

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,BENCH

K. N. Trimbathu ~~VOA/TA/RA/CP/MA/PT~~ 194 of 20-90
Applicant(S)U. O. S. Deo ^{Versus} Respondent(S)

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5 - O.A. Capital - See A-		A-25

Certified that the file is complete in all respects.

Signature of S.O.

Signature of Deal. Hand

B-C Wides out
14-5-94

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

LUCKNOW

C.A./T.A. No. 194/90 of 19

Name of Parties K. N. Tripathi... Applicant

Varsus

Union Of India Respondents

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Part 3.

B 464 B. 94

Part C

C75 to C84

CERTIFICATE

Certified that no further action is required to be taken and the case is
for consignment to the record room (Decided)

Countersigned:-

Dated- 27/6/93

~~W. J. Morris~~
Signature of the dealing
Assistant.

Section Officer/ Court Officer

K2

particulars to be Examined

Endorsement as to result of examination

11. Are the application/duplicate copy/spare copies signed ? *yes*

12. Are extra copies of the application with Annexures filed ?
a) Identical with the Original ? *yes*
b) Defective ? *no*
c) Wanting in Annexures
Nos. _____ pages Nos. _____ ?

13. Have the file size envelopes bearing full addresses of the respondents been filed ? *yes*

14. Are the given address the registered address ? *yes*

15. Do the names of the parties stated in the copies tally with those indicated in the application ? *yes*

16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ? *yes*

17. Are the facts of the case mentioned in item no. 6 of the application ?
a) Concise ? *yes*
b) Under distinct heads ? *yes*
c) Numbered consecutively ? *yes*
d) Typed in double space on one side of the paper ? *yes*

18. Have the particulars for interim order prayed for indicated with reasons ? *yes*

19. Whether all the remedies have been exhausted. *yes*

dinesh

O.A. 194/90(C)

15.1.92
D.R.

Applicant is present.

This case has been taken up today. Because on the date fixed this file was not available to me. Applicant is directed to file Rejoinder by 5/3/92.

S. 3. 92
D.R.

Both the parties are absent. Applicant is further directed to file Rejoinder by 20/5/92.

20-5-92
D.R.

Both the parties are present. Applicant has filed Rejoinder today. Hence, this case is to be listed before the Hon. Bench for hearing on 28.7.92.

28.7.92. No date of hearing
adjm 18.9.92

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH : LUCKNOW

ORDER SHEET NO. _____

O.A./T.A. No. 1941/92

OFFICE REPORT / DATE / ORDER

case is S.P. 11-

15-9-92

Case and record adj'd

10/9/92

13-11-92

Boe

13-11-92

No sitting adj'd
to 23-12-92

23-12-92 - No sitting adj'd to 10-2-93

OK

10-2-93

No sitting adj'd

23-3-93

✓

CHIEF

SFT

✓

09/2/93

23-3-93

No sitting adj'd to 22-4-93

✓

OK

CHIEF/II OK

SFT

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Case and record adj'd

to 9-2-93

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O.A.No.194/90

176

9/7/93

Hon. Mr. B.K. Singh, A.M.

Shri V.K. Srivastava, learned Counsel
for the respondents is present.

None for the applicant. Pleadings
are complete. List this case
for final hearing/disposal
on 30/8/93.

(tgk)


A.M.

30.8.93

No hearing of D.M. only
on 15.10.93


D.M.

~~OR~~
~~Ex. 100/100~~

~~BBM~~

~~29/8/93~~
~~15.10.93~~

No hearing of D.M.
affirm


D.M.

~~Ex. 100/100~~

~~BBM~~

~~29/8/93~~
~~15.10.93~~

OR
Vide order of Hon
V.C. Substituting case

for F.H. on 19.9.93.


V.C.

~~Ex. 100/100~~
~~15.10.93~~
~~Advocate not~~
~~Advocate not~~
~~Advocate not~~
~~Advocate not~~
~~Advocate not~~

~~of~~
~~hearings have~~
~~already been completed.~~
~~the said case was~~
~~made V.C.D. on~~
~~15.10.93.~~

~~M.P. 780/93 moved.~~
~~for F.H. the said~~
~~case was set for~~

~~order~~
~~26/10/93~~

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

Original Application No. 194 of 1990 (L)

this the _____ day of October, 1994

HON'BLE MR. V.K. SETH, ADMN. MEMBER
HON'BLE MR. D.C. VERMA, JUDICIAL MEMBER

Kailash Nandan Tripathi, aged about 43 years, S/o
of Sri Ram Bujharat Tripathi, R/o 583, A Baulia Railway
Colony, Gorakhpur.

Applicant

By Advocate : Shri B.N. Rastogi

Versus

Union of India through its Secretary, Ministry of
Railways, New Delhi.

2. Divisional Commerical Superintendent, N.E.R. Ashok
Marg, Lucknow.

3. Senior Divisional Commercial Supdt., N.E.R.,
Ashok Marg, Lucknow.

4. Addl. Divisional Railway Manager, N.E.R., Ashok
Marg, Lucknow.

Respondents

By Advocate : None

O R E E E

D.C. VERMA, MEMBER (J)

Kailash Nandan Tripathi, T.T.E., N.E.

Railway, has by this O.A. under section 19 of A.T.
Act ~~xxx~~ challenged (i) order of imposition of penalty
of reduction to the lower stage (vide Annexure-1),
(ii) rejection of appeal (vide Annexure-2) and (iii)
~~order passed on~~
(revision (vide Annexure-3).)

2. The brief facts of the case is that the applicant, on 3rd May of 1988, was on duty on 153 up Vaishali Express from Gorakhpur to Lucknow in IInd class Sleeper Coach No. S-15 (4810). The applicant handed over the charge at Lucknow to Sri S. Sahai, T.T.E. who went further with the coach up to Delhi. Between Aligarh and Ghaziabad the train was checked by Special Squard Vigilance Inspector of the Railway Board, who found that R.A.C. passengers of the coach were not given berth, though available ~~wait~~ listed and new passengers were given berth ~~against~~ [&] ~~ed~~ the rules. The R.A.C. passengers complain^y that in spite of their request the available berth was not given to them. A memo was issued to the applicant ^{was} was called at the Vigilance Wing of the Railway Board and his statement was recorded. Finally a formal chargesheet was issued. Shri H.S. Sokhi was appointed as Enquiry Officer. After completion of the enquiry a punishment order was passed. Against the said order an appeal was preferred and thereafter a revision was ^{on} but both were rejected. The original penalty order of reduction to ^{from Rs. 1320/-} lowest stage of Rs. 1200/- in time scale of Rs. 1200-2040 for a period of 3 years with postponing future increments was maintained, hence this O.A.

3. The learned counsel for the applicant has contended that the special s-quard checked the train when the applicant was not holding the charge of the Bogie, the R.A.C. passengers were ~~offer~~ ^{they} ~~offer~~ ^{offer} berths but ^{they} ~~declined~~ ^{reservations} to accept the same by depositing additional ^{am} dunts,

serious irregularities were noticed.

Article-1

He deliberately allotted berth No. 62 and 56 to passengers with Tkt. No. 68543/91006 (W/L No. 17) and with Tkt. No. 16345/55971 (II M/ Exp. Tkt.) ex-GKP to NDLS out of turn overlooking legitimate turn of RAC passengers kept on B. No. 15 & 23 with improper motive as detailed in the statement of imputation.

Article-2

He also intentionally falsified the reservation chart of Coach No. 4810 by passing a remark against RAC 15-23 "Berths not required" only to cover up his malpractice as detailed in the statement of imputations.

Thus he violated Rule No. 3(1) (i), (ii) and (iii) of the Railway Service (Conduct) Rules, 1966."

6. The RAC passenger of berth No. 15 were Ramesh ^{Sahai} Sharma and Abdul Aziz and on RAC berth No. 23 V.K. ^{Soni}

The statements were recorded in the presence of T.T.E., S. Sahai, who was managing the coach between Lucknow Junction to Delhi Junction. The R.A.C. passengers complaint that in spite of their request and demand, the berth was not given to them. The complaint by the passengers are in writing with their signatures.

The passengers who were given berths were wait listed and even out of list. Against the names of the applicants noted on the reservation chart "berth not required". The enquiry officer recorded the statement of S. Sahai, T.T.E. who was managing the coach between Lucknow to Delhi, & of Vigilance Inspector N.V. Prasad Sharma who checked the Bogi. who

The applicant also examined S. Sahai, T.T.E. was produced earlier as a prosecution witness and also produced R.P. Gupta and M.N. Sharma two other witnesses. Besides the above, the applicant also produced undated statement of Abdul Aziz that he did not require the sleeper berth. This undated written statement has ~~not~~ been accepted by the enquiry officer on the ground that the same was obtained subsequently. The enquiry officer has given sound reason.

A

ing for his conclusion. A reading of evidence recorded by the enquiry officer shows that he ^{has} ~~was~~ considered all the points raised on behalf of the applicant and has properly assessed the evidence. The contention of the learned counsel for the applicant that the proper opportunity was not given to him for cross-examination, or that the evidence of defence witnesses has not been properly assessed, has no basis. Non-examination of one prosecution witnessess namely R.P. Singh is also not very material as another witness on the same point was examined earlier. We are, therefore, unable to agree with the contention of the learned counsel for the applicant, that the findings ^{against} ~~against~~ the ^{applicant} is based on no evidence.

7. The other contention of the learned counsel for the applicant that the applicant was not given copy of enquiry report as has been held in M.R. Khan's case is also not correct. M.R. Khan's case was decided on 20.11.1990. The decision is not retrospective and is only prospective as has been held by the Hon'ble Supreme Court in the case of Managing Director ECIL Hyderabad Vs. B. Karunakar & others 1993 SCC (L&S) page 1184.

8. The last point of argument of the learned counsel for the applicant is that imposing of punishment

by awarding to lowest stage of the pay-scale is not within the strict interpretation of the term. There is no limit to which the punishment of reduction in pay can be awarded. Lower stage includes lowest stage. Besides it, this Bench hearing the case under section 19 of A.T. Act cannot interfere with the quantum of punishment. In State Bank of India & others Vs. Samarendra Kishore Endow and another reported in 1994 SCC page 687 the Hon'ble Supreme Court has held as Below :-

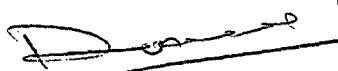
"Imposition of appropriate punishment is within the discretion and judgment of the Disciplinary Authority. It may be open to the Appellate Authority to interfere with it but not to the High Court or to the Administrative Tribunal ~~and~~ for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under article 226. The power under article 226 is one of the judicial review. It is not an appeal from a decision but a review of the manner in which the decision was made. The power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the authority after according a fair treatment, reaches on a matter which it is authorised by law to decide for itself, a conclusion which is correct in the eyes of the court".

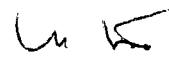
9. The quantum of punishment awarded has been and upheld by the appellate authority ~~also on revision~~, so we are not inclined to interfere with it.

10. In view of the discussions made above, we

AB

find no ground to interfere with the order of punishment awarded to the applicant. The O.A. is liable to be dismissed and is dismissed. No costs.


MEMBER (J)


MEMBER (A)

LUCKNOW: DATED: 18-10-94

GIRISH/-

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH AT LUCKNOW

O.A. No. 194 of 1990(L)

Kailash Nandan Tripathi

... Applicant

Versus

Union of India & others

... Respondents.

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5. Vakalatnama	18
6. Postal order No. B02414709 for Rs 50/-	dated 31.5.90 -19-

f.f.
2/6/90

Place: Lucknow

Dated: 1.6.90

Raju/-

Asit Kumar Chaturvedi
Advocate,
Counsel for the applicant

Noted for
2.7.90
Asit Chaturvedi

1
AS
IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW

O.A. No. 194 of 1990(L)

Central Administrative Tribunal

Circuit Bench, Lucknow

Date of Filing 11/6/90

Date of Receipt by Past.....

for Deputy Registrar (M)

KAILASH NANDAN TRIPATHI,
Aged about 43 years,
Son of Sri Ram Bujharat Tripathi,
R/O 583 A Baulia Railway Colony,
Gorakhpur.

... Petitioner/
Applicant
Versus

1. Union of India through its Secretary,
Ministry of Railways,
New Delhi.
2. Divisional Commercial Superintendent,
N.E.R. Ashok Marg, Lucknow.
3. Senior Divisional Commercial Supdt.,
N.E.R. Ashok Marg, Lucknow.
4. Addl. Divisional Railway Manager,
N.E.R., Ashok Marg, Lucknow.

... Opp. Parties/
Respondents

APPLICATION UNDER SECTION 19
OF THE TRIBUNALS ACT. 1985.

K. N. Tripathi

DETAILS OF APPLICATION

2

AT6

(2)

1. Particulars of the order against which the application is made;

The above said application is being preferred before this Hon'ble Tribunal against the orders;

(i) Dated 6.10.1989 passed by Divisional Commercial Superintendent, N.E.R., Lucknow reducing the applicant in the time scale of lower stage. A copy of this order is annexed herewith as ANNEXURE No.1 to this application.

(ii) Dated 1.12.1989 passed by the Senior Divisional Commercial Superintendent, N.E.R., Ashok Marg, Lucknow rejecting the appeal of the applicant against above mentioned punishment order. A copy of this order is annexed herewith as ANNEXURE No.2 to this application.

(iii) Dated 15.1.1990 passed by the Addl. Divisional Railway Manager, N.E.R., Ashok Marg, Lucknow dismissing the revision application of the applicant against the said penalty. A copy of this order is annexed herewith as ANNEXURE No.3 to this application.

K.N. Tripathi

(3)

2. Jurisdiction of the Tribunal;

The applicant declares that the orders referred above against the applicant have been passed at Lucknow. Hence this circuit bench at Lucknow has its jurisdiction to adjudicate the matter.

3. Limitation;

The applicant further declares that the application is within the limitation period prescribed in section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the case;

Brief facts of the case are as under;

i. That the petitioner was appointed in North Eastern Railway as Act Apprentice with effect from 8th February, 1966. Ultimately the applicant was promoted to the post of Train Ticket Examiner on 5th May, 1987. Since then he has been working on this post at his headquarter at Lucknow and lastly at Gorakhpur.

ii. That on 3rd May, 1988 the petitioner was on duty on 153 up Varanasi Express from Gorakhpur to Lucknow which crosses up to Delhi in coach no. S-15(4810) Second Class Sleeper. The applicant handed over the charge at Lucknow to Sri S. Sahai, Train Ticket Examiner who went further to the train journey.

K. N. Tripathi

(4)

iii. That 4 births were available in Second Class Sleeper and there were certain reservation in R.A.C. 4 of R.A.C. passengers though offered births by the applicant but they refused to avail it as they never wanted to deposite extra money of Rs 24/- each required for full birth.

iv. That there it may be pointed out that the applicant left the duty at Lucknow at 1.10 A.M. between the night of 3/4th May, 1988.

v. That the same train was checked thereafter in the morning between Aligarh and Ghaziabad by Sri N.V.S. Prasad Sharma, Special Squad, vigilance Inspector of the Railway Board. At that time Sri Sahai was running as Train Ticket Examiner in train and not the applicant. However Sri Sharma compelled to passengers to make statements that they were not offered births or paid Rs 24/- each and in these circumstances Sri Sharma a Vigilance Inspector secured statement against the applicant.

vi. That through a memo issued to the applicant the applicant was called at the vigilance wing of the Railway Board on 2.6.1988 and his statement was recorded in the matter. He made a statement that the passengers did not avail of the opportunity of having full birth instead of R.A.C. The Railway authorities were not satisfied with the statement hence a formal chargesheet was issued to the applicant on 20.9.1988 and Sri H.S. Sokhi was appointed as Enquiry Officer. Enquiry was conducted by Mr Sokhi

JK N Tripathi

(5)

on several dates with the following irregularities.

(a) The Statement of Sri Raj Pal Singh, R.P.C. Guard attached to the vigilance inspector was not recorded. He was only the material witness. The statements of 3 complainants/passengers were also not recorded in presence of the applicant nor the applicant was afforded opportunity of crossexamination with them though the applicant demanded for the same. Yet their so called written statement taken at the train by the vigilance inspector have been heavily relied upon by the Enquiring Officer and the punishing authority against the applicant. Thus the statement taken prior to the formal enquiry and without an opportunity to the applicant of crossexamination they cannot be relied upon in the formal enquiry.

(b) That the Enquiring Officer did not consider the statement of Sri K.P.Gupta and M.N.Sharma the 2 witnesses upon whom the applicant relied upon. They were the persons who were travelling along with the applicant and they were most material witnesses on the point as to whether the passengers were not offered the births or they refused to avail off, and that was clinching question to be decided by the Enquiring Officer and Punishing authority. Hence the whole enquiry has been vitiated.

(c) That no opportunity of personal hearing was afforded to the applicant. The enquiring officer submitted a report against the applicant holding him guilty and the appointing authority passed the impugned orders annexure no.1 imposing

K.N.Turpeth

6
R.D.

a punishment of reduction of salary in the time scale of a lower stage. While passing the impugned order Annexure no. 1 no reasons have been recorded. Only a casual order has been passed and the contents of the enquiry report and findings were not incorporated in the punishment order. So the petitioner submitted an appeal to the Opposite Party No. 3 but in appeal also a casual and summary order has been passed without considering the points.

(d) That the applicant also submitted a revision application but the same was also rejected by the Opposite Party No. 4 in a summary and casual manner without recording any reason.

5. Grounds for relief with legal provisions;

i. Because the entire enquiry is in violation of the principle of natural justice as the petitioner was not afforded an adequate opportunity.

ii. Because it is a case of no evidence against the applicant.

iii. Because the enquiry report is based upon the presumption and assumption on which the appointing authority not applied mind and followed it mechanical

iv. Because the statement of witnesses who did not appear during the formal enquiry and with whom the applicant had no opportunity to crossexamine cannot be relied upon.

K.N. Tripathi

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AGT

(7)

v. Because the statement of witnesses ought to have been considered by the Enquiring Officer.

vi. Because the bias of the enquiring officer was evident from the presumption and assumption and how so ever it is strong cannot take place the truth.

6. Details of remedy exhausted;

The applicant declares that he has availed all the remedies available to him under the relevant service rules etc.

7. The matter is not previously filed or pending with any other court;

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of this application has been made before any court or any other authority or any other bench of the Tribunal, nor any such application, writ petition or suit is pending before any of them.

8. Relief sought;

In view of the facts and circumstances mentioned in paragraphs 4 & 5 of this application the applicant prays for following reliefs;

(A) That this Hon'ble Tribunal may graciously be pleased to set aside Annexures 1, 2 & 3 of this application with all consequential benefits in respect of pay, arrears and allowances etc.

K. N. Tripathi:-

A29

(B) That any other and further relief which this Hon'ble court deems fit and proper may also be awarded in favour of petitioner along with cost.

9. Interim relief if any prayed for;

Pending final decision, on the application the applicant seeks the following interim relief;

That on the basis of facts and circumstances grounds mentioned in the application along with its annexures, it is most respectfully prayed that this Hon'ble tribunal may be pleased to issue a suitable direction/order and stay the operation of the impugned orders contained as Annexures 1,2 & 3 in the interest of justice.

10. The humble applicant wants oral hearing through his counsel.

11. Particulars of the postal order;

Postal order No. 1502416709 dated 31-5-90 for Rs 50/- only.

VERIFICATION

I, Kailash Nandan Tripathi, Aged about 43 years Son of Sri Ram Bujharat Tripathi, Resident of 583A Bau lia Railway Colony, Gorakhpur do hereby solemnly affirm and do hereby verify that the contents of paragraphs 1 to 11 of this application are true

K-N.Tripathi

9
523

(9)

to my personal knowledge except para-5 which is true on the basis of legal advice received and that I have not suppressed any material facts.

Application is being provided vide notification No. A-A.T.11019/44/87 dated 11th October, 1988.

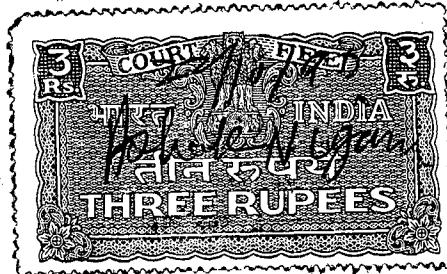
K.N.Tripathi

SIGNATURE OF THE APPLICANT

Place: Lucknow

Dated: 1.6.90

Asit Kumar Chaturvedi
Advocate,
Counsel for the applicant



229

NS/CCS

VAKALATNAMA

Before
in the Court of

Central Adm. Tribunal Bench Lucknow
on 194/90(L)

Plaintiff
Defendant K. N. Tripathi

Claimant
Appellant

Versus

Defendant
Plaintiff Union of India & others

Petitioner
Respondent

The President of India do hereby appoint and authorise Shri Ashok Nejami
Advocate Lucknow

..... to appear, act, apply, plead in and prosecute the above described suit/appeal/proceeding on behalf of the Union of India to file and take back documents, to accept processes of the Court, to appoint and instruct Counsel, Advocate or Pleader, to withdraw, and deposit moneys and generally to represent the Union of India in the above described suit/appeal/proceedings and to do all things incidental to such appearing, acting, applying, Pleading and prosecuting for the Union of India SUBJECT NEVERTHELESS to the condition that unless express authority in that behalf has previously been obtained from the appropriate Officer of the Government of India, the said Counsel/Advocate/pleader or any Counsel, Advocate or Pleader appointed by him shall not withdraw or withdraw from or abandon wholly or partly the suit/appeal/claim/defence/proceeding against all or any defendants/respondents/appellant/plaintiff/opposite parties or enter into any agreement, settlement, or compromise whereby the suit/appeal/proceeding is/are wholly or partly adjusted or refer all or any matter or matters arising or in dispute therein to arbitration PROVIDED THAT in exceptional circumstances when there is not sufficient time to consult such appropriate Officer of the Government of India and an omission to settle or compromise would be definitely prejudicial to the interest of the Government of India and said Pleader/Advocate or Counsel may enter into any agreement, settlement or compromise whereby the suit/appeal/proceeding is/are wholly or partly adjusted and in every such case the said Counsel/Advocate/Pleader shall record and communicate forthwith to the said officer the special reasons for entering into the agreement, settlement or compromise.

22/10
The President hereby agree to ratify all acts done by the aforesaid Shri Ashok Nejami
Advocate Lucknow

in pursuance of this authority.

IN WITNESS WHEREOF these presents are duly executed for and on behalf of the President of India this the day of 198 .

Dated 198

K. L. Pandey
Designation of the Executive Officer

12/10/90

NER-84850400-8000-4 7 84

प्रबंध संदर्भ वादित्य अधीक्षक
पूर्वोत्तर रेलवे, लखनऊ

Accepted for O.P. No. 1 OP NO 1

Ashok Nejami

22-10-90 Adarsh

VAKALATNAMA



Before
In the Court of

Central Admin. Tribunal Bench Lucknow

on No. 194 of 1990 (C)

K. N. Tripathi.....

Versus

.....Union of India and others.....

H/W. K. L. Pandey.....S/o. Divl. Comol. Subalt. NER. Lucknow

.....and S. P. Ranholi.....Divl. Comol. Subalt. NER. Lucknow

B. S. Rawal

do hereby appoint and authorise Shri.....Ashok Nigam.....

Railway Advocate.....Lucknow.....to appear, act apply and prosecute the above described Writ/Civil Revision/Case/Suit/Applicaion/Appeal on my/our behalf, to file and take back documents, to accept processes of the Court, to deposit moneys and generally to represent myself/ourselves in the above proceeding and to do all things incidental to such appearing, acting, applying, pleading and prosecuting for myself/ourselves.

H/W. We hereby agree to ratify all acts done by the aforesaid Shri.....Ashok Nigam.....

.....Railway Advocate,.....Lucknow.....

.....in pursuance of this authority.

IN WITNESS WHERE OF these presents are duly executed by me/us this.....

.....day of.....198..

.....Balram
(B. S. Rawal)
or (S. P. Ranholi)

मण्डल वाणिज्य अधीनक
पूर्वोत्तर रेलवे, लखनऊ

.....M. L. A.....
.....(K. L. Pandey) 12/10/90

प्रबर मण्डल वाणिज्य अधीनक
पूर्वोत्तर रेलवे, लखनऊ.....

Accepted for O. P. No. 723 O P No. 223

NER-84850400-800-4784

Ashok Nigam
Adiwalli

22.10.90

NS/CCS
64

VAKALATNAMA



Before
In the Court of

Central Adm Tribunal Bench Lucknow

OA No. 194 of 1990 (L)

R. N. Prabhat

Versus

Union of India and others

I/We R. K. Singh Addl. Adm. Rly. Manager
NE Rly. Lucknow

do hereby appoint and authorise Shri Ashok Nigam

Lucknow

Railway Advocate to appear, act apply and prosecute the above described Writ/Civil Revision/Case/Suit/Applicaion/Appeal on my/our behalf, to file and take back documents, to accept processes of the Court, to deposit moneys and generally to represent myself/ourselves in the above proceeding and to do all things incidental to such appearing, acting, applying, pleading and prosecuting for myself/ourselves.

I/We hereby agree to ratify all acts done by the aforesaid Shri Ashok Nigam

Railway Advocate, Lucknow

..... in pursuance of this authority.

IN WITNESS WHERE OF these presents are duly executed by me/us this

..... day of 198..

R. K. Singh
12. x. 80
(R. K. Singh)

अपर्मडल रेलवे प्रबन्धक,
पूर्वोत्तर रेलवे, लखनऊ

OP No. 1

NER-84850400-80 -4 7 84

Accepted for C.P. No. 4

*Ashok Nigam
Advocate*

22-10-80

(127)

To : The Dy. Registrar
Central Admin Tribunal
Lucknow

Sir, I am the Counsel of
Smt. K.N. Taparia in Case No 194/80
I would like to make an application
against the for purpose of an
early hearing.

W.B. Raygarh
Counsel for
Petitioner

10/5/80

W.B. Raygarh
Counsel for
Petitioner

ब अदालत श्रीमान्

Central Admnistrative Tribunal

महोदय

Locpura

[वादी अपीलान्ट]

श्री

प्रतिवादी [रेस्पाइन्ट]

K.N.Tsopaku

D.R.M (North Eastern Railways

वकालतनामा

Locpura



(वादी अपीलान्ट)

K.N.Tsopaku

बनाम

D.R.M (N.E.Railways
Locpura (प्रतिवादी रेस्पाइन्ट)

नं. मुकद्दमा P4 सन् १० पेशी की ता० १९ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री B.N.Rao

Advocate 11379 Sector B
Vadavagur, Gol

बकील

महोदय

एडवोकेट

अदालत नं०	मुकद्दमा नं०
नाम	फरीदारी
नाम	काम

को अपना बकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ इस मुकद्दमा में बकील महोदय स्वयं अथवा अन्य बकील द्वारा जो कुछ पैरवी व जबाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रूपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करें मुकद्दमा उठावें या कोई रूपया जमा करें या हमारी विपक्षी (फरीदारी) का दाखिल किया हुआ रूपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करें - बकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूँ कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूँगा अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे बकील पर नहीं होगी इसलिये यह बकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर K.N.Tsopaku

साक्षी (गवाह) (गवाह)

दिनांक महीना सन् १९ ई०

स्वीकृत

24/4/89

Ann. No 11

NORTH EASTERN RAILWAY

FORM No. 2

Order of imposition of penalty of reduction to a lower stage in the time scale of Pay under Rules 6(v) of the Railway Servants (D&A) Rules, 1968.

No. LD/SS-C/Vig./ 74/88

Dated 6.10.89

To :

Name	- Shri K. N. Tripathi
Father's name	-
Designation	- T.T.E.
Department	- Commercial
Date of appointment	-
Stage	- GKP
Scale of pay	- 1200-2040
Present Pay	- Rs. 1380/-

Shri K. N. Tripathi, TTE/Gorakhpur

(name, designation and office in which he is employed)
(under suspension) is informed that the Inquiry Officer/Board-of-Inquiry appointed to enquire into the charge(s) against him has/have submitted his/their report. A copy of the report of the inquiry officer/Board-of-inquiry is enclosed.

2. On a careful consideration of the enquiry report aforesaid the undersigned agrees with the finding(s) of the Inquiry Officer/Board-of-Inquiry and holds that the article(s) of charge is/are proved.

OR

On a careful consideration of the enquiry report aforesaid the undersigned agrees with the finding(s) of the Inquiry Officer/Board of Inquiry in so far as it relates to article(s) of charge no.(s) _____ and for reasons stated in the attached Memorandum holds that article(s) of charge no.(s) _____ which the Inquiry Officer/Board of Inquiry has/have held is not proved/not proved, is also proved/not proved.

3. The undersigned has, therefore, come to the conclusion that the penalty of reduction to the lower stage at Rs. 1200/- in the time scale of pay of Rs. 1200-2040 may be imposed on Shri K. N. Tripathi, TTE/GKP for a period of 3 Years (Here state the period). Shri K. N. Tripathi is, therefore, reduced from the stage of Rs. 1380/- to the stage of Rs. 1200/- in the scale of pay Rs. 1200-2040 at present held by him for a period of 3 years months from the date of this order with/without postponing future increments.

4. Under Rule 18 of the Railway Servants (D&A) Rules 1968 an appeal against these orders lies to Sr. DGS provided :

- the appeal is submitted through proper channel within 45 days from the date of receipt of these orders and
- the appeal does not contain in improper or disrespectful language.

5. Please acknowledge receipt of this letter.

D/A/ EO's report
in 5 pages.

Signature (S. P. KAUSHAL)

(Name & Design. of the disciplinary authority)

*Strike out whichever is
not applicable.

DIVL. COMM. SUPDT. / L.J.N.

T. C.
Atit Chaturvedi
Adv.

Charge copy — 11

R.S.

REPORT OF ENQUIRY AND FINDINGS

UNDER R.S. (D & A) RULES, 1968.

.....

Case No. - LD/SS-3/Vig/74/88

Suspect Public Servant - Shri K. N. Tripathi, TTE/GKP(W)

Memorandum of Charge No. - LD/SS-3/Vig/74/88 dt. 20.9.88

Disciplinary Authority - D. C. S./LJN

Enquiry Officer - H. S. Sokhi,

Defence Assistant - Shri I. S. Khare, Ex. EI/DA.

I. Article of Charges framed against Shri K. N. Tripathi, TTE/GKP(W).

✓ That the said Sri K. N. Tripathi while working as Sleeper Coach TTE headquartered at GKP, in the month of May, 1988 he committed serious misconduct and failed to maintain absolute integrity, devotion to duty and behaved in the manner of unbecoming of a Railway Servant in that during a Vigilance Check conducted by I. Is/Vig./Spl. Squad Railway Board in 3 Tier Coach No. 4810 by 153 Exp. of 04.5.88 between Aligarh - GZB the following serious irregularities were noticed.

ARTICLE - I.

He deliberately allotted berth No. 62 and 56 to Passengers with Tkt. No. 68543/91006 (W/L No. 17) and with Tkt. No. 16345/55971 (II M/Exp. Tkt.) ex-GKP to NDLS out of turn overlooking legitimate turn of RAC passengers kept on B. No. 15 & 23 with improper motive as detailed in the statement of imputation.

ARTICLE - II.

He also intentionally falsified the reservation chart of Coach No. 4810 by Passing a remark against RAC 15 - 23 as "Berths not required" only to cover up his malpractice as detailed in the statement of imputations.

Thus he violated Rule No. 3(l)(i), (ii) and (iii) of the Railway Service (Conduct) Rules, 1966.

Statement of Imputations.

Shri K. N. Tripathi was working as Sleeper Coach TTE headquartered at GKP in the month of May, 1988. During Vigilance check conducted in 3-Tier Sleeper Coach No. 4810 by 153 Exp. of 04.5.88 between ALN and GZB the following serious irregularities were noticed.

The reservation chart of the said coach was verified and found that passengers kept on RAC 15-23 with II M Exp. ticket No. 14480/53802, 68441/ 90883, ex GKP to NDLS with II M Exp. ticket

T. C.
Anil Kumar Chaturvedi
Add

K. N. Tripathi

No.15326/90884 ex GKP to ALJN and with II M/Exp ticket No. 68442/90885 ex GKP to NDLS were not provided accommodation. It was also found that he deliberately allotted berth No.56 and 62 to Passengers with ticket No.68543/91006 (W/L No.17) and with II M Exp. ticket No.16345/55971 ex GKP to NDLS ignoring RAC Passengers since original passengers booked on B.No.56 and 62 have not turned up at GKP. The RAC passengers of the coach against whom he passed a remark as "No need for berth" were contacted. Sri Vinay Kumar Sahai of RAC 23 stated in his complaint dated 04.5.88 that he never refused for berth but requested the TTE for allotment of confirmed accommodation in presence of Sri S. Sahay, TTE/LJN and Sri Raj Pal Singh, RPF Rakshak, Sri Ramesh Sharma and Sri Abdul Aziz Passengers travelling on RAC No. 15 also stated that they x never refused accommodation and instead requested him for allotment of sleeper accommodation and also gave in writing in presence of Sri S. Sahay, TTE/LJN and Sri Raj Pal Singh, RPF/Rakshak/NDLS Thus he falsified the reservation chart by Passing a remark as "Berth not required" deliberately to cover up his malpractice of out of turn allotment.

2.00 Authority for Enquiry. DCS/LJN, who is the disciplinary authority in this case, has nominated me to inquire into the charges framed against Sri K. N. Tripathi, TTE/GKP vide Orders No.LD/SS-C/Vig./74/88 dated 13.12.88. A copy of this order has also been endorsed to Shri K. N. Tripathi (SPS).

3.00 Relied Upon Documents. Out of 4 RUDs mentioned in Annexure III to the memorandum of charge sheet, SPS has admitted RUD No.1 and 4.

4.00 Prosecution witnesses. Evidence of 2 P.Ws out of 3 P.Ws mentioned in Annexure IV to the charge sheet was recorded as under :-

1. Shri S. Sahai ROP 2 & 3.
2. " N.V.S. Prasad Sharma, ROP- 4 to 15.

Third P.W. Shri Raj Pal Singh did not appear before the enquiry.

5.00 Defence witnesses.

SPS produced defence witnesses whose evidence was recorded as under :-

1. Shri Shailendra Sahai, TTE (earlier he appeared as PW and evidence recorded vide ROP 2 & 3). ROP 18 & 19.
2. Shri R. P. Gupta, KC ROP 20 and 21.
3. Shri M. N. Sharma, ROP 22.

K.N.Tripathi

T.C.
At Chaturvedi
Adv.

6.00 Defence Case.

SPS has submitted his defence statement under Rule 9(19) vide ROP 16 and 17. After recording evidence of his defence witnesses vide ROP 18 to 22, he was examined by E.O. under rule 9(21) vide ROP 23 and 24. SPS submitted his written brief under Rule 9(22) vide ROP 25 to 36.

Appreciation of Evidence.

7.01 Article -1. The allegation against SPS is that he deliberately allotted berth No. 62, and 56 to passengers ex. GKP to NDLS out of turn over looking legitimate turn of RAC passengers kept on berth No. 15 and 23. It was detected during the Vigilance check conducted by I.I.(Vig.) Rly. Board in 3 Tier Coach No.4810 by 153 Exp. of 4.5.88 between Aligarh and Ghaziabad. SPS Vide ROP 23/ 1 & 2 has accepted to have worked 153 Up on 3.5.88 ex GKP to LJM and had worked coach No. S/15 (4810). PW Sri Shaleendar Sahai has deposed vide ROP 3/11 that he took charge of coach S/14 and S/15 of 153 Up at LJM from Shri K. N. Tripathi and Sri Tripathi had worked these sleeper coaches ex GKP to LJM.

PW Shri N.V.S. Pd. Sharma in his statement in chief vide ROP-4 has deposed that he conducted check in coach No.4810 by 153 Up Exp. on 4.5.88 between ALJN and Ghaziabad and during his check it was found that SPS had allotted berth No.62 and 56 to wait listed passengers and fresh passenger ex GKP to NDLS out of turn overlooking the legitimate turn of RAC passenger on berth No.15 and 23 of the said coach. He has also deposed that RAC passengers i.e. S/Sri Ramesh Sharma and Abdul Aziz travelling on RAC berth No. 15 have stated that they are travelling from GKP to NDLS and SPS did not allot them berth even on their request. The statement of the passengers taken by him was witnessed by TTE manning that coach between LJN to NDLS. He has also stated that passenger on RAC berth No. 23 travelling from GKP to NDLS has stated that he had requested for for a berth but was not provided any accommodation. Statement of Shri Vinai Kumar Shahi of berth No. 23 and that of S/Shri Ramesh Sharma and Abdul Aziz berth No.15 have been endorsed by TTE Shri Shaileendra Sahai to the fact that the passengers have given statement in his presence. Shri Shaileendra Sahai has confirmed vide ROP 3/14 that the endorsement on the complaint by passengers is in his own handwriting and bore his signature. He also stated that these complaints of passengers were brought by V.I.

SPS vide ROP 23/5 & 6 has accepted that there were 6 RAC passengers who had turned up at GKP and had occupied their allotted RAC berths. These berths were 7, 15 & 23. He accommodated RAC passengers of berth No.7 and remaining RAC passengers on berth No. 15 & 123 were not provided berths due ~~to~~ to their refusal to occupy the same. The statement of passengers recorded by I.I. reveals that they were not provided sleeping berth by the TTE even on request whereas SPS has taken the plea that these passengers had refused to occupy sleeping berths even when the same were offered to them. Defence witness

K.N. Tripathi

Shri M. N. Sharma vide ROP-22/1 has stated that legally RAC passenger can not refuse sleeping berth when offered. SPS vide ROP 24/7 has accepted that 4 RAC passengers did not occupy sleeper berths even an offer made by him as the berths were available.

It is evident from the above evidence that out of 6 RAC passengers on berth No. 7, 15 and 23, 4 RAC passengers on berth No.15 and 23 were not accommodated on the available sleeping berths and on these available sleeper berths No.56 and 62 WL/Fresh passengers were accommodated out of turn. The extent instructions on the subject are that after providing accommodation to the passengers in the coach according to reservation chart and the berths becoming available due to non-turning up passengers having confirmed reservation, these berths should be allotted to RAC passengers and thereafter to wait listed passengers. Thus RAC passengers have their prior claim for sleeper berths becoming available. TTE should have followed the instructions. By not following these instructions and thereby allotting available berths 62 and 56 to other than RAC passengers of 15 & 23. SPS has failed to maintain devotion to duty.

7.02 Article II. The allegation against SPS is that he intentionally falsified the reservation chart of coach No.4810 by passing a remark against RAC 15-23 as 'berths not required' only to cover up his mal practice. RAC passengers booked on berth No. 15 and 23 have stated in their ~~x~~ statements RUD 2 and 3 that they were not provided sleeping berths by the TTE even on their request. These statements of passengers have been witnessed by Prosecution witness Shri Shailendra Sahai (ROP-2). SPS has taken the plea in his defence argument that RAC passenger Shri Abdul Aziz had given in writing that he did not require sleeping berth. SPS also produced an undated memo alleged to have been written by Shri Abdul Aziz that he does not require sleeping berth. In case this memo was obtained by TTE Sri Tripathi from Sri Abdul Aziz on the date of his travelling it should have been supported by the witness of other passengers or responsible person travelling by 153 Up of 3.5.88 from GKp. He could have also produced this memo at the time of giving his statement on 2.6.88 which is RUD-4 in this ~~x~~ case. Even in case he had obtained his refusal in writing on the date of journey he should have mentioned in the reservation chart regarding refusal of Shri Abdul Aziz giving reference to the writing written refusal obtained by him from Shri Abdul Aziz. Since this memo is undated and not supported by any witness and moreover Shri Abdul Aziz has not turned up in the enquiry to corroborate the same ~~in~~, the same is not acceptable. Thus the remarks made by SPS Sri Tripathi in the reservation chart against berth No.15 and 23 as "berth not required" is not supported by any documentary evidence by SPS. Hence the allegation of falsifying reservation chart of coach No. 4810 by passing remarks against berth No.15, 23 "as berths not required" is proved.

Since there is no evidence and complaint against SPS from any passenger regarding demand and acceptance of money. The allegation for his failure to maintain absolute integrity is not substantiated. Investigating V.I. has also deposed by ROP 6/17 that no passenger had alleged against the SPS regarding demand or realisation of illegal gratification.

K. N. Tripathi

T. C.
Smt Chaterjee
Adv

16
15
-: 45 :-

Finding

In view of the appreciation and discussion of the evidence as above the violation of Railway service conduct Rule 1966 by Shri K. N. Tripathi is proved as under:-

Article -I - Violation of 3(1) (ii) is proved.

Article -II - Violation of 3(1) (i) is proved, So far falsifying of the reservation chart is concerned

K N Tripathi

(H. S. Sokhi) 22-4-84
Enquiry Officer/HQ

T.C.
At Chaturwadi
Hd

13/11/89

Arice No 18

16

Ass

N. E. RLY.

DIVL RLY. MANAGER(C)'S OFFICE
LUCKNOW: Dt. 1/12/1989.

No. LD/SS-C/Vig/74/88.

Shri K.N.Tripathi,
TTE/GKP (through CTTI/GKP).

Ref: Your appeal against the order
of DCS/LJN dated Nil forwarded
by CTTI/GKP on 21.11.89.

....

Having considered your appeal dated Nil, the
undersigned has passed the following orders:-

" I have gone through the case. It appears
unbelievable that RAC passengers will be
present in train, yet refuse berths when offered.
In the circumstances, there is purely possibility
that SPS committed the misconduct as made out
by Article of charges I & II. Hence appeal is
rejected".

K. N. Tripathi

P. K. Tevar
Sr. Divl. Commls Supdt. / LJN
AC

T.C.
Hari Chaturvedi
Adv

20/1/90

पूर्वोत्तर रेलवे

Amrit No 3 156

कार्यालय मण्डल रेल प्रबन्धक(वा०)

लखनऊ दिनांक 15-1-1990

प०स० ललडी/एससस-सी/विज/74/88

श्री कै०स०त्रिपाठी,
टी०टी०ई०/गोरखपुर
दूवारा ई०टी०टी०आई०/गोरखपुर ।

सन्दर्भ: आपकी रिवीजन पेटीशन याचिका दि० 1-1-1990 ।

आपकी दिनांक 1-1-1990 की सन्दर्भित रिवीजन पेटीशन पर विचारोपरान्त अधी-हस्ताक्षरी ने निम्न आदेश पारित किए हैं : -

“मैंने श्री कै०स०त्रिपाठी, टी०टी०ई०/गोरखपुर के दि० 1-1-90 के पुनरीक्षण प्रतिवेदन सहित पूरे केस का भली भांति अध्ययन किया । यह तथ्य सिद्ध हो चुका है कि कोच स० 4810 की शायिकाये स० 56 और 62, जो चाक्रियों के न आने के कारण रिक्त रह गई थी, नस याक्रियों को आवंटित कर दी गई जबकि शायिका स० 15 व 23 पर आर०स०सी० यात्री मौजूद थे और रिक्त शायिकाओं के आवंटन के अधिकारी थे । यह बात श्री त्रिपाठी ने भी अपने उपरोक्त पुनरीक्षण प्रतिवेदन में स्वीकार की है, परन्तु इसके लिए इन्होंने यह तर्क प्रस्तुत किया है कि उपरोक्त आर०स०सी० याक्रियों ने शायिका स० 56 और 62 लेने से इनकार कर दिया था । इस संदर्भ में शायिका स० 15 पर स्पैसेज उपसित दो आर०स०सी० याक्रियों में से एक (श्री रमेश शर्मा) तथा शायिका स० 23 पर उपसित दो आर०स०सी० याक्रियों में से एक (श्री विनय कुमार शाही) के बयान रेलवे बोर्ड के जांचकर्ता निरीक्षक (आईआई०/विज०) ने श्री एस० सहाय, टी०टी०ई०/लखनऊ तथा श्री राजपाल सिंह, आर०पी०स्प० रक्षक की उपस्थिति में लिए थे । यह बयान आरोप पत्र के साथ संलग्न आर०य०डी० की सूची में सम्मिलित है । अतः सम्बन्धित आर०स०सी० याक्रियों की सूची में सम्मिलित करने की कोई आवश्यकता प्रतीत नहीं होती । श्री एस० सहाय, टी०टी०ई०/लखनऊ तथा श्री राजपाल सिंह, आर०पी०स्प० रक्षक का नाम पहले से ही आरोप पत्र के साथ संलग्न साक्षियों की सूची में है । कर्मचारी को प्रकृत चाय (नेचुरल जस्टिस) दिस जाने की दृष्टि से यह पर्याप्त समझा जाता है ।

अतः श्री कै०स०त्रिपाठी, ई०टी०ई०/ गोरखपुर का सन्दर्भित पुनरीक्षण प्रतिवेदन अस्वीकार किया जाता है ।”

156/1-1-90
(कर्नल आर०क०सी०ह)

अपर मण्डल रेल प्रबन्धक/लखनऊ

Kirti Pathak

T.C.
Hari Chaturvedi
Adv.

ब अदालत श्रीमान

[वादी] अपीलान्ट

प्रतिवादी [रेस्पान्डेन्ट]

Central Administrative Tribunal

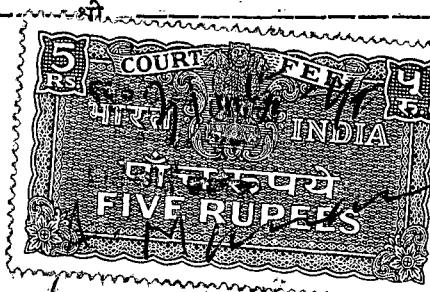
महोदय

Lucknow Bench,

का वकालतनामा

A. No.

/ 90



दो (अपीलान्ट)

Kailash Nandlal Tripathi

बनाम

प्रतिवादी (रेस्पान्डेन्ट)

मुकदमा नं०

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Union of India and others

पेशी की ता०

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ऊपर लिखे मुकदमा में अपनी ओर से श्री Malika Gati Ka Phatak, Bai Ki

Masjid Lucknow

Shri A. K. Chatterjee

वकील

महोदय

एडवोकेट

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ कि इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जबाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रूपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा उठावें या कोई रूपया जमा करें या हमारी या विपक्षी (फरीकासनी) का दाखिल किया हुआ रूपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद लेवें या गंच नियुक्त करें—वकील महोदय द्वारा कोई वह सेवा कार्यवाही हमको सर्वशा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूँगा औपर मुकदमा अदम पैरवी में एक तरफ मेरे खिलाफ फँसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर छाम आवे।

K. N. Tripathi

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

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महीना

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IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH,
LUCKNOW

O.A. NO. 194 OF 1990 (L)

KAILASH Nandan Tripathi ... Applicant

Versus

Union of India and others ... Respondent

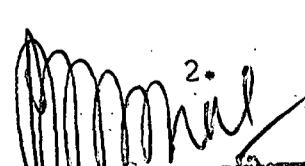
Reply
COUNTER MEMORIAL ON BEHALF OF OPPOSITE PARTIES

Filed today

*sgm
12/9/91*

I, S. K. S. P. Kanshal, aged about 56 years, son of Gagan PD Sharma, resident of 10B RA Redhaway Lane, working as Dm'l Com'l Subj in the Office of Northern Eastern Railway, Lucknow has been authorised to file the reply, do hereby solemnly affirm and state on oath as under:-

1. That the contents of para 4(1) of the application under reply is the matter of records and needs no reply.

2. 
That with reference to the contents of para 4(2) of the application under reply, it is submitted

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that the petitioner was on duty on 153 UP, Vaishali Express on 3rd May, 1988, which was started from Gorakhpur to Lucknow. The claimaint handed over the charge to Shri S.Sahai, Train Ticket Examiner at Lucknow, who went further to New Delhi.

3. That the contents of para 4(3) are wrong and are denied. The passengers never refused for berth and they requested the claimaint, who is the in-charge Train Ticket Examiner of the coach, ^{for} allot-
ment of accommodation for them, ~~who~~ claimaint did not consider their requests. Other allegations contrary to the same are wrong and are denied.
4. That the contents of para 4(4) of the application are not disputed.
5. That the contents of para 4(5) are wrong and are denied on the basis of the appreciation of the evidence, it has been proved that the claimaint while working as Train Ticket Examiner, from Gorakhpur to Lucknow Junction on Vaishali Express allotted berths out of turn to the wait listed passengers ignoring the claim of RAC passengers, who made requests for the allotment of berth to them. It is wrong that Shri Sharma as alleged, compelled the passenger to make the statement as stated in para under reply.
6. That ~~the~~ with reference to the contents of the para 4(6) of the application under reply, only this much is admitted that the claimaint was issued

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major penalty memorandum on 20th Sept., 1988 and Shri HS. Sekhi was appointed as enquiry officer of the case, who conducted the enquiry in the matter. However, thereof irregularities as alleged and allegations contrary to it are wrong and are denied.

7. That with reference to the contents of para 4(6a) of the application under reply, it is submitted that the witnesses as mentioned in the chargesheet were mentioned by the Enquiry Officer, during the course of DAR enquiry and the petitioner was given every reasonable opportunity to cross examine the witness.

8. That with reference to the contents of para 4(6b) of the application under reply, it is submitted that the same are wrong and are denied. The Enquiry Officer gave his findings in the report after considering the entire statement of the witnesses on the records including that of Shri RR Gupta, Shri MN Sharma.

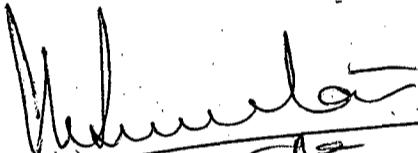
9. That with reference to the contents of para 4(6c) of the application under reply, are wrong and are denied. The petitioner was given every reasonable opportunity of being heard by the Enquiry Officer, including the appointing authority while imposing the punishment upon the claimant. The disciplinary authority has already recorded observation while passing the final order in the case. Appeal preferred by the claimant was also considered by the concerned authorities and the same were rejected according to Law.

नवीन विजय कुमार
द्वारा दिया गया दस्तावेज़
मुक्ति दिलाई गई

10. That with reference to the contents of para 4(6d) of the application under reply, it is submitted that the revision petition filed by the petitioner were also properly considered by the competent revision authority and the observations were duly communicated to the claimant on 18th Jan., 1990. It is submitted that the none of the grounds stated in the claim petition are tenable under law and the punishment awarded to the claimant is quite legal and valid and cannot be quashed in the circumstances of case.

Lucknow, dated:

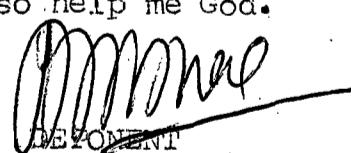
Sept 12 1991.


 DEONENT
 इस वाचिका का लिखने
 के प्रधान वकील
 वकील
VERIFICATION

I, the abovenamed deponent do hereby verify that the contents of paras to this Counter Affidavit are true to the onw knowledge of the deponent and those of paras to 10 of the same are believed to be true on the basis of records and those of paragraphs are believed to be true on the basis of legal advice. No part of it is false and nothing material has been concealed, so help me God.

Lucknow, dated:

Sept 12 1991.


 DEONENT
 इस वाचिका का लिखने
 के प्रधान वकील
 वकील

I identify the above named deponent who has signed before me.

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In the Hon'ble Central Administrative Tribunal, Circuit
Bench, Lucknow

O.A.No. 194 of 1990 (L)

Kailash Nandan Tripathi ... Applicant
Versus
Union of India and others ... Opposite Parties

Rejoinder Affidavit on behalf of applicant

I, Kailash Nandan Tripathi, aged about 43 years, son of Shri Ram Bujharat Tripathi, resident of 583 A, Railway Colony, Gorakhpur, states on oath as under :-

1. That the deponent is applicant has read over the counter affidavit filed by the opposite parties and has understood the same. He is fully conversant with the facts
filed today deposed hereinafter.

Stm 2. That the contents of para 1 of the counter reply
20/5/92 are not disputed.

K.N.Tripathi 3. That the contents of para 2 of counter reply are not admitted, para 4(2) of application are reiterated as correct.

4. That the contents of para 3 of counter reply are not admitted, para 4(3) of application are reiterated as correct. It is not disputed that the R.A.C. passengers offered the berths by applicant, but they refused to avail it because they did not want to deposit extra money of Rs.24/- which required for full berth.

- 2 -

5. That the contents of para 4 of counter reply are not disputed.

6. That the contents of para 4 and 5 of counter reply are not admitted, para 4(5) of application are reiterated as correct. It may be pointed out that no charge has been proved, the applicant offered the berth to R.A.C. passengers but they refused to avail it, because they did not want to deposit extra money.

7. That the contents of para 7 of the counter reply are vehemently denied, para 4(6)a of application are reiterated as correct. It is relevant to point out here that the relevant prosecution witness which was cited as witness no.3 i.e. Shri Raj Pal Singh was never produced before the applicant during the enquiry.

It is very relevant to point out here that the applicant was not provided with enquiry report before passing the impugned order. In this view he was denied the opportunity of producing his defence.

K N Tepathu

8. That the contents of para 8 of counter reply are vehemently denied, para 4(6b) of application are reiterated as correct. The enquiry officer did not consider the statement of Shri R.P.Gupta and Shri M.N. Sharma, two witnesses upon whom the applicant relied upon. In such view the applicant was denied the reasonable opportunity of defence.

9. That the contents of para 9 of counter reply are not admitted, para 4(6c) of application are

reiterated as correct. That the applicant was not given the opportunity to cross examine the Raj Pal Singh, which was the important witness. The enquiry officer has not consider the the statement of defence witness i.e. Shri R.P.Gupta and Shri S.N.Sharma, the applicant was not provided the opportunity of personal hearing. The appointing authority has not applied his mind and without considering the defence of the applicant, the punishment order was passed in a most arbitrary and casual manner. The punishment order is absolutely a non speaking order it is not discussed in the punishment order that how the opposite parties have concluded that the applicant was guilty for these charges.

That the appeal was rejected without discussing any reason, it is also a non speaking order.

10. That the contents of para 10 of counter reply are not admitted, para 4(6-d) are reiterated as correct. The revision order was also rejected without recording any reason.

The order of punishment is a illegal and arbitrary order without applying mind. The application is liable to be allowed with cost.

Dated:Lucknow:
20-5-
January ,1992

K.N.Tripathi
Deponent

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Ans

- 4 -

Verification

I the above named deponent do hereby verify that the contents of paras 1 to 10 of the affidavit are true to my own knowledge. Nothing is wrong in it and nothing material has been concealed, so help me God.

Dated: Lucknow:

20-5, 1992

K.N.T. Pathan
Deponent

I know the above named deponent, identify him and he has signed before me.

Okar

Advocate

Dated: Lucknow:

20-5, 1992