

ANNEXURE - I

List of Papers in original Application No.

89/92

Sl. No. Of Papers.	Date of Papers Or Date of Filing.	Description of Papers.
	5.7.95	Part <u>1</u> I
	4.2.92	Original Judgement
	30.4.92	O.A. & Material Papers.
		Counter
		Reply Counter

PART

I

PART

II

PART

III

Destroyed.

193/99.

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

RECORD SECTION INDEX SHEET

O.A. No. 89 /1992

a) Applicant (S) A. Suryanarayana Rao

Versus

b) Respondent (S) Tir DPO. Secy Vijayawada 23076

Sl.No.	Description of Documents.	Page. No.
	<u>Part. I</u>	
	Order Sheet	1 to 3
	Original Application	4 to 14
	Material Papers	15 to 51
	Order dated	
	Counter Affidavit.	52 to 59
	Reply Affidavit	
	Order dated 5-7-95	60 to 65
	<u>Part. II</u>	
	Duplicate Order Sheet.	
	" Application	
	" Material Papers	
	" Order dt.	80
	" Counter Affidavit	
	" Reply Affidavit	
	" Order dt.	
	<u>Part-III</u>	
	Vakalat ✓	
	Notice Papers ✓	
	Memo of Appearance ✓	28/95

OA. 89/92

16/2/95

At the request on behalf

of the applicant, adjourned to
18/2/95.

Attenu

HABG
n(A)

HAVH
n(J)

Adjourned to 6-3-95

HABG
n(A)

HAVH
n(J)

6-3-95

At the request on
behalf of the applicants
counsel, adjourned to 15/3/95

Attenu
HAVH
n(J)

15-3-95

At the request of counsel
for the applicant list it on

20-3-95.

HABG
n(A)

HAVH
n(J)

Post it on 17/3/95.

HABG
n(A)

HAVH
n(J)

5/6/95

b6c

from b6b

if b6b b6c

OK

to file it on 4-3-

HABG B-2 HAVH
n(A) D2Q 1-

b6b

list it on

29-6-95

OA 89/92

①

⑥

5-7-95

Judgement pronounced.

The OA is dismissed.

No costs. Orders vide
separate sheet.

✓
marksg
(c/a)

7-8-95
SC

OA 89/92

24/9/94

Post After Vacation

HABG
MLA

HAVH
M(T)

26.10.94

~~adjd to~~ 2.11.94
RJ

7-12-94

At the request
of the applicancy council
adjourned to 12/12/94.

J Alain
HABG, HAVH
MLA M(T)

12-12-94

At the request of
the council for Reparations
Post it on 19/12/94

J
HABG
MLA

Alain
HAVH
M(T)

(2)

OA-89/92

19/12/94

list - 2 - on
21/12/94.

HABG: HAVH
M(A) M(J)

25-1-95.

Since the counsel for the applicant is reported to be out of station on a very urgent work, the case is adjourned to 1-2-95.

HAR HAVH
M(A) M(J)

6-2-95.

At the request on behalf of the applicant counsel ~~is~~ adjourned to 13/2/95.

HABG
M(A)

HAVH
M(J)

Central Administrative Tribunal

HYDERABAD BENCH

O.A. No./T.A. No.

89/1992

A. Suganayagam Rao.....Applicant(s)

versus

The D.P.O., Secy, Vijayawada & 3 others.....Respondent(s)

Date	Office Note	Orders
6-2-92		<p>Sri V. Rama Rao, learned counsel for the applicant present and heard. The case is admitted. Issue notice to respondents for filing counter within two weeks with an advance copy to the learned counsel for the applicant, who may file the rejoinder within two weeks, if any.</p> <p>list the case on 19-3-92.</p> <p>12/2/92 memo of APP filed by m/s R. Jayaram Rao Adm Date</p>
		<p>19-3-92 Four weeks time is granted for filing Counter. Post the OA for orders on 23-4-92.</p> <p>HCJ/R M(J)</p>

(P.T.O.)

13

(3)

Date	Office Note	Orders
23-4-92		<u>OA. 89/92</u> Mr. Murthy, for Mr. Rama Rao, learned counsel for the applicant and Mr. J.R. Gopal Rao, standing counsel for the respondents are present. Time for filing ^{counter} prayed is granted. The respondents are directed to file their counter within six weeks. List the case on 10-6-92. <i>uslm</i> (HCJR) M(J)
26-5-92	Counter filed by Mr. J.R. Gopal Rao, SC for Rly.	<u>MA 533/92</u> Delay in filing counter affidavit is condoned. Accordingly MA is allowed. <i>uslm</i> (HCJR) M(J)
28-5-92		
10-6-92		Mr. K.S. Murthy for Mr. V. Rama Rao, for the applicant is present. He represents that a copy of the counter is received by him only today. So, he seeks further time hence list this OA for orders on 16-6-92. <i>uslm</i> T.C.N. <i>uslm</i> (HTBCN) (HCSR) n(A) n(S)
16-6-92		None for either party. The OA is already admitted. The applicant may file his rejoinder if any within 4 weeks with a copy to the learned counsel for the applicant respondent. The case be listed for final hearing in the usual course. <i>uslm</i> T.C.N. <i>uslm</i> (HTBCN) (HCSR) n(A) n(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

ORIGINAL APPLICATION NO. 89 OF 1992

Shri A. Surya Narayana Rao

Plaint (s)

Versus

DPO, Secy, Vijayawada

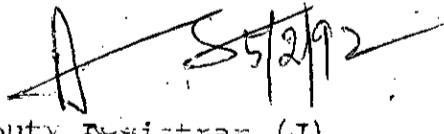
h 3 Gz.

Respondent (s)

This Application has been submitted to the Tribunal by
Mr. V. Rama Rao Advocate
under Section 19 of the Administrative Tribunal Act, 1985 and
same has been scrutinised with reference to the points mentioned
in check list in the light of the provisions contained in the
Administrative Tribunal (Procedure) Rules, 1987.

The Application has been in order and may be listed
for admission on 1/2.


Scrutiny Officer.

 85/292
Deputy Registrar (J)

Particulars to be examined	Endorsement as to result of examination
8. Has the index of documents been filed and has the paging been done properly ?	Y
9. Have the chronological details of representations made and the outcome of such representation been indicated in the application ?	Y
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal ?	Y
11. Are the application/duplicate copy/spare copies signed ?	Y
12. Are extra copies of the application with annexures filed.	Y
(a) Identical with the original	Y
(b) Defective	2
(c) Wanting in Annexures	
No...../Page Nos.....?	
d) Distinctly Typed ?	
13. Have full size envelopes bearing full address of the Respondents been filed ?	Y
14. Are the given addresses, the registered addresses ?	Y
15. Do the names of the parties started in the copies, tally with those indicated in the application ?	Y
16. Are the translations certified to be true or supported by an affidavit affirming that they are true ?	SIC
17. Are the facts for the case mentioned under item No. 6 of the application.	Y
(a) Concise ?	Y
(b) Under Distinct heads ?	2
(c) Numbered consecutively ?	Y
(d) Typed in double space on one side of the paper ?	Y
18. Have the particulars for interim order prayed for, stated with reasons ?	SIC

May be filed
C

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

APPLICANT (S) *A. S. Rao*

RESPONDENT (S) *D.P.O. Secy, Vijayawada & S/o.*

Particulars to be examined

Endorsement as to result
of examination

1. Is the application Competent ? *Y*
2. (a) Is the application in the prescribed form ? *Y*
(b) Is the application in paper book form ? *Y*
(c) Have prescribed number complete sets of the application been filed ? *Y*
3. Is the application in time ? *Y*
If not by how many days is it beyond time ?
His sufficient cause for not making the application in time, stated ?
4. Has the document of authorisation / Vakalat name been filed ? *Y*
5. Is the application accompanied by B.D./I.P.O. for Rs. 50/-? Number of B.D. / I.P.O. to be recorded. *Y*
6. Has the copy/copies of the order (s) against which the application is made, been filed ? *Y*
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed ? *Y*
(b) Have the documents referred to in (a) above duly attested and numbered accordingly ? *Y*
(c) Are the documents referred to in (a) above neatly typed in double space ? *Y*

CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH.

INDEX SHEET.

O.A. No.

89/1 1992

CAUSE TITLE A.S.N. Rao

VERSUS

The D.P.O. S.R. Vijayawada 30th

Sl. No.	Description of Documents.	Page No
1.	Original Application	1 to 9
2.	Memorial Papers.	10 to 46
3.	Vakalat	1
4.	Objection Sheet	
5.	Speaker Copies 4 (Four)	
6.	Covers. A. of	

to set aside the penalty of reducing the Applicants to the lower grade of Junior Clerk on pay of Rs. 1150/- for a period of 6 years (occurring).

(4)

RAILWAY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : ADDITIONAL BENCH
HYDERABAD

Bench
BENCH CASE

O.A.No. 89 of 1992

Between:

A. Suryanarayana Rao .. Applicant

And

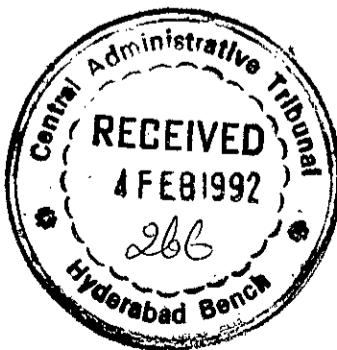
D.P.O, S.C.Rly. Vijayawada & others .. Respondents

CHRONOLOGY OF EVENTS

<u>Sl. No.</u>	<u>Date</u>	<u>Description</u>	<u>page No.</u>
1.	17-10-79	Applicant joined in Railways as Jr.Clerk	2
2.	1984	Applicant promoted as Sr.Clerk	2
3.	5-10-88	1st respondent issued Memorandum of charge alleging that on 18-4-88 the applicant demanded bribe.	2
4.	17-1-90	Enquiry was conducted and report submitted	3
5.	2-4-90	Applicant represented against the findings of the Enquiry Officer	3
6.	15-6-90	1st respondent issued impugned proceedings imposing penalty of reduction to lower grade for 2 years, w.e.f. 19-6-90.	3
7.	25-7-90	Applicant submitted appeal petition	4
8.	12-12-90	2nd respondent proposed for enhancement of punishment for 6 years.	4
9.	26-12-90	Applicant represented against the said proposal.	4
10.	9-1-91	2nd respondent passed impugned orders enhancing the punishment to 6 years.	4
11.	27-2-91	Applicant submitted appeal to 3rd respndt.	4
12.	26-3-91	3rd respondent confirmed the enhanced punishment imposed by 2nd respndt.	5

Hyderabad.

Date: 3.2.92



[Signature]
Counsel for Applicant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : ADDITIONAL BENCH
HYDERABAD

O.A.No. 89 of 1992

Between:

A. Suryanarayana Rao .. Applicant

And

D.P.O, S.C.Rly. Vijayawada & others .. Respondents

I N D E X

Sl. No.	Description of the document	page No.
1.	Original Application	1 to 9
2.	DAR Enquiry report dt.17-1-90 (Annexure-I)	10 to 27
3.	Representation of applicant dt.2-4-90 (Annexure-II)	28 to 31
4.	Impugned proceedings dt.15-6-90(Annexure-III)	32 to 35
5.	Appeal of the applicant dt.25-7-90 (Annexure-IV)	36 to 38
6.	Proceedings dt.12-12-90 (Annexure-V)	39
7.	Reply to show cause notice by applicant dt.26-12-90 (Annexure-VI)	40 to 42
8.	Impugned proceedings dt.9-1-91 (Annexure-VII)	43
9.	Appeal of the applicant dt.27-2-91 (Annexure-VIII)	44 & 45
10.	Impugned proceedings dt. 26-3-91(Annexure-IX)	46

Hyderabad

Date: 3.2.92


Counsel for Applicant

*Red. Copy
Smt. Somnath
4/2/92
for SC only*

(6)

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNALS ACT, 1985

For the Use of Tribunal Office:

Date of filing :

Signature of Registrar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : ADDITIONAL BENCH
AT HYDERABAD

O.A.No. 89 of 1992

Between:

A. Suryanarayana Rao s/o A.V. Seshagiri Rao,
aged about 35 years, Jr. Clerk,
O/o Sr. Divl. Personnel Officer,
S.C. Railway, Vijayawada .. APPLICANT

And

1. Divisional Personnel Officer,
South Central Railway,
Vijayawada.
2. Sr. Divisional Personnel Officer,
South Central Railway,
Vijayawada.
3. Additional Divisional Railway Manager(I),
South Central Railway,
Vijayawada.
4. Union of India, represented by its
Railway Board, New Delhi. .. RESPONDENTS

is

1. The details of the applicants ~~are~~ the same as stated in the above cause title and the address for service of all notices and processes is that of his counsel M/s. V. Rama Rao, D. Govinda Rao and B. Narasimha Sharma, Advocates, 3-6-779, Himayatnagar, Hyderabad.
2. The particulars of the Respondents for service of all notices and processes are the same as stated in the above cause title.



3. Particulars of the Order against which this application is made:

The applicant is challenging the impugned proceedings issued by the 1st respondent vide Proc. No. B/P. Con. 227/I/88/1, dated 15-6-90; 2nd respondent vide Proc. No. B/P. Con. 227/I/88/1, dt. 12-12-90 and 9-1-91; and 3rd respondent vide Proc. No. B. | P. Con. 227/I/88/1, dt. 26-3-91.

4. Particulars of the Jurisdiction of the Tribunal:

The applicant declares that the subject matter comes under the Jurisdiction of this Hon'ble Tribunal u/s. 14(4) of the Administrative Tribunal Act, 1985. The Order against which he wants redressal is within the jurisdiction of the Hon'ble Tribunal.

5. LIMITATION :

Since the impugned proceedings issued by the appellate authority i.e., 3rd respondent is dated 26-3-91 this application is within the prescribed period of Limitation U/s. 21(1) of the Administrative Tribunals Act, 1985.

6. BRIEF FACTS OF THE CASE :

I. That the applicant was appointed as Junior clerk on 17-10-1979 and promoted as Senior clerk in February, 1984. In April he was transferred from the Office of the Senior Divisional Personnel Officer, Vijayawada to the Office of the Permanent Weigh Inspector, Nuzivid. In July 1988 the applicant was again transferred from the said place to the Office of the Divisional Railway Manager.

II. It is submitted that the 1st respondent issued a Memorandum of Charges vide Proceedings No. B/P. Con. 227/I/88/1, dated 5-10-88, alleging that on 18-4-88 the applicant while working as Senior clerk in P.W.I Office, Nuzvid abused his position as Public servant by demanding and

(B)

accepting a Bribe of Rs.30/- from one P.Karunakar Rao, Gangman for processing Loan application and to expedite the Railway pass. The applicant specifically denied the charge and submitted his explanations. Then enquiry was conducted and report dt. 17-1-90 was submitted holding that the alleged charge against the applicant for accepting the said bribe has not been established. However the enquiry Officer gave a finding that the charge levelled against the applicant is partially proved to the extent that the applicant while functioning as Senior Clerk in the PWIs Office Nuzvid on 18-4-88 in abuse of his position as public servant demanded the said bribe from one P.Karunakar Rao, Gangman for processing Loan application and expediting the Railway pass. The applicant humbly submits that the said finding of the Enquiry Officer is arbitrary, ~~unreasonable~~ unsustainable, contrary to the evidence on record, and not supported by any positive and cogent evidence. The copy of the Enquiry report dated 17-1-90 submitted by the 1st respondent is enclosed herewith as Annexure-I at page No. 10. The applicant submitted representation against the findings of the Enquiry Officer on 2-4-90 and the same is filed herewith as Annexure-II at page No. 28 and the same may be read as part of this application. Based on the said Enquiry report the 1st respondent has issued proceedings No. B/P.Con./227/I/88/1, dated 15-6-90 imposing a penalty of reduction to lower grade in the scale of Junior Clerk for a period of two years with the loss of seniority. Consequent to the said Orders, the applicant was reverted to the lower grade as Junior Clerk in the scale of Rs.950-1500 with effect from 19-6-90 for a period of two years (recurring) with loss of seniority. A copy of the said impugned proceedings are filed herewith as Annexure-III at page No. 32.

III. Aggrieved by the same the applicant submitted an appeal petition before the 2nd respondent on 25-7-90 and the same is filed herewith as Annexure-IV at page No. 36 and may be read as part of this application. Pending consideration of said appeal petition, the second respondent issued proceedings dt. 12-12-90 proposing to enhance the above said punishment to revert the applicant to lower grade of Rs.950-1500 as Junior clerk for a period of six years (recurring) with loss of seniority and provided an opportunity to the applicant to submit representation against such proposed enhancement of punishment. The applicant humbly submits that the said action of the 2nd respondent proposing to enhance the punishment of reversion for two years to six years (recurring) with the loss of seniority is arbitrary, unwarranted, unfair and unsustainable. It is submitted that the second respondent failed to note the finding of the Enquiry Officer that the alleged charge against the applicant for accepting the Bribe has not been established. In the absence of any additional evidence the said action of the second respondent amounts to abuse of exercise of powers and unwarranted. The said impugned proceedings dt. 12-12-90 are filed herewith as Annexure-V at page No. 39. The applicant submitted representation on 26-12-90 along with supported court judgements. The copy of the said representation is filed herewith as Annexure-VI at page No. 40 and may be read as part of this application. The 2nd respondent passed orders dated 9-1-91 imposing the enhanced penalty reverting the applicant to the lower grade i.e., Junior clerk for a period of six years (recurring) with loss of seniority, and the same is filed herewith as Annexure-VII at page No. 43. Aggrieved by the same the applicant submitted an appeal to the third respondent on 27-2-91 and the same is filed

(16)

herewith as Annexure-VIII at page No. 44, and may be read as part of this application. The third respondent passed orders on the said Appeal petition on 26-3-91 confirming the penalty imposed by the 2nd respondent and the same is filed herewith as Annexure-IX at page No. 46. The applicant humbly submits that the findings of the Enquiry Officer, the impugned penalty imposed by the 1st respondent, the enhanced penalty imposed by the 2nd respondent and the Orders of the 3rd respondent confirming the penalty imposed by the 2nd respondent is arbitrary, illegal, unfair, unwarranted and unsustainable for the following among other submissions:

- i) The respondents failed to note the categorical finding of the Enquiry Officer that the alleged charge made against the applicant that he has accepted the bribe has not been established and there is no positive and cogent evidence on record to establish even the alleged demand of applicant for bribe from the complainant.
- ii) The respondents failed to note that the complainant in the disciplinary proceedings has inter-union rivalry against applicant and as such keeping his enmity and rivalry to the applicant the entire proceedings are vitiated by material irregularity.
- iii) The respondents failed to note that the facts on record establish that the alleged bribe amount of Rs.30/- has been demanded and accepted by one Mr. Elia, Gangman and not by the applicant.
- iv) The Enquiry Officer erred in holding that the acceptance of bribe amount from the said Elia was under the instructions of the applicant. In fact there is no whatsoever positive and *prima facie* evidence on record to support such finding.

- v) The respondents failed to note the crucial and material witness i.e., said Mr. Elia was not examined during the course of enquiry proceedings. In the absence of his evidence even to establish the alleged demand of bribe by the applicant, the finding of the Enquiry officer and consequential impugned punishment are arbitrary, illegal and liable to be set aside.
- vi) The respondents failed to note that the witnesses examined by the Enquiry Officer are not credible, independent and un biased.
- vii) The findings of the Enquiry officer ~~was~~ even to the extent of holding that the alleged charge has been partially proved against the applicant is at the most on surmise and assumption.
- viii) The respondents erred in relying on the alleged statement of the said Mr. Elia said to be recorded prior to the commencement of the Enquiry behind the back of the applicant, in support of finding of Enquiry Officer that the applicant has demanded the said bribe.
- ix) The respondents failed to note that the statements, if any, recorded during the preliminary enquiry or prior to the commencement of Enquiry, if not affirmed again before the Enquiry Officer giving an adequate opportunity to the delinquent cannot be used either by the Enquiry Officer or by the disciplinary authority to decide any alleged charge.
- x) The finding of the Enquiry Officer and the consequentia 1 impugned punishment imposed by the respondents is vitiated by material irregularity and illegality.

- xi) The Enquiry Officer erred in being guided by certain extrenious and irrelevant considerations like, alleged delay by applicant in keeping the loan applications which is in fact not the matter covered by the alleged charge.
- xii) The respondents failed to note that the material submissions made by the applicant in his explanation, Defence statement, representations and appeal petitions which prima facie establish that the finding of the Enquiry Officer and the impugned punishment are arbitrary, unfair, unwarranted and untenable.
- xiii) The Order of the 2nd respondent imposing the enhanced punishment in the absence of any additional evidence is unwarranted and unsustainable. The 2nd respondent ought not to have acted under Rule 22 of the Railway Servants (D&A) rules, 1968 as there was no evidence on record warranting exercise of such powers. The 2nd respondent exceeded and abused powers under rule 22 of Railway servants (D&A) Rules by enhancing the punishment.
- xiv) The 3rd respondent failed to note that the facts on record and the material submissions made by the applicant establish that the alleged charge against the applicant has not been proved and for the said reason they ought to have allowed the appeal by setting aside the impugned punishment.

IV. The applicant respectfully submits that there is no evidence on record to sustain the alleged charge or the finding of Enquiry Officer. The proceedings has been initiated at the instance of the complainant keeping in view of Trade Union rivalry and the enmity. There is no positive and cogent evidence to establish the allegation that the applicant demanded the said Bribe amount from the complainant.

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The evidence before the Enquiry Officer is interested, biased and not credit-worthy. In the absence of any positive and cogent evidence to support the finding of the Enquiry Officer the entire proceedings including the impugned penalty is totally vitiated. The impugned penalty imposed by the respondents is arbitrary, illegal, unfair, unwarranted and violative of Article 14 & 16 and 21 of Constitution of India. By virtue of the impugned proceedings the applicant is being put to great hardships and irreparable loss. In fact there was no charge or allegation against the applicant since the date of his appointment till the impugned proceedings. The applicant is deprived of seniority and other service benefits including future promotions by virtue of impugned proceedings.

7. MAIN RELIEF :

It is therefore prayed that this Hon'ble Tribunal may be pleased to declare the proceedings of the third respondent in Proc.No.B/P.Con.227/I/88/1,dt.26-3-91 confirming the orders in Proc.No.B/P.Con.227/I/88/1,dt.9-1-90 of the second respondent and Proc.No.B./P.Con.227/I/88/1,dt.15-6-90 of the 1st respondent respectively as arbitrary, illegal with a consequential direction to treat the applicant as a senior clerk from 11-6-90 with all consequential benefits as if the impugned orders were not passed and pass such other order or orders as this Hon'ble Tribunal deems fit and proper to meet the ends of justice.

8. INTERIM RELIEF :

It is further prayed that this Hon'ble Tribunal may be pleased to expedite the hearing of the Original Application in view of the urgency in the matter and pass such other order or orders as this Hon'ble court deems fit and proper.

(14)

9. Details of remedies exhausted:

The applicant submits that he has exhausted all the remedies available to him except to approach this Hon'ble Tribunal since the appellate authority did not consider the applicant's case.

10. Matter not pending with any other courts etc.

The applicant further declares that the matter regarding which this application is being made is not pending before any court of law or any authority or any other bench of this Tribunal.

11. Particulars of Postal Order in respect of Application fee:

1. Name of the P.O. : High court post office : Hyderabad
at which drawn
2. IPO No. & Date : 8-04-434875 dt- 31.1.92

12. Details of Index :

An index in duplicate containing the details of the documents to be relied upon is enclosed.

13. List of enclosures :

1) Material paper Booklet 2) IPO of Rs. 50/-
3) Vakalat & covers.

[Signature]
Counsel for Applicant

A Surya
Signature of the Applicant

VERIFICATION

I, A. Suryanarayana Rao s/o A.V. Seshagiri Rao, aged about 35 years, Jr.Clerk, Office of Sr.Divl.Personnel Officer, S.C.Railway, Vijayawada do hereby verify that the contents from paras 1 to 13 are true to my personal knowledge and belief and I have not suppressed any material facts.

Hyderabad.

Date: 3.2.92

A Surya
Signature of the Applicant

14

DAR ENQUIRY REPORT IN THE SPE CASE AGAINST SRI A.
 SURYANARAYANA RAO, SENIOR CLERK, SR.DPO/O/BZA NOW WORKING
 UNDER PWI/NUZVID - CHARGE MEMORANDUM No. B/P.Con.227/I/88/1
 dated 5-10-1988 ISSUED BY DPO/BZA.

...

1. Name of the Charged employee : Sri A.Suryanarayana Rao,
 Sr.Clerk, Sr.DPO/O/BZA.

Name of the Defence counsel : Sri V.B.S.R.Sastry,
 Retd.Chief Clerk,CE/OL/SC

Name of the Disciplinary Authority, Memorandum No. and Date : DPO/BZA
 No. B/P.227/Con/I/88/1
 dated 5-10-1988.

Name of the Enquiry Officer Order No. & Date : Sri C.Chandrasekharan,
 Senior Enquiry Officer/HQ.,
 No.B/P.Con/227/I/88/1,
 dt.19-4-1989.

Date of receipt of Case file/ documents by the Enquiry Officer : 1-6-1989

Name of the Presenting Officer : Sri K.Jayanna, Inspector,
 CBI/SPE/Visakhapatnam.

2. BRIEF HISTORY OF THE CASE:

2.1. Sri A.Suryanarayana Rao, while functioning as a Sr.Clerk in the PWI's Office, Nuzivid, in abuse of his position as a public servant demanded and accepted a bribe of Rs.30/- from Sri P.Karunakar Rao, Gangman for processing a loan application and for expediting a Railway pass of Sri Karunakar Rao at about 16.30 hours on 18-4-1988 at the PWI's Office, Nuzivid, through Sri M.Elia, Gangman under PWI/Nuzvid. Sri Suryanarayana Rao, thus violated Rule 3(1) of Railway Service (Conduct)Rules,1966.

2.2 Sri Suryanarayana Rao was issued with a Charge Memorandum (SF-5) No.B/P.Con/227/I/1/88/1 dated 5-10-1988 by the Divisional Personnel Officer, Vijayawada. The explanation to the Charge Memorandum was not accepted by the D.A. and he had ordered a D.A. enquiry to be conducted in to the above case and nominated Sri C.Chandrasekharan, as Enquiry Officer vide his No.B/P.Con.227/I/88/1 dated 19-4-89. Sri G.B.Rao, Inspector of Police, CBI/SPE/Visakhapatnam was nominated as Presenting Officer in this case.

2.3 A Preliminary hearing was conducted by the E.O. at Vijayawada on 10-7-1989. Sri A.Suryanarayana Rao was accompanied by Sri V.B.S.R.Sastry, Retired Chief Clerk ,CE/OL/SC as his Defence counsel. The Presenting Officer did not turn up for the preliminary hearing.

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2.4. The Regular hearing commenced on 9-8-1989 and continued further on 25-9-1989, 26-9-1989, 15-11-1989 and completed on 16-11-1989. Thirteen (13) witnesses listed in Annexure-IV of the Charge Memorandum of which, twelve were examined/Cross-examined leaving Sri G.N.Gupta , Dy.SP/CBI/SPE/Visakhapatnam. As his deposition was not felt necessary by the Presenting Officer his name was deleted from the list.

2.5. During the course of the enquiry, the following documents were taken on to record and listed as Exhibits:

<u>S.No.</u>	<u>Description of Exhibit</u>	<u>Exh.No.</u>
1.	Statement of Sri P.Karunakar Rao dated 26-8-1988	Ex.P.1
2.	Sealed bottle containing right hand wash of Sri M.Elia	Ex.M.O.1
3.	Sealed bottle containing shirt pocket wash of Sri Elia.	Ex.M.O.2
4.	Sealed pocket of shirt of Sri M.Elia	Ex.M.O.3
5.	20 Rupees note 13 R -246328	Ex.MO/4-1
	10 Rupees Note W 16-690909	Ex.MO/4-2
	Brown cover with signatures containing notes	Ex.MO/4-3
6.	Pass application dated 26-3-1988 of Sri P.Karunakar Rao	Ex.P.2
7.	Loan application of E.C.G Society, Madras of Sri P.Karunakar Rao	Ex.P.3
8.	Complaint dated 17-4-1988 of Sri P. Karunakar Raoto Dy.S.P./VSP Camp:BZA	Ex.P.4
9.	Proceedings (pre-trap)dated 18-4-1988 (four pages)	Ex.P.5
10.	Proceedings (Post-trap)dated 18-4-88 (8 pages)	Ex.P.6
11.	Statement of Sri N.Francis dated 24-6-1988	Ex.P.7
12.	Statement of Sri N.Venkateswara Rao, PWII/Nuzvid dated 25-6-1988	Ex.P.8
13.	Statement of Sri P.Chandrasekhar, PWI/Gr.II/BZA	Ex.P.9
14.	Statement of Sri T.Daniel, Sr.Gangaman dated 26-6-1988	Ex.P.10
15.	Loan application from of E.C.C.Society Ltd., from Sri T.Daniel	Ex.P.11
16.	Statement of Sri D.Rama Murthy APO/E dated 24-6-1988	Ex.P.12
17.	Statement of Sri S.Nageswara Rao dated 26-6-1988	Ex.P.13
18.	Loan application of Sri S.Nageswara Rao dated 26-6-1988	Ex.p.14

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19. Statement of Sri P.Samuel, Gangman dated 26-6-1988	Ex.P.15
20. Loan application of Sri P.Samuel dt.26-6-1988	Ex.P.16
21. Statement of Sri T.N.Rao,PI/CBI dated 21-6-1988	Ex.P.17
22. Statement dated 26-5-1988 from Sri K.Nirmal Kumar	Ex.P.18
23. Family composition declaration certificate dated 24-3-1988 from Sri T.Karunakar Rao	Ex.P.19
24. Statement dated 26-5-1988 of Sri N. Chandra Mouli	Ex.P.20

2.6 Sri Suryanarayana Rao denied the allegations levelled against him. He did not wish to get himself examined as a witness in his own case and hence he was subjected only for a general examination.

3. CASE IN SUPPORT OF THE DEFENCE

3.1 Sri Suryanarayana Rao, in reply to the Charge memorandum denied all allegations in toto. He stated that the detailed explanation was not submitted due to the fear that the same may jeopardise the defence in the enquiry and that he stated that he would prove his innocence during the enquiry. Details of his defence are available in the Defence brief enclosed in original.

4. CASE IN SUPPORT OF THE CHARGE

4.1 Sri A.Suryanarayana Rao was working as a Sr.clerk in the PWI's Office, Nuzvid. He was assisted by Sri M.Elia, a literate Gangman in his official work. Sri P.Karunakar Rao, Gangman under PWI/Nuzvid is alleged to have approached Sri Suryanarayana Rao requesting him to issue a Railway pass and process his loan application form for the above work, Sri Suryanarayana Rao demanded Rs.30/- as bribe which would be shared between Sri Suryanarayana Rao and Sri M.Elia. Sri Karunakar Rao not willing to give the amount, made a complaint to the CBI Official camping at Vijayawada on 17-4-1988. On 18-4-1988, a trap was laid wherein the amount of Rs.30/- demanded by Sri A.Suryanarayana Rao was given to Sri M.Elia, literate Gangman in the PWI's Office, Nuzvid, as per the instructions of Sri A.Suryanarayana Rao. Sri Suryanarayana Rao was immediately confronted by the CBI Officials and was subjected to interrogation.

On recovering the amount from Sri M. Elia, the right hand and the shirt pocket of Sri Elia where he had kept the amount of Rs.30/- were subjected for a colour wash which turned into pink in colour. Thus, Sri A. Suryanarayana Rao by his above acts, violated Rule 3 of Railway Services (Conduct) Rules, 1966.

5. SUMMARY OF EVIDENCE

5.1. WITNESS No.1 - Sri P.Karunakar Rao

Sri Karunakar Rao stated that he had met Sri Suryanarayana Rao on 14-4-1988 and enquired about his application. Sri Suryanarayana Rao asked him to come with Rs.30/- as a bribe and meet him on 18-4-1988. He also stated that the statement dated 26-8-1988 given by him to the Investigating Officer was his and the contents therein are true. He affixed signature on sealed bottles (Exh.MO-1) and (Exh.MO-2) and the shirt which was kept in a sealed packet (MO-3). He also identified the currency notes of Rs.20/- and Rs.10/- which were used for the trap. A pass application dated 6-3-1 signed by him and addressed to PWI/Nuzvid was also identified by him. So also the Loan application of Railway Employees Cooperative Credit Society signed by him. These two documents have been listed as Exh.P-2 and P-3. He also accepted the complaint dated 17-4-1988 (Exh.P-4) as that of his. The signatures on pre-trap proceedings and post-trap proceedings dated 18-4-1988 have been admitted as his. In Answer to Question No.17, Sri Karunakar Rao replied that he met Sri Suryanarayana Rao and did not meet the PWI. It was accepted by him that he has not put the date on the application for loan from Railway Employees Cooperative Credit society, Madras. In answer to Question No.19, Sri Karunakar Rao, confirmed to the effect that Sri Suryanarayana Rao had told him that both the matters are pending which could be attended to with the assistance of Sri Elia. It was at 5-0'clock on 14-4-1988 Sri Karunakar Rao had contacted Sri Suryanarayana Rao and that he was asked to bring with him the money on 18-4-1988. He was also sure that the money which was meant to be given as bribe was there on the person of Sri Elia. The pre-trap and post-trap

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proceedings were read to him. He has brought out that his relationship with Sri A.Suryanarayana Rao was not strained any time.

5.2 WITNESS No.2 - Sri N.FRANCIS, GROUP'D'POSTAL DEPARTMENT VIJAYAWADA.

5.3 The Statement dated 24-6-1988 given by him to the I.O. was confirmed as his and the contents being true. He has also identified his signature on the sealed bottles, the packet containing the shirt of Sri M.Elia and the two Government currency notes of Rs,20/- and Rs.10/-used for the trap. So also the pre-trap and post-trap proceedings dated 18-4-1988 were identified by him. Sri Francis was taken inside under the guise of a different person as that of a cousin's husband. He deposed that at the time of entering the room, Sri Elia was there. The amount of Rs.30/- received by Sri M.Elia was recovered by Sri Chandra Mouli, one of the mediators. Sri M.Elia was present when the signal as directed was relayed. Sri Francis was about four to five feet away when Sri Suryanarayana Rao Sr. Francis stated that he did not know Sri. Suryanarayana Rao prior to the incident.

5.3. WITNESS No.3 Sri N.VENKATESWARA RAO, PWI/NUZVID.

5.3.1. Sri Venkateswara Rao, confirmed that Sri A.Suryanarayana Rao was working as a Personnel Branch clerk. He was not sure whether or not Sri M.Elia had worked in the office on 18-4-1988. Sri Venkateswara Rao identified his statement dated 25-6-1988 given to the CBI Inspector. The application of Sri P.Karunakar Rao dated 26-3-1988 and the recorded date is 30.3.1988. The date '3.3.1988' given by him in his statement dated 26-3-1988 is not correct. In answer to Question No.64, this witness replied that the first page of the loan application form is to be filled in by the employees concerned. Verification of the particulars will also be done by the Personnel Branch Clerk. Sri Karunakar Rao had not approached him during the period from 14-4-1988 to 18-4-1988 with any complaint, saying that Sri Suryanarayana Rao had demanded Rs.30/-.

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The normal practice is that the Loan application forms, after the signature of the PWI, will be handed over by the Personnel Branch clerk to the employees concerned for further transmission to Madras. Sri Venkateswara Rao was not aware of any strained relationship between Sri Karunakar Rao and Suryanarayana Rao. He has also not received any complaint regarding the work of Sri A.Suryanarayana Rao from any other staff prior to 18-4-1988.

5.4. WITNESS No.4 - P.CHANDRASEKHAR,PWI/GR.I/SAP

5.4.1 Sri Chandrasekhar also stated that Sri A.Suryanarayana Rao was the Personnel Branch Clerk and that one Gangman was assisting him. Sri Karunakar Rao, Gangman had submitted an application for pass on 28-3-1988 and the same was endorsed by him to the Personnel Branch clerk for issuing the same. He has admitted that, the statement dated 27-6-1988 given by him to the CBI Inspector was his. He too has not come across any complaints having been made against Sri A.Suryanarayana Rao.

5.5. WITNESS No.5 Sri T.DANIEL, Sr.GANGMAN WORKING UNDER PWI/NUZVID

5.5.1 It was deposed by Sri Daniel that Sri Suryanarayana Rao working as a Clerk in the PWI's Office, Nuzvid was assisted by Sri M.Elia, Gangman in the office work. He has admitted the contents of the statements dated 26-6-1988 given to the CBI Inspector as correct. To a question No.82, Sri Daniel stated that he had paid Rs.10/- to expedite the submission of the loan application and that it was only to cover the postal charges. Sri Daniel in answer to further question replied that he had paid Rs.10/- to Mr.Elia, some time before Sree Rama Navami. He used to approach Sri Elia and at times PWI directly. He identified the blank loan application form signed by him (Exh.P.11).

5.6. WITNESS No.6 Sri D.RAMA MURTHY, APO|E| VIJAYAWADA

5.6.1 Sri Rama Murthy authenticated the statement dated 24-6-1988 given by him to the CBI Inspector (Exh.P.12). To a question from the charged employee, Sri Rama Murthy replied that enquiries were made against Sri A.Suryanarayana Rao with regard to the allegations of non-grant of Family planning increments R.E.I.S. and in-attention to work. It was stated by him that Sri Suryanarayana Rao was under

suspension from 7-3-1986 to 18-3-1986 when he was working in Sr.DPO's Office/Vijayawada and that he was issued S.F.5 by Sr.DPO/BZA for the same. Sri Rama Murthy has added that there were complaints against Sri Suryanarayana.

5.7. WITNESS No.7 - Sri S.Nageswara Rao, Gangman Unit No.6 PWI/O/Nuzvid.

5.7.1 Sri Nageswara Rao admitted the contents of the statement dated 26-6-1988 given to the CBI Inspector by him as correct. He also identified the loan application form of Railway Employees Cooperative Society, Southern Railway, Madras as having been signed and given by him. Sri Nageswara Rao clarified that one loan was as marriage loan and the other one from the Society. There was nobody else when the form was handed over, approximately 15 to 20 days prior to the trap incident. Also there was none when Sri Suryanarayana Rao had demanded Rs.20/-.

5.8. WITNESS No.8 - Sri P.SAMUEL, GANGMAN,UNIT-6 PWI/NZD

5.8.1. Sri Samuel identified Sri Suryanarayana Rao as Clerk when working in the PWI's Office, Nuzvid who is assisted by Sri M.Elia, Gangman. He admitted the contents of his statement dated 26.6.1988 given to the CBI Inspector as correct.

He also identified the loan application form signed by him (P-16) as that was given by him. The loan application form of Madras Society was handed over to Sri Suryanarayana Rao in the presence of Sri M.Elia in December, 1987. Rs.10/- was also paid as per the demand to Sri Suryanarayana Rao when Sri Elia was there. This money was intended to process the loan application immediately. The application which was returned to Sri P.Samuel for certain corrections was handed over back to Sri Suryanarayana Rao. It was clarified by Sri Samuel in Answer to Question No.114 that he had submitted a fresh loan application form even though he had sent another application. He stated that he is brother of Sri Karunakar Rao. The loan application of Madras Society duly signed by him was given in June, 1986. On not hearing of the disposal of the same, he has made one more and submitted the same to the office.

5.9. WITNESS No.9 Sri T.N.RAO, INSPECTOR OF POLICE, CBI/VISAKHAPATNAM

5.9.1. Sri T.N.Rao identified all the material objects and his

statement dated 21-6-1988. He also identified the Exhibits Viz., P-4, P-5, P-6, P-2, P-3, P-11, P-14 and P-16. On 18-4-88 he had seen Sri M. Elia Gangman, Sri P. Karunakar Rao and Sri. N. Francis, on entering the PWI's office. Sri A. Suryanarayana Rao was sitting in his chair and attending to some work. It was at 16.35 hours that he entered the room of Sri Suryanarayana Rao. Sri T.N. Rao confirmed that the initials appearing in the Exhibits P-3 P-11, P-14 P-16 are that of two witnesses viz. Sri R. Nirmal Kumar and Sri M. Chandramouli.

5.10. WITNESS No.10: Sri K. Nirmal Kumar, Inspector of Customs and Central Excise, Vijayawada.

5.10.1 Sri Nirmal Kumar witnessed the proceedings on 18-4-88 and he had given a statement, which, when showed to him, he stated that the same was his statement and was given on 25-8-88. He also identified Exhibits No. P-4, P-5, P-6, P-2, P-3, P-11, P-14 & P-16, whereupon his initials are there on all the documents. Exhibit P-5, he has confirmed, was written by him in his own hand-writing, having been dictated by the C.B.I. Inspector. He was at a convenient distance of about 50 to 100 yards. He also deposed that he was at the gate of the PWI's Office, Nuzvid when Sri Karunakar Rao and Sri M. Francis, entered the PWI's office. Further, he confirmed that Sri M. Elia was present at that time. He replied that, as could be seen from the application form, there are no dates at all on the above exhibits. The family composition declaration, though not listed in the charge memorandum in Annexure-III (a copy of which was produced by the charged employee as having been received by him from the Disciplinary authority) was taken as an Exhibit. The correct number of the 20 Rupees currency note was clarified by him.

5.11. WITNESS No.11 - Sri M. Chandra Mouli, Complaints Inspector, R.P.O/Vijayawada.

5.11.1. He identified the statement dated 26-5-88 and testified the contents therein are true. Exhibits P-4, P-5, P-6, P-2, P-3, P-11, P-14 and P-16 were identified and it was stated by him that on the above documents appear his initials. ■

The hand-writing of P-6 is stated to be in his own hand. Sri T.N.Rao, the Trap Laying Officer, instructed him to draw the proceedings. and he drafted it as per Sri T.N.Rao's dictation. The charged employee had put to him that the correction of a word 'Complainant' is now a second thought and he was asked to explain for the same. Sri Nageswara Rao maintained that the correction given now as the mistake being rectified. Further he stated that Sri Karunakar Rao and Sri N.Francis were maintaining a convenient distance of about 100 feet from him. Exhibit P-3 was initialled by him at page-3. It was clarified by him that on Exhibits P-11, P-14 and P-16 that neither the applicants had not put their dates. He stated that when he entered the PWI's Office on 18-4-88, the position of Sri M.Karunakar Rao and Sri M.Francis was at a distance of about 5 to 6 feet in the PWI's Office.

Sri Chandra Mouli also correctly decoded the 20 Rupees Note denomination currency note.

5.12 WITNESS No.12 : Sri P.Rosi Reddy, Inspector, CBI, Visakhapatnam.

5.12.1. Sri Rosi Reddy, gave a small resume indicating as to how he proceeded with the case and he registered the same.

5.13. DEFENCE WITNESS No.D-1 - Sri Ch.Appa Rao , Stores Watchman, Nuzvid.

5.13.1 Sri Appa Rao, reported for duty at 18.00 Hrs. on 18-4-88. The PWI returned to the Headquarters at 21.30 Hrs.on 18-4-1988. S/Sri A.Suryanarayana Rao and two others were in the office when he came for duty at 18.00 Hrs. and he was not allowed to go inside the PWI's office. He has stated that he has not seen Sri M.Elia entering into the PWI's office after his reporting for duty. But Elia was being brought to the PWI's office by somebody from outside the gate at about 18.00 Hrs. Sri Appa Rao's rostered hours on duty 18.00 Hrs. and 6.00 Hrs., the following morning. He was not knowing as to who were there inside the office along with Sri A.Suryanarayana Rao. He also did not know as to who brought Sri M.Elia to the Office.

6. ASSESSMENT OF EVIDENCE:

6.1 On 14-4-1988, when Sri P.Karunakar Rao, Gangman under PWI, Nuzvid, met Sri A.Suryanarayana Rao, he had enquired about the application and had asked him (Sri P.Karunakar Rao) to come with Rs.30/- as a bribe and meet him on 18-4-1988 (Question No.6) The loan application form of Railway employees Cooperative Society Madras along with others were testified by him. It was confirmed by Sri Karunakar Rao that Sri Suryanarayana Rao had told him that the work would be attended to, with the assistance of Sri M.Elia, a literate Gangman. In Ans. to Question No.26, he maintained that Sri Elia was inside the PWI's Office on 18-4-1988. In answer to Question No.21, the witnesses stated that he contacted Sri Suryanarayana Rao after 5.00 O'clock on 14-4-88 when there was nobody otherm than Sri Elia. At this time, Sri Karunakar Rao was asked by Sri Suryanarayana Rao to come with the money on 18-4-1988. Sri Karunakar Rao deposed that Sri SuryanarayanaRao asked him whether he had brought the money with him. On seeing the notes taken out by him and also with another person, Sri Suryanarayana Rao directed Sri M.Elia to take the money. Sri Elia had, later, confessed that the amount was taken by him as per the instructions of Sri A.Suryanarayana Rao, though Sri Suryanarayana Rao denied this.

6.2 Sri N.Francis was the accompanying witness in this trap. In this statement he stated that he had gone with Sri Karunakar Rao to the Office of the PWI/Nuzvid and he was available where when Sri Suryanarayana Rao had demanded for money. But Sri Suryanarayana Rao asked Sri P.Karunakar Rao to give the money to Sri M.Elia and accordingly the money was received by Sri Elia.

6.3 Sri Venkateswara Rao, PWI/Nuzvid was away on line on 18-4-1988 when the trap took place. In answer to Question No.64 this witness stated that the first page of the loan application form is to be filled in by the Personnel Branch clerks after the form is filled in by the employees. In further answer to

question No. 66, Sri Venkateswara Rao brought out that the loan application form, after his signature, used to be handed over by the Personnel Branch clerk to the employees concerned, for further transmission to Madras.

6.4 Sri T. Daniel has made a clarificatory reply to the charged employee to his question No. 82 that he had paid Rs.10/- as already brought out in his statement to expedite the loan application as he had no leave at his credit, to visit now and then on this account. He stated, he had paid this amount only to cover the Postal charges.

6.5 Sri D. Rama Murthy, APO(E)/BZA had only brought out in his deposition regarding the correctness of his statement dated 24-6-1988. In answer to Question No. 91 put by the charged employee Sri Rama Murthy replied that the enquiries were made against Sri Suryanarayana Rao into the allegations of non-grant of F.P.incre-
ment, REIS refunds and in-attention to work.

6.6 Sri S. Nageswara Rao has given a statement wherein he has stated that Sri Suryanarayana Rao had demanded Rs.20/- for filling the forms, for two loans. The practice was that he used to hand over the filled in forms and the employees used to send them by post. However, there was nobody available when he had demanded Rs.20/- from Sri Nageswara Rao.

6.7 Sri Polimetla Samuel, Gangman under PWI/NZD also stated that he had applied for Madras society loan in 1987 and met Sri A. Suryanarayana Rao with the application. Sri Suryanarayana Rao demanded Rs.10/- and Sri Samuel paid this amount of Rs.10/- to Sri Suryanarayana Rao. But the loan application was returned with certain irregularities. Asked why he had paid Rs.10/- to Sri A. Suryanarayana Rao, the reply was that it was for the purpose of processing the loan application immediately.

6.8 Sri T. N. Rao was the trap laying officer who had made discreet enquiries of the complainant before laying the trap. It was only then that he had contacted collector Central Excise and Director of Postal services for requisitioning the services of their staff to serve as mediators. Sri T. N. Rao, in his statement dated 21-6-1988, stated that Sri Karunakar Rao's having told the

trap party that Sri Suryanarayana Rao had demanded the amount. Here, again, Sri Karunakar Rao is stated to have told that, on seeing another person with him, Sri Suryanarayana Rao had asked him to hand over the money to Sri M. Elia, who in turn had received it and put in his left side shirt pocket.

6.9 Sri K. Nirmal Kumar, Inspector of Customs and Central Excise, Vijayawada, is an independent witness, who had associated as one of the trap party members. As per the instructions of Sri A. Suryanarayana Rao, Sri Elia had received the money. Asked about the date of receipt of the Exhibits P-11, P-14, P-16, Sri Nirmal Kumar (In Answer to Question No.139) stated that there is no date at all on these exhibits. The tainted currency notes were taken from the left side shirt pocket of Sri Elia. The hand as well as shirt pocket were subjected to a wash which clearly showed that the solution used for the purpose had turned into pink in colour. Here again, Sri Nirmal Kumar has stated that Sri Suryanarayana Rao had asked Sri Elia to receive the amount, on seeing another person with Sri Karunakar Rao.

6.10 Sri M. Chandra Mouli was one of the trap party members and stated that he was satisfied with the nature of the complaint given by Sri P. Karunakar Rao. On getting the pre-arranged signal after the trap and the ~~ixa~~ when Sri Chandra Mouli along with the other members of the trap party went inside the PWI's Office, Sri N. Francis already available in the office had told them that the money was received by Sri M. Elia who was present along with the Senior clerk. When confronted by the CBI Officers, both Sri Suryanarayana Rao and Sri M. Elia became nervous and kept mum. After a while, Sri Suryanarayana Rao stated that he had neither demanded nor received any amount from the complainant. It was then Sri M. Elia who came out with his disclosure that the amount was demanded by Sri A. Suryanarayana Rao and he (M. Elia) had accepted the amount from Sri P. Karunakar Rao and kept the same in his left side shirt pocket, as per the instructions of Sri A. Suryanarayana Rao.

6.11 Sri Ch.Appa Rao,Store Watchman was on duty at 18.00 hours on 18-4-1988. In Ans to Question No.170 this witness had stated that he had not seen Sri M.Elia after his (Sri Appa Rao) reporting for duty. But in Answer to Question No.172, the same witness stated that Sri Elia was being brought into the office by somebody from outside the gate at about 18.00 hours. He also did not know as to who were inside the PWI's office along with Sri Suryanarayana Rao at 18.00 hours or as to who had brought Sri M.Elia to the PWI's office.

6.12. Sri A.Suryanarayana Rao denied the charge levelled against him and did not wish to get examined as a witness in his own case.

7. REMARKS ON THE DEFENCE BRIEF

7.1 Taking into account both the prosecution brief and the Defence brief, the Enquiry Officer wishes to place on record that the parameters under which the departmental enquiry is to be conducted are already known to the EO and there was no necessity for the PO to emphasize about the pros and cons of the same in his brief.

7.2 The contention of the charged employee that evidence on record does not establish the fact of demand and acceptance of bribe, that the Exhibits P-11 and P-3 and P-14 and P-16 are the undated documents and the witnesses also could not establish the date on which they were submitted for further processing, cannot be accepted. The above exhibits are the loan application forms from four different witnesses examined in this case. The loan applications were signed by the employees concerned and they were with the charged employee under his custody. He could have returned the same to the employees concerned for filling it up and re-submission which was not done. This was all the more necessary in view of the answer to Question No.64 which is also quoted in the defence brief.

7.3 The reasons for non-issue of Railway pass though the complainant was submitted on 28-3-1988, as given by the charged employee are certain facts which have been brought out for the first time in his Defence brief and the undersigned has no remarks to offer against it.

7.4 With regard to Answer to Question No.85, it is not disputed that the answer relates to the approach of the witness to Sri M. Elia and PWI directly but not to Sri A. Suryanarayana Rao.

7.5 Regarding demand of Rs.20/- from Sri S. Nageswara Rao by the charged employee as brought out in his statement and also in Answer to Question No.104, wherein, he says that nobody was there at the time of demand, wherein, ~~he says that he~~ does not simply that this had not happened. Similarly, witness No.8 Sri P. Samuel, has stated that he had paid Rs.10/- to Sri Suryanarayana Rao in presence of Sri Elia. It was stated by the witness in Answer to Question No.111 that the said amount was to process the loan application immediately. Of course, to corroborate this Sri M. Elia was not examined in this case as contended by the charged employee. Yet, the stand of the witness cannot however be ~~establishe~~stablished.

7.6. Witness No.10 Sri K. Nirmal Kumar is a responsible public servant who is neither interested nor disinterested in the case. He is a witness with no sides and a person who did not know the charged employee prior to the trap incident. The complainant brought the witness Sri N. Francis inside the PWI's Office under the guise of a different person which was only to lay the trap as already planned. Hence the contention of the charged employee cannot gain its ground. Also his not having taken the money and directing him to pay the same to Sri M. Elia was also not of much consequence, In view of the facts narrated above. The next point raised by the charged employee in his Defence Brief is in regard to payment of Rs.10/- and not Rs.20/- by Sri T. Daniel, Witness No.5 This is not disputed. The contention of the charged employee, thus is not challenged nor ~~establishe~~stablished, in as much as the answers to Question No.82 and 83 reveal that the amount of Rs.10/- was paid towards the postal charges only.

7.7 To Ans. to Question No.85, emphasized by the charged employee in the Brief, no remarks are offered as this had been dealt with in the earlier paragraphs.

7.8 The stand-point that the witness No.8 is biased in view of the Answer to Question No.115 that he is brother of the complainant does not stand to reason as the relationship of a person with another does not cast anything in favour or against a person in the course of an Enquiry.

7.9 The proceedings (pre-trap)dated 18-4-1988 is accepted to have been written under the instructions of Sri T.N.Rao, CBI Inspector and it is the practice of drawing out the mediator's report as per the dictation of the CBI Officials, in the sequence of events and the time of happenings. This proceedings is also signed by other responsible public witnesses who are neither related nor known to the charged employee. Answer to Question No.51, it is admitted, witness No.2 Sri N.Francis, has expressed inability to say as to how this particular event is not featuring in his statement dated 26-4-1988 but maintained that he gave the signal after getting it from Sri T.Kamunakar Rao.

7.10 The concern caused by the charged employee on the word 'Silly' eased by the Presenting Officer in his brief is taken note of and it is suggested that the Presenting Officer could have been more brief in presenting his brief without any derogatory expressions.

7.11 The Annexure-III to the Charged Memorandum included all the listed witnesses in this case relevant to the charge as decided by the Disciplinary Authority. (Reference to Answer to Question No.70) . Only one witness by name, Sri G.N.Gupta, Dy.SP/SPE/CBI/Viskahapatnam was deleted as per the requirement of the Presenting Officer.

7.12 While the above are the remarks on the Defence Brief, the enquiry Officer is inclined to express his opinion on the Presenting Officer's brief wherein, he has recommended that the charged employee should be awarded suitable punishment for his act which was unbecoming on the part of the public servant. This part was very much uncalled for and unwarranted since the P.O. is only a person nominated by the Disciplinary authority to present

the case so as to help the Enquiry Officer to smoothly conduct the enquiry and arrive at the truth. He, has no recommendatory powers vested in him. Even the Enquiry Officer has only to find out the truth of the allegations based on the evidences adduced during the enquiry. Hence the last para of the P.O. is required to be expunged.

8. REASONS FOR FINDING.

8.1 It has been established during the enquiry that Sri. A. Suryanarayana Rao who was working as Senior clerk, Personnel branch in the PWI's Office, Nuzvid had an assistance rendered from a literate Gangman, by name Sri M. Elia, in his office work. Most of the witnesses who tendered their evidences, have signified to the correctness of this fact.

8.2 It would be seen that S. Railway Coop. Credit society loan application forms duly signed, but not filled in, in favour of the following staff along with some others were found to be in the custody of Sri A. Suryanarayana Rao, Senior clerk.

1. Sri P. Karunakar Rao	Gangman
2. Sri T. Daniel	-do-
3. Sri S. Nageswara Rao	-do-
4. Sri P. Samuel	-do-

It is not clear as to what was the necessity or the purpose to have received the application forms duly signed but not having completed in all respects. In fact, all these applications should have been received in the office of the PWI only after they were filled in properly and it should have been only at the final stage for the purpose of certification and verification of the particulars, the same should have been submitted by the staff. But, in actuality, all these incomplete applications were seized from ~~akk~~ the Sri. A. Suryanarayana Rao, Senior clerk and the reasons adduced by Sri Suryanarayana Rao are not very much convincing.

8.3 It is an accepted version during the course of the enquiry through various witnesses that Sri Karunakar Rao had entered the office along with another person and on contacting Sri A. Suryanarayana Rao, he told him to hand over the amount to Sri Elia who was sitting in the same room.

8.4 Sri N.Fracis who was the accompanying witness is an independent person who does not know either Sri Karunakar Rao or Sri Suryanarayana Rao prior to the trap incident.

8.5 Sri D.Rama Murthy ,APO/E/BZA has given a very clear picture about Sri A.Suryanarayana Rao with regard to the complaint received against him.

8.6 In reply to Question No.64, Sri M.Venkateswara Rao replied that the first page of the loan application form is only to be filled in by the personnel Branch clerk after the form is filled in by the employees concerned. If this were to be so, there was no necessity for keeping the blank forms with only the signatures of the staff, under the custody of the senior clerk, without any purpose or motive.

8.7 In Answer to Question No.110, Sri P.Samuel stated that he had paid Rs.40/- to Sri A.Suryanarayana Rao in presence of Sri M.Elia, this amount is stated to have been given to process the loan application immediately.

8.8 In Answer to Question No.165, Defence witness No.1 Sri Ch.Appa Rao stated that he had reported for duty at 18.00 hours on 18-4-1988. In Answer to Question No.170, this witness stated that he had not seen Sri Elia, Gangman in the PWI's office after his reporting for duty. At the same time, his answer to question No.172, to the effect that Sri Elia was being brought to the office by somebody from outside the gate at about 18.00 hours seems to be at variance, if not contradictory. It can only be construed that Answer to Question No.172 must have been afterthought.

8.9 Borne out from the evidences of various witnesses examines in this case, it is a fact that Sri A.Suryanarayana Rao, Sr.Clerk of PWI's office, Nuzvid asked Sri Elia to receive the illegal amount under instructions and on his behalf. This being so, the charge that Sri A.Suryanarayana Rao accepted the bribe amount of Rs.30/- cannot be established. But the acceptance of the amount by Sri M.Elia as per the versions of many witnesses

examined in the case, was as per the instructions of Sri A.Suryanarayana Rao, Sr.Clerk, Personnel Branch under whom is Sri M.Elia is working. Therefore, the end result of acceptance of Rs.30/- by Sri M.Elia was on account of the demand placed by Sri A.Suryanarayana Rao, Sr.Clerk, personnel Branch, PWI's office, Nuzvid. Hence the charge of demand of illegal money by Sri A.Suryanarayana Rao stands substantiated.

8.10 In the light of the above, the charge levelled against Sri A.Suryanarayana Rao, Sr.Clerk, PWI's office, Nuzvid stands substantiated, partially.

FINDING.

The Charge levelled against Sri A.Suryanarayana Rao vide charge Memorandum No.B/P.Con/227/I/1/88/1,dated 5-10-1988 is partially proved to the extent that he while functioning as a Senior clerk in the PWI's office, Nuzvid on 18-4-1988 in abuse of his position as a public servant demanded a bribe of Rs.30/- from Sri P.Karunakar Rao, Gangman for processing loan application and for expediting the Railway pass of the later.

Sd/-
(C.CHANDRASEKHARAN)
Senior Enquiry Officer/HQrs.
17-1-1990.

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// True copy //

Vijayawada
Dt. 2-4-90

33

To T
The Divisional Personnel Officer,
SC Rly/BZA.
(Disciplinary authority)

Respected Sir,

Sub: Disciplinary action against me.
Ref: Your Ir.No.B/P.Con /227/I/88/1,dt.19-3-90.

...

While thanking you for providing me an opportunity to make a submission/representation on the IO's report, I make the following submission for favour of consideration while taking the judicious decision by your kindself being the disciplinary authority.

EO in his findings has held the charge levelled against me vide charge Memorandum No.B/P.Con.227/I/88/I,dt.5-10-88 as partially proved /to the extent that I while functioning as a senior clerk in the PWI office, Nuzvid on 18-4-88 in abuse of my position as a public servant demanded a bribe of Rs.30/- from Sri P.Karunakar Rao Gangman for processing loan application and for expediting the Rly. pass of the later.

In the assessment of evidence in para 6.1 Sri P.Karunakar Rao in answer to question No.21 stated that he contacted me after 5.'o clock on 14-4-88 when there was nobody other than Sri Elia at this time Sri Karunakara Rao was asked by me to come with the money on 18-4-88. To establish this a witness nor examined by the prosecution in my presence. As agreed by the EO the sole witness to corroborate the evidence was Sri Elia. Under these circumstances the answer to question No.21 by Sri P.Karunakara Rao cannot be relied. Upon since the statement was not having corroboration evidence and as such same suffers for want of evidence. There is nothing on record to prove that I have demanded Rs.30 from Sri P.Karunakara Rao gangman on 14-4-88.

Further EO has mentioned that Sri Elia had, later confessed that the amount was taken by him as per the instructions of Sri. A.Suryanarayana Rao though Sri Suryanarayana Rao denied this in the same para at page 9 of the report. Here, again Sri Elia was neither cited as a witness nor examined by the prosecution in my presence and hence this forms a piece of information

either received or recorded in my absence as such cannot be used against for proving the charge. I relied upon the judgement of the Central Administrative Tribunal principle Bench Delhi in application No T-338/86 (862082) Sri Captain Singh Vs. Union of India and others decided by honourable Sri K. Madhava Reddy, Chairman and honourable Sri Kaushal Kumar, Member. The Hon'ble Chairman and the Hon'ble member have held that findings of the statements placed on file at the back of delinquent and on a date and at a venue for which he had no notice have no validity and cannot form the basis of any conclusion on the part of the enquiry officer (ATR 1986(2) CAT 624). Under the circumstances neither the answer to question No.21 of Sri P. Karunakar Rao nor the confession said to have been made later by Sri Elia had any validity for forming the basis of the findings of the EO.

In para 6.2 EO while assessing the evidence of Sri M. Francis the accompanying witness in this trap, stated that the witness in his statement that he had gone with Sri Karunakar Rao, to the Office of PWI Nuzvid and he was available there when Sri Suryanarayana Rao had demanded for money. Here, again the statement of Sri M. Francis suffers for want of evidence since the evidence of the accomplice lacks corroboration by an independent witness.

The statement of Sri S. Nageswara Rao where in he has stated that Sri Suryanarayana Rao had demanded Rs.20 for filling the forms for two loans also suffers for want of evidence as mentioned by the EO in para 6.6. "However there was nobody available when he has demanded Rs.20 from Sri Nageswara Rao"

The attitude of the presenting officer can be well judged by your kindself in emphasizing about the pro's and con's of the parameters under which the Departmental Enquiry is to be conducted by the EO.

EO in para 7.2 has contended that I could have returned the same (loan application forms) to the employees concerned for filling it up and resubmission which was not done and as such I was guilty of keeping them in my custody. Sir your kindself

is well aware that the gangmen being illiterates the filling up of the loan application forms, leave applications etc. was done by the literate staff in the PWI's office. It is owing to that age old practice these forms though not filled in by the applicant were kept in my custody for getting them filled in as was the normal practice. Here I submit that this is one of the many practices which contravenes the basic rules. Under these circumstances I had to keep them in the drawer in safe custody and not had any malafied intention.

The undisputed answer to question No.85 by the witness clearly establishes that there was no occassion for me to demand money as alleged this was amply clarified by the EO in para 7.4.

E.O though agreed that the statement of Sri S.Nageswara Rao and Sri P.Samuel have not been corroborated since Sri M.Elia was not examined in this case. However EO opined that the stand of the witnesses cannot be destablished. Here again, I submit that the statements referred to suffer for want of evidence and any matter which is not borne out of evidence cannot be used against me merely to prove the charge since such usage violates the principles of natural justice. Further all the witnesses referred to are the prosecution witnesses and not independent and unbiased. Hence their evidence cannot pass the test of legal scrutiny without having been corroborated.

The remarks made by the EO on the presenting officer's attitude while preparing the prosecution brief in para 7.10 deserves your kind consideration.

I submit that I have explained the reasons clearly as to why the loan application forms were kept in my custody. This has the reference to the doubts expressed by the EO in para 8.2 of the reasons for finding.

EO has brought out in para 8.3 it is an accepted version during the course of the enquiry through various witnesses that Sri Karunakara Rao had entered the office along with another person and on contacting Sri A.Suryanarayana Rao he told him to handover amount to Sri Elia who was sitting in the same room. Sir I submit

(nb) 31

from the evidence of record that while laying the trap only two persons ie Sri P.Karunakara Rao and M.Frances have entered the room the rest of the witnesses were said to be some where by taking convenient poistion as per their versions and have only entered the room after the signal was relayed to them as proposed by the trap laying officer. Under these circumstances the version of the witnesses who were away from the room was only an heresy version and not witnessed by them. An heresay evidence cannot be considered as a corroborated evidence and as such I beg to defer on this point of reasoning.

EO has laid much reliance on reply to question No.64 by Sri N.Venkateswara Rao and emphasized that the loan application form there was no necessity for keeping blank forms with only the signature of the staff under the custody of the senior clerk without any purpose or motive, I submit that as already brought out in the foregone paras the only purpose of keeping the signed blank forms in my custody was to have them filled in by the literate assistance that was given to me by the PWI as was the practice in all offices as the applicants are illiterate and do not maintain their service particulars. There was no any other intention in keeping those forms in my custody. It is to be submitted that only one table with two drawers was provided for the use of senior clerk as well as the literate assistant in the PWI's office, Nuzvid. All the pending papers either requiring my attention or the attention of the literate assistant were used to be kept in the drawers of that one table. And as such it will be most uncharitable to say that there were kept in my custody. Since nothing was kept in my personal custody.

I therefore request your kindself to view the assessment of the evidence and the reasons for the findings dispassionately basing on the evidence asbrought on record and oral evidence abused during the course of enquiry judiciously and favour me with a decision which will have iegs to stand against the legal scrutiny.

Yours faithfully,
Sd/-
(A.Suryanarayana Rao)
Sr.Clerk,
Sr.DPO/O/BZA

// True copy //

SOUTH CENTRAL RAILWAY
No.B/P.Con.227/I/88/1

Divisional Railway Manager's
Office (Personnel Branch),
Vijayawada, dated 15-06-1990

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MEMORANDUM

Department	:	Personnel
Name	:	Sri A.Suryanarayana Rao
Designation	:	Sr.Clerk
Date of appointment	:	17-10-1979
Rate of pay	:	Rs.1350/-w.e.f.1-2-90
Scale of pay	:	Rs.1200-2040(RSRP)
Staff No.	:	-
Station	:	Sr.DPO/O/BZA(ex.PWI/O/NZD).

Shri A.Suryanarayana Rao , Sr.Clerk/Sr.DPO/O/BZA(ex.PWI/O/NZD) is informed that the Officer appointed to enquire into the charge against him has submitted his report. A copy of which was sent to him on 19-3-90 and acknowledged it on 20-3-90.

2. On a careful consideration of the enquiry report aforesaid and the representation dated 2-4-90 of the charged employee the undersigned agrees with the findings of the Enquiry Officer and holds that the article of charge is partially proved for the following reasons.

"Shri A.Suryanarayana Rao, Sr.Clerk/Sr.DPO/O/BZA, while working as Sr.Clerk in PWI/O/NZD was charged for abuse of his position as public servant in that he demanded and accepted a bribe of Rs.30/- from Shri P.Karunakara Rao, G.Man for processing loan application and for expediting the Railway pass of the latter on 18-4-88 at 16.30 hrs. at the PWI/O/NZD through Shri M.Elia, Gangaman as detailed in the imputations of misconduct. Shri Chandrasekharan, Sr.Enquiry Officer/Hqrs/SC has conducted enquiry in this case.

On a careful consideration of the enquiry report, I agree with the findings of the enquiry officer. I have carefully gone through the DAR case of Shri A.Suryanarayana Rao, Sr.Clerk emanating with SF.5, its listed documents annexed thereto, the reply given by Sri A.Suryanarayana Rao dated 15-12-88 denying the charges, the enquiry proceedings followde thereafter, defence brief, prosecution brief presented by presenting Officer

- 2 -

and final report of the enquiry officer and the representation dated 2-4-90 in reference to Enquiry officer's report submitted by the Charged employee. The following observations are made.

The witness (complainant Shri P.Karunakara rao)deposed that he has applied for loan from the Railway Employee's Co-op. society, Madras for which the details are to be filled by Sri A.Suryanarayana Rao. He met Shri A.Suryanarayana Rao on 14-4-88 and enquired about the date of his application form. Sri A.Suryanarayana Rao asked him to come with Rs.30/- as a bribe and meet him on 18-4-88. Shri A.Suryanarayana Rao has further stated that he will attend the work with assistance of Shri M.Elia and demanded Rs.30/- for the work and this amount will be shared between himself and Shri M.Elia. Shri A.Suryanarayana Rao has further stated that he should come with the money latest by 18.4.88. Shri Karunakara Rao has given a complainat to Dy. Superintendent of Police. The Inspector of Police CBI/VSKP arranged a trap ~~trap~~ on 18-4-88. When the trap was arranged, Shri M.Elia had received the amount of Rs.30/- as per the instructions of Shri A.Suryanarayana Rao and currency notes were seized from the left side of the shirt pocket of Shri M.Elia. The hand~~ed~~ and as well as the shirt pocket were subject to wash and tested which clearly proved that the solution used for the purpose of had turned into pink colour.

Shri K.Nirmal Kumar (witness No.10)Inspector of Customs and Central Excise/Vijayawada who is the independent witness deposed that Sri A.Suryanarayana Rao had asked Shri M.Elia to receive the amount, on seeing another person with Shri P.Karunakar Rao Shri Francis (witness No.2) who was available in PWI/O/NZD at the time of trap, conferred that the amount was received by Shri M.Elia who was present along with Sri A.Suryanarayana Rao. When confronted by the CBI Officer both Sri A.Suryanarayana Rao and Sri M.Elia became nervous and kept mum. Shri A.Suryanarayana Rao had stated that he had neither demanded nor received any amount from the complainant. Shri M.Elia at this stage deposed

that the amount was demanded by Sri A. Suryanarayana Rao and he accepted the amount from P. Karunakara Rao and kept the same in his left side shirt pocket as per the instructions of Shri A. Suryanarayana Rao. It is evident from the above that Shri ~~A. Suryanarayana~~ M. Elia who was assisting Shri A. Suryanarayana Rao has accepted the bribe amount of Rs.30/- to share the amount between Sri A. Suryanarayana Rao and himself. To substantiate the above there is an evidence that he was keeping the loan application forms duly signed by the following employee s.

1. Sri P. Karunakara Rao	Gangman
2. Sri T. Daniel	-do-
3. Sri S. Nageswara Rao	-do-
4. Sri P. Samuel	-do-

But the loan application forms are incomplete in all columns which were found in the custody of Shri A. Suryanarayana Rao. It is clearly shows that he was in the habit of keeping the incomplete applications and demanding bribe for certifying the Co-operative Credit Society loan applications. Shri A. Suryanarayana Rao in his representation dated 2-4-90 stated that he was keeping the signed blank loan application forms in his custody to fill these applications with the literate assistance that was given to him by the PWI, as it was the usual practice in all the offices, as the applicants are illiterates and do not maintain their service particulars. This cannot be accepted and Shri A. Suryanarayana Rao is not suppose to keep the signed blank loan application forms with him.

Even though the charges levelled against him have been partially proved by Enquiry Officer, yet there is an evidence to believe that Sri A. Suryanarayana Rao has instructed Sri M. Elia to receive the bribe amount of Rs.30/- to share between Shri A. Suryanarayana Rao and Sri M. Elia.

The report of the Enquiry Officer holds the charge thus proved partially and I also agree with the findings of the enquiry officer and holds that charge:

" That Shri A. Suryanarayana Rao while functioning as a Sr. Clerk in PWI/O/NZD in abuse of his position as a public

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servant demanded a bribe of Rs.30/- from Sri P.Karunakar Rao Gangman for processing loan application and for expediting the Railway pass of the latter on 18-4-88 at 16.30 hrs. at the PWI/Office/Nuzvid, through shri.M.Elia, Gangman as detailed in the imputations of misconduct.

By the aforesaid acts Shri A.Suryanarayana Rao failed to maintain absolute integrity conduct and due diligence unbecoming of public servant and thereby violating Rule.3 of Railway service conduct rules,1966."

as proved and hold him guilty.

Accordingly I impose a penalty of reduction to lower grade in the time scale as Jr.Clerk in scale Rs.950-1500(RSRP)for the period of two years(recurring) with loss of seniority."

3. Accordingly he is informed that he is reduced to the lower grade of Junior clerk in scale Rs.950-1500(RSRP)on pay of Rs.1150/- with effect from 11-06-1990 for a period of 2 (TWO)years (recurring with loss of seniority.

The period of reduction will not count for future increments on restoration.

4. The penalty is imposed by the undersigned and the appellate authority is Sr.DPO/BZA. Appeal hereon,if any, is to be submitted through proper channel within 45 days from the date of receipt of this advice.

5. He should acknowledge receipt of this on the spare copy enclosed.

Signature:
Name
Designation
of the D.A

Sd/-
(K.VENKATA KRISHNAIAH)
DPO/BZA

To
Shri A.Suryanarayana Rao,
Sr.Clerk/Sr.DPO/O/BZA Through: OS/P/BZA

Copy to:OS/Tfc.bills,&L&I,CC/Comml.Cadre for information and necessary action.

Copy to:Sr.DAO/BZA

// True copy //

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ANNEXURE 11

VIJAYAWADA
Dt.25-7-90.

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From

A.Suryanarayana Rao
Sr.Clerk,
Sr.DPO/P/BZA

To
Sr.Divl.Personnel Officer,
S.C.Railway,
Vijayawada.

Thro' Proper channel

Respected Sir,

Sub:- Appeal against penalty.

Ref:- DPO/BZA penalty advice No.B/P.Con.227/
I/88/1,dt.15-6-90.

...

With reference to the penalty advice cited under reference above, I beg to submit the following few lines for your kind consideration and favourable orders.

Sir, on an allegation that I had demanded and accepted a bribe of Rs.30/- from one Sri P.Karunakar Rao, Gangman, Nuzvid, charges are framed against me and an enquiry under D&A rules was held. The learned I.O. held that the article of charge is partially proved. DPO/BZA who is the disciplinary authority agreeing with the findings imposed penalty of reduction to a lower grade of Jr.Clerk for a period of two years (recurring) with loss of seniority vide reference cited above. Hence the appeal.

Sir, the reasons adduced for holding the charge as partially proved, to see the least, self contradictory. The disciplinary authority while admitting that the details in the loan application form are to be filled in by me, holds me guilty for keeping the same in-completed in my custody. If I were to fill in the details it goes without saying that the forms received by me will only be incomplete. Unfortunately, the I.O. too erred in arriving at conclusion that there was no necessity for keeping the blank form with only signatures of the staff under my custody without any purpose or motive (para8.6).

For, even the ex.P8 clearly indicates that the loan application forms are to be filled in by me and this is one of the documents relied upon to sustain the charge against me.

Sir, pardon me if I sound impertinent, but I submit that it is the administration which is responsible for creating a situation

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through their directives wherein an innocent employee is found guilty.

Normally the applicant himself has to fill in the loan application and submit it to office for verification of the particulars entered and certification. It is the first page alone that has to be filled in by me. While the rule being so, over a period of time, the administration, on the ground that the employees are illiterate has forced the personnel Branch clerk in a PWI's office to fill up these particulars also. Similarly, till a few years back it is the processing office which has to send the loan applications to the society. Suddenly this was changed, for good reasons no doubt, and the applicants themselves were asked to send the loan applications to the society. I submit that the administration which held these employees as unable to fill up the columns because of their illiteracy, ought not have expected them to send these applications by themselves since they are illiterates. The result of the change was that these illiterate employees were compelled to seek the assistance of some literate person such as Sri M. Elia. If these Elias demand and accept some amount in addition to the registration charges how can I be held responsible. In the instant case atleast one prosecution witness had admitted that he had paid Rs.10/- to Sri Elia to cover postal charges. That not a single application was sent by registered post by me is a clear proof that even the postal charges were not collected by me.

Sir, the disciplinary authority had recorded that "there is an evidence to believe that sri A Suryanarayana Rao, has instructed Sri Elia to receive the bribe amount of Rs.30/- to share between Sri. A. Suryanarayana Rao and Sri M. Elia." As submitted in my defence brief and submissions over the IO's report the evidence referred to above is totally untenable. The ground for such a conclusion is the so called confession of Sri Elia which has no legal validity since he was not examined as a witness in my case, a fact noted by the I.O(Para 7.5).

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- 3 -

Sir, before concluding I would like to invite your kind attention to certain judgements cited in my defence brief and I request you sir to consider all these factors and render me justice by annulling the penalty imposed

Yours faithfully,

Sd/-

(A.SURYANARAYANA RAO)

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// True copy //

South Central Railway
No.B/P.Con.227/I/88/I

Office of the
Divisional Railway Manager,
personnel Branch,
Vijayawada, date: 12-12-90

MEMORANDUM

Sub: SPE case - DAR action against Sri A.Suryanarayana Rao, Jr.Clerk/Sr.DPO/O/BZA(ex.Sr.clerk).
Ref: Your appeal dated 25-7-90.

Shri A.Suryanarayana Rao, Jr.Clerk/Sr.DPO/O/BZA(ex.SC) is hereby informed that the undersigned having gone through the above appeal and also proceedings of the disciplinary action taken against him by DPO/BZA, in pursuance of memorandum of even No.dt.05-10-88 issued against him, considers that the penalty of reduction to the lower grade of Junior clerk in scale Rs.950-1500 (RSRP) on pay Rs.1150/- w.e.f.19-6-90 for a period of 2 years (recurring) with loss of seniority imposed on him by DPO/BZA (the Disciplinary authority) vide memorandum of even no.dt.15-6-90 is inadequate and proposes to enhance the penalty under Rule 22 of Railway servants(Disciplinary & Appeal)Rules,1968,(for the reasons given in the annexure).

2. Shri A.Suryanarayana Rao, is therefore advised that the undersigned has provisionally come to the conclusion that the penalty imposed on him should be enhanced to reduction to a lower grade of Rs.950-1500(RSRP) as Junior clerk on pay Rs.1150/- for a period of SIX years(Recurring) with loss of seniority. Sri A.Suryanarayana Rao is hereby given an opportunity of showing cause against the action proposed to be taken. Any representation which he may make in this connection will be considered by the undersigned. Such representation,if any, should be made in writing by Sri A.Suryanarayana Rao,with in 15 days from the date of receipt of this memorandum.

3. If Shri A.Suryanarayana Rao, fails to submit his representation within the time limit allowed it will be presumed that he has no representation to make and orders will be liable to be passed against him ex-parte.

4. The receipt of this memorandum should be acknowledged by him on the form appended below.

Sd/-
(T.P.W.S.Sekhara Rao)
Sr.Divisional Personnel Officer
&Appellate authority.

To
Sri A.Suryanarayana Rao,
Jr.Clerk/Sr.DPO/O/BZA

// True copy //

(Lb)

Vijayawada
Dt.26-12-90.

From
A.Suryanarayana Rao,
Jr.Clerk,
Sr.DPO/O/BZA.

To
The Sr.Divisional Personnel Officer,
South Central Railway,
Vijayawada.

Through Proper Channel,
Respected Sir,

Sub: Show cause Notice.

Ref: Your Memorandum No.B/P.Con/227/I/88/I,
dt.12-12-90.

...

While thanking you, sir, for giving me an opportunity of showing cause against the proposed enhancement of penalty, I submit the following few lines for your kind consideration.

It is most unfortunate that without considering the rulings handed down by several CATs, and without meeting the points raised in my appeal against the penalty, action is proposed to be taken. Also, sir, it is unfortunate that the inherent contradictions in the conclusion arrived at in regard to keeping blank loan application forms, have formed basis for the proposed action.

In the show cause notice (Annexure) it is held "Instead of returning the blank forms to the employees for filling up the loan application forms immediately on receipt, Sri A.Suryanarayana Rao simply accepted the loan applications and kept with him as such till the time of check. This goes without saying that he has got motive behind his action".

While arriving at the conclusion, the fact that the Personnel Branch clerk himself is obliged to fill up, as deposed by PWI, has been ignored and motives were attributed. Whether it is mandatory or not, a clerk is obliged to carryout the instructions of his supervisor.

Then there is one more vital aspect which has not received due consideration. During the period in question a good number of other urgent works had to be attended to.

During March 26th to 3rd April 88 attending regular salary bill preparation.

(Ct)

On 4th April '88, submission of Salary bill in Office/BZA.

On 5th and 6th April 88 attending one provisional certification of IV th Pay commission S.R. which was objected by Accounts Department previously. That too, the employee was due retire on 30th April 88 due to superannuation.

On 7th, the same IV Pay commission S.R. submitted in Sr. DAO's office/BZA.

During 8th to 12th I was on leave to bring my family to put up at Nuzvid.

During 13th to 15th - attending regular pending of routine work

On 16th and 17th - Checking of T.A. journals of the staff and get the counter signature of the PWI.

On 18th submission of the same T.A. journals in AEN's office/ Eluru.

An averment has been made that the allegation that I had demanded an amount of Rs.30/- through Sri M. Elia has been made without any proof. Either the so called confession of Sri M. Elia or the depositions of other witnesses in another case cannot be held against me in view of the ruling of Hon'ble Supreme court in case of Central Bank of India Vs. P.C. Jain (AIR 1969 IC 983) wherein it was ruled "The Principle that a fact sought to be proved must be supported by the statements made in the presence of the person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the evidence act."

The same principle has been reiterated by Hon'ble CAT Hyderabad very recently in the case of Sri K. Chalamaiyah Vs. DRM/BZA and another (O.A.No.520/86) as reported in ATR 1990(1) T 112 (Photostat copy enclosed).

(CR) 42

It was held that it would be very difficult to establish the charges through direct evidence and therefore degree of proof required in domestic enquiries is preponderance of evidence. This too, I submit, is against the Law of the Land. For, in the case of Shankarlal Viswakarma Vs. Union of India and others it was ruled". The test of the prosecution evidence being established without any doubt has to be applied vigorously also in a departmental enquiry proceedings, and the disciplinary authority has to be satisfied about it (ATR 1986(2) CAT/577)

In view of the court decisions cited above, I submit that it cannot and shall not be held that the charges against me were partially proved and as such I request you sir to annul the penalty imposed by Divisional Personnel Officer/ S.C.Rly./Vijayawada.

Yours faithfully,

Sd/-
(A. Suryanarayana Rao)
Jr. Clerk.

✓
// True copy //

SOUTH CENTRAL RAILWAY
No.B/P.Con.227/I/88/I

U8 ANNEXURE 54
Divisional Office,
Personnel Branch,
Vijayawada.
Date:09-01-1991

MEMORANDUM

The representation dated 26-12-1990 of Sri A.Suryanarayana Rao, Jr.Clerk/Sr.DPO/O/BZA(ex.SC), to this office memorandum (Show cause notice) of even No.dt.12-12-90 proposing to enhance the penalty of reduction to the lower grade of Rs.950-1500(RSRP) as Jr.Clerk on pay Rs.1150/- for a period of Six years (Recurring) with loss of seniority has been carefully considered by the undersigned and decided as under:

" I have carefully gone through his defence and quoted court cases, which are based on individual cases. No fresh points have been brought except busy schedule of work. Normally PWI's office clerk is supposed to do busy work in the field. Proposal stands good."

2. Accordingly Sri A.Suryanarayana Rao, is hereby informed that the penalty of reduction to the lower grade of Junior clerk in scale Rs.950-1500(RSRP) on pay Rs.1150/- w.e.f.19-06-1990 for a period of 2 years (Recurring) with loss of seniority already imposed by DPO/BZA vide B/P.Con.227/I/88/I,dt.15-6-90 is enhanced to that of reduction to the lower grade of Junior clerk in scale Rs.950-1500(RSRP) on pay Rs.1150/- for a period of 6 (Six) years recurring with loss of seniority.

3. The penalty is imposed by the undersigned and appeal lies to ADRM/I/BZA under Rule 18 & 19 of Railway Servants (Discipline & Appeal)Rules, 1968 with in 45 days from the date of receipt of this advice. The appeal should be in his own name and should be submitted through proper channel.

4. He should acknowledge receipt of this on the spare copy enclosed.

Signature : Sd/-
Name : (T.P.V.S.Sekhara Rao)
Designation of the : Sr.Divl.Personnel Officer
Appellate authority Vijayawada

To
Sri A.Suryanarayana Rao,
Jr.Clerk/Sr.DPO/O/BZA

// True copy //

19

ANNEXURE

VIII

44

Vijayawada
Dt.27-2-91

From: A.Suryanarayana Rao
Jr.Clerk,
Sr.DPO/O BZA

To : The Addl.Divl.Rly Managar(I)
South Central Railway,
Vijayawada.

Respected Sir,

Through Proper channel

Sub: Appeal against penalty imposed

Ref: Sr.DPO/BZA Memorandum No.B/P.Con.227/I/88/1,
dt.9-1-90.

With reference to the memorandum cited under reference above,
I beg to submit the following few lines for your kind consideration
and favourable orders.

The manner in which my representation dt.26-12-90 addressed
to SriDPO/BZA submitted in obedience to the memorandum (Show cause
notice) of even no.dt.12-12-90 has come as a rude shock to me.
The following are the observations made by Sr.DPO/BZA while
disposing of my representation dt.26-12-90.

It is stated that after carefully going to my defence and
quoted court cases which are based on Individual cases. The
matters which are well settled at any rate by a Judicial body
are equally applicable to those who are placed in similar situa-
tions. This contention was relied on the decision of the Supreme
court in Inder Pal Yadav and others Vs.Union of India and others
(1985(2)SLR 248 SC)wherein the Supreme court has observed as
follows:

"therefore, those who could not come to the court need not be
at a comparative disadvantage to those who rushed in here. If they
are otherwise similarly situated, they are entitled to similar
treatment if not by anyone else at the hands of this court".

The Central Administrative Tribunal which are replaced
the jurisdiction of judiciary of High court's has observed ~~that~~
in order O.A.683/88 which is also reproduced below.

"At any rate the matter is now well settled that in order
to avoid multiplicity of proceedings, the employers
themselves shall apply to all employees the principles
shall apply to all employees the principles as settled
finally by a judicial body".

(S)

45

- 2 -

It is for consideration whether the principles on which the judgements which were quoted by me in my representations do equally apply to me or not, hence the observation made by Sr.DP O/BZA has no ~~legis~~ to stand for a judicial scrutiny.

Further, it is observed no fresh points have been brought except busy schedule of work. It is submitted that to my limited knowledge, there is no provision under the D&A rules to bring out any new points while submitting representations/submissions which are not supported by direct or circumstantial evidence either on record or adduced during the course of enquiry before the E.O. Hence, the observation cannot be made use of against me while deciding my representation, since any new point brought out by me will be discredited by the same authority terming the same as a second though and not supported by evidence which has been brought on record.

As regards the busy schedule of work, it has been accepted, normally PWIs office clerk is supposed to do busy work in the field. I request you to excuse me for placing on record that this ~~as~~ very observation is violative of Article 14 and 16 of the Constitution of India which clearly lays down that equals are not to be treated as unequals, since there is no any differentiation in the scale of pay or the service condition of these two classes of employees. Further, Sir, I submit, this itself is an admission that I was overburdened with work.

The foregoing will establish that the order given by Sr.DPO BZA doesn't appear to be a speaking order and lack of applicability of mind.

I request you to afford an opportunity of personal hearing along with my D.C.

Thanking you,

Yours faithfully,

Sd/-

(A.Suryanarayana Rao)

// True copy //

South Central Railway

No.B/P. Con.227/I/88/I

Sri A.Suryanarayana Rao,
Jr.Clerk/Sr.DPO's/O/BZADivisional Office,
Personnel Branch,
Vijayawada
Dt.26-3-91.

Through: OS/P/BZA

Sub: Appeal against the penalty imposed by
DPO/BZA and later enhanced by Sr.DPO/BZA.

Ref: Your appeal dated 27-2-91.

...

ADRM/I/BZA, the appellate authority has carefully considered your appeal on the penalty enhanced by Sri DPO/BZA along with relevant documents and ordered as under:

"I have gone through the charges levelled against Sri.A. Suryanarayana Rao, erstwhile Sr.Clerk, PWI's office/NZD, the enquiry proceedings and the punishment imposed by Disciplinary authority i.e., Sr.DPO. I have also gone through the appeal of Sri A.Suryanarayana Rao . I have also heard the employee in person on 18-3-91.

It is seen from para 8.9 of the Enquiry Officer's proceedings that the fact of Sri A.Suryanarayana Rao asking Sri Elia to receive the illegal amount is established. But for the fact that Sri Suryanarayana Rao has not received the amount personally, his intention of illegal gratification is clearly proved. In his appeal, Sri Suryanarayana Rao has at length dealt about the procedure of submission of loan applications etc., but nowhere he has contra-~~guilty~~ dictated or tried to explain whether he is guilty of illegal gratification of the amount in question or not.

Under the circumstances, I hold Sri Suryanarayana Rao responsible for receipt of illegal gratification and uphold the punishment enhanced by Appellate Authority i.e., Sr.DPO."

Please note and acknowledge receipt of this letter on the spare copy enclosed.

Sd/-
(M.Raghunath)
Sr.Divl.Personnel Officer,
Vijayawada

h
// True copy //

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD.

O.A.No. 89 of 1992.

Between:

A. Suryanarayana Rao, .. Applicant.

and

Divisional Personnel Officer,
South Central Railway,
Vijayawada and three others. .. Respondents.

COUNTER AFFIDAVIT FILED ON BEHALF OF RESPONDENTS.

I, P.S. Murthy, S/o late P. Sankaram aged 47 years, Occupation: Sr.Divisional Personnel Officer, South Central Railway, Vijayawada, resident of Vijayawada, resident of Vijayawada, do hereby solemnly and sincerely affirm and state as follows:-

- 1) I am working as Sr.Divisional Personnel Officer, South Central Railway, Vijayawada, and as such I am well acquainted with the facts of the case. I am filing this counter affidavit on behalf of respondents and I am authorised to do so.
- 2) I submit that I read the application filed by the applicant in O.A.No.89 of 1992 and I submit that the material allegations made therein are not true and correct and do not disclose any valid or tenable grounds to grant any reliefs in O.A.No.89 of 1992 and material allegations made therein which are not specifically admitted in this counter affidavit shall be deemed to have been denied by us.
- 3) It is submitted that the applicant was appointed as Junior Clerk in scale Rs.260-400(RS) in the Office of Senior Divisional Personnel Officer/Vijayawada on 17-10-79 and promoted as Senior Clerk in scale of ~~Rs.330-560~~ Rs.330-560(RS) w.e.f. 11-2-84. While working as Senior Clerk, he was transferred from Senior Divisional Personnel Officer's Office, Vijayawada to Permanent Way Inspector's Office, Nuzivedu w.e.f. 25-4-86. He was transferred back to Senior Divisional Personnel Officer's Office, Vijayawada and joined on 21-7-88.

P. S. Murthy

Attested

1st Page:

Corrections:-

शार्थ मण्डल कार्मिक अधिकारी
द. स. राम, विजयवाडा.
Senior Divisional Personnel Officer
S. C. Rly, VIJAYAWADA.

Deponent.

Assistant Personnel Officer G&C
S.C.Rly, VIJAYAWADA

4) It is submitted that the applicant while working as Senior Clerk in Senior Divisional Personnel Officer's Office/Vijayawada, was issued with a major penalty charge sheet vide reference No.B/P.Con.227/I/88/I of 3-10-88, for abusing his position as a public servant by demanding and accepting a bribe of Rs.30/- from Sri P. Karunakara Rao, Gangman for processing loan application and expediting his Railway Pass, on 18-4-88 at 16.30 hrs. at the Permanent Way Inspector's Office/Vijayawada through M.Elias, another Gangman of the same Office. On receipt of the charge sheet i.e. Standard Form No.5 and after availing the opportunity of inspection of documents, the applicant denied the allegation and nominated his defence counsel to defend him in the course of DAR enquiry. The presenting Officer and the enquiry Officer were appointed to conduct DAR enquiry into the allegation that was denied by the applicant, as per the procedure laid down under Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1988. Accordingly, DAR enquiry was conducted and the charge was partially proved to the extent that the applicant has abused his position as a public servant in demanding a bribe of Rs.30/- from Sri P. Karunakara Rao, for processing loan application and for expediting the Railway pass of the letter. The enquiry Officer recorded his findings on completion of the enquiry i.e. after giving reasonable opportunity to the applicant to defend his case and on the basis of the evidence available on the record and also the evidence of various witnesses (including the additional witness cited by the applicant) examined during the enquiry. Hence, the findings of Enquiry Officer were neither arbitrary nor unsustainable as alleged by the applicant.

It is submitted that the Disciplinary Authority, before taking a final decision on the enquiry report, a copy of the same was sent to the applicant, gave him the opportunity of submitting a representation/submission to the Disciplinary

2nd Page
Corrections:-

S. C. Rly. Personnel Officer G&O
S.O.Rly, VIJAYAWADA

Alleged *P. Gandy*
वारिष्ठ मण्डल कार्यक्रम अधिकारी
द. न. रेलवे, विजयवाडा,
Senior Divisional Personnel Officer Deponent.
S. C. Rly, VIJAYAWADA

Authority on Enquiry Officer's report. The Disciplinary Authority, after careful consideration of Enquiry Officer's report with proceedings, the representation dated 2-4-90 of the applicant on Enquiry Officer's report and the documentary evidence available, imposed the penalty of reduction to lower grades as Junior Clerk, in scale Rs.950-1500(RSRP) on pay Rs.1150/- w.e.f.19-6-90 for a period of 2 years (Recurring) with loss of seniority, vide reference No.B/P.Con.227/I/88/3 of 15-6-90.

5) It is submitted that on the above orders of the first respondent, the applicant preferred an appeal to the appellate authority i.e., the 2nd respondent. In exercise of powers conferred under Rule 22 of RS(D&A) Rules 1968, the 2nd respondent proposed to enhance the period of above penalty from 2 years to 6 years and the applicant was issued with a show cause notice on the proposed penalty ^{with} reasons recorded by the 2nd respondents for coming to that decision to enhance the penalty.

It is submitted that ^{having} considered the points, explained by the appellant in his representation dated 26-12-90, (in reply to the show cause notice) and as the allegation to the extent that applicant had demanded an amount of Rs.30/- through M. Elia has been established beyond doubt, the 2nd Respondent enhanced the penalty imposed by the 1st respondent vide reference No.B/P.Con.227/I/88/1 of 9-1-91. Therefore, the applicant's contention that the orders of 2nd respondent were arbitrary, unwarranted, unfair and unsustainable, is not correct. Under the provisions of Rule 22 of Railway Servants (Discipline & Appeal) Rules, 1968, the 2nd respondent has full powers to enhance the penalty imposed by the 1st respondent, if he holds the opinion that the penalty is inadequate for the offence committed by the applicant. So for such enhancement there is no need for additional evidence. On the enhanced penalty ^{struck} seeking personal hearing along with his defence counsel. After the personal hearing ~~also~~ and having examined the relevant documentary evidence available, the 3rd

(55)

respondent confirmed the penalty, under the provisions of Rule 19 (ii) of Railway Servants (Discipline & Appeal), Rules 1968. The speaking order recorded by the 3rd respondent ~~who was~~ also communicated vide reference No. B/P.Con. 227/I/88/I of 26-3-1991. In view of the position above explained, the orders of the 1st, 2nd and 3rd respondents were in accordance with the provisions contained in Railway Servants (Discipline & Appeal) Rules 1968.

6) It is submitted that the Enquiry Officer (in his findings) besides stating that the charge, that the applicant received the bribe amount of Rs.30/- could not be established, he also stated that ~~was~~ ^{as} borne out from the evidence of various witnesses examined in the case, it was a fact that the applicant asked Sri Elia to receive the illegal amount under instructions and on his behalf. The E.O. further stated that the acceptance of Rs.30/- by Sri M. Elia was on account of the demand made by the applicant and as such the charge of demand of illegal money by the applicant stands substantiated. The respondents considered the E.O.'s report with proceedings and also the representation/appeals of the applicant, before passing the appropriate orders. Therefore, the applicant's contention that the respondents have failed to note the findings of E.O. is not correct.

7) It is submitted that in reply to Q.No.184 of Enquiry proceedings the applicant stated that he has cordial relationship with both Sri P. Karunakara Rao, Gangman/NZD and Sri M. Elia, Gangman/NZD. Hence, the contention that the complainant has inter-union rivalry against the applicant is quite contradictory to his answer to Q.No.184 and is an after thought.

8) It is submitted that the findings were recorded by the E.O. only on completion of the enquiry, after examining the

Attested


4th Page
Corrections:-

Assistant Personnel Officer, G.O.O.
S.O. Ray, VIJAYAWADA

P. S. Ray 23/4
राष्ट्रीय प्रौद्योगिकी अधिकारी
द. म. रेलवे, विजयवाडा.
Senior Divisional Personnel Officer
S. C. Ray, VIJAYAWADA

oral and documentary evidence available on record and the evidence of various witnesses examined during the DAR enquiry. Therefore, there is sufficient oral and documentary evidence to prove that the applicant has demanded the bribe through Sri M. Elia. Further, Sri M. Francis, (Group 'D', Senior Superintendent of Post Office, Vijayawada) who is one of the independent witnesses examined in the enquiry, replied to Q.No.47 (Cross-examination by the applicant) that at the time of trap incident only the applicant and Sri M. Elia were present and when CBI Inspector challenged and asked to take out the amount Sri Elia said that he had taken the amount as directed by the applicant even though he denied the demand. The same witness in his reply to E.O. to Q.No.49 stated that the applicant asked the complainant whether he had brought the money and if so, to hand over the same to Sri Elia who was there.

9) It is submitted that Sri M. Elia, Gangman/NZD is also one of the culprits besides the applicant in the same SPE case for taking the bribe amount from the complainant, even though on the directions of the applicant. He was also charged under DAR and imposed the penalty of Removal. On his appeal Removal was modified to that of reduction to lower grade as Gangman. Since there was sufficient oral and documentary evidence available for the case, it was felt that the examination of Sri M. Elia is not necessary. So his name was not cited in the list of witnesses by whom the articles of charge framed against the applicant were proposed to be sustained and thereby he was not examined in the enquiry. If the applicant was of the opinion that the examination of Sri M. Elia will prove that he was not guilty, he could have requested the Enquiry Officer to examine him as defence witness. But he did not do so.

5th Page
Corrections:-

Assistant Personnel Officer &c/o
S.O.Rly, VIJAYAWADA

Attested
S. C. Rly

P. 8/July/237
Deponent.
वाराण्स मण्डल कामिक अधिकारी
द. म. रेलवे, विजयवाडा.
Senior Divisional Personnel Officer
S. C. Rly, VIJAYAWADA.

57

He requested for the examination of only one additional witness and the same was agreed to by E.O. Hence, the applicant's contention that the findings of E.O. are arbitrary, illegal is not correct.

10) It is submitted that the witnesses cited under Annexure-III of the charge memorandum are relevant to the case and are independent and unbiased, witnesses.

11) It is submitted that no statement of M. Elia was taken into account by any of the 3 respondents, before imposing/enhancing or confirming the penalty on the applicant. But they have relied upon the oral and documentary evidence available on record and passed orders as they deemed fit.

12) It is submitted that the Enquiry Officer in his report vide Para (2.5) indicated the documents taken on to record and listed as exhibits during the course of enquiry. During the enquiry, while examining witnesses, the applicant was given full opportunity of cross-examining the witnesses, on the points stated by them in their statements. Therefore, the applicant has perused the statement of the witness before the cross-examination of that witness who gave that statement.

13) It is submitted that the charge was of demanding illegal gratification from the complainant through M. Elia, to process the loan application and Railway pass of the former. If the applicant had no purpose or motive, he had no need to keep the loan application forms blank, only with the signatures of the employees. In fact, all these applications should have been received in the Office of Permanent Way Inspector and only at the final stage for certification and verification of the particulars, the same should have been submitted by the staff. Further, during the cross-examination by the applicant, the witness, Sri P. Samuel vide his answer to Q.No.111, stated that

Attested
S. O. Rly.

6th Page:
Corrections:-

Divisional Personnel Officer & C.O.
S. O. Rly, VIJAYAWADA

P. S. R. Deponent.
वारिष्ठ मण्डल कार्यिक अधिकारी
द. म. रेलवे, विजयवाडा.
Senior Divisional Personnel Officer
S. C. Rly, VIJAYAWADA

EGB

he paid Rs.10/- to process the loan application immediately. This confirms that the applicant is in the habit of accepting illegal gratification from the employees for processing loan applications.

14) It is submitted that as per the provisions contained under Rule 22 of Railway Services (Discipline & Appeal) Rules, 1968 the 2nd respondent as an appellate authority has full powers to confirm, enhance, reduce or set aside the penalty imposed by the 1st respondent, if he is of the opinion that the penalty imposed by 1st respondent was inadequate. Hence, the applicant's contention that the 2nd respondent exceeded and abused powers under the said rule by enhancing the punishment is devoid of merit.

15) It is submitted that after having carefully considered the representation of the applicant in reply to show cause notice and also the points discussed in the personal hearing, the 3rd respondent was of the opinion that the charge framed against the applicant has been proved to the extent that he demanded Rs.30/- from the complainant through M. Elia for processing the loan application and expediting the Railway pass. The ^{reasons} persons recorded by the 3rd respondent for confirming the penalty were also communicated to the applicant vide B/P.Con.227/I/88/I of 26-3-91.

16) It is submitted that since the penalty imposed by the 1st respondent was with loss of seniority, the applicant will be deprived of seniority.

17) It is submitted that remedy of filing revision against the order of 3rd respondent confirming the enhanced penalty lies under Rule 26 of RS(D&A) Rules, since 3rd respondent had also functioned as Appellate Authority over the enhanced penalty imposed

Attested
S. C. Riy

7th Page
Corrections:-

Assistant Personnel Officer &c
S.O. Riy, VIJAYAWADA

P. Venkateswara
Deponent
वारद यादव कार्मिक अधिकारी
द. म. रेलवे, विजयवाडा.
Senior Divisional Personnel Officer
S. C. Riy, VIJAYAWADA.

In the Central Administrative
Tribunal, Hyderabad

O.A. no. 89 of 1992

Counter Affidavit filed on
behalf of Respondents



Mr. J.R. Gopala Rao
Standing counsel for
Railways

by the 2nd respondent. The applicant has not exhausted this remedy. Therefore, the present O.A. is not maintainable and liable to be dismissed.

18) Under the facts and circumstances stated above the Honourable Tribunal may be pleased to vacate the interim order dated 6-2-92 and dismiss the O.A.No.89 of 1992 as devoid of merits and pass such other order or orders as the Honourable Tribunal deems fit and proper.

P. Srinivas 237469
DEPONENT

बरिष्ठ मण्डल कार्मिक अधिकारी
Solemnly affirmed before me at at Secunderabad. म. रेलवे, विजयवाडा.
this 23rd day of April '92 and signed his name *S. R. Vijayawada*,
in my presence.

Before me.

S. R. Vijayawada

8th & last page:-
Corrections:-

Attesting Officer.
*Assistant Personnel Officer (A.P.O.)
S.O.Rly, VIJAYAWADA*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

R.A./M.A./C. NO.

89/92

ORIGINAL APPLICATION NO?

761/92

OF 199

TRANSFER APPLICATION NO.

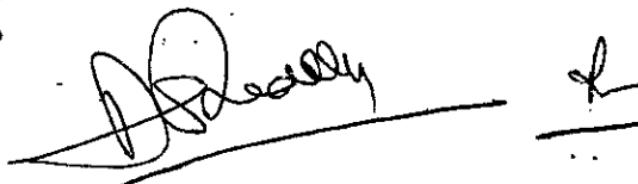
OLD PETN. NO.

CERTIFICATE

Certified that no further action is required to be taken
and the case if fit for consignment to the Record Room (Decided)

Dated.

16/7/95


D. Deekay

IN THE ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
HYDERABAD

60

OA 89/92

Dated 5-7-95

BETWEEN

A. SURYANARAYANA RAO s/o A.V. Seshagiri Rao
aged about 35 years, Jr. Clerk,
% Sr. Divl. Personnel Officer,
S.C. Railway, Vijayawada

....APPLICANT

AND

1. Divisional Personnel Officer,
South Central Railway,
Vijayawada.
2. Sr. Divisional Personnel Officer,
South Central Railway,
Vijayawada.
3. Additional Divisional Railway Manager (I),
South Central Railway,
Vijayawada.
4. Union of India, represented by its
Railway Board, New Delhi.

.... Respondents.

Counsel for the Applicant Shri V. Rama Rao

Counsel for the Respondents ... Shri J.R. Gopal Rao

Coram

Hon'ble Justice Shri V. Neeladri Rao, Vice-Chairman

Hon'ble Shri A.B. Gorthi, Member (Admn.)

I AS PER HON'BLE JUSTICE SHRI V. NEELADRI RAO,
VICE-CHAIRMAN]

JUDGEMENT

Heard both the learned counsels.

2. Charge memo. dated 5-10-88 with the following
charge charge

"That Shri A. Suryanarayana Rao while functioning as a Senior Clerk in PWI office, Nuzvid in abuse of his position as a public servant demanded and accepted a bribe of Rs.30/- from P. Karunakara Rao, Gangman for processing loan application and for expediting the Railway pass of the latter on 18-4-88 at 16-30 hrs. at the PWI office, Nuzvid through M. Elia, Gangman as detailed in the imputation of misconduct."

was issued to the applicant who was working as Sr. Clerk in PWI office, Nuzvid. After due enquiry in regard to demand it was held that the charge is proved. Basing on the same, R1 passed order dated 15-6-90, ordering reduction to lower grade for 2 years with cumulative effect. The applicant preferred appeal to R2. The latter issued memo. dated 12-12-90 proposing to enhance the punishment of reduction to lower grade for 6 years with cumulative effect. After considering the explanation of the applicant in regard to the said memo. R2 enhanced the punishment as proposed. The said enhanced punishment was confirmed by R3 by order dated 26-3-91. The same is assailed in this OA. // Shri Karunakaran, the complainant stated during the enquiry that on 14-4-88, the applicant asked him to come in the afternoon of 18-4-88 with Rs.30/- as bribe for processing his loan application and also for expediting his railway pass. He further stated that he had given complaint to CBI and then a trap was arranged on 18.4.88 and he went along with Shri N. Francis a witness proposed by CBI

H

and then the applicant enquired him as to whether when he brought the money and he had taken it out, he was asked to pay it to Shri Eliah, Gangman who was said to be assisting the applicant in processing the loan applications etc. and accordingly the amount was paid to Shri Eliah and on the basis of the signals given by Shri N. Francis, the CBI officials came and seized the amount of Rs. 30/- from Shri Eliah. Shri N. Francis corroborated the said allegation of the complainant.

3. But the enquiry officer also observed as under: in para 6.1 of the enquiry report

"Shri Eliah had later confessed that the amount was taken by him as per the instructions of Shri Suryanarayana Rao. But Shri Suryanarayana denied this." (Shri Suryanarayana referred to therein is the applicant herein). While referring to it the learned counsel for the applicant urged that there is infirmity in relying upon the alleged confession of Shri Eliah when he was neither examined nor his alleged confession statement was marked during the enquiry proceedings and hence the inquiry report is vitiated.

4. When the alleged confession report of Shri Eliah was not marked nor he was examined, the same should not be considered. But even after excluding the same, it cannot be stated that the conclusion of the enquiry officer on the basis of the depositions of the complainant Shri Karunakaran and Shri N. Francis is perverse. It is well established that the finding in the disciplinary

proceedings cannot be disturbed so long as there is some evidence in support of it.

5. There is force in the contention of the applicant that the evidences of the witnesses Shri E. Daniel, Shri S. Nageshwar Rao and Shri Kolemala Samuel who had spoken about the alleged demand of the bribe by the applicant for consideration of their loan applications cannot be taken into consideration. Past mis-conduct can be taken into consideration in an enquiry in a disciplinary proceeding if a finding was already given in regard to alleged mis-conduct. But no finding in regard to alleged past mis-conduct can be given in an enquiry on the basis of mere allegations in regard to alleged past mis-conduct. But even after excluding the evidences of the above three witnesses, there is the evidence of the complainant Shri Karunakaran and Shri N. Francis in support of the charge.

6. Hence the contention for the applicant that the charge as alleged as per the charge memo. to the extent of demand ~~is not established~~ ~~has to be negatived~~ cannot be accepted.

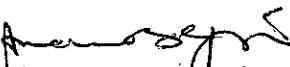
7. In the last para to memo. dated 12-12-90, the following was given as the reason for proposing the enhanced punishment.

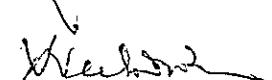
"The charges levelled against Sri A. Suryanarayana Rao are partially proved. In cases where corruption is proved, one of the punishments to be imposed are removal from service or dismissal from service. As it is partially proved and sufficient for preponderance of probability, as a clemency, I have decided that he may be kept in service with a modification of earlier punishment to Reduction to lower grade as Jr. Clerk in scale Rs. 950-1500 (RSRP) for a period of SIX years(Recurring) with loss of seniority."

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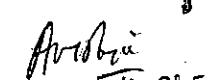
8. While the charge is for the demand and acceptance of Rs. 30/- as bribe, the finding is that the demand of Rs.30/- as bribe was proved. The Appellate authority felt that if the acceptance was also established, it would have been a case of removal or dismissal from service, ^{but} as it is the case of only proof of demand, as a clemency the applicant may be kept in service. When it is stated for the appellate authority that it is a case of grave charge which was established in regard to ~~Q~~ deterrent punishment has been proposed and thereby the period of punishment was enhanced, we cannot hold it as harsh or dis-proportionate and accordingly the OA has to be dismissed.

9. In the result, the OA is dismissed. No costs. //


(A.B. GORTHI)
Member (Admn.)


(V. NEELADRI RAO)
Vice-Chairman

Dated the 5th July, 1995
Open court dictation


Deputy Registrar (J)

NS

To

1. The Divisional Personnel Officer,
S.C.Rly, Vijayawada.
2. The Sr.Divisional Personnel Officer,
S.C.Rly, Vijayawada.
3. The Additional Divisional Railway Manager(I)
S.C.Rly, Vijayawada.
4. The Railway Board, Union of India, New Delhi.
5. One copy to Mr.V.Rama Rao, Advocate, CAT.Hyd.
6. One copy to Mr.J.R.Gopal Rao, SC for Rlys, CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE CHAIRMAN

A N D

A. B. Gorai

THE HON'BLE MR.R.RANGARAJAN: (M(ADMN))

DATED - 27 - 1995.

ORDER/JUDGMENT:

M.A./R.A./C.A.No.

OA.No.

in

89/92

TA.No.

(W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No order as to costs.

No Space (OPY)

