

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

MP-128/2001 order sheet pg. 1
disposal date 8/8/01

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E.P/M.A No. 128/2001

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SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 240/2000 OF 199

Applicant(s) Sri Jaleswar Kalita.

Respondent(s) Union of India and others.

Advocate for Applicant(s) Mr. L. P. Thakuria.

Advocate for Respondent(s) C. G. S. C.

Notes of the Registry	Date	Order of the Tribunal
<p>21.9.00</p> <p>Present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman.</p> <p>Heard Mr L.P.Thakuria, learned counsel for the applicant. Application is admitted. Issue usual notice.</p> <p>List on 15.11.2000 for written statement and further orders.</p> <p>Vice-Chairman</p>	<p>21.9.00</p> <p>pg</p>	
<p>13.11.00</p> <p>On the prayer of Mr.S. Sharma learned counsel on behalf of Mr.B.K.Sharma learned Railway counsel, four weeks time is allowed for filing of written statement. List on 14.12.00 for filing of written statement and further orders.</p> <p>Vice-Chairman</p>	<p>13.11.00</p> <p>lm</p>	

lm

AKS
G111


(2)

BA-240/2000

Notes of the Registry	Date	Order of the Tribunal
14-11-2000 ① Service report are still awaited. ② No. written statement has been filed. <u>24</u> 14-11-2000 Notice duly served on R.N. 1 Others are awaited <u>13/12/00</u> No written statement has been filed. <u>24</u> 12.2.2001 No written statement has been filed. <u>24</u> 14.3.01 11-4-01 No written statement has been filed. <u>21/5/2001</u> H/S has been filed on respondents. NB 21/5/2001 Written statement filed on behalf of the respondents. <u>24</u> 8.6.2001	14.12.00 pg 16.1.01 lm 13.2.01 lm 15.3.01 lm 12.4.01 trd 11.5.01 lm	Four weeks time is granted to the respondents to file written statement on the prayer of Mr J.L.Sarkar, learned Railway standing counsel. List on 16.1.2001 for order. <u>Member(A)</u> Vice-Chairman List on 13.2.02 to enable the respondents to file written statement. <u>Member</u> Vice-Chairman List on 15.3.01 to enable the respondent to file written statement. <u>Member</u> Vice-Chairman List on 12.4.01 to enable the respondents to file written statement. <u>Member</u> Vice-Chairman No written statement so far filed by the respondents. One more adjournment is given to enable the respondents to file written statement. List on 11.5.2001 for written statement and further orders. <u>Vice-Chairman</u> List on 11.6.01 to enable the respondents to file written statement. <u>Member</u> Vice-Chairman

Notes of the Registry	Date	Order of the Tribunal
	12.7.01	<p>Since the pleading is complete, the case is ordered to be listed for hearing on 13-8-2001.</p> <p><i>Member</i> <i>Vice-Chairman</i></p>
	bb	
	13.8.01	<p>List the case again on 5.9.2001 in presence of the learned counsel for the applicant Sri L.P.Thakuria. It was stated by Sri I.C.Deka, learned counsel appearing for Sri L.P.Thakuria that Sri L.P.Thakuria is out of station on personal reasons grounds.</p> <p><i>Member</i> <i>Vice-Chairman</i></p>
<p>Written statement has been filed.</p> <p><i>3/9</i> <i>8/10/01</i></p>	bb	
	5.9.	<p>There is no diversion much today. The case is adjourned to 9.10.2001.</p> <p><i>5-9</i></p>
	9.10.2001	<p>Heard in part. List the case again on 10.10.2001 for hearing.</p> <p><i>Member</i> <i>Vice-Chairman</i></p>
	bb	
	10.10.01	<p>Heard counsel for the parties. Hearing concluded, judgment delivered in open Court, kept in separate sheets. The application is allowed in terms of the order. No order as to costs.</p> <p><i>Member</i> <i>Vice-Chairman</i></p>
<p><u>30.10.2001</u></p> <p>Copy of the judgment has been sent to the office for issuing the same to the applicant as well as to the standing counsel.</p> <p><i>HS</i></p>	bb	

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Notes of the Registry	Date	Order of the Tribunal
<p>8. 16. 2001</p> <hr/> <p>Counter statement in behalf of an applicant has been submitted.</p> <p></p>		

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 240 of 2000

Date of Decision 10.10.2001....

----- Shri Jaleswar Kalita, Gangman -----
----- Petitioner(S) -----

----- Mr. L. P. Thakuria -----
----- Advocate for the -----
----- Petitioner(s) -----
-----Versus-----

----- Union of India & Ors. -----
----- Respondent(s) -----


----- Mr. J. L. Sarker, Railway counsel. -----
----- Advocate for the -----
----- Respondent(s) -----

THE HON'BLE MR. JUSTICE D.N. CHOWDHURY, VICE CHAIRMAN.

THE HON'BLE MR. K.K. SHARMA, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble : Vice-Chairman.



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 240 of 2000.

Date of Order : This the 10th Day of October, 2001.

HON'BLE MR. JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN.

HON'BLE MR. K.K.SHARMA, ADMINISTRATIVE MEMBER.

Shri Jaleswar Kalita, Gangman
S/O Shri Sarbeswar Kalita
Vill:- Garmara, P.O:-Bali (Via:-Tihu)
P.S:- Barama, Dist:- Nalbari (Assam) . . . Applicant.

By Advocate Mr.L.P.Thakuria

- vs -

1. Union of India
Through General Manager/Construction
North East Frontier Railway
Maligaon, Guwahati - 781011.
2. Deputy Chief Engineer/Construction
North East Frontier Railway
Goalpara.
3. Assistant Engineer/Construction
North East Frontier Railway
Goalpara. . . . Respondents.

By Mr.J.L.Sarkar, Railway Advocate.

O R D E R

CHOWDHURY J.(V.C) :

The applicant was working as a Gangman, Group 'D' employee in North East Frontier Railway. He was posted at Pancharatna under JE(W)/Gr.I/Con-IV/GLPT. The respondents initiated disciplinary proceeding under Rule 9 of the Railway Servants (Disciplinary and Appeal) Rules, 1968 vide memo dated 28.7.98 for alleged unauthorised absence from duty. According to the applicant, he was not aware of any such proceeding nor he was served with any notice.

2. In the application, the applicant stated that due to physical torture meted out to him by the miscreants and on being appalled and petrified the

applicant left for home to avert the situation. The applicant also fell sick subsequently. When the applicant fully recovered he went before the authority for allowing him to join his duty and to that extent submitted an application on 3.1.2000. In stead the applicant was informed that his service was terminated with effect from 15.11.97 and to that extent an endorsement was made by an Officer in the body of the application. The applicant preferred an appeal before the General Manager (Con.), N.F.Railway Maligaon narrating the facts indicating the reasons for his absence and prayed for setting aside the exparte termination order dated 9.10.98, By communication dated 15.2.2000 the applicant was informed that his application alongwith Private Medical Fit Certificate for permission to resume in duty could not be accepted as his service was terminated with effect from 15.11.97 vide letter No. 20E/266/GLPT dated 9.10.98. By the said communication the termination order was also communicated to the applicant. Failing to get appropriate remedy from the authority the applicant moved this Tribunal assailing the order of termination as arbitrary and discriminatory.

3. The respondents submitted its written statement and stated that since the applicant unauthorisedly absented from duty is violation of the Service Conduct Rules the authority initiated disciplinary proceeding and the applicant was finally terminated in due course.

4. We have heard Mr.L.P.Thakuria, learned counsel appearing for the applicant at length and Mr.J.L. Sarkar, learned counsel for the respondents.

5. Mr.Thakuria submitted that the purported order of termination termination the services of the applicant is not sustainable. The learned counsel for the applicant further submitted that the procedural ^{provided in} ~~for~~ safeguard by the Railway Servants (Disciplinary and Appeal) Rules ^{A.H.} were adhered only in breach of the rules. The

learned counsel submitted that the applicant was not served with any charge sheet and terminated the services of the applicant without holding any due and proper enquiry.

6. The materials on record also did not indicate that any charge sheet was served on the applicant. Mr. Sarkar, learned counsel for the respondents submitted that the charge memo was returned with the postal endorsement comprising the remark that the addressee had refused to accept. Assuming that the charge memo was served on the applicant that did not absolve the authority from its responsibility of holding an enquiry. The procedure prescribed by the Disciplinary Rule contemplates that ⁱⁿ such an enquiry, if the Railway servant, to whom a copy of the articles of charge has been delivered, does not submit written statement of defence for holding an enquiry and to come to a definite findings as to the alleged misconduct. The records made available did not indicate that the respondents authority conducted such enquiry and reached to any findings that the charge or charges against the applicant were proved save and except the impugned order of termination. The impugned act of termination is thus cannot be sustained as lawful. The contention of Mr. Sarkar that the applicant did not prefer an appeal before the authority is also not acceptable. On the face Annexure-E of application whereby the applicant preferred an appeal before General Manager (Con.). Mr. Sarkar the learned Railway counsel submitted that the G.M. (Con.) was not the Appellant authority. In that case, it was the duty of the respondents to send the appeal to the appropriate authority instead of sitting over the matter or to return the same to the applicant for the necessary steps. Mr. Sarkar, learned counsel submitted that the said appeal was also not in time as prescribed in the Rule 20 of the Rules. Admittedly, the said appeal was filed only when he came to know vide letter dated 9.10.98


that his service was terminated with effect from 15.11.97. Officially the order of termination was also sent to the applicant on 15.2.2000. In the circumstance the appeal made by the applicant also cannot be termed as time barred.

7. Considering all aspects of the matter, we set aside the order of termination vide order No.20E/266/GLPT/864 dated 9.10.98. The respondents are directed to reinstate the applicant forthwith. The applicant, in the circumstances will however not be entitled for the back wages, but he will be entitled for all other service benefits including seniority etc.

With the observation made above, the application is allowed to the extent indicated above.

There shall, however, be no order as to costs.


(K.K. SHARMA)
ADMINISTRATIVE MEMBER


(D.N. CHOWDHURY)
VICE CHAIRMAN

Dr. Ramesh Chandra Tyagi

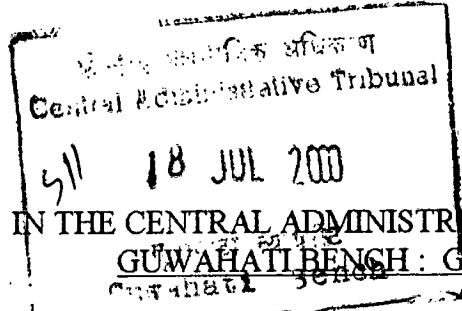
-Vs-

Union of India and others.

1996(1) SLR 703(SC).

SERVICE OF CHARGE SHEET

"No charge sheet was served on the appellant. The Enquiry Officer himself stated that the notices sent were returned with endorsement "left without address" and on others occasion "On repeated visits, people in the house said that he has gone out and they do not disclose where he has gone. Therefore, it is being returned." May be that the appellant was avoiding it but avoidance does not mean that it gave a right to Enquiry Officer to proceed ex-parte unless it was conclusively established that he deliberately and knowingly did not accept it. The endorsement on the envelope that it was refused, was not even proved by examining the post man or any other material to show that it was refusal by the appellant who denied on oath such a refusal. No effort was made to serve in any other manner known in law. Under Postal Act and Rules the manner of service is provided. Even Service Rules take care of it. Not one was resorted to. And from the endorsement it is clear that the envelope containing charge-sheet was returned. In absence of any charge-sheet or any material supplied to the appellant it is difficult to agree that the inquiry did not suffer from any procedural infirmity. No further need be said as the appellant having been removed for not complying with the transfer order and it having been held that it was invalid and non-est the order of dismissal falls automatically.



O.A. NO. 240 /2000

Shri Jaleswar Kalita : Applicant.

-Versus -

Union of India and others : Respondents.

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Jaleswar Kalita

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BRANCH: GUWAHATI

(An application under Section 19 of the Administrative Tribunal Act. 1985)

O. A. No. 240 /2000

Shri Jaleswar Kalita, Gangman

Son of Shri Sarbeswar Kalita,

Vill: Garmara, P.O. Bali (Via-Tihu),

P.S. Barma, Dist: Nalbari (Assam)

.....Applicant

-Versus-

1. Union of India, through General Manager/Construction, Northeast Frontier Railway, Maligaon, Guwahati – 781011.
2. Deputy Chief Engineer/Construction, Northeast Frontier Railway, Goalpara.
3. Assistant Engineer/Construction, Northeast Frontier Railway, Goalpara.

.....Respondents

1. The Order against which this application is made :

- (A) Letter No. 20E/266/GOP/660 dated 28.7.98 issued by Assistant Engineer/Con-I/N.F.RAILWAY, Goalpara (in short AEN/CON-I/GOP) informing the applicant that due to unauthorised absent from duty a Major Penalty charge-sheet is issued. (Annexure-A)
- (B) Letter No. 20E/266/GLPT/725 dt. 20.8.98 informing that the letter No. 20E/266/GLPT/726 dt. 28.7.98 was sent to applicant's permanent address and on being refused the letter was pasted on the notice Board at Pancharatna, the working place of the applicant and submission of defence within ten days failing which ex-parte decision would be taken (Annexure-B)

Sri Jaleswar Kalita
Filed by
L. P. Bhakurina (Adv)

- (C) Letter No. 20E/266/GLPT/864 dated 9-10-98 informing the applicant that administration has taken ex – parte decision and the service of the applicant is terminated from Railway w.e.f. 15.11.97.

- (D) Not allowing the applicant to resume duty in spite of repeated representation by the applicant.

2. Jurisdiction of the Tribunal

The applicant submits that the subject matter of this application is within the jurisdiction of the Hon'ble Tribunal.

3. Limitation.

The applicant submits that the application has been filed within the period of limitation.

4. Facts of the case:-

- 4.1 That, the applicant is a citizen of Indian and is therefore, entitled to the rights and privileges guaranteed by the Constitution of India.
- 4.2 That, the applicant was working as Gangman, Group 'D' employee in N.F. Railway and was posted at Pancharatna under JE(W)/Gr.I/Con-IV/GLPT. The applicant remained absent from duty as the applicant developed sudden mental disturbance, since the area where he was discharging his duty (Place of posting) is a terrorist prone area, the entire area was polluted with bad social elements, the applicant was physically tortured several times for not meeting the ransom demanded by the miscreants, and even received death threatening from some

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Jalewar 12/11/98

4.3 unknown miscreants and as a result to quell the fear of death/physical torture, the applicant had to abscond from his home with a view to avert the situation. The abduction of Shri Lalwani, the then Dy.CE/Con/GOP took place, is the proof of disturbance of that locality. Nevertheless, the applicant, showing his sense of responsibility and devotion to duty, advent to join his duty prior to his sickness every off and on keeping aloof the scared of life as is evident from article-II (Annexure - C).

4.4 That, the applicant has been labelled against article-I that he violated Rule 3(i),(ii) of Railway Service Conduct Rule'1996, while the Railway Service Conduct Rules came into force in 1966, namely Railway Services Conduct Rules/1966. Rule 3.1 (i) articulates; maintain absolute integrity while Rule 3.1 (ii) articulates, devotion to duty. Therefore, the charges framed against the applicant are of ambiguous nature and not in order and above all remaining absent from duty unauthorisedly as stated does not come within the ambit of integrity. The integrity of the applicant has been defamed/touched without any ground.

4.5 The applicant has been supplied the charge-sheet along with termination letter etc. while he sought resumption to duty after being declared fit by the doctor. The Charge-sheet so issued to the applicant should have been signed by the competent authority indicating name and designation of signing authority. But the same is not done as per (Discipline & Appeal) Rules, 1968. (Annexure-A).

Gulshan Reddy

4.6 That, after frequent mental tortures, the applicant developed a lunatic state and gradually developed into traumatic state and the applicant got shifted at Guwahati by his wife for treatment. The DAR proceedings was initiated while no family member was available at his home. The registered letter so issued to the applicant at his home address and was refused by the applicant is refuted on the ground that while the addressee concerned is out of his home, the question of refusal is impertinent. (Annexure-B).

4.7 That, the applicant is a screened employee (Screened on 17.11.96). As per Indian Railway Establishment Code Volume-I (5th Edition) , under rule – 510, extraordinary leave may be granted to a permanent Railway servant but all kinds of leave shall not exceed 5 years in one spell. The applicant is screened permanent employee (screened on 17.11.96) and is entitled to get extraordinary leave for the period he remained absent from duty (w.e.f. 15.11.97 to 31.12.99), approximately 2 years.

4.8 That, the applicant is a permanent screened group 'D' staff. Finalisation of (D&A)Rules, 1968 proceedings against the applicant should have been completed as per extant rule. Penalties specified in clauses (V) to (IX) of Rule – 6 of (D&A)Rule, 1968 was not followed instead the services of the applicant is terminated treating him as casual labour as is applicable in case of casual labour (of a temporary Railway servant in accordance with rule – 149 contained in Volume-I of the Indian Railway Establishment Code). Therefore, termination letter issued against the applicant is an infringement of existing rule. (Annexure-C).

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Jalmar Reddy

- 4.9 The applicant repeatedly prayed for allowing him to resume his duty but the applicant was not allowed to resume duty and his appeal to the higher authority was not forwarded. The applicant was replied by the administration vide letters No. (1) 20E/266/Con/GLPT/101 dt. 15.2.2000 and 30.3.2000 (Annexure - F & G).

5. Ground for relief:

- 5.1 That, the applicant was sick (Mental instability) certificate issued by the doctor (Annexure-H). No decree can be passed against a person who is a lunatic or mentally instable. The DA who is supposed to function as Judge, did not care to perform the duties of a Judge rather he did function whimsically without taking the entire scenario of the applicant into consideration
- 5.2 That, the applicant made a final appeal praying his resumption to duty addressed to the General Manager/Con, the supreme authority but the appeal was not forwarded to the addressee concerned which should have been forwarded as per provision of revision available for class-III & IV employee in Rule-24 of (D&A)Rules, 1968.
- 5.3 That, the administration while refusing to forward the appeal of the applicant did not go through the contents of the appeal and even did not pay any interest to think over the medical certificate issued by the Doctor. The administration did not give any importance of the medical certificate and treated the applicant as the prey of authority.

galeman Volsin

6. Details of remedies exhausted.

The applicant made a number of representation to the authority but did not get the justice.

7. Particulars of previous application if any:-

The applicant said that he has not filed any application before any Tribunal or any Suit or writ petition before any Court and no such application or suit is pending before any Tribunal or Court in the subject matter of this application.

8. Relief sought :-

Under the circumstances stated above the applicant humbly prays that the Lordships of this Hon'ble Tribunal may be pleased to set-aside the letter No. 20E/266/GLPT/864 dt. 9.10.98 and direct the respondents to reinstate the applicant or such other orders/directions as the Hon'ble Tribunal may deem fit and proper.

And for this act of kindness the applicant as duty bound shall ever pray.

9. Interim Relief :-

Nil.

10. Particulars of application fees :-

Indian Postal Order No. OG 496868
dt. 28.6.2000 amount of Rs. 50/- (Rupees fifty) only
is enclosed.

VERIFICATION

I, Sri Jaleswar Kalita, aged about 35 years, working as G/man in the office of Deputy Chief Engineer/Construction Goalpara, resident of Village Garmara, P.O. Bali (via Tihu), P.S. Barana Dist. Nalbari, Assam, do hereby verify that the contents of paras 1 to 4.9 are true to my personal knowledge and paras 5.1 to 5.3 believed to be true on legal advice and that I have not suppressed any material fact.

And I sign this verification on this the 18th day of July 2000.

Date : 18.7.2000

Place : Guwahati.

Jaleswar Kalita

(8)

ANNEXURE-AANNEXURE-V

Standard Form of Charge-sheet for Major Penalties

(Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968)

No. 20E/256/GOP/1660(Name of Railway Administration) Dy.CE/CON/Goalpara(Place of Issue) Goalparadate 28/7/98MEMORANDUM

****The President**/Railway Board**/undersigned propose(s) to hold an inquiry against Shri Jaleswar Kalita, G/man under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The substance of the Imputations of mis-conduct or mis-behaviour in respect of which the inquiry is proposed to be held, is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the Imputations of mis-conduct or mis-behaviour in support of each article of charge, is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexures-III and IV).**

2. Shri Jaleswar Kalita is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure-III) at any time during Office hours within five days of receipt of this Memorandum. If he desires to be given access to any other documents which are in the possession of Railway Administration but not mentioned in the enclosed list of documents (Annexure-III), he should give a notice to that effect to the undersigned S/General Manager N.E. Railway within, & ten days of the receipt of this memorandum, indicating the relevance of the documents required by him for inspection. The disciplinary authority may refuse permission to inspect all or any such documents as are, in its opinion, not relevant to the case or it would be against the Public interest or security of the State to allow access thereto. He should complete inspection of additional documents within five days of their being made available. He will be permitted to take extracts from such of the additional documents as he is permitted to inspect.

3. Shri Jaleswar Kalita, G/man is informed that request for access to documents made at later stages of the inquiry, will not be entertained unless sufficient cause is shown for the delay in making the request within the time limit specified above and the circumstances show clearly that the request could not have been made at an earlier stage. No request for access to additional documents will be entertained after the completion of the inquiry unless sufficient cause is shown for not making the request before the completion of the inquiry.

Attested
L. P. Thakuria (Adv)
18. 7. 2000

(9)

4. Shri Jaleswar Kalita, Gangman is further informed that he may if he so desired, take the assistance of any other Railway, Servant/ an Official of a Railway Trade Union who satisfies the requirements of Rules (9) of the Railway Servants (Discipline and Appeal) Rules, 1968 and Note I and/or Note 2 there under as the case may be) for inspecting the documents and assisting him in presenting his case before Inquiring Authority in the event of an Oral Inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Railway Servant(s) or Railway Trade Union Official(s), Sri Jaleswar Kalita, should obtain an undertaking from the nominee(s) that he(they) is(are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case(s) if any, in which the nominee(s) had already undertaken to assist and the undertaking should be furnished to the undersigned/ General Managers N.F. Rx Railway along with the nomination.

5. Shri Jaleswar Kalita is hereby directed to submit to the undersigned (through General Manager N.F. Ilwys) a written statement of his defence (which should reach the said General Manager)s within ten days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of his defence and within ten days after completion of inspection of documents if he desires to inspect documents and also -

- (a) to state whether he wishes to be heard in person; and
- (b) to furnish the names and addresses of the witnesses, if any whom he wishes to call in support of this defence; and
- (c) to furnish a list of documents, if any, which he wished to produce in support of his defence.

6. Shri Jaleswar Kalita is further informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should therefore specifically admit or deny each article of charge.

7. Shri Jaleswar Kalita is further informed that if he does not submit his written statement of defence within the period specified in para 5 or does not appeal in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry ex-parte.

8. The attention of Shri Jaleswar Kalita, G/man is invited to Rule 20 of the Railway Services (Conduct) Rules, 1966 under which no Railway Servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respects of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri Jaleswar Kalita, G/man is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the Railway Services (Conduct) Rules, 1966. II

9. The receipt of this Memorandum may be acknowledged.

@ (By order and in the name of the President).

(Enclo) :

[Signature]
28/8/78

(Signature)
Name and Designation of
Competent Authority.

To, Shri Jaleswar Kalita

Designation Gang man

(Place etc.) _____

£ Copy to Shri _____ (Name and designation of the lending authority) for information.

%This time limit may be extended upto ten days at the discretion of the competent authority.

&This time limit may be extended upto twenty days at the discretion of the competent authority.

STO be retained wherever President or the Railway Board is the competent authority.

@Where the President is the disciplinary authority.

£To be used wherever applicable-See Rule 16(1) of the Railway Servants (Discipline and Appeal) Rules, 1968. Not to be inserted in the copy sent to the Railway Servant.

** Strike out whichever is not applicable.

@ Submission of such list at this stage need not be insisted upon if the employee does not comply with this requirement.

9(9)(6)

9(23)

9(10)

(11)

23

ANNEXURE-I

Statement of Articles of charge framed against Shri Jaleswar Kalita
(Name and designation of the Railway Servant) Gangman.

ARTICLE-I

That the said Shri Jaleswar Kalita while functioning as Gangman during the period 5-8-97 to till date has been absenting from duty without any authority on various occasions as detailed in Annexure-II. By this action he has displayed lack of devotion of duty and hereby violated Article 3(i)(ii) Railway Service Conduct Rule'1996.

ANNEXURE-II

Statement of imputations of misconduct or unauthorised absent of the article of charge framed against Shri Jaleswar Kalita, Gangman.

ARTICLE-II

Shri Jaleswar Kalita, Gangman is a habitual absentee. He had remained absent for long durations frequently from the time he joined this unit. The periods for which he remained absent without any authorities is listed below :-

- 1) 25-08-97 to 03-09-97
- 2) 06-09-97 to 09-09-97
- 3) 13-09-97 to 11-10-97
- 4) 31-10-97 to 02-11-97
- 5) 15-11-97 to till date i.e. 27-7-98.

By remaining unauthorisedly absent very frequently he has exhibited lack of devotion to duty and thereby violated article 3(i)(ii) of Railway Service Conduct Rule'1996.

ANNEXURE-III

List of documents by which the articles of charge framed against Shri Jaleswar Kalita, Gangman (Name and designation of Railway Servant) are proposed to be sustained.

- (1) Muster sheets.

ANNEXURE-IV

List of witnesses by whom the articles of charge framed against Shri Jaleswar Kalita, G/man (Name and designation of the Railway Servant) are proposed to be sustained.

NIL

Singh
28/7/98

(12)

ANNEXURE-B
SN-38

N.F. Railway.

Office of the
Dy. Chief Engineer/Con,
G-J Project, Goalpara.
Date : 20-8-98

No. 20E/266/GLPT/725

To,
Shri Jaleswar Kalita,
S/O Shri Sarbeswar Kalita,
Vill: Garmara
P.O. Bali (Tihu)
P.S. Barama
Dist. Nalbari (Assam).

Sub : Submission of Defence.

Ref : This office major penalties charge-sheet
of even No. dt. 23/7/98.

....

The above letter was sent with A/D in your permanent home address available in the service book. But it is seen from the cover of the letter that you had refused to receive the letter and thus it is sent back by the postal department to this office again.

However the above letter has been pasted on the office notice boards at place of your work i.e. at Pancharatna.

In view of the above you are hereby again asked to submit your defence within 10 (ten) days from the issue of this letter failing which the administration would be compelled to take ex-parte decision.

J. J. D. 20/8/98
Dy. Chief Engineer/Con,
N.F. Railway, Goalpara.

Copy to :-

- 1) AEN/CON-I & II/GLPT
- 2) JE(P.Way)C/GLPT
- 3) JE(W)/C-IV/GLPT

J. J. D. 20/8/98
Dy. Chief Engineer/Con,
N.F. Railway, Goalpara.

9.
Dec.

LP/202
20/8/98

Attested

L. P. Bhakurias (Adv.)
18. 7. 2000

(13)
N.F. RAILWAY.

Office of the
Dy. Chief Engineer/Con,
G-J Project, Goalpara.
Date : 09-10-98

No. 20E/266/GLPT / 864

To,
Shri Jaleswar Kalita,
S/O Shri Sarbeswar Kalita
Vill-Garmara
P.O. Bali (Tihu)
P.S. Barama
Dist. Nalbari (Assam).

Sub : Termination from Service.

Ref : This office letter of even No. dt. 4-5-98,
28-7-98 & 20-8-98.

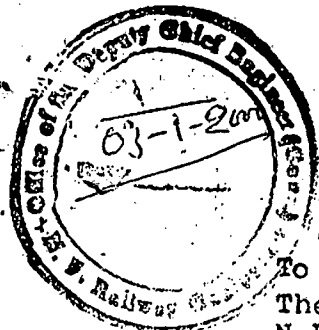
....

With reference to the above letters followed by reminders it is noticed that you have failed or did not care to submit your defence till date. So there is no alternative left to this office but to take ex.parte decision for termination of your service from the Railway with effect from 15-11-97.

[Signature]
Asstt. Engineer/CON-I,
for Deputy Chief Engineer/Con,
N.F. Railway, Goalpara.

.....

1 21
Attested
L. P. Bhakurias (Adv)
18. 7. 2000



(14)

ANNEXURE - 1

Sr. 57.

290

To
The Deputy Chief Engineer/CON,
N.F. Railway, Goalpara.

Subject :- Prayer for joining duty

Sir,

With profound respect and humble submission I beg to state that When I was coming on my due rest at my native village Gomara near Tihu Railway station suddenly unfortunately my seriously ill and under the treatment of private doctor at Guwahati w.e.f. 17-11-97 to 02-01-2000. The information was sent by me on 17-11-98 by telegram.

So I request your honour to allow me to joining on duty on 03-1-2000 for further duty for this act of your kindness I shall remain grateful to you,

Clsd : One P.M.C.

Yours faithfully,

Jaleswar Kalita
03-1-2000

(Jaleswar Kalita)
Gangman

*By J.C.K. in case file of termination of service
03/01/2000
J.C.K.*

E'station

The above named s.d. has already been terminated from service on 15-11-97 due to unauthorized absence since 15/11/97.
03/01/2000
J.C.K.

Attested
198
L. P. Bhakurian (Adv)
18. 7. 2000

To :

The General Manager(Con),
N.F.Railway, Maligaon.

(Through Sr. XEN/Con/GOP)

Sub:- Prayer for permission to resume duty.

Ref:- My application dt. 3-1-2000 addressed to Dy. CE/Con/GOP.

Respected Sir,

With due respect and humble submission, I would like to draw your kind attention to the following few lines for your kind perusal and sympathetic consideration please :

That Sir, I had been suffering from some serious ailments viz. Neuragia, Neuritis with mental instability and had been undergoing treatment under Dr. P. Duara, Dy. Director of Health Services, Assam, Guwahati since 17.11.97 to 31.12.1999. After being declared fit for duty after a long period, I submitted an application dt. 3.1.2000 addressed to Dy. CE/C/GOP along with sick and fit certificate issued by Dy. Director of Health Services, Assam, Guwahati, seeking permission for joining duty. (Copy enclosed).

That Sir, in reply to my application dt. 3.1.2000, I received a registered letter in my home address issued by Sr. XEN/Con/GOP vide No. 20E/266/Con/GLPT/101 dt. 15.2.2000 wherein it has been stated that my service has been terminated w.e.f. 15.11.97. The contents of the letter has appeared to me as bolt from the blue because I have been terminated without any fault on my part. The entire sick period was a natural phenomenon which was a dark chapter of my destiny but I have been treated as scapegoat in this matter with prejudice without going through the whole facts and circumstances of my appeal and medical certificate issued by the Doctor.

That Sir, from the papers as enclosed in the letter of Sr. XEN/C/GOP, it is seen that SF-5 was issued against me with the imputation of unauthorised absent from duty. It has been stated in the aforesaid letter of Sr. XEN/C/GOP that one registered letter was sent to my home address and the same was returned back with the remarks "refused" is vehemently denied. Since I was under treatment at Guwahati w.e.f. 17.11.97, no family members were there in my home. As mentioned earlier that I had been suffering from some critical diseases (mental instability) my wife was also living with me at GHY for nursing and other emergent services. From the point narrated above, the question of refusing any letter does not arise because to refuse a letter the presence of the addressee concerned is must, while myself, the addressee was under treatment at Guwahati.

That Sir, since long I had been suffering from un-diagnosed ailments and I used to take medicine from local physicians but unfortunately on 15.11.97 at night I stumbled down on the road on the way to my home from a local dispensary. I lost my conscious and on hearing my sobbing some passersby did drop me at home. My condition was getting deteriorated day by day.

That Sir, On 17.11.97 due to frequent nausea, my condition further deteriorated and led to in a trance state. Since my wife as well as neighbours are not aware about the Central Hospital, Maligaon, they immediately escorted me at Guwahati and got me admitted under Dy. Director of Health Services, Assam, Guwahati. Therefore, the charge of unauthorised absent as labelled against me is impertinent because a person who is in trance state, his existence is nothing but like a puppet.

Attested
L. P. Ghakoria (Adv)
18.7.2000

RECEIVED
18/7/2000
S/C

Contd. ...2

Therefore, the point, violation of rule 3.1 (i),(ii) of Railway Services Conduct Rules/1966 for a person who is mentally-retarded is not legitimate in my case. Rather, keeping aside my physical condition, I used to attend my duty sincerely. Even I had never paid any attention to my health considering the exigency of duty whereas I could go on sick leave.

That Sir, it is highlighted here that while my mental condition was regained a little bit, I was allowed by Doctor to visit my native place for 3 days only. Then my memory was not functioning properly and everything had to remind me by others. My wife on being asked by me, regarding my service, she stated that "you are on sick leave from 5 days. She also told that after 5 days you will be released from there for joining duty". She was advised by the Doctor to conceal the real fact to me otherwise it may cause strain on my brain and may damage further. So far as my devotion to duty and sense of responsibility are concerned, it may be quoted here that I made my wife to send a telegram dt. 16.11.98 addressed to IOW/CON/GOP seeking extension of leave for 8 days which is an evidence of sense of responsibility and my mental imbalance upto that period because I took whatsoever my wife told as true.

That Sir, during the period of my illness I had no idea of day and night upto August/98. While I got recovered fully, I was at a loss to think that I had been sick for such a long period. It is also to add here that for my treatment all my belongings have been mortgaged or sold and now spending days with starvation.

That Sir, it is my earnest prayer to your kind benevolent to give me the justice taking into consideration the fact that an ex-parte major penalty charge-sheet which was unilaterally issued against me while I had been in a state of coma..

In view of the facts stated above and for the end of justice your benevolent is fervently requested kindly to allow me resume my duty by setting aside the ex-parte termination order dt. 9.10.98 passed by Dy.CE/Con/GOP, considering the miseries and phase of ill fate of my life so that my sinking family with minor children can survive and get rid of starvation. ✓

For this act of your kindness, I, along with my family will remain ever grateful to you.

With regards,

~~DA: 4 Medical Certificate.~~

2.

Yours faithfully,
 Sri Jaleswar Kalita
 (Jaleswar Kalita)
 Gangman/Con

(17)

Regd. w/AD

ANNEXURE - F

NORTHEAST FRONTIER RAILWAY.

Office of the
Dy. Chief Engineer/Con,
G-J Project, Goalpara.
Date : 15-2-2000

No. 20E/266/CON/GLPT/ 101

To
Shri Jaleswar Kalita,
S/O Shri Sarbeswar Kalita,
Vill - Garmara
P.O. - Bali (Via-Tihu)
P.S. - Barma
Dist - Nalbari (Assam)

Sub : Permission for resumption in duty.

Ref : Your application dtd. 03-01-2000.

In reference to your above application it is regretted to inform you that your application along with Private Medical Fit Certificate for permission to resume in duty could not be accepted. As your service from Railway has already been terminated w.e.f. 15-11-97 vide this office letter No. 20E/266/GLPT/864 dtd. 9-10-98. In this connection the relevant letters issued to you from time to time before termination of service are also enclosed (Photo copies) for your ready reference and perusal please.

Enclo : As above.

15/2/2000
(N.C. Sarkar)

Sr. Executive Engineer/CON,
for Dy. Chief Engineer/CON,
N.F. Railway, Goalpara.

Copy to :-

- (1) GM/CON/MLG - for kind information.
- (2) Dy. CE/CON/GLPT at MLG - for information. This is as per note given in the relevant case at PP-10.

for Dy. Chief Engineer/CON,
N.F. Railway, Goalpara.

Attested
L. P. Bhakuria (Adv)
18.7.2000

(18)

ANNEXURE - G

80

Northeast Frontier Railway.

No. 20E/266/CON/GLPT *202*

Office of the
Dy. Chief Engineer/Con.
G-J Project, Goalpara.
Date : 30-3-2000

To,
✓ Shri Jaleswar Kalita,
S/O. Sarbeswar Kalita
Vill: Garmara
P.O.: Bali (via-Tihu)
P.S. Barma
Dist: Nalbari (Assam)

Sub: Permission to resume duty.

Ref : Your representation dt. 18.3.2000.
....

With reference to your above representation, it is to
inform you that this office has nothing to do, since your service
stands terminated. In view of the above your appeal is not sent
to higher authority from this end.

Recd 30/3/2000
Sr. Executive Engineer/Con.
N.F. Railway, Goalpara.

Attested
L. P. Thakuria (Adv)
18. 7. 2000

(19)

ANNEXURE - H

Dr. P. Duara MBBS, AHS
Dy. Director of Health Services, Assam
Regd. No. 3205 (AMC)

Phone No. 450676
R. G. Baruah Road,
Guwahati - 781 003

To whom it may concern

Certified that an Jaleswar Kalita of
Gom-muk village - Dist. Nalbari, Assam was
under my treatment and advice from 12.11.99 to this day of 12.12.99.
He had been suffering from neuralgia, neuritis with
mental instability during the above period & was
unable to do his work.
Now he is cured & fit for his normal duty.

Dr. Duara
Dy. Director of Health Services,
Assam Government

Attested
L. P. Thakuria (Adv)
18.7.2000

-20-

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
21 MAY 2001
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गुवाहाटी बेंच :: गुवाहाटी
Bench

In The Central Administrative Tribunal
Guwahati Bench :: Guwahati.

Chandra Sarma
Filed by the respondents
through A. Chandra Sarma
18/5/2001
Nagendra

O.A. No. 240/2000

Sri J. Kalita

- Vs -

Union of India & Others

In the matter of :

Written statement on behalf
of the respondents.

The respondents in the above case most respectfully
beg to state as under :

1. That the respondents have gone through the original application and have understood the contents thereof.
2. That the respondents do not admit any statement except those which are specifically admitted in this written statement. Statements not admitted are denied.
3. That in reply to statements in para 4.2 to 4.3 it is stated that the applicant did not make report of any such incidence to the respondents, which is obligatory on the part of a Govt. servant. The occurrence of Sri Lalwani was an incidental case which did not happen in that locality. The moment Administration came to know

P/2.....

of the incident, all corrective measures were taken by the administration for his safe release. But in the case of applicant, he did not inform anything rather he refused to take delivery of official letter and was absent from his duty irregularly.

4. That in reply to statements in para 4.4 to 4.5 it is stated that remaining unauthorised absent from duty is a violation of service conduct Rule and not informing of the applicant's where about for a longer period made things doubtful about his integrity, devotion to duty etc. The mention of "Railway Service conduct Rule 1996" was a typing mistake. It is stated that the applicant was served registered letter number of times but he refused to accept the same and then only he was terminated after following all the official formalities with prior approval of the competent authority. It is further stated that due to oversight, the name of the signing authority could not be typed. But the seal of the signing official had been pressed on the bottom of the letter. However, the name of the then signing officer was Sri Balwant Singh, Assistant Engineer/CCN/N.E. Rly/Goalpara.

5. That in reply to the statements in paras 4.6 to 4.9 it is stated that a Govt. servant can not keep his office in dark as to his where about for more than 48 hours and cannot leave his working place without head Quarters leave permission. In the instant case the initiation of DA R proceedings and subsequent action taken against him was as per the norms and regulations stipulated in the Establishment Mannuals for DAR proceedings. It is

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- 22 -

also stated that the applicant is not a screened permanent employee and the date of screening as shown by him is false. The applicant wanted to resume duties after the DAR proceedings was over and hence question of forwarding the applicant's application does not arise. The applicant also did not submit any appeal under DAR Rules, 1968.

6. That in the facts and circumstances of the case the application deserves to be dismissed with cost .

VERIFICATION

I, *Sn. Nageswara Chandra Sarkar*
working as *Deputy Chief Engineer / con / G-J / MLG.*

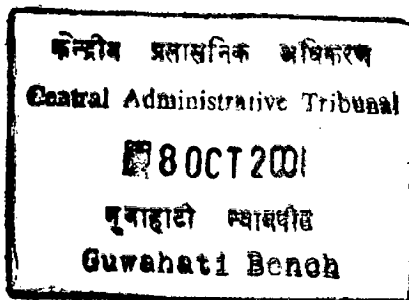
N.F. Rly, Maligaon, do hereby verify that the statements made in para 1 to 6 are true to my knowledge.

Nageswara Chandra Sarkar.

S I G N A T U R E

Guwahati

14 / 5 / 2001.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI, BENCH,
G U W A H A T I

O.A. NO. 240 / 2000

Sri J. Kalita ... Applicant.

- Vs -

Union of India & others
.... Respondents.

IN THE MATTER OF :

Counter Statements on behalf of
the Applicant .

The applicant in the above case Most Respectfully
Sheweth as follows :

- 1) That the applicant had gone through the written statements prepared by the respondents in the above mentioned case.
- 2) That, in response to the applicant's petition, the respondents in their written statements in para 3 stated that the applicant did not make report of any such incidence to the respondents i.e. regarding the abduction of Sri Lalowani, the then Dy. C.F/Con. It is stated that the respondents tried to overlook the grave situation arising out of terrorists infected problems and in this regard the N.F. Rly's staff and Officers itself issued

Contd.. 2

an appeal to the people of North East which is published in the North-East observer, a leading English daily of North-East . This publication was annexed in the applicant's petition which is self explanatory.

Regarding the applicant's refusal to take delivery of official letter it is stated that since the applicant is under treatment at Gauhati and no other family members stay in the locality of his Village, therefore the question regarding the refusal to take ~~delivery~~ delivery of official letter on the part of applicant does not arise.

3) That, in response to para 4 of the written statement prepared by the respondents, it is stated that the applicant , showing his sense of responsibility and devotion to duty, advent to join his duty prior to his sickness every off and on keeping aloof the scared of life, which the respondents do not want to acknowledge for the reasons best known to themselves.

Regarding refusal of accepting letters it is already stated in the aforesaid para.

Regarding termination of the applicant, the respondents treated him as a casual labour wherein the term ' termination ' *applies.*

- 3 -

4) That in response to para 5 of the Written statements as prepared by the respondents, the applicant only begs to state that the respondents had taken a quite opposite stand which is negative to the interest of an employee and also averse to the roads of justice. The respondents initiated the D.A.R. proceedings while the applicant was under treatment. The applicant was also denied the scope of natural justice and it carries gross violation of all norms of rules of law.

Regarding the denial of screening of the applicant it is stated that official record itself speaks of the contents of the matter and it is self ^{explanatory} exemplary.

That the applicant did not submit any appeal under Rules, 1968 is also totally false and baseless and the respondents tried to mislead the contents thereof in a different direction and also tried to evade the responsibility from their shoulder. The respondents did not pursue the appeal put forward by the applicant to the concerned authority.

That in the facts and circumstances of the case, the petition of the applicant ^{is} ~~deserves~~ to be maintainable before the Hon'ble Tribunal ^{is a fit case to issue} and ^{give} direction to the respondent as prayed ^{for} by the applicant before the Hon'ble Tribunal.