

5/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 3.80/2000

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CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI, 5

ORIGINAL APPLICATION NO. 380/2000

Ganesh Chandra Dehingia .. .Applicant.

VERSUS

Union of India & Ors Respondents.

For the Applicant(s) Mr. A.C. Boragohain
Mr. D. Borah
Mr. N. Borah

For the Respondents

R.J. Advocate.

NOTES OF THE REGISTRAR

DATE

ORDER

16.11.00 Present : Hon'ble Mr. Justice
D.N.Chowdhury, Vice-ChairmanCase not in time
Petition is
not filed C.F.
S. 57 deposited
No 503816
6.11.2000Mr. A.C. Boragohain, learned counsel
appearing on behalf of the applicant.Admit. Issue notice. Call for
the records. Returnable by six weeks.
List on 9.1.2001.Dy. Registrar
Borah

Vice-Chairman

trd

Atm
(6.11)

10.1.2001

Four weeks time allowed for
filing of written statement on the prayer
of Mr S. Sarma on behalf of the learned
Railway Counsel. List it on 9.2.2001
for orders.B/S
Notice received and Sent to
D/S for doing the necessary
by hand ride D/N 27/11/00 to 27/11/00
1768 dated 22/11/00.

Vice-Chairman

nkm

(2)

9.2. M.S.B. Adjourned to 21.3.2001.

M/s
A/c-2
9.2

9.1.2.001

"Varkaladamma"
has to file by
the respondents.

21.3.01 List on 2.5.01 to enable the
respondents to file written statement.


Vice-Chairman

No written statement pg
has been filed.

21.3.01

2.5. Puts over to 11.5.2001

M/s
A/c-2
2.5

11.5. There was a reverence.
List on 23/5/2001.

M/s
A/c-2
11.5

23.5.01
No written statement
has been filed.

26.6.01

trd

27.6.01 The respondents are yet to file
written statement. Further time is
granted to file written statement.
List on 3.8.01 for filing of written
statement and further orders.


Vice-Chairman

02-08-2001
No. W/statement
has been filed.

1m

3.8.01

List the matter again on 5.9.
2001 to enable the respondents for
filing of written statement.


Vice-Chairman

trd

(3)

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Notes of the Registry	Date	Order of the Tribunal
	5.9.01	As relief sought for setting aside of the dismissal order, the matter is not for Single Bench. List on 5/10/01 before Division Bench for order.
No. written statement has been filed.	mb	I C Usha Member
<u>By</u> <u>3/10.01</u>	5.10.01	No written statement so far been filed by the respondents till now. Mr. S. Sengupta, learned Rly. counsel, again sought for time to file written statement. Three weeks time is granted to the respondents to file written statement. List on 12/11/01 for order.
	mb	I C Usha Member
	12.11.2001	The respondents have filed written statement. The applicant may file rejoinder within two weeks from today. List the case on 4.12.2001 for further order.
<u>13.11.2001</u> <u>W/S on behalf of the respondents has been furnished.</u>	bb	I C Usha Member
	4.12.01	Written statement has been filed. List the case for hearing on 10.1.02.
<u>3/12/2001</u> <u>No rejoinder has been filed.</u>	mb	I C Usha Member (A)
	10.1.02	List on 30.1.2002 for hearing.
<u>AT</u> <u>3/12/2001.</u> <u>No rejoinder has been filed.</u>	mb	I C Usha Member
		Vice-Chairman
		<u>9.1.02.</u>

Notes of the Registry	Date	Order of the Tribunal
<u>20.1.2002</u>	<u>20.1.2002</u>	<p>Heard Mr. A.C. Buragohain Learned Counsel for the Applicant Mr. S. Ganguly, Learned Counsel for the Hearing Concluded: Judgment delivered, by A. Ganguly 20.1.</p>
	<u>20.2.02</u>	<p>Judgment delivered in open court, kept in separate sheets. The application is dismissed in terms of the order. No order as to costs.</p>
<u>13.3.2002</u>		<p><u>K. Bhattacharya</u> Member</p> <p><u>Vice-Chairman</u></p>
	<u>mb</u>	
<p>Copy of the Judgment has been sent to the Office for issuing of Notice to the applicant as well as to the Rly. Adm. in the Replies by 14.3. 2002 Copy of the Judgment has been sent to the Rly. Adm. in the Replies by 14.3. 2002</p>		

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 380 of 2000.

20-2-2002.
Date of Decision.....

Shri Ganesh Chandra Dehingia

Petitioner(s)

Mr. A. C. Buragohain, Mr. D. Borah &
Mr. N. Borah.

versus-

Advocate for the
Petitioner(s)

Union of India & Others.

Respondent(s)

Mr. S. Sengupta, Railway

Advocate for the
Respondent(s)

THE HON'BLE MR. JUSTICE D. N. CHOWDHURY, ADMINISTRATIVE MEMBER.
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 : Administrative Member.

JK Sharma

X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 380 of 2000.

Date of Order : This the 20th Day of February, 2002

THE HON'BLE MR. JUSTICE D.N. CHOWDHURY, VICE CHAIRMAN .
THE HON'BLE MR K. K. SHARMA, ADMINISTRATIVE MEMBER.

Shri Ganesh Chandra Dehingia
S/o Late Kuladhar Dehingia
Resident of Village:-Pathalibam
P.O:-Pathalibam, P.S:- Moran
District:-Dibrugarh, Assam.

... Applicant.

By Advocate Mr.A.C.Buragohain, Mr.D.Borah &
Mr.N.Borah.

- Versus -

1. The Senior Assistant Chief Cashier
N.F.Railway, Maligaon
Guwahati-781011, Assam.

2. The Chief Cashier (J.A.)
N.F.Railway, Maligaon
Guwahati-781011, Assam.

3. The Financial Adviser and
Chief Accounts Officer
N.F.Railway, Maligaon
Guwahati-781011, Assam.

4. The General Manager
N.F.Railway, Maligaon
Guwahati-781011, Assam.

5. The Union of India
Represented by the General Manager
N.F.Railway, Maligaon
Guwahati-781011, Assam. . . . Respondents.

By Mr.S.Sengupta, Railway Advocate.

ORDER

K.K.SHARMA, (ADMN. MEMBER):

The relief\$ claimed by the applicant in this application are as under :

- 1) Setting aside of the dismissal order dated 11.6.96.
- 2) Payment of backwages from January, 1978 to the date of re-instatement i.e.16.10.95.
- 3) Payment of subsistence allowance from 9.1.84 to 16.10.95.
- 4) Other consequential reliefs.

1. The applicant was appointed as a Trainee Clerk in the office of the Financial Adviser and Chief

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Contd.. 2

Accounts Officer of N.F.Railway, Pandu on 11.5.59. On 16.1.78, When the applicant was working in the Dibrugarh Pay Office a cash shortage ^{of Rs.38,165.15} was found in his cash box. The matter was referred to the C.B.T. and the applicant was placed under suspension w.e.f.19.1.78. A criminal case was instituted against the applicant in the court of Special Judge and the Special Judge by its order dated 13.6.83 convicted the applicant to undergo R.I. for one year and fined him of Rs.30,000/- and in default to R.I. for a further term of twenty months. The applicant was further convicted under Section 409 I.P.C. (Act 45 of 1860) and was sentenced to undergo R.I. for one year with a fine of Rs.10,000/- and in default R.I. for a further term of ten months.

2. The applicant preferred an appeal before the Hon'ble High Court and by judgment dated 1.6.95 the Hon'ble High Court acquitted the applicant. Based on the judgment dated 13.6.83 by the Special Judge the applicant was dismissed from service by Memorandum No.CP/GCD/Shortage/Pt.I. dated 9.1.84. The said memo is reproduced below :

" Whereas Shri Ganesh Ch. Dehingia, Senior Cashier (under suspension) has been convicted of criminal charges under Section 5(2) R/W Section 5(1) of the Prevention of Corruption Act and Section 409 of the I.P.C. and sentenced to undergo R.I. for a term of one year and to pay fine of Rs.30,000/- (Rupees thirty thousand), in default to R.I. for a further term of 20 months for the first offence and R.I. for a term of one year and fine of Rs.10,000/- (Rupees ten thousand), in default to R.I. for a further term of 10 months for the second offence by the Hon'ble Special Judge, Assam, Gauhati in the criminal case instituted against the said Shri Ganesh Ch. Dehingia in special case No.11 of 1978.

And whereas it is considered that the conduct of the said Shri Ganesh

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Ch. Dehingia which has led to this conviction is of grave misconduct so as to render his further retention in the public service undesirable.

And whereas an opportunity was given to Shri Ganesh Ch. Dehingia to make representation on the proposed penality of dismissal vide Memorandum No.CP/GCD/Shortage/PT.I dated 9th Dec./83 to which Shri Ganesh Ch. Dehingia has not submitted any representation.

2. Now, therefore, in exercise of the powers conferred by Rule 14(1) of Railway Servants (Discipline and Appeal) Rules, 1968 the undersigned hereby dismisses the said Shri Ganesh Ch. Dehingia from service w.e.f.9.1.84.

3. The receipt of this memorandum should be acknowledged."

Against the order of dismissal the applicant preferred an appeal on 23.3.91 before the respondent No.4. The appeal was not disposed of within the time prescribed by the rules. The applicant filed an application being O.A.26/94 before the Tribunal challanging the order of dismissal. As the dismissal of the applicant was without holding of an enquiry the order of dismissal dated 9.1.84 was set aside by judgment dated 29.8.95 in the said O.A. and the respondents were directed to hold an enquiry. The respondents were further directed as under :

" In the event of such proceedings being commenced respondents will be free to take steps in accordance with the law and the rules including suspension of the applicant is so necessary. The respondents shall take the decision whether to draw up a disciplinary proceeding or not or to close the chapter within a period of two months from the date of receipt of the copy of this order. If the respondents decide not to draw up disciplinary proceedings the respondents shall give all the consequential benefits including back wages to the applicant with effect from 9.1.1984 till the date of reinstatement as per the relevant financial rules."

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Contd.. 4

The respondents were directed to complete the exercise within a period of six months. The applicant was not paid any subsistence allowance from 10.1.84 to 15.10.95. The applicant was reinstated on 16.10.95 and was again placed under suspension on the same date. In the enquiry conducted pursuant to the order dated 29.8.95 passed in O.A.26/94, the applicant requested inspection of the following documents.

"(1) Original Bill-bearing-AB No.13 DWPF dated 27. 27.10.77 and

(2) Bill bearing AB No.16 LXL dated 7.11.77

3. As the enquiry was not completed within a period of six months, the applicant moved an Misc.Petition being M.P.No.71/96 on 18.6.96 before this Tribunal praying for back wages and other consequential reliefs. On the filing of the Misc. Petition the respondents came forward with an application for extension of time. In the enquiry by the I.O. only four witnesses were examined. The statements made before the CBI by the witnesses were not produced. The Enquiry Officer submitted his report and on the basis of the enquiry report the respondents issued show cause notice on 25.6.96 to the applicant. Thereafter by impugned order dated 11.9.96 the applicant was dismissed from service. The applicant filed an appeal before the concerned authority praying for setting aside of the order of dismissal dated 11.9.96. The appellate authority by its order dated 17.2.97 rejected the appeal of the applicant. Another appellate order dated 30.3.2000 followed intervention of C.A.T. in O.A.198/97. The appeal was again dismissed.

4. The applicant has challenged the impugned order on the ground that it had been passed without judicious application of mind; the authority failed to consider the case of the applicant regarding payment of back wages and other consequential

benefits; that the applicant was entitled to subsistence allowance from the date of original suspension i.e. 19.1.78 till the final order of dismissal dated 17.2.97.

5. Mr. A.C. Buragohain, learned counsel appearing for the applicant elaborated the submissions made in the application. His main argument was that the relevant record was not produced in the enquiry. The respondents did not pay the applicant subsistence allowance to the full extent. The learned counsel for the applicant also submitted that disciplinary authority, which suspended the applicant became the appellate authority and was thus biased. The submission in this regard made in this application is as under :

" For that the Respondent No.2 the Chief Cashier (J.A.), N.F.Railway, Maligaon, who acted as a disciplinary authority in re-instating and suspending the applicant heard the appeal as appellate authority and therefore the appellate order dtd. Nil, is liable to be set aside."

6. Mr. S. Sengupta, learned counsel on behalf of the respondents. The respondents also filed its written statement. It is stated that in the departmental enquiry the applicant was provided with the full opportunity to peruse the records and take extracts from the various relevant records. The applicant by his letter dated 1.12.95 did not indicate about supply of the original bill Nos. 13 DWRF and 16 LXL dated 27.10.1977 and 7.11.1977 respectively. On his further representation dated 5.12.95 about non-supply of the above original bills the matter was clarified to him vide order dated 14.12.95 stating inter-alia that the original bills were not referred to in the list of documents. He was allowed to consult his charge report of Pay Beet No. 10DBRT dated 23.1.78 duly signed by him.

After satisfying himself with the reply of the Railway Administration and perusal of the relevant records of the case, the applicant forwarded a letter dated 16.12.95 expressing inter-alia his readiness to face the enquiry. In the course of enquiry the applicant also accepted that he had handed over the said two bills to Sri N.K.Baruah, Ex-Cashier/10/A/DBRT without fund for payment to the concerned payees with the commitment that he would recoup the amount to Sri Baruah subsequently. This fact was further confirmed by the applicant in his subsequent representation dated 25.6.96. Moreover, these two bills were with CBI and judicial notice of these bills was taken in course of hearing of the Special case No.11 of 1978 before the Special Judge. The applicant was debarred from seeking production of these original records which were not in possession of the respondents. It came to light in Nov-Dec, 1977 that the applicant violated the extant codal provisions regarding payment procedure and refrained from closing his Cash Books etc. and resorted to retention of paid bills and unpaid amounts unauthorisedly beyond permissible period as required under Rule 982-A. He also avoided the surprise check of his Cash and Accounts. On 18.1.78, on verification of the Cash balance of the applicant a shortage to the extent of Rs.38,151.94 was detected. The applicant also accepted the shortage. The applicant was acquitted by the Hon'ble High Court on benefit of doubt. The Hon'ble High Court, while acquitting the applicant found him negligent in his duties and it was not a clean acquittal as such it was open to the authority to draw up departmental disciplinary proceedings and also suspending the applicant after reinstatement. The applicant was thus dismissed from his service after

observing the rules and procedure in vogue. The applicant was provided with reasonable opportunity by way of show cause notice issued to him vide memo dated 9.12.93. In the departmental enquiry, the applicant was found guilty and was consequently dismissed from his service w.e.f.11.9.96. As the applicant was earlier dismissed from service w.e.f.9.1.84 and as the fresh disciplinary proceeding was held after the Hon'ble Tribunal's order dated 29.8.95 and as a result of fresh disciplinary proceedings, the respondents came to the same conclusion, the question of making payment of any amount for the period from 10.1.84 to 15.10.95 did not arise. Moreover during that period the applicant was neither performing any railway duties nor he was under suspension. Regarding the payment of back wages, it is stated that in terms of the judgment of the Hon'ble High Court dated 1.6.95 and FR 54(1) and the order of the Hon'ble Tribunal dated 28.9.95 the applicant is not entitled to payment of the same. Regarding the objection of the applicant to the disciplinary authority acting as appellate authority the respondents ^{ve} has replied as under :

"..... regarding respondent No.2 being the Disciplinary Authority as well as Appointing Authority etc. this has happened because the post of the CHief Cashier was upgraded from Senior Scale to Junior Administrative Grade and there is nothing irregularity in this regard. The matter has been elaborately clarified at paragraph 23 of this written statement."

7. Regarding non-production of the aforementioned two bills the applicant objection was considered on the basis of his representation and by letter dated 30.3.2000 it was replied as under :

"(a) The contents of these two bills were already in the knowledge of the applicant.

(b) These 2 bills were personally handed over by Sri Dehingia Sr.Cashier (Applicant) to Sri N.K.Baruah Ex.Cashier/Dibrugarh Town for payment

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to the payees concerned as mentioned in the bills, without providing Sri Baruah with the necessary funds (one on 18.11.77, and, the other on 20.11.77 without even clearing the dues of the bill handed over in the first occasion on 18.11.77) though the Applicant received the required fund/cash from the Government for making necessary payment to the payees concerned on much earlier dates i.e. 1st bill on 31.10.77 and 2nd bill on 17.11.77.

(IV) Even in course of D.A.R. enquiry proceeding and in the personal hearing also he did not make any assertion that he every recouped the amounts of these two bills to Sri Baruah Ex.Sr. Cashier, Dibrugarh.

(V) The original bills (as mentioned by the Applicant) only indicate records about nature of claim, details of the amount drawn and payable in favour of particular payee or payees by a nominated cashier in presence of witnessing officials concerned, as well as, acknowledgement(s) of the payees(s) in support of receipt of payment, Accouts enforcement towards passing of Bills, reference to entry in the Chief Cashiers Cash Books (Payment) etc. and that the bills do not indicate recoupment of cash and these bills do not show whether money was handed over/recouped subsequently or in any time.

vi) The matters regarding receipt of these 2 bills by the Applicant from Railway Administration (with fund) and regarding handing over of these two bills by the Applicant to another Sr.Cashier Sri N.K.Baruah without handing over the fund which he received from Government at the time of handing over of the bills and not handing over the amounts on any subsequent dates also etc. are all matters of records and the Applicant (Sri Dehingia) already accepted these.

vii) Even prior to seizure of these two bills by C.B.I. on 12.5.78, Sri Dehingia (Applicant) clearly accepted the shortage of Rs.38,151.94 P in cash in his case Balance as per Joint signed memorandum dated 23.1.1978."

It is stated that the applicant had accepted the shortage of cash in the statement of Assets and liabilities on 18.1.78. The applicant had also

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promised to recoup the financial loss if he was re-instated. The amount of shortage was not handed over by the applicant to Sri N.K. Baruah. The applicant was re-instated on 16.10.95 and again suspended on the same date in order to proceed with the enquiry against him. It is also stated that in the order dated 7.2.94 in O.A.26/94 the Tribunal had refused to pass any order regarding granting payment of subsistence allowance from February, 1984 to January, 1994. The question of examining the C.B.I. official did not arise as the departmental enquiry was based on Railway records. The disciplinary authority after applying its mind arrived at the conclusion to issue the penalty of dismissal. The respondents suffered a huge loss on account of negligence of the applicant. Regarding objection of the applicant to the jurisdiction of appellate authority, it is stated that there is no legal bar on the officer signing the suspension order being the appellate authority. As such there is no irregularity in the dismissal of the appeal of the applicant. The disciplinary authority had disposed of the appeal of the applicant by a speaking order. The learned Railway counsel for the respondents submitted that the application is liable to be dismissed.

8. We have given our anxious consideration to the submissions made by the learned counsels for the parties. We have also perused our records as well as the records produced by the respondents. The applicant, who was Cashier was awarded the penalty of dismissal for shortage of cash amounting to Rs.38,165.15. A criminal case was filed against the applicant. Disciplinary Proceeding under the Railway Servants Discipline & Appeal Rules 1968 was initiated

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against the applicant and after following the due procedure the applicant had been dismissed. There were a series of applications before this Tribunal, there ^{appeals} were as many as two ~~hicks~~ against the order of dismissal. Now the applicant is before us challenging the penalty of dismissal. When the matter has passed through so many stages, the applicant raised the plea of non-production of documents mentioned above/ in the disciplinary proceeding and has argued that the whole proceeding was vitiated on account of non-production of the two bills, namely, original bill dated 27.10.77 and 7.11.77. This plea was raised by the applicant for the first time in the O.A.198/97, in which the applicant had challenged the first appellate order dated 17.2.97. The applicant was placed under suspension with effect from 19.1.78.

9. We have gone through the enquiry report. The applicant participated in the enquiry. He never took a plea that non-production of the original bills vitiated the enquiry. For this purpose the section dealing with the examination of evidence in the enquiry report is referred to and is extracted below :

" The disciplinary authority has proposed to sustain the charges against the defendant on the basis of 18 pcs. of documentary evidence and six prosecution witnesses as per Annexure III and IV of the memorandum. Out of this prosecution witnesses PW No.2 & 5 already expired. So the evidence of PW No.1, 3, 4 & 6 were recorded. The defendant demanded some additional documents and defence witnesses in his defence dt.24.1.96 to the Enquiry Officer. After discussion, it was found that the additional documents and the witnesses were not relevant to the case. The defendant agreed to this and the enquiry started without this additional documents and defence witnesses. The evidence aspect at a greated length will also be discussed in the chapter to follow while recording the reasons for findings after examinations of the

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each articles of charge framed against the defendant."

10. The respondents have supported their written statement and filed copies of documents. Some of the documents are referred to below :

1. Annexure-III to the written statement is a statement of assets and liabilities as on 18.1.78, wherein shortage of Rs.38,165.15 is accepted by the applicant and the relevant portion is reproduced below :

" Shortage Rupees thirty eight thousand one hundred sixty five and Paise fifteen only in my cash and the above shortage of Rs.38,165.15 P (Rupees thirty eight thousand one hundred sixty five and Paise fifteen) only is accepted and confirmed."

2. Annexure-IV to the written statement is a note dated 18.1.78 addressed to the Chief Cashier explaining the circumstances under which the shortage occurred. The same is reproduced as under :

" I beg to state that under what circumstances the shortage of Rs.38,165.15 P (Rupees thirty eight thousand one hundred sixty five and Paise fifteen) only have been occurred is beyond my imagination. I have no doubt about the integrity of my colleagues at DBRT.

Two bills bearing AB No.DWPF dated 17.x.77 and 16 LXL dated 7.11.77 respectively as mentioned in the statement enclosed. I beg to state that due to sudden serious illness of my wife I hurriedly came to the office on 18.11.77 and handed over the above bills to C/DBRT without fund for payment of Carriage Labour Staff to avoid infringement of Payment of Wages Act.

In have no other Cash and Vrs. in my cash box and safe lying at DBRT Pay Office."

By letter dated 5.12.95 addressed to the Chief Cashier the applicant had admitted that he was allowed to have photocopies of the documents namely, bills dated 27.10.97 and 7.11.97. In the first appeal filed before the appellate authority no plea against the non-production of aforementioned bills was raised. In the second appellate order dated 30.3.2000 the objection of the applicant had been considered in

detail. The relevant portion of the order dealing with the objection of the applicant as to the non-production of two bills is extracted below :

" In order to ascertain about the truth of his allegation and cause of non-supply of documents, if any, and to ascertain how far his case was prejudiced because of non-supply of two Bills bearing A.B.No.DWPF dated 27.10.77 and 16 LXL dated 7.11.77, I have delved into the matter, and from records available I find that, the contents of these two Bills were already in his knowledge. These 2(two) bills were personally handed over by Shri Dehingia to Shri N.K.Baruah, Ex-Cashier/Dibrugarh Town for payment to the payees mentioned in the bills without providing Shri Baruah with the necessary funds; (one on 18.11.77 and the other on 20.11.77 even without clearing the dues of the bill handed over in the first occasion on 18.11.77), though Shri Dehingia received required cash from the Government for making necessary payment to the payees concerned on much earlier dates i.e. on 31.10.77 & 17.11.77 respectively. Even, in course of DAR proceeding and in the personal hearing also, he did not make any assertion that, he ever recouped the amounts of these two bills to Shri Baruah, Ex.Sr.Cashier, Dibrugarh. It is to mention herein that the original Bills only indicate records about nature of claim, details of the amount drawn and payable in favour of a particular payee or payees by a nominated Cahsier in presence of the witnessing Official(s) concerned, as well as, acknowledgement(s) of the Payee(s) in support of receipt of payment, Accounts enforcement towards passing of the Bills, reference to entry in the Chief Cashier's Cash Books (Payment), etc. and does not indicate about recouplement of cash of the type.

as per record. The appellant also could not produce any document by which it can be ascertained beyond reasonable doubt that, he made good the shortage in his Cash Balance or he ever made good the amount against the two Bills Nos. ibid (total Rs.24,117.83) to Shri N.K.Baruah. Even in the personal hearing granted to him on 2.3.2000, Shri Dehingia stated that he already reported to the then Chief Cashier, Maligaon to the effect that there existed a shortage of about Rs.40,000/- in his cash as on 16.1.78. His grievance about non-supply of those two bills with allegations of his being prejudiced by non-production of these two seized bills, during DAR enquiry stage by the Disciplinary/Enquiry Authority, for the purpose of his inspection, verification etc. to ascertain the fact about making good the amounts of the above two bills (totalling of Rs.24,117.53), if any, are not tenable in as much as the original bills cannot exhibit that recoupment of funds for these two bills were made to Shri Baruah by Shri Dehingia, and that, he ever made good the amount to Shri Baruah. Further it,s there had been any adjustment of fund, then the same would have been reflected in the Cash Book and other allied records and not through the original Bills. Moreover, on scrutiny of the relevant papers/records, nowhere it has been found that the amount was made good by Shri Dehingia. Even from the letter dated 31.1.78 written by Shri N.K.Baruah, Ex.Sr.Cashier to Chief Cashier, prior to seizure of the bills by the CBI, I find that Shri Baruah himself expressed apprehension about tempering of these bills if he is asked to part with these bills. On being asked in the personal hearing about the specific point as to whether he made good the above amount to Shri Baruah subsequently also Shri Dehingia evaded to give a specific reply in a positive manner, as to whether he ever made good the same. He however, stated that, he handed over the bill No.13 DWPF dated 27.10.77 (for Rs.11,103.00) without fund to Shri Baruah on 18.11.77 for payment to the payee, as his wife was seriously ill on that particular date and that, he was in a hurry with his wife's Medical treatment on that day. The enquiry report also confirmed that, in addition to the above bill, Shri Dehingia also handed over another bill No.16 LXL dated 7.11.77 for Rs.13,014.83 to Shri N.K.Baruah, Ex.Sr.Cashier/DBRT on 20.11.77 for payment to the Payees concerned without providing any fund for that bill also and also without adjusting

the fund of the 1st bill handed over on 18.11.77 for Rs.11,103.00, on grounds of his self sickness. The relevant records also reveal that, Shri Dehingia attended Pay Office/Dibrugarh for some time, every day from 18.11.77 to 20.11.77, handled his Cash Box, Cash Safe & other records and also arranged payment to certain Rly. staff at Ledo on 19.11.77. He was sick w.e.f.21.11.77 as per sick report submitted on 25.11.77 and not from 20.11.77 although he indicated that, he had to hand over the 2nd bill also on 20.11.77 due to his self sickness on that day. It is a simple logic that when he had time and could attend Pay Office/Dibrugarh from 18.11.77 to 20.11.77 and handled his Cash Box, Cash safe and other records and handled over two bills to Shri N.K.Baruah, Ex.Sr.Cashier/10A/DBRT on 18.11.77 and 20.11.77 without fund, he could hand over the required cash also simultaneously alongwith the Bills, since, the required cash against these two bills were already received by him on 31.10.77 and 17.11.77 respectively as per records and the same were supposed to be lying with him on the dates of their handing over by Shri Dehingia to Shri Baruah. Hence, his pleas of failure to hand over the cash to Shri Baruah on grounds of his wife's sickness on 18.11.77 and self sickness on 20.11.77 are not tenable, and, unfortunate, and, this also gives room to draw an inference that, Shri Dehingia defalcated the cash against these two bills received by him from Rly Administration. There is sufficient ground to believe that, Shri Dehingia by his action of handing over those two bills to a Co-Cashier for payment without fund, made attempt to somehow manage the payments out of way, and to misguide the Administration and escape from the eye of law by putting forward his various pleas in support of his action and by alleging that his case was prejudiced by non-supplying 2(two) original Bills Nos.13 DWPF dated 27.11.77 and 16 LXL dated 7.11.77 by the Disciplinary/Enquiry Authority, knowing fully well that, these two original bills were already seized by CBI Authority on 12.5.78 from the Rly Administration. In this connection from the own submissions in paras 3 and 4 of his letter dated 7.12.95 to the Chief Cashier (JA) N.F.Railway Maligaon, as extracted herein below, it will be quite evident that the entire matter of seizure of these 2(two) original Bills by C.B.I were

also in his knowledge and that, he completed his inspection of documents on 6.12.95. Vide his letter addressed to the Disciplinary Authority dated 16.12.95, he also intimated that he was ready to face DAR Enquiry at any stage."

11. The other objection of the applicant relating to the authority who passed the suspension order acted as ~~Appellate~~ authority and thus was prejudiced against the applicant has also been dealt in detail in the appellate order. The same is extracted below :

" I have also gone through his allegations at item 15 of the appeal. I find that the Senior Asstt. Chief Cashier who is a Senior scale officer in the Railways, has rightly acted as a Disciplinary Authority . The schedule of powers on establishment matters (Rly) under Item 6 and 52 also quite speak of the same. As per the schedule of powers, a senior scale Officer in the Rlys is empowered to act as appointing Authority in respect of all Group "D" Employees and in respect of Group "C" Employees upto the scale of Rs.425-640/- (R.S.) (revised as ; .1400-2300/- under 4th Pay Commission and further revised as Rs.5000-8000/- under 5th Pay Commission). Prior to dismissal from Rly Service, Shri Dehingia was holding the post of a Sr.Cashier in scale of Rs.425-640/- (RS) and he was appointed to that post w.e.f.1.12.75 by an order issued by the then Chief Cashier (Sr.Scale) and the present post of Sr.Asstt.Chief Cashier (Sr.Scale) is of equivalent rank to that of erstwhile Chief Cashier (Sr.Scale). Thus the Senior Asstt. Chief Cashier is competent to act, as Disciplinary Authority as well as Appointing Authority in terms of Rule 2 Sub-Rule 1(C) (iii) and sub-rule (2) under Rule 7 of Rly. Servants (Discipline & Appeal) Rules, 1958, and thus is Competent to impose any of the major penulties specified in Rule 6 inclusive of dismissal from service upto the grade to which the Appellant belonged prior to his dismissal, in accordance with Rule 9 of Railway Servants (Discipline and Appeal) Rules, 1968, in respect of the Railway Employees under him."

Sub-rule 15 of the Rule 9 of the Railway Servants Discipline & Appeal Rules 1968 gives the power to the Enquiry Authority to refuse the requisition of the such

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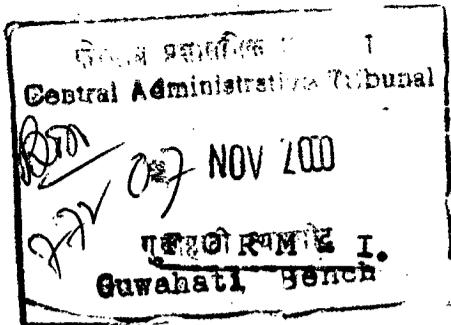
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documents which are not relevant to the case. The charge drawn against the applicant is related to the shortage of cash, which was supported by documents. The copies of the relevant bills were made available to the applicant. Before the Enquiry Authority no plea was made that the production of the original bills was essential. We feel that the production of original bills would not have in any way disapproved the shortage of cash. The cash was found short in the Cash Box. The applicant has not questioned the shortage of cash. The plea of production of original bills was raised by the applicant at a very late stage and had been considered by the appellate authority. We do not find any infirmity in the order of the appellate authority in respect of non-production of the two bills. On the material before the Enquiry officer the charges were proved. The enquiry report had not been challenged and as per the report the charges were proved. The applicant's case did not suffer any prejudice/injustice by the non-production of the two bills. The objection of the applicant regarding consideration of the appeal of the applicant by the appellate authority had also been taken into account and his objection has been rejected. We do not find any illegality in the same. The claim of the applicant for back wages and subsistence allowance has also been discussed in detail by the appellate authority. The same was also not accepted by us in O.A. No. 26 of 1999.

For the reasons given by the appellate authority, we do not find any infirmity in the view taken by the respondents. No interference is called for in the impugned orders. No relief is allowed. The application is accordingly dismissed. There shall, however, be no order as to costs.

K. K. Sharma
(K. K. SHARMA
ADMINISTRATIVE MEMBER

D. N. Chowdhury
(D. N. CHOWDHURY
VICE CHAIRMAN



Application under Section 19 of the Administrative
Tribunal Act, 1985.

Title of the Case : Case No. 380/2000

Shri Ganesh Chandra Dehingia, .. Applicant.

- Vs -

The Senior Assistant Chief Cashier,
N.F.Railway & Ors., .. Respondents.

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Niran Baruah
Signature of the Advocate.

FOR USE IN THE TRIBUNAL'S OFFICE.

Date of Filing :

Registration No. : 6A 380/2000

Signature.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BRANCH.

CASE NO. 380 OF 2000.

IN THE MATTER OF :

Shri Ganesh Chandra Dehingia,
Son of Late Kuladhar Dehingia,
Resident of Village-Pathalibam,
P.O. Pathalibam, P.S. Moran,
District- Dibrugarh, Assam.

Last Employed:

Senior Cashier,
Dibrugarh Pay Office,
Pay Beat No. 10,
N.F.Railway, Dibrugarh, Assam.

... APPLICANT.

- Versus -

1. The Senior Assistant Chief Cashier,
N.F.Railway, Maligaon,
Guwahati-781011, Assam.
2. The Chief Cashier (J.A.),
N.F. Railway,
Maligaon, Guwahati-781011, Assam.
3. The Financial Adviser and
Chief Accounts Officer,
N.F. Railway, Maligaon,
Guwahati- 781011, Assam.
4. The General Manager,
N.F. Railway, Maligaon,
Guwahati-781011, Assam.
5. The Union of India,
represented by the General Manager,
N.F.Railway, Maligaon,
Guwahati-781011, Assam.

... RESPONDENTS.

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Sri Ganesh Chandra Dehingia
through - Niran Baruah
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DETAILS OF APPLICATION

1. Particulars of the Order : (i) The Order dt. 30.3.2000, against which the application is made. bearing No.CP/EP/GCD/CAT/GHY, issued by the Sr.Asstt.Chief Cashier(H.Q) on behalf of Dy. Chief Accounts Officer(Cash & pass) N.F.Railway, Maligaon and received by the appellant on 5/4/2000 dismissing the appeal dt. 13.1.2000, without furnishing the original bills No. 13 DWRF dt. 27.10.77 and 16 LXL dt. 7.11.77 which were vital Documents and the Hon'ble CAT directed the Railway Authorities/ Respondents to allow the Appellant to inspect them and take abstract of the same.

(ii) The order passed by the Chief Cashier(JA) N.F.Railway, Maligaon and Communicated vide letter No. CP/EP/GCD/DAR/Pt.II/96 dated 14.2.97 signed by Sr.Asstt.Chief Cashier(HQ), N.F.Railway, Maligaon dismissing the appeal of the applicant G.C. Dehingia.

Annexure- A 19.

2. Jurisdiction of the Tribunal. : The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

3. Limitation.

: The applicant further declares that the application is within the Limitation period prescribed in Section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the Case :

a) The applicant is a citizen of India and his permanent residence is at Pathalibam Dehingia Village under Moran Police Station of the Dibrugarh District. He is now about 57 years old.

b) Initially he was appointed as a Trainee Clerk in the office of the Financial Adviser and Chief Accounts Officer of N.F.Railway, Pandu vide its appointment letter No.PNO/AD/56/89 dated 21.4.59 and he has joined as such on 11.5.59. Afterwards he was promoted to the post of Senior Cashier under N.F.Railway. During the period from 1959 to 1978 he had performed his duties well and no adverse remark was made in his service career.

The applicant, while working as Senior Cashier (Confirmed) in Pay Beat No. 10 of Dibrugarh Pay Office of N.F.Railway, on 16.1.78 he found that there was a shortage of huge amount of money in his cash box, and he immediately reported the matter in writing to his immediate superior- the Assistant Divisional Cashier at Tinsukia who directed the applicant to report the matter to the Chief Cashier, N.F.Railway, Maligaon. The applicant reported the matter on 18.1.78 to the Chief Cashier, N.F.Railway, Maligaon. The Chief Cashier, N.F.Railway, Maligaon got the cash amount in Pay Beat No. 10 inspected and found a shortage of Rs. 38,165.15 paise.

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c) That thereafter, the authority concerned, instead of making a departmental enquiry under Rly Service Discipline & Appeal Rule handed over the case to the C.B.I. for investigation and prosecution for the reason best known to them. The applicant was placed under suspension w.e.f. 19.1.78.

(A copy of the Suspension Order No.CP/EP/GCD
dt. 19.1.78 is enclosed herewith as Annexure- A1).

d) That thereafter, the C.B.I. after completing the investigation based on FIR instituted a criminal case against the applicant under section 5(2) r/o S.5(i)(c) of the Prevention of corruption Act and also under S. 409 IPC in the court of the Special Judge, Assam, Guwahati which was registered and numbered as Special Case No. 11 of 1978.

e) In the said Special Case No. 11 of 1978 the prosecution has examined as many as 55 witnesses and four witnesses were examined in defence. The learned Special Judge also made a local inspection of pay Beat No.10 at Dibrugarh.

f) That after hearing the arguments of both sides, the learned Special Judge by his Judgment dated 13.6.83 convicted the applicant under Section 5(2) read with Section 5(i)(c) of the Prevention of Corruption Act (Act II of 1947) sentencing him to undergo R.I. for one year and a fine of Rs. 30,000/- only in default to R.I. for a further term of twenty months and further convicting the applicant under Section 409 I.P.C. (Act 45 of 1860) and sentencing him to undergo R.I. for one year and a fine of Rs.10,000/- only in default R.I. for a term of ten months. The substantive sentences of imprisonment shall run concurrently.

g) That against the said Judgment dtd. 13.6.83 the applicant has preferred an appeal in the Hon'ble Gauhati High Court which was registered and numbered as Criminal Appeal No. 85 of 1983. The said appeal was heard and disposed of on 1.6.95. The applicant was acquitted and the appeal is allowed.

(A copy of the Judgment dtd. 1.6.95 is annexed herewith as Annexure - A2).

h) The applicant begs to state that no appeal was preferred in the Hon'ble Supreme Court against the Judgment dtd. 1.6.95 passed in Cril.Appeal No. 85 of 1983 of the Hon'ble Gauhati High Court.

i) That based on the Judgment dtd. 13.6.83 passed in Special Case No. 11 of 1978 the F.A. & Chief Accounts Officer, N.F.Railway, Maligaon, Guwahati-781011 dismissed the applicant from service by Memorandum No. CP/GCD/Shortage/Pt-I dated 9.1.84 without giving any reasonable opportunity to show cause.

(A copy of the order dtd. 9.1.84 is annexed herewith as Annexure - A3).

j) That against the said order of dismissal dated 9.1.84 (Annexure-A3) the applicant preferred an appeal before the appellate authority Respondent No.4, but the appellate authority has not disposed of the appeal inspite of reminders for the reason best known to them.

(A copy of the said appeal dtd. 23.3.1991 is annexed herewith as Annexure - A4).

k) That the appeal which was filed before the appellate authority was not disposed of within time prescribed by rules and therefore, the applicant filed application O.A.

No. 26 of 1994 before this Hon'ble Tribunal. The said application OA No. 26/94 was heard and disposed of on 29.8.1995. The relevant portion of the order is quoted below :-

" In the result following order is passed

1. The impugned order of dismissal dated 9.1.1984 is hereby set aside.
2. The respondents are directed to reinstate the applicant forthwith.
3. There will be no bar for the respondents to draw up disciplinary enquiry proceedings against the applicant if so advised and to pass such interim orders as may be called for pending the enquiry.

In the event of such proceedings being commenced respondents will be free to take steps in accordance with the law and the rules including suspension of the applicant if so necessary. The respondents shall take the decision whether to draw up a disciplinary proceeding or not or to close the chapter, within a period of two months from the date of receipt of the copy of this order. If the respondents decide not to draw up disciplinary proceedings the respondents shall give all the consequential benefit including back wages to the applicant with effect from 9.1.1984 till the date of reinstatement as per the relevant financial rules.

However, in the event of the respondents deciding to draw up disciplinary proceedings the question of giving consequential benefits and back wages shall stand postponed till the conclusion of the disciplinary enquiry and thereafter it shall be dealt with consistently with the order at the enquiry. If the disciplinary enquiry is commenced

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it shall be completed within a period of six months. If it is not completed within that time liberty to the applicant to seek directions from the Tribunal in respect of back wages and other consequential reliefs without prejudice to the enquiry.

The O.A. accordingly allowed. No order as to costs.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN) ".

The applicant begs to state that no appeal was preferred against the order dtd. 29.8.95.

(The copy of the order dtd. 29.8.95 passed in OA No. 26/94 is annexed herewith as Annexure- A5).

1) That the applicant sent an application dt. 20.6.95 to the Respondent No. 3, annexing the certified copy of the Gauhati High Court's Judgment dt. 1.6.95 (Annexure- A2) praying for his re-instatement in the service. But the respondent No. 3 paid no heed to the said application.

(The copy of the application dt. 20/6/95 is annexed herewith as Annexure - A6).

m) The applicant begs to say that he was given the subsistence allowances from the date of suspension i.e. from 19.1.1978 to 9.1.1984 and from 16.10.95 to 11.9.96 till the date of dismissal from service. No subsistence allowance is paid to the applicant for the period from 10.1.1984 to 15.10.1995 and for the period from. As per F.R. 53 and 54 and Rule 11 of the Railway Servants Discipline and Appeal Rules, 1968, the applicant is entitled to the subsistence allowance for the period from 10.1.1984 to 15.10.1995. The applicant further begs to state that the subsistence allowance etc. are not paid as per Rules.

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a) That, the applicatn was acquitted of the charges by the Gauhati High Court Judgment dtd. 1.6.95 passed in Crl. Appeal No. 85 of 1983 and therefore he is entitled to all the back wages and other beneficiary reliefs as per FR 54(1) and the decision of the Apex Court for the period from 19.1.1978 to 15.10.95.

b) That as per Order dtd. 29.8.1995 passed in O.A.No.26 of 1994 the Respondent No.2 vide order No.CP/KP/GCD/Shortage/ Pt-I dtd. 16-10-95 re-instated the applicant in the service, and on the same day i.e. on 16.10.95, the Respondent No.2, vide order No. CP/EP/GCD/Shortage/DAB dtd. 16/10/95 put the applicant under suspension.

The applicant further begs to state that he was suspended on the same day, the date of his joining to the service.

c) That the petitioner by his letter dtd. 5.12.95 addressed to the Respondent No.2, requested for inspection of the documents i.e. (1) Original Bill-bearing- AB No.13 DWPE dtd. 27.10.77 and (2) Bill bearing AB No. 16LXL dtd. 7.11.77 respectively which are most vital document in relation to Article 1 of the Charge Sheet(Para 7 of the letter dtd. 5.12.95). In reply to the said letter the Respondent No.1, in his letter No.CP/GCD/Shortage/Part-I dtd. 14.12.95, replied that -

" As regards item No.7 of letter dated 5.12.95 and item No.3, of bills No. 7.12.95, nothing has been recorded as "original bills" in the listed documents and only record Document of disbursement of the amount of bills showing Bill No. and date".

It may be pertinent to mention here that Respondent No.2 who has reinstated and suspended the petitioner as disciplinary authority and also heard the appeal as an appellate authority.

q) That as per the direction of the Hon'ble Tribunal the respondents have not proceeded with the departmental enquiry to be completed within April, 1996. As no enquiry was held, the applicant had approached this Hon'ble Tribunal vide application dtd. 18.6.96 in case No. M.P. 71/96 in O.A. 26/94 praying for payment of back wages and other consequential relief. Afterwards the respondents came forward with an application praying for extension of time by denying the backwages etc. to the applicant. The applicant begs to say that inaction on the part of the respondents proves malafide & injustice in the case.

r) That, the departmental enquiry was not conducted with established procedure of law and the rules made thereunder. The Inquiry Officer instead of soliciting the statements of facts & figures from the witness put leading questions to the qitnesses. Only four witnesses i.e. (1) Shri T.N. Biswas, (2) Shri K.K.Das, (3) Shri P. Sarkar, (4) Shri N.K. Baruah were examined in the departmental inquiry. The Statements made before the CBI by the witnesses as early as 1978 were not produced before the witnesses. The most important witness, C.B.I. was not examined in the departmental enquiry.

The enquiry officer submitted his report with the findings. The relevant portion is as follows :-

"Findings :

In the light of the detailed discussion as presented in the fore-going chapters, the findings against each article of charges are as under :

Article No. 1.

The charges fully established against Shri G.C. Dehingia, Sr. Pay Clerk-10/DBRT, the defendant.

Article No. 2.

Charges are partially established against Shri G.C. Dehingia, Sr. Pay Clerk-10/DBRT, the defendant.

Article No. 3.

Shri G.C. Dehingia, Sr. Pay Clerk-10/DBRT, the defendant is partially responsible for not closing Cash Book daily as per 951A of 1960. The charges of avoiding of checking by Inspector of Cashiers have not been established. The allegation against Shri G.C. Dehingia, Sr. Pay Clerk-10/DBRT, the defendant, did not hand over the charge to Shri K.K. Das, Reiliving Cashier inspite of being instructed by the competent authority has not been established.

Article No. 4.

The charge against Shri G.C. Dehingia, Sr. Pay Clerk-10/DBRT, the defendant, has been fully established."

s) That the Disciplinary authority ditteed the findings of the Enquiry Officer and after receiving the show cause dtd. 25.6.96 from the applicant, dismissed the applicant from service with effect from 11.9.96 vide No.CP/EP/GCD/DAR dtd. 11.9.96. There was not mention in the order regarding, backwages subsistence allowance etc. though these facts were stated in the show cause.

t) That, against the said dismissal order dt.11.9.96 the applicant preferred an appeal before the authority concerned. The prayer portion of the appeal is as follows:

G.C. Dehingia

" Under the circumstances, it is prayed that the impugned dismissal order dtd. 11.9.96 be set aside and the appellant be allowed to be re-instated with all the consequential benefits including promotion in the service, payment of the arrear salaries to the tune of Rs. 6,15,123.00 only (as on October,1995) and further other consequential benefits."

- u) That, the Appellate Authority (Respondent No.2) vide order dtd. Nil communicated through letter No.CP/EP/GCD/DAR/Pt-II/96, dtd. 14/17.2.97 signed by the Sr.Asstt.Chief Cashier(HQ) N.F.Railway, Maligaon, rejected the appeal without mentioning a single word, regarding payment of back wages and other consequential benefits to the applicant, the grounds regarding non-examination of the CBI Officer in the departmental enquiry, non-payment of subsistence allowance etc. according to the statements prepared and filed before the appellate authority.
- v) The applicant is now ~~57~~⁶⁰ years old and suffering from High Blood Pressure. If he is re-instated in the service, he ~~shall have to retire~~^{has} from service by 31st July, 2000, and therefore praying for early disposal of the case. During the period from 19.1.78 (under suspension) till date he was not absorbed in any of employment except household affairs like cultivation.
- w) That the applicant was not paid his subsistence allowance for the period from Feb.1984 to January,1995. He had to approach this Hon'ble Tribunal for payment. This Hon'ble Tribunal by order dtd. 7.2.94 passed in OA 26/94 directed the Respondent for payment of subsistence allowance.

x) The applicant begs to state that he had to face the CBI at the initial stage, then the Criminal Trials before the Special Judge, Assam, preferring appeal before the Hon'ble Gauhati High Court and afterwards this Hon'ble Tribunal. Then again as per direction of this Hon'ble Tribunal, the applicant appeared before the departmental enquiry, the appeal before the appellate authority and again approach this Hon'ble Tribunal seeking for justice and relief. All these courses took 20 years to get a final relief. The applicant is thus physically and mentally and economically suffering during these long 20 years and therefore praying for early disposal of this application.

5. Grounds for relief with legal Provisions :

A) That the appellate authority (Respondent No.2) has not decided the grounds No.6 (Para 6) of the appeal and therefore there is no judicious application of mind due to lack of bonafide.

B) That the appellate authority as well as the disciplinary authority have totally failed to consider the case of the applicant regarding payment of back wages and other consequential benefits, the order of dismissal as well as the appellate order respectively are liable to be set aside.

F.R. 54(1).

C) For that the acquittal with benefit of doubt amount complete acquitted on merits, and the applicant is finally acquitted on 1.6.95 by the Judgment & Order dtd. 1.6.95 passed in Crl. Appeal No. 85 of 1983 by the Hon'ble Gauhati High Court, and therefore, he is entitled to full pay and allowances from the date of his original suspension order dtd. 19.1.78 till the date of his reinstatement on 16.10.95.

D) For that assuming but not admitting that the applicant is not entitled to any pay and allowances and other consequential benefits, he would be entitled to subsistence allowance from the date of original suspension i.e. dated 19.1.78 till the final order of dismissal dt. 17.2.97.

AIR 1997-SC-1998.

E) For that the action of the Respondents by not paying the subsistence allowance, payment of back wages etc. as per rules, established the intention of biasness and vindictive attitude of the authority concerned, and therefore there is malafide in the instant case.

F) For that the previous statements made by the witnesses ~~examined~~ examined before the CBI is not admissible for the purpose of corroboration and therefore the whole departmental proceedings are liable to be vitiated.

G) For that due to the setting aside of the dismissal order dtd. 9.1.84 the original suspension order dt. 19.1.78 was in existence till 16.10.95 as the said suspension order was not modified or revoked as per rules, by the authority concerned.

H) For that the penalty imposed is not on the basis of the evidence adduced during the inquiry and therefore the dismissal order 11.09.96 is violative of Art.311(2) of the constitution of India.

I) For that the applicant was not given reasonable opportunity to inspect the original Bills (1) AB No.13 DWPF dtd. 27.10.77 and (2) AB No. 16 LXL dtd. 7.11.77 which are the most vital documents relating to Article of Charge No.1

G.C. Dehingia

of the charge sheet and therefore, the actions of the Respondents are arbitrary based on malafide, the whole disciplinary proceedings are liable to be set aside.

J) For that the Respondent No.1 Senior Assistant Chief Cashier of N.F.Railway, Maligaon, has no jurisdiction/ authority to act as a disciplinary authority under the Rules.

Sch.II of Rule 4 and Sub Rule (2) of Rule 7 of the R.S. (Discipline and Appeal) Rules 1968.

k) For that the Respondent No.2 the Chief Cashier (J.A.) N.F.Railway, Maligaon, who acted as a disciplinary authority in re-instanting and suspending the applicant heard the appeal as appellate authority and therefore the appellate order dtd. Nil, is liable to be set aside.

*Sr. Ass't (W.M.)
Sr. Cashier*

6. Details of remedies exhausted :

The applicant has preferred appeal before the appellate authority (Respondent No.2) and declares that he has availed of all the remedies available to him under the relevant service rules etc.

*Reinst. 27/1/94
P.M.A. 27/1/94
(b) P. 23*

7. Matters not previously filed or pending with any other court :

The applicant file O.A. 26/94 before the Hon'ble Tribunal. The said application was disposed of on 29.8.96. The Hon'ble Tribunal set aside the dismissal order dtd. 9.1.84 directed that the applicant be reinstated in the service and that the Respondents shall give all the consequential benefits including backwages w.e.f. 9.1.84 as per rules and further enquiry is to be made again the authority with postpone the payment till conclusion of the departmental enquiry and thereafter it shall be dealt with consistently.

3. Relief sought :

In view of the facts mentioned in para 6 above the applicant prays for following reliefs after calling for the entire records and on perusal thereof:

- 1) To be re-instated in the service as Senior Cashier, by setting aside the dismissal order dated 11.9.96 and the appellate order dated Nil.
- 2) A direction to the Respondent Nos. 1 & 2 respectively for payment of backwages from January, 1978 till the date of re-instatement (16.10.95) Rs. 4,56,337.00 only (Approx.) from Feb 1979 to May, 1995 as shown in pay & allowances from June, 1995 to 16.10.95 within the period as fixed by this Hon'ble Tribunal.
- 3) For a direction to pay the subsistence allowance from 9-1-1984 to 16-10-95 within the period as fixed by this Hon'ble Tribunal.
- 4) To direct the Respondents No. 1 & 2 respectively for payment of other consequential reliefs as admissible under the Rules, within specified time.
- 5) If re-instated in the service as Senior Cashier in the N.F.Railway a direction for fixing the Seniority in the service- with promotion and scale of pay in the service.
- 6) Any other relief that may be deemed fit and proper in the facts and circumstances of the case.

Legal Provision relied upon :

1. Rules 5(3), 5(4), 5(5)(C) and Rule 11 of the Railway Servants (Discipline and Appeal) Rule 1968.
2. Fundamental Rule 54 & 54 (1).

3. (a) 1987 (2) SLJ 312 (CAT)

A.F. Singh - Vs - Union of India & Ors.

(b) 1983 Lab I.C. 1846

State of Gujarat - Vs - B.C. Dwivedi.

(c) 1982- Lab I.C. 594 Delhi

Mohanlal - Vs - Union of India & Ors.

(d) AIR 1984 - SC - 380

Dattatrya - Vs - Director of Agriculture.

(e) AIR 1995 - SC - 1364

Dy. Director of Collegiate Education - Vs -

S. Nagoor Meera.

(f) AIR 1997 SC- 1998 (July issue)

Board of Management SVT Education - Vs - R. Bhat.

(g) Art.311(2) of the Constitution of India.

(h) Judgment dtd. 1.6.95 passed in Crl.Appeal No.85/83.

(i) Order dtd. 29.8.95 passed in O.A. 26/84.

(j) AIR 1994-SC-1074.

M D Ecil - Vs - B. Karunakar.

9. That, it may be mentioned that earlier the appellant filed appeal being No.O.A. 198 of 1997 before the Hon'ble CAT, which was disposed of on 30/11/99 with a direction to furnish the documents precisely the bills, i.e. (i) Bill No. 13 DWRF dt. 28.10.97 and (ii) Bill No. 16 LXL dt. 7.11.77 (on the basis of which the conviction was inflicted on the appellant), which were mentioned in the serial No. 9 and 10 of the list of documents. These two vital documents were neither shown to the appellant nor given any abstract thereof by the Rly./Respondents.

(The copy of the Judgment & Order dt. 30.11.99

passed in O.A. 198/97 is annexed herewith as

Annexure - 17).

10. That, the appellant has filed a fresh appeal on or about 13/1/2000 addressed to the Chief Accounts Officer (Cash & Pay) (Appellate authority) N.F.Rly., Maligaon, Guwahati-11, where in the petitioner/appellant has taken the point of non-supply of the above two bills on the basis of which the conviction was made in para 9 of the appeal memo.

(A copy of the appeal memo dt. 13/1/2000 is annexed as Annexure - A8).

11. That, inspite of the Specific direction of the Hon'ble C.A.T. vide order dt. 30/11/99 the appellate authority refused to supply the above two bills, i.e. bills No. (i) 13 DWRF dt. 27.10.77 and (ii) Bill No. 16 LXL dt. 7.11.77 and has not shown the above two bills till date to the appellant. On the other hand, the learned Appellate Authority, without furnishing or showing or giving abstract or photo copy of the above two bills has disposed of the Appeal in a mechanical and arbitrary manner by its order dt. 30.3.2000 (received on 5/4/2000) bearing No. CP/EP/GCD/CAT/GHY and dismissed the appeal and found guilty of " defaulting recouping the amount of shortage of Rs. 38,151.94 ".

(A copy of the Judgment/Order dt. 30/3/2000 is annexed as Annexure - A9).

12. That, non-supply of the vital documents i.e. the aforesaid two bills amounting to Rs. 38,151.94 has greatly prejudiced the appellant and in absence of the above two vital document the prosecution story falls through and any conviction given to the Appellant in absence of the above two documents is absolutely illegal and without any basis and is liable to set aside.

13. That, the appellant has already attained the date of Superannuation during the pendency of the appeal/litigation and therefore, he is entitled to get the back wages and other financial benefits including increments- pensionary benefits, P.F. and other financial benefits and the Hon'ble Court be pleased to grant him all the financial and other benefits. He also prays for adequate compensation.

14. That, the Appellant craves the indulgence of the Hon'ble Court to produce and rely upon any official documents at the time of Hearing.

15. The application is directly filed.

16. Particulars of Bank/Postal Order filed in the respect of the application fee :

Postal Order No. 26 503816 dtd. 6.11.2000
for Rs.50/- (Rupees fifty only) in favour of the
Registrar, Central Administrative Tribunal,
Guwahati Branch.

VERIFICATION

I, Shri Ganesh Chandra Dehingia, son of Late Kuladhar Dehingia, aged about 60 years, working now as Cultivator (Previously Senior Cashier, N.F.Railway Dibrugarh, Assa) resident of Pathalibam Dehingia Gaon, Police Station Moran in the District of Dibrugarh, Assam, do hereby verify the contents of paragraphs a, b, d, e, f, g, h, i, j, k, l, m, n, o, p, q, r, s, t, u, v, w, x, y, z ^{10/11/12/13/14} are true to my personal knowledge, and paragraphs l, 2, 3, c, g, s, u, 5 believe to be true on legal advice and that I have not suppressed any material facts.

Date : 7th Nov. 2000

Place: Guwahati.

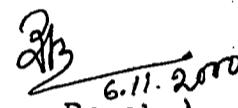
Ganesh Ch. Dehingia
Signature of the Applicant.

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- 19.A -

C E R T I F I C A T E

Certified that the grounds taken in this
appeal are good grounds and I undertake to support
the same.


(Niran Borah)

Advocate.

Standard form-1.

Standard Form of Order Of Suspension(Rule 6(1) of the RS(D & A) Rule 1968.

NO:CP/EP/GCD.

(Name of the Railway Administration) N.F.Railway place
of issue Maligaon dated:

ORDER

Whereas a disciplinary proceeding against

Sri G.C. Lechinga, Sr Cashier
(Name & Designation of the Railway Servant)
is contemplated/pending

Now, therefore, the undersigned(the authority competent to place the Railway servant under suspension in terms of Schedule I, II & III appended to RS(D&A) Rules, 1968/ an authority mentioned in provision to Rule 3(1) of the RS(D&A) Rules 1968) in exercise of the powers conferred by Rule 4 Provision to Rule 5(1) of RS(D&A) Rules, 1968 hereby places the said Sri

.....G.C. Lechinga.....under suspension with effect from ..69.....1978.

It is further ordered that during the period this order shall remain in force, the said Sri.....G.C. Lechinga..... shall not leave the Head Quarters without obtaining the previous permission of the competent authority.

Signature :

G.P. 700000
19.1.78
Designation of the Suspending
Authority Chief Cashier
W.P. Railway, Maligaon

Copy to Sri.....G.C. Lechinga.....Pay & Cash, Maligaon
(Name & Designation of the Suspended Railway Servant).

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Sh
Advocate

संग्रहीत नं. 42 परिवर्तन
कार्यक्रम
Date fixed for notifying
the requisite number of
stamps and tolls.

प्रतिवेदित तिथि
Date of delivery of the
requisite stamps and
tolls.

दिनांक, जबकि यह कॉपी
प्रतिवेदित तिथि
Date on which the copy
was ready for delivery.

प्रतिवेदित कॉपी को
दिलाया गया तिथि
Date of making over the
copy to the applicant.

15-6-95

15-6-95

15-6-95

Anx - A2
15-6-95

IN THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

CRIMINAL APPEAL NO.85 OF 1993 (1983)

Shri Ganesh Chandra Dihingia

Appellant.

- Versus -

D.S.P.E., Shillong (CBI)

Respondent

P R E S E N T.

THE HON'BLE SMTI JUSTICE M. SHARMA.

or the Appellant

1- Mr. A.K.Bhattacharyya,
Mr. K.Agarwal, Advocate

or the respondent

1- Shri D.K.Hazarika, Sr.Advocate

Date of hearing

1-

Date of Judgment

1- 1-6-95

JUDGMENT & ORDER.

This Appeal has been preferred by the appellant against
the judgment and order passed by the Special Judge, Assam,
Guwahati on 13.7.83 in Special Case No.11 of 1978.

The prosecution case in brief is that the accused
appellant was posted as Senior Cashier in pay beat No.10
of Dibrugarh Pay Office of N.F.Railway. The appellant received a total sum of Rs. 1,20,911 '91 paise against 20 bills from Railway
for payment of various employees in the month of October and
November in 1977. He made payment of Rs. 81,620 '36 out of the
total amount against 3 bills, by 26.11.77, and remaining
balance of Rs. 39,091 '55 along with Rs. 37 '60 being the value of
138 Revenue stamps of 20 paise each, total leftover amount
being Rs. 39,129 '15 which supposed to be with him.

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Advocate

The



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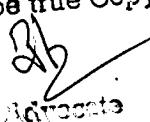
2.

The appellant was imputed with allegation of misappropriation of said remaining amount of Rs. 38,151 '94 as during physical verification of his cash balance on 23.5.80 a sum of Rs. 977 '21 found as against Rs. 39,129 '15 paise and charge was framed against him under Section 409 I.P.C. and Sec. 5(2) read with Section 5(1)(c) of the prevention of Corruption Act, 1947.

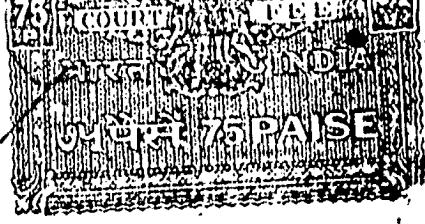
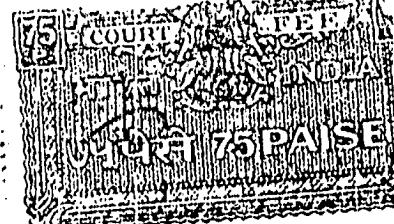
In this appeal appellant has challenged the sanction order as not valid sanction order under the law. Further grounds of challenge are that - (a) appellant was not entrusted with the property in question in capacity of being a Public servant; (b) that appellant dishonestly or fraudulently misappropriated or otherwise for his own, used the said property.

On the point of sanction, I reappreciated the materials on record, P.W. 2, 54 and 55 and the document Ext. P/59. The prosecution obtained sanction from the Principal Adviser and Chief Accounts Officer (P.W. 54), N.F.Railway U/s 6(1)(c) of the Act. Admitted position was that the P.W. 54 was competent to give sanction order. Evidence of P.W. 2 and P.W. 55 are categorical and corroborated each other. It was disclosed that the sanctioning authority examined the case discussed the matter, that all the documents of the case were produced before P.W. 54 and the same were examined personally, that P.W. 54 himself dictated the sanction order, that the facts mentioned therein are correct as per the record examined by him. I found the sanction order was a speaking order containing all facts pertaining to the alleged offence. The submission of Mr. Agarwalla, learned counsel for the appellant, that the sanctioning authority did not apply its mind and did not give any ground of his satisfaction before granting the purported sanction, is not sustainable as I, as discussed above, hold that the evidence of the witnesses are

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Advocate

clear



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clear and categorical. I find no material to take a different view taken by the trial court. There is no dispute that sanction is not an idle formality or an crimonious exercise but a solemn and sacrogant act which affords protection to Government servant against the frivolous prosecution. On the materials on record, the concerned authority after careful examination granted sanction to prosecute the appellant. Moreover the submission of the learned counsel for the appellant that as offence under I.P.C. and P.C. Act are on different footings the sanction U/s 6 of P.C. Act cannot suffice the purpose of a sanction required to be given for prosecuting the accused U/s 409 I.P.C. , is misconceived and devoid of any force or substance. Perusal of Ext. P/59 clearly shows that both the offence under I.P.C. and P.C. have been covered and separate sanction for separate offences under Separate Act are not required when the offence U/s 409 I.P.C. have been read with the said sections of the Act. For all practical purposes the offence U/s 5(1)(c) of P.C. Act and Section 409 of IPC are one and the same, under the provision of Sec. 26 of General Clauses Act, it becomes incumbent on the prosecution Agency to prosecute the Public Servant under the General Law or the Special law, joint trial U/s 409 I.P.C. and Section 5(1)(c) is legal. If prosecution decides to do so, it will be proper to do so. In the same light separate sanction for prosecution on two heads of the sections of two different states are not the intention of the legislature. In that view of the matter I uphold the finding of the trial court.

Advocate The next point regarding entrustment, the materials on record are the evidences of P.W. (1) Shri D.K.Chatterjee, P.W. 2 Shri G.P.Verma, P.W. 52 Shri K.R.Kundu and the documentary evidence are Ext. P/S. 6, 7, 8, 9, 10, 12 to 33. The three prosecution witnesses in their depositions stated that the cashiers are the custodians of the cash received.

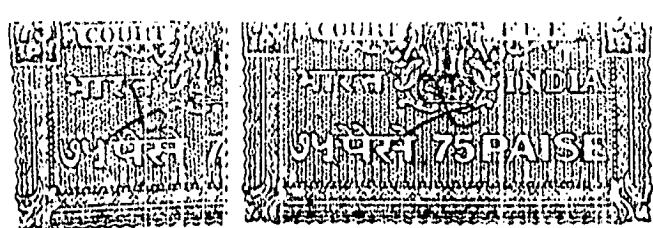
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received by them and it is their duty to make the disbursement as per the bills and return the bills, both paid or unpaid, along with the unpaid cash, if any, to the Divisional Cashier or the Assistant Divisional Cashier. That they are also required to submit a statement of asset and liabilities to the above authorities showing their position of payments etc.

These witnesses stated that the accused-appellant Dihingia received Rs. 1,20,711 '91 paise concerning 20 bills from P.W. 1 Assistant Divisional Cashier during the period between 3.10.77 to 17.12.77. All the amounts were duly entered by the accused appellant in his own hand in his cash book (Ext. P/9, P/12, P/13). The receipt of the aforesaid bills and amounts have not been disputed by the accused, but the facts has been clearly admitted by him in his statement U/s 313 Cr.P.C. The entrustment of Rs. 1,20,711 '91 paise to the accused was established by those documents. The entrustment of the amount to the accused appellant has been proved beyond reasonable doubt in his capacity as a Public Servant. Mr. Agarwala, learned counsel for the appellant has made an attempt to show that from the evidence it was clear that either the Divisional Cashier or the Assistant Divisional Cashier is the drawing and disbursing officer and therefore the appellant can not be said to have been entrusted with the money in question; that appellant was simply a pay clerk, whose duty was to pay the amounts to the persons concerned as directed by the Assistant Divisional Cashier. This argument does hold good as in his statement recorded U/s 313 Cr.P.C. in question No.

he admitted this entrustment. Evidence of P.W. 1 is categorical and each of his statement was proved and corroborated with documentary evidence which were exhibited in the trial. From

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Advocate
the stand of defence in the trial, it is evident that, the appellant was entrusted with the money, but as he had to take leave due to his indisposition he left the remaining amount in the Ironsafe allotted for that purpose in his room, namely.



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namely beat No.10 Chamber, and when he joined after recovery money was not found there and the Ironsafe was in a broken condition, purpose of which was to prove that money has been taken away by breaking the Iron safe. On the above reason I hold that the amount of Rs. 1,20,711 '91 was entrusted to the appellant as a Public Servant for payment to the concerned persons.

The main point for consideration is whether the allegation of misappropriation of remaining Rs. 38,151 '94 has been established beyond reasonable doubt.

The finding of the trial court was that prosecution had been able to establish the non payment of Rs. 24,117 '88. But on the other hand trial court found that prosecution had not led any specific evidence to establish the individual non payment of the bills and as the defence did not dispute the non-payment of the bills and therefore nonpayment became apparent from the bills themselves. I find sufficient force in the submission of Mr. Agarwal that prosecution can not bring home the offence merely on the non submission of the point in the trial. Prosecution has to establish its own case beyond reasonable doubt on the basis of the material on record; that trial court's view that this lacuna on the part of the prosecution can not dislodge the foundation of the prosecution case. The trial court apparently on the evidence of P.Ws 1, 2, 3, 9, 14, 41 and 55 and the on the documentary evidences namely Ext. P/13, 11(4), 13(8), 14, 15, 15(1)(2), 25, 29(1)(2), 47, 48, 49(2), 50, 50(4)(5)(6)(7), (8) (9), 51, 51(8) (9)(10)(11) (12) (13) (14), 52, 58. Those materials as seen whether sufficient to prove the shortage and non disbursement alleged by which of Rs. 38,151 '94, the persons were alleged to have not been paid their dues were not examined. Other infirmity of the prosecution in this regard was that, as to who were the persons, who were not paid their dues out of the aforesaid bills

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Advocate

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bills, namely, Ext. 14 to 33. Moreover prosecution's stand seemed to be weakened as it failed to pin point which were the bills out of those 20 bills, in respect of which the shortage of Rs. 38,151 '94 took place.

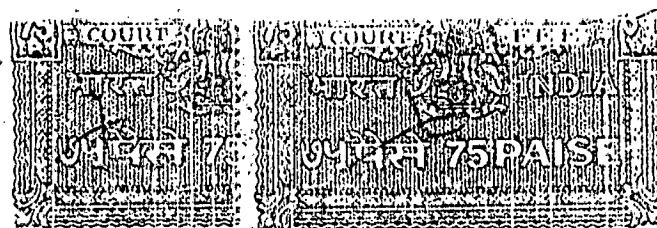
Regarding the misappropriation of Rs. 38,151.91 the material witness was Shri N.K. Barua P.W. 41. His evidence on record was that appellant on 18.11.77 handed over him two bills- Ext. P/15 and P/29 for Rs. 13,014.83 and Rs. 11,103/- respectively and he made payment of those bills on the same day. The practice followed in this respect has been disclosed in accused's answer to his question No.15 recorded U/s 313 Cr.P.C.

As emerges from the materials on record, it is to be considered whether allegation of misappropriation against the accused appellant has been based on suspicion only. In a criminal case prosecution has to bring home the prosecution case beyond reasonable doubt and mere suspicion and inferences can not be drawn by court to the prejudice of the accused.

Mr. Agarwala, learned counsel for the appellant has submitted that as the prosecution failed to establish the misappropriation of Rs. 38,151 '94 by not producing any specific evidence the trial court only on suspicion convicted and sentenced the accused without evidence.

Records shows that after the entrustment of the amount for payment as discussed above, the petitioner paid some amount to the persons and took leave on 21.11.77, leaving an amount of Rs. 38,151.94 as non disbursed. It is also evidence on record that the appellant when took sick leave he did not hand over the cash to P.W. 41 N.K.Barua. In his statement recorded under Section 313 Cr.P.C. (Answer to question No.44) appellant admitted that his safe and strong room was kept locked by him. The stand of the accused ^{copy been taken in the answer to question No.77 of the} statement

Qh
Advocate



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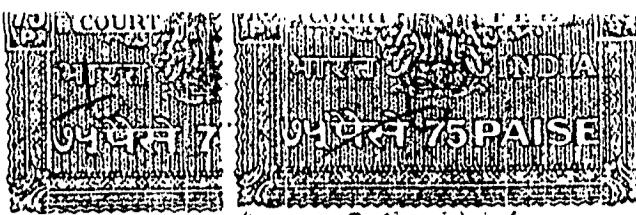
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statement U/s 313 Cr.P.C. wherein his case was that on his joining date on 16.1.78, Assistant Divisional Cashier asked him to hand over charge to K.K.Das P.W. 10 when he came to Dibrugarh on the same day and prepared papers ready for charge report, he went to open the lock of his strong room and found the lock defective, opened the embedded safe inside the strong room and the same was found defective and keys could not be fitted properly; that when could open after sometime, Rs. 40,000/- kept by him therein found missing. The correctness of this explanation of the accused has to be examined from the materials on record. The accused informed K.K.Das (P.W. 10) this fact and immediately rushed to Tinsukia and met P.W. 1 and reported the matter who advised him to go to Maligaon to report. P.W. 1 also accompanies the accused to Maligaon. On this point whether trial courts finding can be accepted as he disbelief this statement holding that the matter was not reported to P.W. 10 nor this fact was disclosed in Ext. P/48. Trial court arrived to its finding further taking into consideration of the memorandum of Inspection prepared on the basis of the Dibrugarh Pay Office on 26.5.83. The said local Inspection report indicated that the trial court did not find any evidence of tampering with the locks during local Inspection on 26.5.83, which was apparently made after a long lapse of time of alleged occurrence of temparing with the locks. prosecution Apparently/did not contest this plea to prove beyond reasonable doubt that the defence explanation was false. This statement recorded U/s 313 Cr.P.C. has been corroborated by the oral evidence of P.W. 1 and fact of informing the aforesaid facts were not disputed or disapproved by prosecution rather evidence of P.W. 41 N.K.Borua supported the statement (Question No. 62) which categorically stated that present (at the time of giving evidence) locks of the Strong room of Beat No. 10 and the main door were changed as it was

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of Beat No. 10 and the main door were changed as it was

Advocate



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was found out of order. Apparently on 26.5.83 when the Inspection was made was replaced by new lock. On perusal of the Memorandum of local Inspection dated 26.5.83 it was seen that - "A gap of (22 c.m. from top frame to wooden batten of the inner door and 16 cm from top frame to brick wall end) at the top of the outer door remains when door is kept locked. It may be possible for a small boy or a very slim man to enter through that gap with some difficulty." (underline supplied).

Further- "The only key of the safe is small in size in comparison to the bigger size of the safe." On this materials on record two views are possible regarding misappropriation of the amount in question and benefit of it shall go in favour of the accused appellant.

Regarding plea of sickness the finding of the court below was that accused took false plea of sickness to avoid handing over of charge to P.W. 10 K.K.Das as he had already mis-appropriated the amount by that time. This finding was vehemently challenged by the learned counsel for the appellant who has submitted that this finding was based not on evidence on record and but based on suspicion and presumption only. In this regard evidence of P.W. 1, 2 and P.W. 10 and Ext. P/43, P/44 are relevant. P.W. 1's evidence was that he received the letter for leave Ext. P/43 from P.W. 2 on 21.12.77 and letter Ext. P/44 from P.W. 2 at Maligaon. The admitted fact was that on 21.12.77, P.W. 1 was at Tinsukia and the letter was issued at Maligaon and there is no evidence on record that when the P.W. 1 received the letter dated 21.12.77 he directed the accused appellant to hand over charge to P.W. 10. Letter Ext. P/44 is dated 23.12.77 and it was handed over to P.W. 1 at Maligaon. Further admitted fact was that accused was on

Conceded to be true by the Court
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Advocate

leave . . .



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leave from 23.12.77 to 15.1.78 which shows that no instruction was issued to the accused to hand over charge between 23.12.77 to 15.1.78 as he was on sick leave. Accused admitted that P.W. 1 asked him to hand over charge on 16.1.78. When he went to report his joining at Tinsukia. Therefore no fault can be imputed to the accused for not handing over charge from 17.12.77 to 22.12.77. This can not be a strong circumstances to disbelieve the defence story.

Further the strong suspicion about truthfulness of the accused lying sick from 21.11.77 and this can not be taken as a circumstances to show that plea of sickness was false. This suspicion was imputed to the accused on the basis that the accused disbursed payment of bills- Ext. P/28 and P/63 on 26.11.77 and 10.12.77 respectively i.e. during his sick leave. But materials on record shows that (Ext. P/28 exhibited by P.W. 1 established that) this exhibit along with receipt shows that there is an endorsement as "passed to sadar Munsiff receipt No.15/14 dt. 26.11.77". Apparently the endorsement does not show who has made the endorsement and no signature put below the endorsement. On the other hand receipt No.14/15 dated 16.11.77 shows that Office of the Sadar Munsiff received the payment from workshop Account Officer. Accused was not the workshop Account Officer. This shows that the accused did not make the payment on the bill Ext. P/28 on 26.11.77. Hence no question of strong suspicion regarding sickness of the accused can be maintained. The relevant materials on record in this regard are evidence of P.Ws. 7, 8, 23 and 52, and Ext. P/58 and P/68. Evidence of P.W. 7 and 8 are belied by the evidence of P.Ws. 23 and 52 who corroborated the

Certified to be true Copdefence stand that on those dates in question accused was not present in Ledo and made no payment; this fact also finds corroboration in the statement of accused U/s 313 Cr.P.C.

BB
Advocate

Accordingly....

Accordingly this circumstances cannot be taken into consideration against the accused/appellant.

From the defence stand the fact of theft as emerged, can not be brushed aside as the Inspection Report dated 26.5.85 and the statement recorded U/s 313 Cr.P.C. has made can be taken out as a case for reasonable probability in favour of the defence than the prosecution evidence. Preponderance of evidence may not be determined by the number of witnesses but by the greater weight of all evidences which do not necessarily mean the greater number of witnesses.

In the above discussion which was emerged from the facts that, the accused-appellant was as a public servant was entrusted with an account of money to make payment but after disbursing some amount, the appellant took sick leave and was absent for some period. Some amount (according to the accused, about Rs. 40,000/- and according to Prosecution Rs. 38,000/- and odd) left undisbursed which was left by the accused in the Safe of strong room of his Beat No.10. He locked the Safe with the money. When he joined his duty after the sick leave he found the lock tampered and the amount he left was missing from the Safe. Inspection Report dated 26.5.83 gave detailed description of the condition of the Strong room which opined about the probability of entering small boy or their person through the defective "opening". Matter was immediately reported to P.W. 1 and P.W.10. This evidence have a probability about the mission of money which is of greater weight and convincing than the evidence which have been opened by the prosecution.

It is well settled principle of law that when the accused gives reasonable and probable explanation, it is for the prosecution to prove affirmatively, that the

explanation . . .

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Advocate

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explanation is false. As stated above, it is not obligatory on the part of the accused to produce evidence to prove his defence; he can do so on the oral or documentary evidence relied by the prosecution. In that case court required to probe and consider the materials relied upon by the defence instead of raising adverse against the accused. It is the court who requires to probe the standard of preponderance of possibilities in favour of the accused as prosecution can not make out its case from the weakness of the defence case. As it is found presence of petitioner on the dates alleged by prosecution was not sustainable from the evidence of P.Ws. 23 and 52 and Ext. P/28 and Ext. P/63. Further, from the evidence adduced by the prosecution whether from the conduct of the appellant strong circumstances that accused was avoiding inspection because he did not have the requisite money can be drawn to prove his intention of misappropriation. In this regard except evidence of P.W. 14 Inspector Cashier Shri T.N. Biswas, prosecution attempted to prove that a strong circumstances was found against the accused as he was avoiding inspection of his cash from 18.11.77 to 20.11.77 by absenting himself, because he did not have requisite cash in his hand. Except oral evidence P.W. 14 no other evidence on record available which can be said to be lead by the prosecution. This witness only came to verify the accounts. But evidence of P.W. 39 Shri R.K. Roy and documentary evidence, namely, Ext. 83 shows that the accused was present in the office and made payment to P.W. 39 Shri R.K. Roy vide Ext. P/83. In my view from the evidence of P.W. 4 regarding strong circumstances imputing intention of misappropriation is not sustainable and can not be

As discussed above, the accused had been able to prove that explanation given by him was both probable



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probable and reasonable judged by the standard of preponderance of probability. In *Rabindra Kumar Dey vs State of Orissa*, 43 (1977) C.L.T.I. (Sc), the Apex court held that the Evidence Act does not contemplate that the accused should prove his case with the same strictness and rigour as the prosecution is required to prove a criminal charge. It is sufficient if the accused is able to prove his case by the standard of preponderance of possibilities as envisaged U/s 5 of the Evidence Act, as a result of which he succeeds not because he proves his point case to the ~~fact~~ but because probability of the version given by him throws doubt on the prosecution case.

Therefore prosecution can not be said to have established the case beyond reasonable doubt. That the mode of proof, by standard of benefit of doubt, is not applicable to the accused, where he is called upon to prove his case or to prove the exceptions of I.P.C. which he seeks to rely. That is sufficient for the defence to give a ~~comparable~~ version which ~~comparables~~ in probability with the prosecution version, for that would be sufficient, to cast suspicion on the prosecution case entailing its rejection by the court.

From the above discussion, the finding regarding the misappropriation of Govt. money has to be considered.

In, ATR 1992 SC 1490 (*Somnath vs State of Rajasthan*)

The Apex Court held that -

"There can be no doubt that before a public servant can be convicted of an offence U/s 5(1)(c), or under Section 409, the property which is said to have been misappropriated must be entrusted to him. The word 'in any manner,' in the context, are significant. The section does not provide that the entrustment of the property should be by some one or the amount received must be the property of the person on whose behalf it is received. As long as the accused is given possession of property for a specific purpose or to deal with it in a particular manner, the ownership being in some person, other than the accused, he can,....

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Advocate



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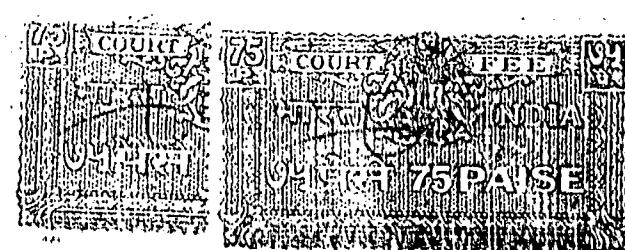
can be said to be entrusted that property to be applied in accordance with the terms of entrustment and for the benefit of the owner. The expression entrusted in Section 409 is used in a wide sense and includes all cases in which property is voluntarily handed over for a specific purpose and dishonestly disposed of contrary to the terms on which possession has been handed over. It may be that a person, the property is handed over may be an agent of the person to whom it is entrusted, in which case, the agent comes into possession of it on behalf of his principal, fraudulently mis-appropriate the property. He is none the less guilty of crime to collect money on behalf of another is entrusted with it. A person authorise to collect money when the amounts are paid to him, and through the person paying may no longer have the propriety interest none-the less the person on whose behalf it was collected becomes the owner as soon as the amount is handed over to the person, so authorise to collect on his behalf."

"The full definition of the same U/s 5(1)(c) contains expressly a proposition as to a state of mind. The definition states that the act, i.e. 'misappropriation, conversion, or allowing any other person to do must have been done dishonestly or fraudulently. Every ingredient of the offence, is stated in the definition itself. If the mental element is proved, to have been absent in any given case, the crime, as defined above, is not committed, looked at from another aspect, the offence having been fully defined, nothing amounts to that crime, which does not satisfy that definition. It would indeed be anomalous to hold that while in the case of misappropriation and conversion, the section requires that it must be done either dishonestly, or fraudulently a person though morally innocent of blame could be held vicariously liable for an assistants crime without there being a dishonest or fraudulent mind."

Certified to be true Copy (Chatterjee-vs- State of Bihar, AIR 1959 Patna 311.

3b
Advocate

It is

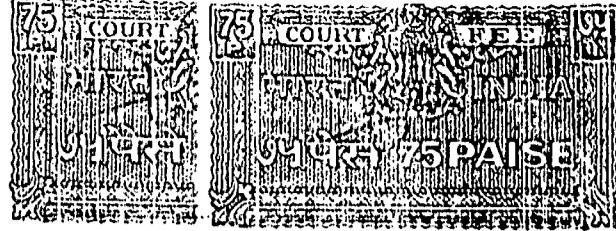


"It is not necessary, in every case to prove in what precise manner the accused has dealt with/ appropriated the goods of his master. The question is one of intention and not a matter of direct proof, but giving a false account of what he has done with the goods received by him may be treated as a strong circumstance against the accused. In the case of servant charged with misappropriation of goods of the master, the element of Criminal offence of Mis-appropriation will be established if the petitioner proves that the servant received the goods, that he was under the duty to account to his master and had not done so. If the failure to account due to an accidental loss, then the facts being within the servant's knowledge, it is for him to explain the loss. If these facts are within his knowledge then he has to prove them. Of course Proprietor ~~xxx~~ has to establish a prima-facie case in the first instance. It is not enough to establish facts which give rise to a suspicion, then by reason of Sec.106 Evidence Act, to throw onus on him to prove his innocence. To establish Criminal breach of trust, the Proprietor is not obliged to precise mode of misappropriation of the property entrusted to the accused. The principal ingredients of the offence being dishonest misappropriate entrustment of the property and failure, in breach of an obligation, to account for property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation. Conviction of a person for the offence of criminal breach of trust may not, in all cases, be founded merely on his failure to account for the property entrusted to him, even when a duty is imposed on him, but where he is unable to account or renders an explanation for his failure to account which is untrue, an inference of misappropriation with dissent may readily be made. (Jaikrishna Das Monohardas Deoni vs- State of Bombay, AIR 1960 SC. 889.".

Mr. D.K.Hazarika, learned Special Public Prosecutor has relied his submission pointing the statements of ~~accused~~ recorded U/s 313 Cr.P.C. supporting the impugned

judgment

Advocate



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judgment. Mr. Hazarika has urged that the provisions in Sec. 313 Cr.P.C. intend to secure to the accused an opportunity to explain the evidence against him, and therefore, to benefit the accused and not to operate as to his detriment. It is further submitted that the principle is that before the demaging points in the prosecution evidence are used against the accused for determining his guilt, his pointed attention should be drawn to them one by one in order to afford him opportunity of giving explanation; that from his statement recorded under section 313 Cr.P.C. the allegation of misappropriation has been proved, that explanation regarding theft is afterthought which other materials on record accused the circumstances proved otherwise. That both oral and documentary evidence and the strong circumstances has established the prosecution case beyond reasonable doubt. From my discussions, I constrained to hold that the explanation given u/s 313 Cr.P.C. are sufficient to raise doubt about the intention of misappropriation, as other related requirements also, such as, use of the money for his own use could not be established. Investigation also could not establish that the misappropriated amount was used in his construction of house or in any other way for his personal gain. The evidence appearing against him regarding misappropriation has been explained by the accused. The amount alleged to be misappropriated found missing and the lock was found tampered. The materials on record also corroborates the situations and position of the strong room where possibility of theft can not be ruled out. In that view of the matter, the submission of Mr. Hazarika that owing to the admission of the guilt as disclosed in the statement u/s 313 Cr.P.C. the accused can be convicted on his own plea. Allegation of misappropriation has been denied by the accused in his statement.

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Advocate

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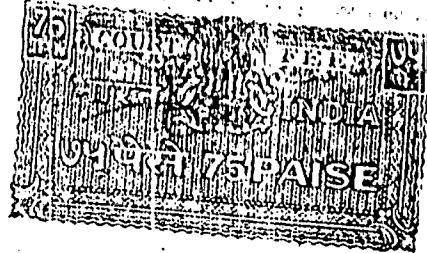
his statement with a cogent explanation. A case in this nature has to be seen in the totality and it is not safe to presume something and lead the consideration in that line without giving an eye to the other aspect of the total circumstances.

Considering the totality of the materials on record, I constrained to hold that prosecution failed to bring home the charge U/s 409 I.P.C. and Section 5(1)(c) read with Section 5(2) P.C. Act.

His omission to non deposit of remaining unlihersed amount to the authority concerned can not be imputed as intentional omission as an omission not only should be nonaction to be intentional, it should be illegal. As casual inadvertance of duty may lead to loss of property, for that, appropriate alternative action is available against a person to the authority. Money was entrusted to the accused, but his act has neither resulted in wrongful gain to him nor has he acted dishonestly, as from the evidence on record it is established that he can not be convicted for criminal breach of trust. Negligence on the part of accused cannot be ruled out, as he must have been caution about keeping the remaining amount of money in the safe, when it was shown that the in safe/the strong room was not safe for keeping money like that. But negligence on the part of a person in the performance of his duties would not warrant a conclusion of his guilty mind.

From the above discussion even the statement of some witnesses are taken at their face value, they do not satisfy the ingredients of Section 409 I.P.C. and Sec.5(2) read with Section 5(1)(c) . Prosecution could not bring home the offence of misappropriation beyond reasonable doubt. From the evidence on record it can not be concluded certified to be true by the strong circumstances proves the offence of misappropriation.

Advocate



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misappropriation as evidences only levelled allegations in general terms.

In view the reasons discussed above, I acquit the accused on benefit of doubt U/s 409 I.P.C. and Section 5(2) read with Section 5(1)(c), P.C. Act.

In the result the appeal is allowed.

Shri M. Shrivastava,
Judge,

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[Signature]
Advocate

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157675 S
Superintendent (Copying)
GAURAVI, NEW DELHI
Accordance U/S 70 Act. 1 of 2000
17/6/98

N. F. RAILWAY.

Office of the
FA & Chief Accounts Officer,
N. F. Railway : Maligaon,
Gauhati - 781 011.

Memorandum No. CP/GCD/Shortage/Pt. I. Dated, the 9th Jan. /84.

WHEREAS Shri Ganesh Ch. Dehingia, Senior Cashier (under suspension) has been convicted of criminal charges under Section 5(2) R/W Section 5(1) of the Prevention of Corruption Act and Section 409 of the I.P.C. and sentenced to undergo R.I. for a term of one year and to pay fine of Rs.30,000/- (Rupees thirty thousand), in default to R.I. for a further term of 20 months for the first offence and R.I. for a term of one year and fine of Rs.10,000/- (Rupees ten thousand), in default to R.I. for a further term of 10 months, for the second offence by the Hon'ble Special Judge, Assam, Gauhati in the criminal case instituted against the said Shri Ganesh Ch. Dehingia in special case No.11 of 1978.

AND WHEREAS it is considered that the conduct of the said Shri Ganesh Ch. Dehingia which has led to this conviction is of grave misconduct so as to render his further retention in the public service undesirable.

AND WHEREAS an opportunity was given to Shri Ganesh Ch. Dehingia to make representation on the proposed penalty of dismissal vide memorandum No. CP/GCD/Shortage/Pt. I dated 9th Dec./83 to which Shri Ganesh Ch. Dehingia has not submitted any representation.

2. NOW, THEREFORE, in exercise of the powers conferred by Rule 14(1) of the Railway Servants (Discipline and Appeal) Rules, 1968, the undersigned hereby dismisses the said Shri Ganesh Ch. Dehingia from service w.e.f. 9.1.84

3. The receipt of this memorandum should be acknowledged.

C. L. Chadda
9/1/84

(C. L. Chadda)
FA & Chief Accounts Officer,
N. F. Railway : Maligaon,
Gauhati - 781 011.

Shri Ganesh Ch. Dehingia,
Railway Quarter No. 51/F,
Siring Gaon Colony,
Dibrugarh,
Dist.: Dibrugarh.

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SB

Advocate

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39 - 15
Appeal

Annexure A4

23.8.91
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27/4

To

The General Manager,
N.E. Railway, Maligaon,
Guwahati - 781 011.

Submitted
on 23/8/91

Dated the 23rd August, 1991.

Ganesh Chandra Dehingia

In the matter of :

An appeal under the provisions of
Railway Servants (Discipline &

Appeal) Rules, 1968, against the
Dismissal Order dated 9th January.

1984 passed by Shri C.L. Chadda,
P.A. & Chief Accounts Officer,
N.E. Railway, Maligaon, Guwahati-
781 011 vide Memorandum No. CP/GD/

Shortage/Pt.I dated 9.1.1984

dismissing the appellant with effect
from 9.1.84.

Annexure - IV

- AND -

In the matter of :

Shri Ganesh Chandra Dehingia,
Son of Shri Kuladhar Dehingia.

Present Address -

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Advocate

Railway...

- 2 -

Railway Quarter No. 51/F

Chiring Gaon Railway Colony,

P.O. C.R. Building,

Dibrugarh, Assam.

Formerly working as Senior Cashier,

N.F. Railway, Dibrugarh.

----- Appellant.

The appellant begs to state as follows :-

→ (1) That the ^{applicant} is a citizen of India and his permanent residence is at Pathalibam Dehingia village, under ~~Mixxxxx~~ Moran Police Station of Dibrugarh District. He is now about $5\frac{1}{2}$ years old, having one minor child and his wife completely depended on him. He has no other source of livelihood except cultivation.

(2) That the ^{applicant} appellant, while working as Senior Cashier in Pay Beat No. 10 of Dibrugarh Pay office of N.F. Railway, on 16.1.1978, found that there was a shortage of huge amount of money in his cash box, and he immediately reported the matter in writing to his immediate Superior - the Assistant Divisional Cashier at Tinsukia, who

directed.....

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S.
Advocate

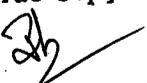
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Bengal

applicant
directed the appellant to report the matter to the Chief Cashier N.F. Railway at Maligaon. Thereafter, the ^{he} appellant reported the matter on 18.1.78 to the Chief Cashier, Maligaon. The Chief Cashier then got the Cash and accounts of the appellant inspected and found a shortage of Rs. 38,165¹⁵ paise. The ^{applicant} appellant was further directed to write a letter (Ext.P/52) as dictated by his superiors.

^{applicant}
(3) That the appellant was under the impression that a departmental enquiry would be made in this regard, but ultimately ^{he} found that the cash was handed over to the C.B.I. for investigation for the reason best known to the authorities concerned.

(4) That based on the First Information Report, an enquiry was made by the C.B.I. and ultimately the accused was sent to the Special Judge, Assam Guwahati to stand his trial under Section 5(2) r/o Section 5(1)(c) of the Prevention of Corruption Act and also under Section 409 of the Indian Penal Code. The learned Special Judge framed the charges under the said Sections against the ^{appellant} accused ^{petitioner}. The appellant pleaded not guilty to the said charges.

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Advocate

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G. S. Ganguli
G. S. Ganguli

- 4 -

(5.) That the prosecution has examined as many as 55 witnesses to prove the allegations and the accused ^{applicant} has examined four witnesses in his defence. A local inspection was made at the pay beat No. 10 of the Dibrugarh Pay Office of the N.F. Rly. and the memorandum of Inspection was also submitted.

(6.) That after hearing the arguments on both the sides, the learned Special Judge, by his Judgment dt. 13.6.83 passed in Special Case No 11 of 1978 ^{accused} ^{applicant} convicted the ^{accused} ^{applicant} and sentenced him to undergo R.I. for one year and to pay a fine of Rs.30,000/- (Rupees Thirty thousand) only in default to R.I. for twenty months under Section 5(2) r/w Section 5(1)(c) of the Prevention of Corruption Act, 1947 and R.I. for one year and a fine of Rs.10,000/- (Rupees ten thousand) only in default to R.I. for a further term of ten months. The substantive sentences of imprisonment shall run concurrently.

(7.) That being aggrieved and dissatisfied with the judgment dated 13.6.1983 passed in the ^{Special} ^{accused} above case No. 11/1978 your ^{accused} ^{applicant} has filed an appeal in the Guwahati High Court which was registered and numbered as Criminal Appeal No. 85 of 1983. The said appeal was admitted for final hearing.....

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S. B.
Advocate

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hearing and the applicant was encharged on bail vide order dated 19.9.1983 passed in Criminal Misc Case No. 392 of 1983 in connection with Criminal Appeal No. 85/83. A xerox copy of the said order dated 19.8.83 is annexed herewith as Annexure - I.

8. That the applicant begs to say that the said Criminal Appeal No. 85/1983 is not yet disposed of.

9. That based on the judgment and conviction dated 13.6.1983 passed in Special Case No. 11/1978, Shri C.L. Chadda, F.A. & Chief Accounts Officer, (Respondent No. 1) N.F. Railway, Maligaon, Guwahati-11 vide his Memorandum No. CP/GCD/Shortage/Pt-I dated 9th December, 1983 has asked the applicant to make representation on the proposed penalty of dismissal of the appellant from service within 7 days from the date of receipt of the memorandum. The said memorandum is annexed herewith as Annexure - II.

10. That in response to the said memorandum (Annexure-II) the applicant has sent his reply

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Advocate

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9.1.84 - dismissed
9.12.83
Short Com NPA
15.12.83 Dated
of Pt-I

dated 15.12.1983 by registered A/D post. In the
dais reply amongst other the applicant has
stated that the subsistence allowance given to
the applicant was stopped from June, 1983. That the
memorandum dated 9.12.83 (Annexure- II) be kept
in abeyance till final disposal of the Criminal
Appeal. The applicant's reply dated 15.12.83 is
annexed herewith as Annexure - III.

11. That without considering the reply of
the applicant dated 15.12.83 (Annexure - II),
Shri C.L. Chadda, F.A. & Chief Accounts Officer,
(Respondent No. 1) N.F. Railway, Maligaon, Guwahati-
781011 vide his memorandum No. CP/GCD/Shortage/Pt-I
dated 9th January, 1984 has dismissed the applicant
from his service with effect from 9.1.1984. A
copy of the order dated 9.1.84 is annexed herewith
as Annexure - IV.

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Sb
Advocate

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-7-

- G R O U N D S -

A) For that the disciplinary authority has not considered the ~~pa~~ reply of the applicant dated 15.12.83 filed by the him in response to the show cause notice (Annexure- II) and therefore the order of dismissal dated 9.1.84 (Annexure- IV) is liable to be set aside.

B) For that the applicant was not given the reasonable opportunity to show cause and therefore natural justice is violated in the instant case.

C) For that the disciplinary authority has passed the dismissal order dated 9.1.84 (Annexure-IV) by violating the provisions/ decisions laid down under Rule 14 of the Railway Servants (Discipline & Appeal) Rules, 1968 and therefore the impugned dismissal order is liable to be set aside.

For that the disciplinary authority has committed an error in not granting subsistence allowance while the Cr. Appeal No. 85/83 (G.C. Dehingia, vs. State of Assam) is pending in the Hon'ble Gauhati High Court for final disposal. The denial of subsistence allowance is in complete violation of the decision of the Supreme Court (AIR 1983 SC 803 State of Maharashtra vs. Chandrabham).

*R 14
B. min. 1968
of P.D.
1968*

*R 14
B. min. 1968
of P.D.
1968*

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Advocate*

- 52 -

E) For that the order of dismissal is too harsh and severe in the instant case in view of the decisions of the Hon'ble Supreme Court as well as the decisions of the Hon'ble Gauhati High Court.

F) For that the applicant having no adverse remark in his service career in the past the impugned order of dismissal is too harsh. The applicant is suffering ~~the~~ heavily for these long 10 years.

G) For that the applicant having served the Railway administration for long 25 years without any adverse remark the impugned order of dismissal is liable to be set aside.

H) For that the applicant having no source of livelihood to maintain his family and the old parents, the Hon'ble Tribunal consider ~~the~~ the case of the applicant on compassionate grounds.

I) For that it is a case of doubt ~~jeopardy~~.

J) For that ~~the~~ no departmental proceedings were initiated by the disciplinary authority to impose the penalty of dismissal from service and no charges were framed against the applicant.

K) For that in any view of the matter it is a fit case for this application.

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Advocate

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- 58 -
Applications

13. That immediately after receipt of dismissal order under memorandum No. CP/GCD/Shortage/Pt-I dated 9th January, 1984 the appellant could not file this appeal within the period of limitation on the following grounds : -

(a) that an appeal against the judgment and conviction dated 13th June, 1983 passed by the Special Judge, Assam, Guwahati in Special Case No. 11/1978 was filed in the Hon'ble Guwahati High Court which was registered as Cr. Appeal No. 85/1983. The said Cr. Appeal was admitted and stay was granted on 19.8.1983 by enlarging the appellant on bail.

(b) that due to poverty and extreme difficulties in the household affairs your appellant could not submit the appeal against the dismissal order dated 9.1.1984.

(c) that the appellant was under the impression that the said Cr. Appeal No. 85/1983 would be heard and disposed of expeditiously expecting that he would get acquittal in the Crl. case.

contd...

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Advocate

G. D. Ganguli
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- 10 -

(d) That your appellant was suffering from illness and mental agony due to the punishment meted out to him since 1983, when his subsistence allowance were stopped. The old parents of the petitioner were to be looked after along with his minor members of the family. The appellant had to face many difficulties for the period from 1983 to 1988.

(e) That in the year 1988 the appellant came to Guwahati and enquired about the Crl. Appeal No. 85/1983 filed in the Gauhati High Court. He came to know that the paper book of the appeal was not ready and therefore the appeal could not be heard.

(f) That again in the year 1989 the appellant ^{about} had enquired the appeal and came to know that the paper book of the appeal was not prepared.

(g) That in the year 1990 the appellant has approached his engaged counsel to know about the case. The engaged counsel has informed the appellant about the order dated 19.3.90 which read as follows :-

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Advocate

- 11 -

SubRitingOrder of the Court O R D E R14.3.90

Shri S.N. Chetia, learned counsel for the appellant and B.B. Narzary, learned Public Prosecutor submits that in view of the voluminous evidence in the case, it shall not be possible to argue the appeal without paper book.

Accordingly let the Paper Book prepare expeditiously whereafter this appeal shall be listed for hearing.

Sd/- J.N. Srivastava.
Judge.

(h) That your appellant begs to say that thereafter several orders were passed in the Cr. Appeal for preparation of the Paper Book of the appeal. But till date the appeal is not heard.

(i) That your appellant was suffering from malignant Stricture of Pxtorus from 14.8.90 to 30.11.90 and thereafter to substantiate his illness, Medical Certificate (xeroxed) issued by the Professor of Medicine, Tropical and Infectious Diseases, Assam Medical College & Hospital, Dibrugarh is enclosed herewith as (Annexure - V).

QY
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Advocate.

Under....

Dehingia

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Under such circumstances, it is prayed that the delay in filing this appeal be condoned on compassionate and humanitarian grounds and for ends of justice, equity and fair play.

It is, therefore, prayed that the appellate authority may be pleased to -

(i) Grant subsistence allowance to the appellant with effect from June, 1983 till final disposal of the Cr. Appeal No. 85/1983 (G.C. Dehingia vs. State of Assam) which is pending in the Hon'ble Gauhati High Court for final disposal.

(ii) Allow the appeal, re-instate the appellant with all the back wages with effect from 19.1.78 by granting other benefits to be entitled by the appellant.

(iii) Allow the appellant to be heard personally accompanied by a person specified under Rule 24 of the Railway Servants

(Discipline & Appeal) Rules, 1968

(iv) Grant any other relief.
And for this your appellant as in duty bound shall ever pray.

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Advocate

~~- 57 -~~
- 13 -VERIFICATION

I, Shri Ganesh Chandra Dehingia, Son of Shri K.D. Dehingia, aged about 51 years, by profession cultivation (Ex-Sr. Cashier) N.F. Railway, Dibrugarh now residing at Railway Quarter No. 51/F Chiring Gaon, Rly. Colony, P.O. C.R. Building, Dibrugarh, Assam, do hereby say that the statements made above are true to my knowledge, information and belief.

Ganesh Chandra Dehingia
23/8/91
(Shri G.C. Dehingia)

Yours faithfully,

Ganesh Chandra Dehingia
23/8/91
(Sri Ganesh Chandra Dehingia)
Chiring gaon Rly. Colony
Railway Quarter No. 51/F
P.O. C.R. Building
District Dibrugarh, Assam.

Copy to :-
F.A. & Chief Accounts Officer
N. F. Railway, Maligaon
Gauhati - 11.

Certified to be true Copy
S. J. Advocate

Ganesh Chandra Dehingia
23/8/91

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Annex - A5

76

Original Application No. 26 of 1994

Date of decision : This the 29th day of August, 1995.

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN

THE HON'BLE SHRI G.L. SANGLYINE, MEMBER (A).

Shri Ganesh Chandra Dehingia
Son of Shri Kula Chandra Dehingia
Village - Pathalibam
P.S. Mojan
District - Dibrugarh
Assam

..... Applicant

By Advocate Mr. P.K. Musahuri

~VOIR SUS~

1. The Financial Adviser & Chief Accountant Officer,
N.F.Railway,
Maligaon
Guwahati-781011
Assam

2. The General Manager
N.F.Railway,
Maligaon
Guwahati-781011
Assam

3. The Union of India
Represented by the General Manager
N.F. Railway

..... Respondents

None present for the respondents.

ORDELL

CHAUDHARI J. (V.C.)

The U.A. is directed against the order of dismissal of the applicant from service passed by the FA & CAO, N.F. Railway dated 9.1.1984. It arises under the following circumstances :

2. The applicant was at the material time working as Senior Cashier. He was prosecuted in a criminal case and was convicted by

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Advocate



the Criminal Court under Section 5 (2) read with Section 5(1) of the Prevention of the Corruption Act and Section 409 of the I.P.C. and sentenced to suffer rigorous imprisonment and to pay fine by judgement and order dated 13.6.1983.

3. In view of the aforesaid order of conviction which was passed by the learned Special Judge, Assam, Guwahati in Special Case No. 11/78, the FA & CAD passed the impugned order dated 9.1.84 dismissing the applicant from Railway service in exercise of powers conferred by Rule 14(1) of the Railway Service (Discipline and Appeal) Rules 1968. Against that order the applicant had preferred an appeal with the Department on 23.8.91. From the written statement it appears that that appeal was not entertained on the ground of delay.

4. Against the order of conviction passed by the learned Special Judge the applicant preferred Criminal Appeal No. 65/83 in the Hon'ble Guwahati High Court. By Judgment and Order dated 1.6.95 the appeal has been allowed and the applicant is acquitted of the offences for which he was convicted by the Trial Court. The applicant has thereafter filed the instant O.A. on 4.2.1994 praying that in view of his acquittal the impugned order of dismissal dated 9.1.1984 be set aside and respondents be directed to reinstate him in service with all benefits including back wages with effect from 9.1.1984.

5. As can be seen from the written statement no full fledged departmental enquiry was held against the applicant but he was prosecuted in the Criminal Court. However the order of dismissal was passed under Rule 14(1) of Railway (Discipline & Appeal) Rules 1968 mentioned above.

6. In view of the fact that the applicant has been acquitted of the criminal charges for which the order of dismissal was passed he is ordinarily required to be reinstated. However since the judgement of the High Court in the Criminal Appeal shows that the applicant has been acquitted on benefit of doubt and the acquittal is not a clean acquittal we think that although the impugned order may be set aside

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S. J. Advocate

Sub

on the ground that the very basis thereof does not survive it would be in fitness of things to leave it open to the respondents to draw disciplinary proceeding for the alleged misconduct if so advised or close the chapter.

In the result following order is passed

1. The impugned order of dismissal dated 9.1.1984 is hereby set aside.
2. The respondents are directed to reinstate the applicant forthwith.
3. There will be no bar for the respondents to draw up disciplinary enquiry proceedings against the applicant if so advised and to pass such interim orders as may be called for pending the enquiry.

In the event of such proceedings being commenced respondents will be free to take steps in accordance with the law and the rules including suspension of the applicant if so necessary. The respondents shall take the decision whether to draw up a disciplinary proceeding or not and close the chapter, within a period of two months from the date of receipt of the copy of this order. If the respondents decide not to draw up disciplinary proceedings the respondents shall give all the consequential benefits including back wages to the applicant with effect from 9.1.1984 till the date of reinstatement of the applicant as per the relevant financial rules.

However in the event of the respondents deciding to draw up disciplinary proceedings the question of giving consequential benefits and back wages shall stand postponed till the conclusion of the disciplinary enquiry and thereafter it shall be dealt with consistently with the order at the enquiry. If the disciplinary enquiry



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✓ Advocate

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is commenced it shall be completed within a period of six months.

If it is not completed within that time liberty to the applicant to seek directions from the Tribunal in respect of back wages and other consequential reliefs without prejudice to the enquiry.

The O.A. accordingly allowed. No order as to costs.

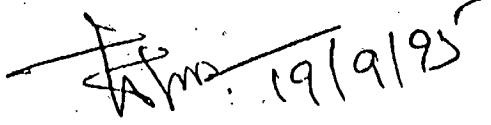


Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

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মাণিক প্রতিক্রিয়া


COURT OFFICER

Central Administrative Tribunal
বেঙ্গলুৰু ৪১ নং/১৩৬ অধিকারণ

Guwahati-১, Assam
পুরাণ মান্দি, পুরাণ-৫


Certified to be true Copy
Advocate

From:-

Shri Ganesh Ch. Dehingia,
Ex-Sr. Cashier, N.F.Rly/DBRIF
Chiring gaon Rly. Colony
Block No.51/F.
P.O.C.R.Building /Dibrugarh.

To

The Financial Adviser and
Chief Accounts officer,
N.F.Railway, Maligaon,
Guwahati- 781011.

through the Chief Cashier
N.F.Rly, Maligaon, and
Divisional Cashier,
N.F.Railway/Tinsukia.

Dated the 20th June 1995.

Sub:- Re-ingatment in service.

Ref:- Your memorandum No. OP/G3D/Shortage/Pt I dated
21.6.95

Sir,

Most respectfully may I draw your kind attention
to the following few lines for consideration and necessary
action.

1. That By Judgement and order dated 13.7.83
passed in special case No. 11 of 1978 by
Special Judge, Assam, Guwahati, I was convicted
under section 5(3) read with section 5(1)(a)
of the prevention of corruption Act, 1947
and section 409 I.P.C. and sentenced to
undergo rigorous imprisonment for 1 (one)
year and to pay a fine of Rs.30,000.00, in
default to further undergo R.I. for 20 months
for the first offence and to undergo R.I. for
1(one) year and to pay fine of Rs.10,000.00,
in default to undergo further R.I. for
10 months.

*Received with copy
of the Judgement 17 copy*
20/6/95
D.C.T.S.K.
R. Poddar
Divisional Cashier
N.F.Railway/Tinsukia
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Advocate

P-2.

2. That on the basis of the aforesaid Judgement and order dated 13.7.83, I was dismissed from service under Rule 14(1) of the Railway servants (Discipline and Appeal) Rules, 1963 with effect from 9.1.84 which was communicated to me vide Memorandum No. CP/GCD/Shortage/Pt I dated 9.1.84.
3. That being aggrieved by the Judgement and order dated 13.7.84 passed by the Special Judge, Assam, I preferred an Appeal before the Hon'ble Gauhati High Court. The aforesaid appeal was registered and numbered as Criminal Appeal No. 85 of 1983- Sri Ganesh Ch. Dehingia Vs- DSPE Shillong (CBI). The aforesaid criminal appeal was finally heard and by Judgement and order dated 1.6.95 passed in Criminal Appeal No. 85 of 1983, the Hon'ble Gauhati High Court allowed my appeal and acquitted me of the charges under the aforesaid sections of Law. A Xerox copy of the certified copy of Judgement and order dated 1.6.95 enclosed herewith for perusal and ready reference. I am retaining the certificate copy of the Judgement and the same can be produced, if it is required.
4. That in view of the order of acquittal dated 1.6.95 passed in my favour, I respectfully submit that the Dismissal order dated 9.1.84 may be revoked and I may be reinstated in service from the date of my dismissal i.e. 9.1.84. I may also be paid all my back wages, allowances, bonus, etc. and all other service

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 Advocate

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P-3.

benifits to which I am entitled to. On reinstatement in service I may be given the necessary promotions etc to which I am entitled, if I would have not dismissed from service from the date anterior to on which my juniors were given promotion. My seniority in the service may also be restored. While I was in service, I was placed under suspension from January 1978 and I was paid 50% subsistence allowance only from January 1978 till date of dismissal i.e. 9.1.84.

I, therefore request your honour to pay me the balance of my salary allowances etc. from January 1978 to till the date of dismissal (9.1.84) also.

I remain Sir ,

Enclos:-

(1). One copy of the
dismissal order
dated 9.1.84 -2 pages.

Yours faithfully,

Attested
(2). Xerox copy of the
Judgement order
dated 1.6.95
in 17 pages.

Ganesh Ch. Dehingia
(Ganesh Ch. Dehingia)

Certified to be true
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.198 of 1997

Date of decision: This the 30th day of November 1999

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

Shri Ganesh Chandra Dehingia,
 Resident of Village- Pathalibam,
 P.O. Pathalibam, P.S. Moran,
 Dibrugarh, Assam.

.....Applicant

By Advocates Mr A.C. Buragohain,
 Mr D. Borah, Mr S.N. Chetia,
 Mr P.K. Mushahari and Mr J. Handique.

- versus -

1. The Senior Assistant Chief Cashier,
 N.F. Railway, Maligaon, Guwahati.
2. The Chief Cashier (J.A.),
 N.F. Railway, Maligaon, Guwahati.
3. The Financial Adviser and
 Chief Accounts Officer,
 N.F. Railway, Maligaon, Guwahati.
4. The General Manager,
 N.F. Railway, Maligaon, Guwahati.
5. The Union of India, represented by the
 General Manager,
 N.F. Railway, Maligaon, Guwahati.Respondents

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

.....

O R D E R

BARUAH.J. (V.C.)

In this O.A. the applicant has challenged the Annexure A/15 order dated 11.9.1996 by which the applicant was dismissed from service, by the Disciplinary Authority and also the Annexure A 19 Appellate Order by which the dismissal order of the Disciplinary Authority was confirmed. The applicant also seeks certain directions to the respondents.



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 Advocate

2. The grievance of the applicant is that during an enquiry he applied for certain documents from the authority, but those documents were not supplied to him. As a result, according to the applicant, he was prejudiced. However, this plea was not taken as a ground before the Appellate Authority. After the Annexure A/15 order of dismissal was issued, the applicant preferred an appeal which was dismissed. Thereafter, the applicant approached this Tribunal by filing O.A.No.26 of 1994. This Tribunal by order dated 29.8.1995 disposed of the said O.A. with direction to the respondents, namely the Disciplinary Authority, to reconsider the case of the applicant. Accordingly the respondents reconsidered the case and found the applicant guilty of charges and the order of dismissal was considered to be fit. Thereafter, the applicant filed an appeal before the Appellate Authority. However, in the memo of appeal the ground for non-supply of documents was not taken by the applicant. Only now, in this O.A. the applicant has raised the point.

3. We have heard Mr A.C. Buragohain, learned counsel for the applicant and Mr J.L. Sarkar, learned Railway Counsel.

4. Normally, this Tribunal will not consider the points which have not been taken before the Appellate Authority. However, for the ends of justice, we feel that the applicant may file yet another appeal raising this point before the the Appellate Authority within a period of one month from the date of receipt of this order. If such appeal is filed within the time prescribed we direct the Appellate Authority to consider the same after scrutiny of all the papers and pass a reasoned order as

J.S. early.....

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early as possible, at any rate within a period of two months from the date of receipt of the appeal.

5. The application is accordingly disposed of. No order as to costs.

SD/- VICE-CHAIRMAN
SD/- MEMBER (A)

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प्रमाणित प्रतिलिपि

Myne 27/12/69
Deputy Registrar (D)
Central Administrative Tribunal
Gangeshwar Banerji

AK 27/12/69

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AK
Advocate

To,
 The Dy. Chief Accounts Officer (Cash & Pay)
 (Appellate Authority)
 N.F. Railway / Maligaon
 Guwahati - 11.

Dated the 13th day of January / 2000,

Shri Ganesh Ch. Dehingia
 S/O Late Kuladhar Dehingia
 Ex - Senior Cashier
 N.F. Railway / Dibrugarh
 Chiring gaon Rly Colony
 Block No. 51 , F.
 P.O. - C.R. Building
 Dibrugarh .

..... Appellant .

Memorandum of Appeal

against the order of Dismissal

No. CP/EP/GCD/DAR dated 11.9.96

passed by Shri R.C. Roy

Sr. Asstt , Chief Cashier N.F. Railway
 Maligaon , Disciplinary Authority

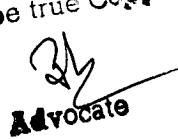
- A N D -

vide order dated 30.11.99 on
 the original Application No. 198
 of 1997 of Hon'ble Central
 Administrative Tribunal
 Guwahati Bench .

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 Advocate

With due respect, I beg to prefer this Appeal against the order of dismissal No. CP/EP/GCD/DAR dated 11.9.96 and recovery of Rs.38,151.94 only from the applicant

1. That the appellant relies on the statements made in the show cause dated 25.6.96 submitted to the Disciplinary Authority against the memorandum of notice No. CP/EP/GCD/DAR dated 6.6.96.
2. The appellant begs to state that the Judgement of the Hon'ble Guwahati High Court dated 1.6.95 passed in Cr. Appeal No. 25 of 1982 still holds good as there is no appeal against the acquittal order and therefore the appellant is entitled to all the service and financial benefits.
3. That the order dated 29.8.95 passed in the O.A. No. 26 of 1994 by the Hon'ble Central Administrative Tribunal, Guwahati bench, very specifically stated that the order of dismissal dated 9.1.84 passed by the F.A. & Chief Accounts Officer U.P. Railway, Maligaon is set aside and therefore the appellant is entitled to all the relief according to law.

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 Advocate

4. That the Disciplinary Authority has not considered the show cause of the appellant as the same is not manifested in the dismissal order .

5. That the Disciplinary Authority has overlooked the report of the Enquiry officer with regards to certain charges which are not proved and which are partially proved is the findings in the disciplinary proceedings and therefore the dismissal order is liable to be vitiated .

6. That the Disciplinary Authority has taken into account the statements recorded by the CBI without asking them as witnesses in this enquiry proceedings .

7. That the Enquiry officer was requested to include the CBI officers as witnesses in the enquiry proceedings, but the enquiry officer turned down the request and the CBI officer was not examined by the Enquiry officer nor examined by the Disciplinary authority.

8. That the Enquiry officer only puts some specific questions to the witnesses in the enquiry proceeding, but no documents were produced before the witnesses for their examination to enable them to furnish answers .

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Advocate

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9. That two original bills No. 13 DWRF dated 27.10.77 and 16 L XL dated 7.11.77 which are very vital and important documents and the same were mentioned at serial No. 9 & 10 of the list of documents by the Disciplinary Authority / Enquiry officer has not supplied to me for inspection which Cause prejudice to me .

10. That the Disciplinary Authority has no Jurisdiction to sit over the Judgement and orders of the superior Authority / Court .

11. That the subject matter before the Disciplinary authority and Enquiry Officer is barred by limitation as the proceedings are not completed in accordance with the direction of the Central Administrative Tribunal and proceeded without following the Procedure said down by law and the Railway Servant (D.A) rules 1968 .

12. The Disciplinary authority is biased with vindictive mind . The appellant suffered mentally , physically and economically . The appellant will cite facts of the case reference and decisions of the court at the time of hearing of the Appeal .

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13. That there was violation of fundamental rules and the R.S. (D & A) rules 1968 regarding payment of subsistence allowances . The appellant will produce the facts and figures at the time of hearing of this appeal .

14. That the order of dismissal is based on hypothetical approach and the appellant is not solely responsible for the cause .

15. That according to schedule II of the rule 4 and sub-rule (2) of rule 7 of the Railway servants (D : A) rules 1968 the senior Assistant Chief Cashier has no jurisdiction / authority to act as a disciplinary authority for major penalty of dismissal, removal and compulsory retirement . Thereby the Senior Asstt. Chief Cashier sits over the rules of the R.S. (D & A) rules 1968 and misused his power . Therefore the disciplinary proceedings against me is liable to be set aside and further therefore the memorandum of dismissal No. CP/EP/CCD/DAR dated 11.9.96 issued by the Senior Asstt. Chief Cashier N.F.Rly/Maligaon is also liable to be set aside .

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By
Advocate

16. That the punishment imposed on the appellant is disproportionate to the alleged offence, which is not proved beyond reasonable doubts in absence of the examination of the original bills as aforesaid.

The question of misappropriation of the alleged sum of Rs. 38,151.94 is also not proved, as the prosecution could not establish the misappropriation in as much as the case is that the petitioner/appellant has handed over the bills to Shri N.K. Boruch Jr. Cashier, who has not complaint against the appellant. It was only a matter of adjustment is between the cashiers which is a prevalent practice of the Railway. The appellant ought not to have punished with the sternest of all the punishments i.e. dismissal from service. Justice would have been done if some lesser punishment would have been inflicted. The appellant had a smooth service career and served the Railway without any blemish and to his utmost sincerity.

17. That the appellant may be allowed to add and submit any other grounds at the time of hearing of the appeal.

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Advocate

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18. The appellant may be allowed for personal appearance before the appellate authority at the time of hearing.

Under such circumstances it is prayed that the disciplinary proceedings and the impuned dismissal order dated 11.9.96 be set aside and the appellant be allowed to re-instate in service with all the consequent service benefits including financial benefits etc.

Yours faithfully

Ganesh Ch. Dehengia
(Ganesh Ch. Dehengia)
Ex-Sr. Cestion/ ERT
Chirang gaon Rly Colony
Block No. 51, F
P.O. -C.R. Building
Nibrugarh, Assam.

Annexards

1. Dismissal order dated 11.9.96.
2. Judgement and order Dtd. 1.6.95 passed in Cr. Appeal No. 85 1983.
3. Order dated 29.3.95 passed in O.A. NO. 26/94
4. Order dated 30.11.99 passed in O.A. 198/1997.

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Advocate

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By S. S. Parashar with AID

Office of the
M.C. Chief Accounts Officer (Cash & Pay) ^{or M}
N.F. Railway : Maligaon.

NO. CP/EP/GCD/CAT/GHY

Dated 30.3.2000.

To

Shri Ganesh Chandra Dehingia,
Chirang Gaon Rly Colony,
P. O. C. R. Building,
Dibrugarh - 3
(ASSAM).

Sub:- Reasoned Order of the Appellate Authority.

Ref:- i) Hon'ble CAT/GHY's Order dated 30.11.99
in O.A.NO.198/97.

ii) Your appeal dated 13.1.2000 to the Appellate Authority.

With reference to above the Reasoned Order passed by the Appellate Authority, i.e., M.C. Chief Accounts Officer (Cash & Pay) /N.F. Railway, Maligaon, on your appeal dated 13.1.2000 as per directive of the Hon'ble CAT/Guwahati's Order dated 30.11.99 in the O.A.NO.198/97 is enclosed herewith for your information.

Receipt of the above order may please be acknowledged.

DA:- as above in
10 Sheets.

R.W. X 3/2000
Sr. Ass'tt. Chief Cashier (HQ),

for M.C. Chief A/c Officer (Cash & Pay)
N.F. Railway : Maligaon.

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S. S. Parashar
Advocate

S P E A K I N G O R D E R

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Reg:- Appeal dated 13.1.2000 filed by
Shri Ganesh Chandra Dehingia, Ex-
Sr. Cashier/N.F.Railway/Dibrugarh
Town before the Appellate Authority
in pursuance of Hon'ble CAT/Guwahati
Bench order dated 30.11.99 in O.A.
No. 198/97 before Hon'ble CAT/Guwahati
Bench.

1. I find that, this is the second appeal filed by Shri Ganesh Chandra Dehingia, Ex-Sr. Cashier/N.F. Railway, Dibrugarh Town against the dismissal order of the Disciplinary Authority, submitted to the Appellate Authority. His previous Appeal dated 16.10.1996 (1st one) was already disposed of by the Appellate Authority. Though the decisions on all the points raised by him in his previous Memorandum of appeal dated 16.10.96 were communicated to him under letter No. CP/EP/GCD/DAR/Pt. II/96 dated 14/17.2.97, he has come up before the Hon'ble Central Administrative Tribunal, Guwahati Bench with O.A. No. 198/97 against the decisions/orders of the Appellate Authority, agitating inter-alia the grievance that, during enquiry the applicant ^{applied} for certain documents from the Authority, but those documents were not supplied to him and as a result, according to the applicant, he was prejudiced.

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Advocate

The Hon'ble Tribunal vide their orders dated 30.11.99 in O.A. No. 198/97 observed that in the Memorandum of appeal filed by the applicant before the Appellate Authority, the grievance regarding non-supply of certain documents was not taken by the applicant as a ground before the Appellate Authority and that, normally, the Tribunal would not consider the points which have not been taken

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before the Appellate Authority. The Hon'ble Tribunal, however, felt that, the applicant may file yet another appeal raising this point before the Appellate Authority within a period of one month from the date of receipt of the order. The Hon'ble Tribunal also directed the Appellate Authority to consider such appeal, if filed, by the applicant within the time prescribed and to pass a reasoned order on ^{after} ~~same~~ scrutiny of all papers.

In obedience to the Hon'ble CAT/Guwahati Bench' direction vide their order dated 30.11.99 in O.A.No.198/1997, I have gone through each of the points now raised by Shri Ganesh Chandra Dehingia in his appeal dated 13.1.2000 wherein he has raised issues not only about non-supply of the alleged documents but in total he has enlarged the appeal with total 18 points. On going through his case records I find that, the issues raised against items 1 to 7 and 10 to 14 of the present appeal in question were already raised by him through his previous appeal dated 16.10.96 submitted before the Appellate Authority (Chief Cashier/JA now re-designated as Deputy Chief Accounts Officer(Cash & Pay) and the decisions of the Appellate Authority on all these points were already communicated to him adequately and elaborately under letter NO.CP/EP/GCD/DAR Pt.II/96 dated 14/17.2.1997, after due consideration and giving a personal hearing to the Appellant too, against which orders, the Appellant filed no representations/ appeal before the next Higher Appellate/Revisional Authority. Hence the inclusion of the same issues again before the

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Advocate

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Appellate Authority is not proper and valid.

However, keeping in view the natural justice aspect, I have gone through all the points/allegations raised by him in his appeal dated 13.1.2000, including those points on which decision/orders of the Appellate Authority was already communicated to him against his earlier representation to the Appellate Authority, and, my observations/decisions on all those points are given hereunder, item-wise.

2.

As desired by the Appellant vide item 17 and 18 of his present appeal dated 13.1.2000, I also granted him a personal hearing on 2.3.2000 and afforded Shri Delingia opportunity to make any other submissions which he might like to add as relevant to the matter.

3.

Vide order dated 30.11.99 in O.A. No. 198/97 the Hon'ble Tribunal has specifically ordered the Appellate Authority to examine and consider the case concerning the main grievance of Shri Delingia regarding non-supply of certain documents only before the Inquiry which were not incorporated as a ground by Shri Delingia in his previous appeal before the Appellate Authority dated 16.10.96.

Through item 9 of his present appeal and replies given by him to the queries put to him during

personal hearing granted to him on 2.3.2000, the Appellant has clarified that, these alleged documents which were not specifically raised by the Appellant in his previous appeal dated 16.10.96

before the Appellate Authority and has

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Advocate

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now been observed by the Hon'ble Tribunal in their order dated 30.11.99 in O.A.NO.198/97, are the two original Bill Nos. 13 DWPF dated 27.10.77 and 16 LXL dated 7.11.77.

In order to ascertain about the truth of his allegation and cause of non-supply of documents, if any, and to ascertain how far his case was prejudiced because of non-supply of two Bills bearing A.B.Nos. 13 DWPF dated 27.10.77 and 16 LXL dated 7.11.77, I have delved in to the matter, and from records available I find that, the contents of these two Bills were already in his knowledge. These 2(two) bills were personally handed over by Shri Dehingia to Shri N.K. Baruah, Ex-Sr.Cashier/Dibrugarh Town for payment to the payees mentioned in the bills without providing Shri Baruah with the necessary funds; (one on 18.11.77 and the other on 20.11.77 even without clearing the dues of the bill handed over in the first occasion on 18.11.77), though Shri Dehingia received required cash from the Government for making necessary payment to the payees concerned on much earlier dates, i.e. on 31.10.77 & 17.11.77 respectively. Even in course of DAR proceeding and in the personal hearing also, he did not make any assertion that, he ever received the amounts of these two bills to Shri Baruah, Ex-Sr.Cashier, Dibrugarh. It is to mention here in that the original Bills only indicate records about nature of claim, details of the amount drawn and payable in favour of a particular payee or payees by a nominated Cashier in presence of the witnessing Official(s) concerned, as well as

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Sly
Advocate

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acknowledgement(s) of the Payee(s) in support of receipt of payment, Accounts enforcement towards passing of the Bills, reference to entry in the Chief Cashier's Cash Books (Payment), etc. and does not indicate about recoupment of cash of the type.

The matters as regards receipt of these two bills with required funds to AIR BARUAH from the Ray Administration and also regarding handing over of these two bills by him to Shri N.K. Baruah without providing fund to Shri Baruah on 18.11.77 & 20.11.77 are all matters of record and Shri Dohingia already accepted these. Even prior

to seizure of these two bills by CBI on 12.5.78, Shri Dohingia clearly accepted the shortage of

Rs. 38,151.94 p. in his Cash Balance as per Joint signed Memorandum dated 23.1.78 besides other records/confessions, and the above shortage was

never made good by him as per record. The Appellant

also could not produce any document by which it can be ascertained beyond reasonable doubt that,

he made good the above shortage in his Cash Balance or he ever made good the amount against the two Bills No. 5161 (total Rs. 24,117.83) to Shri N.K. Baruah.

Even in the personal hearing granted to him on 2.3.2000, Shri Dohingia stated that he already reported to the

then Chief Cashier, Maligaon to the effect that there existed a shortage of about Rs. 40,000/- in his cash as on 16.1.78. His grievance about non-supply of

these two bills with allegations of his being prejudiced by non-production of these two seized bills, during DAR enquiry stage by the Disciplinary/Inquiry

Authority, for the purpose of his inspection, verification etc. to ascertain the fact about making good the amounts of the above two bills (totalling

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Advocate

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Rs. 24,117.53), if any, are not tenable in as much as the original bills cannot exhibit that recoupment of funds for these two bills were made to Shri Baruah by Shri Dehingia, and that, he ever made good the amount to Shri Baruah. Further if, there had been any adjustment of fund, then the same would have been reflected in the Cash Book and other allied records and not through the original bills. Moreover, on scrutiny of the relevant papers/records, nowhere it has been found that the amount was made good by Shri Dehingia. Even from the letter dated 31.1.78 written by Shri N.K. Baruah, Ex. Sr. Cashier to Chief Cashier, prior to seizure of the bills by the CBI, I find that Shri Baruah himself expressed apprehension about tampering of these bills if he is asked to part with these bills. On being asked in the personal hearing about the specific point as to whether he made good the above amount to Shri Baruah subsequently also Shri Dehingia evaded to give a specific reply in a positive manner, as to whether he ever made good the same. He however, stated that, he handed over the bill No.13 DWPF dated 27.10.77 (for Rs.11,103.00) without fund to Shri Baruah on 18.11.77 for payment to the payee, as his wife was seriously ill on that particular date and that, he was in a hurry with his wife's Medical treatment on that day. The enquiry report also confirmed that, in addition to the above bill, Shri Dehingia also handed over another bill No.16 LXI dated 7.11.77 for Rs.13,014.83 to Shri N.K. Baruah, Ex. Sr. Cashier/DBRT on 20.11.77 for payment to the payees concerned without providing any fund for that bill also and also without adjusting the fund of the 1st bill handed

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Advocate

over on 18.11.77 for Rs. 11,103.00, on grounds of his self sickness. The relevant records also reveal that, Shri Dehingia attended Pay Office/Dibrugarh for some time, every day from 18.11.77 to 20.11.77, handled his Cash Box, Cash Safe & other records and also arranged payment to certain Rly staff at Ledo on 19.11.77. He was sick w.e.f. 21.11.77 as per sick report submitted on 25.11.77 and not from 20.11.77 although he indicated that, he had to hand over the 2nd bill also on 20.11.77 due to his self sickness on that day. It is a simple logic that when he had time and could attend Pay Office Dibrugarh from 18.11.77 to 20.11.77 and handled his Cash Box, Cash safe and other records and handed over two bills to Shri N.K. Baruah, Ex.Sr. Cashier/10A/DBRT on 18.11.77 and 20.11.77 without fund, he could hand over the required cash also simultaneously alongwith the Bills, since, the required cash against these two bills were already received by him on 31.10.77 and 17.11.77 respectively as per records and the same were supposed to be lying with him on the dates of their handing over by Shri Dehingia to Shri Baruah. Hence, his pleas of failure to hand over the cash to Shri Baruah on grounds of his wife's sickness on 18.11.77 and self sickness on 20.11.77 are not tenable, and, unfounded, and, this also gives room to draw an inference that, Shri Dehingia defalcated the cash against those two bills received by him from Rly Administration. There is sufficient ground to believe that, Shri Dehingia by his action of handing over those two bills to a Co-Cashier for payment without fund, made attempt to somehow manage the payments out of way, and to baffle the Administration and escape from the eye of law by putting forward his various pleas in support of his action and by alleging that his case

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Advocate

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was prejudiced by non-supplying 2(two) original Bills Nos.13 DWPF dated 27.10.77 and 16 LXL dated 7.11.77 by the Disciplinary Enquiry Authority, knowing fully well that, these two original bills were already seized by CBI Authority on 12.5.78 from the Rly Administration. In this connection from the own submissions in paras 3 and 4 of his letter dated 7.12.95 to the Chief Commissioner (JA) N.F.Rly. Maligaon, as extracted herein below, it will be quite evident that the entire matter of seizure of these 2(two) original Bills by C.B.I. were also in his knowledge and that, he completed his inspection of documents on 6.12.95. Vide his letter addressed to the Disciplinary Authority dated 16.12.95, he also intimated that he was ready to face DAR Enquiry at any stage.

Extracts of paragraphs 3 and 4 of the letter dated 7.12.95.

"Para 3 :- That the documents asked for inspection except the documents in para 7(sever) of my letter dated 5.12.95 I was neither allowed to inspect the documents nor did I was furnished with extract of the documents mentioned in para 7 of my letter dated 5.12.95. However, your goodness informed me verbally that, the documents mentioned in para 7 of my letter dated 5.12.95 are not available and accordingly you expressed your inability either to inspection or to furnish the extracts thereof".

Note:- In para 7 of his letter dated 5.12.95, the Appellant mentioned about the two original Bill Nos.13 DWPF dated 27.10.77 and 16 LXL dated 7.11.77.

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para :- That, as I have completed the inspection of documents only on 6.12.95, I am entitled to submit my written statements of Defence within ten days of completion of inspection i.e., within in 16.12.95 as per para 4 of the Memorandum of charge sheet No. CP/EP/CGD/DAR dated 20.11.95".

In view of above commitments, I find little reasoning and validity of his grievance about non-supply of any of the relevant documents before the Enquiry.

4. I also find little substance for fresh consideration of his allegation made at item 6 & 7 of his present appeal. It is quite clear that the DAR Enquiry was conducted under Railway Servants (D & A) Rules, 1968, based on the available Rly. records and witnesses and not on the statements recorded by CBI and as such his contention that, CBI officials should also have been associated in the Enquiry proceedings is not acceptable. Although, vide item 17 of the Annexure III to the Memorandum of Charges, the CBI/SPE Shillong's report No.16 dated 25.8.78 was also included in the list of documents by the disciplinary Authority, the Enquiry Officer did not take that report into account as vouch'd from the Enquiry proceedings dated 5.2.96 and Enquiry Officer already held that these documents/ witnesses were not relevant. The charges of misconduct and lack of integrity were proved beyond doubt on the basis of Rly. records only, and under the provisions of Rly Servants -(Discipline & Appeal) Rules -1968. In terms of sub-rule 15 under rule 9 of Rly Servants. (Discipline & Appeal) Rules-1968, the Enquiry Officer is authorised to refuse to take

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Advocate

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into account any of the documents, if in his opinion, the same are not relevant to the enquiry.

5. The contention raised under item 8 regarding putting some specific questions to the witnesses as well as non-production of documents before the witnesses in the Enquiry is not acceptable on the ground that the enquiry was conducted strictly in accordance with the provisions under the Rly Servants (Discipline & Appeal) Rules, 1968 and the Enquiry Officer provided all reasonable facilities/opportunities to the delinquent and the Defence Counsel for the examination and cross examination of the witnesses in the confronted enquiry, and all relevant records and evidences which in the opinion of the Enquiry Officer were relevant in respect of the charges had been produced and the charges regarding handing over of the 2 Bills to another Cashier for payment without providing him fund as well as shortage of cash to the tune of Rs.38,151.94 p. in the cash balance of Shri Dehingia while working in the Railways as a Sr. Cashier during 1977-78 were fully proved in the confronted enquiry.

The points raised at item Nos. 8 & 15 were also raised by him in the O.A. No. 193/97 filed by him before Hon'ble Tribunal and necessary replies were already submitted by the respondents through their written statement in the case on these points before the Hon'ble Tribunal.

As regards the contention made vide item 16 of his appeal dated 13.1.2000 I do not find any merit in his argument put in this item that the punishment imposed on the appellant is dis-

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Advocate

20.11.84

proportionate to the alleged offence etc. and that justice would have been done if some lesser punishment would have been inflicted on him etc. I have considered the matter thoroughly and I find that in cases of such grave misconduct and lack of integrity, specially on the part of Government Servant on whom the responsibility of dealing with Government cash was entrusted, no lesser punishment than that of dismissal from service with further direction to deposit Rs. 38,151.94 p. to the Rly. Administration, would be justified in the circumstances of the case, since shortage of cash to the tune of Rs. 38,151.94 in his cash balance was fully established in the Departmental Enquiry.

7.

Regarding the contentions of the appellant at items 2,3,4,5,10,11,12, and 14 of his appeal dated 13.1.2000 to the effect that :-

- 1) the Judgement of the Hon'ble Guwahati High Court dated 1.6.95 in Cr. Appeal No. 85 of 1983 still holds good and therefore the appellant is entitled to all the service and Financial benefits etc.,
- 2) that, by the order - dated 29.8.95 of the Hon'ble CAT/Guwahati Bench in O.A. No. 26 of 1994, the order of dismissal dated 9.1.84 was set aside ;
- 3) that the Disciplinary Authority did not consider the show cause of the applicant, etc ;
- 4) that, the Disciplinary Authority has overlooked the Enquiry Officer's Report, etc ;
- 5) that, the Disciplinary Authority set over the Judgement/order of the Superior Court/Authority, etc ;

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Advocate

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Ex. 12 - 8

- 6) that, the subject matter before the Disciplinary Authority is barred by limitation etc ;
- 7) that, the Disciplinary Authority was biased and vindictive, etc ;
- 8) that, there was violation of Fundamental Rules and the Railway Servants (D & A) Rules, 1968, etc. regarding payment of subsistence allowance etc ; and
- 9) that, the order of dismissal is based on hypothetical approach, etc ;

I find that all these allegations were already raised by the appellant in his previous appeal filed before the Appellate Authority and the observations/decisions of the Appellate Authority duly considering all his allegations were communicated to the appellant vide letter No. CP/EP/GCD/DAR/Pt. II/96 dated 14/17.2.1997 and I find no further point or cause which might warrant or call for modification/revision to these decisions which were based on records available.

Further, it is not material as to whether any appeal was filed by the CBI/Shillong or not, who were parties in that criminal appeal before the Hon'ble High Court, Guwahati. But records reveal that when the matter about the Judgement of this Hon'ble High Court was agitated by the Appellant (i.e. Shri Dholingia) before Hon'ble CAT/Guwahati Bench, vide O.A.36/94, the Hon'ble Tribunal already held that the acquittal by the Hon'ble Guwahati High Court (under order dated

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Advocate

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1.6.95 in Cr. Appeal No. 85/83) was not a clean acquittal and that, it was open to the respondents (Rly. Administration) to draw disciplinary proceedings etc. against the Appellant for the alleged mis-conduct, etc.

8. I have also gone through the records on the point of his allegations at item 5 of the present appeal. On a scrutiny of the Inquiry Report, I find that although the charges against Shri Dehingia under Article - II (regarding retention of bills beyond prescribed time limit, etc) and Article - III (regarding non-closing of Cash Book as per rule, avoiding of inspection of the accounts and Cash Balance of his Pay Beat by Inspector of Cashier and non-handing over of his charges to the Relieving Cashier, etc) were partly proved, the other charges under Article - I (regarding handing over of two bills bearing A. R. No. 12 DWPF dated 27.10.77 for Rs. 11,103/- and 16 LAL dated 7.11.77 for Rs. 13,014.83 to Shri H. K. Baruah, Ex-Sr. Cashier/DBRT for payment to the payees without fund on 18.11.77 and 20.11.77 respectively, by adopting a malafide practice, inspite of receiving cash for the said payments by Shri Dehingia from the Rly. Administration, etc) and Article - IV, regarding shortage of cash of Rs. 38,151.34 in the Cash Balance of Shri Dehingia while working as Sr. Cashier at Dibrugarh Pay Office, etc. have been fully proved during the enquiry which speak of his grave mis-conduct and lack of integrity in handling Govt. Cash, which are main ingredients of a Govt./Rly. Servant, thus inter alia violates the provisions of the

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Advocate

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Railway (Services) conduct Rules - 1966.

9. I find no force in the contention of the Appellant at item 10 of the appeal that the Disciplinary Authority had no Jurisdiction or ever sat over any of the Judgment and orders of Superior Authority/ Court, since all actions were taken promptly by the Disciplinary Authority by due observance of the relevant rules, authority etc, and also in consonance to the orders of the Hon'ble Court/Tribunal, etc.

10. The contentions of the Appellant vide para 11 of his Appeal also appears to be not based on records. It is evident from the case records that the case was dealt with by the Disciplinary Authority and Enquiry Officer within the extended time period granted by the Hon'ble Tribunal in M.P. NO.86/96 against O.A.NO.26/94 and all the requirements/ procedures laid down by Law and the Ry Servants (Discipline and Appeal) Rules, 1968 have been fully complied with.

11. As regards the allegation at item 12 of his appeal regarding biasness and vindictiveness on the part of the Disciplinary Authority, etc, I find that these points were already examined by the Appellate Authority in the earlier occasion and found to be unfounded. The Appellant, though has also been given a reasonable opportunity for making any further submission also at the time of his personal hearing granted to him on 2.3.2000, could produce no evidence or records etc. which might show that the Disciplinary Authority was bias and he acted with a vindictive mind.

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Advocate

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12. As regards the matter of payment of subsistence allowance as raised at item 13 of his appeal, I have also gone through the relevant rules quoted by him in his appeal and his oral submissions made during the personal hearing on 2.3.2000 and also the orders of the Hon'ble Tribunal dated 29.8.95 and 19.6.96 in O.A. NO.26/94 inclusive of H.P.NO. 71/96 thereto, and I find that the actions taken by the Railway Administration regarding payment of subsistence allowance are quite in consonance with Hon'ble Tribunal's orders in this regard.

In the instant case, the Appellant was reinstated to service on 16.10.95 as per Hon'ble Tribunal's order dated 29.8.95 in the O.A.NO.26/94 and was again placed under suspension w.e.f. 16.10.95 since a Departmental proceeding was initiated against him as per provision available in the said Order dated 29.8.95 of Hon'ble Tribunal. Finally, he was again dismissed from service w.e.f. 11.9.96 as a result of the findings in the Departmental Enquiry. The Hon'ble Tribunal vide their order dated 29.8.95 as referred to above inter alia held the view that, "the question of back wages, etc shall stand postponed till conclusion of the disciplinary Enquiry, and thereafter it shall be dealt with consistently with the order at the Enquiry". Since, the Appellant has faced the same penalty of dismissal as a result of the Departmental Enquiry also, no question of payment of subsistence Allowance w.e.f. 9.1.84 to 15.10.95 does arise.

13. It is also observed from the Enquiry Report that the charges inter-alia towards shortage of

Rs.38,151.94 in the Cash Balance of Shri Dholingia was fully established and he never made good the shortage amount to the Rly Administration. It is a clear case of defalcation of Govt. Rly. Cash, causing pecuniary loss to the Government exchequer which proved his serious misconduct and lack of integrity in handling Government cash and un-becoming of a Government (Rly) Servant. The Rly Administration had to withdraw an equivalent amount from Government exchequer for the second time to make payments to payees as well as to recoup the shortage in his cash balance by drawing another Pay Order on 6.2.78. Hence, it is clear that the Appellant was solely responsible for the cause of his dismissal and is to blame himself for the same and that the dismissal order was not at all based on any hypothetical approach etc as alleged at item 14 of his appeal in question.

Further, the submissions from his side before the Railway Administration on different dates, for instance on 9.1.97 in the personal hearing, etc, to the effect that if he can get the change of his appointment in Railway Service, he would recoup the financial loss of Rs.38,151.94 p.m. to the Railway Administration by any means, or by deduction from his salary, etc, are nothing but a way of avoiding the recoupment of the cash by him, though all this establishes his misconduct beyond any reasonable doubt.

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Advocate

I have also gone through his allegations at item 15 of the appeal. I find that the Senior Asstt. Ct. of Cashier who is a Senior scale Officer in this institution, has rightly acted as a disciplinary authority in this case.

as a Disciplinary Authority. The schedule of powers on establishment matters (Rly) under Item 6 and 52 also quite speak of the same. As per the schedule of powers, a senior scale Officer in the Rlys is empowered to act as appointing Authority in respect of all Group 'D' employees and in respect of Group 'C' employees upto the scale of Rs.425 - 640/- (R.S.) (revised as Rs.1400 - 2300/- under 4th Pay Commission and further revised as Rs.5000 - 8000/- under 5th Pay Commission). Prior to dismissal from Rly Service, Shri Dohingia was holding the post of a Sr. Cashier in scale Rs.425 - 640/- (R.S.) and he was appointed to that post w.e.f. 1.2.75 by an order issued by the then Chief Cashier (Sr. Scale) and the present post of Sr. Asstt. Chief Cashier (Sr. scale) is of equivalent rank to that of erstwhile Chief Cashier (Sr. Scale). Thus, the Senior Asstt. Chief Cashier is competent to act as Disciplinary Authority as well as Appointing Authority in terms of Rule 7 sub-rule 1 (C)(iii) and sub-rule (2) under Rule 7 of Rly.

(A) Servants (Discipline & Appeal) Rules, 1968, and thus is competent to impose any of the major penalties specified in Rule 6 inclusive of dismissal from Service upto the grade to which the Appellant belonged prior to his dismissal, in accordance with Rule 9 of Railway Servants (Discipline and Appeal) Rule, 1968, in respect of the Railway Employees under him.

16. In view of discussion in paragraphs 1 to 14 above, I find no merit in his appeal, and all the actions of the Railway Administration in the matter are quite legal, valid and proper. All reasonable facilities were also provided to the appellant to defend his case. Shri Dohingia has also defaulted in recouping the amount of shortage of Rs. 38,151.94

during all these period of about 5 years and this has caused pecuniary loss to the Govt. exchequer by his serious misconduct in this case.

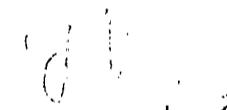
16. In fine, I am constrained to observe that, there is no valid ground in his appeal dated 13.1.2000 which might call for setting aside the order of dismissal or for reduction or modification as to the extent of punishment imposed upon him via disciplinary Authority's order No. CP/DP/GD/DAR dated 11.9.96 and to hold that, his case was prejudiced in any way.

The above reasoned order may be communicated to Shri Ganesh Chandra Debnigra (the Appellant) ex-Asst. Cashier/Peonimath immediately.

A prayer to the Hon'ble Tribunal has also been made for granting extension of the period of time for disposal of the appeal of the Appellant dated 13.1.2000.

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Advocate


Addl. Commr. of Accounts
Officer (Cash & Pay)

U.P. Railway : Muzaffarnagar

(Appellate Authority)

Dated 30.3.2000.

U.P. Railway : Muzaffarnagar

Officer (Cash & Pay)

U.P. Railway : Muzaffarnagar

Officer (Cash & Pay)

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Annexure V
Annexure-A 10

BY SPEED POST.

Office of the
Chief Cashier (JA),
N.F.Railway: Maligaon:

No. GP/EP/GCD/DAR/Pt.II/96

Dated 14.02.97.

To

17.2.97

Shri Ganesh Chandra Dehingia,
Ex. Sr. Cashier/Dibrugarh,
Cheringgaon Railway Colony,
Block No. 51 (A)
P. O. C. R. Building,
Dibrugarh (ASSAM)

Sub:-

- 1) Appeal against the Order of Dismissal vide Memorandum No. GP/EP/GCD/DAR Dated 11.9.96.
- 2) Your appeal dated 16.10.96.
- 3) This Office Letter (Speed Post) of even number dated 20.12.96.

As advised, final decision of Appellate Authority (Chief Cashier (JA), in reference to your appeal dated 16.10.96, are sent herewith.

Kindly acknowledge receipt of the letter.

DA:- 3 (three) Sheets.

Sd/- Illegible,
Sr. Asstt. Chief Cashier (JA),
N.F.Railway : Maligaon.

SD
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Advocate

Sub:- Appeal filed by Shri Ganesh Chandra Dehingia, Ex. Sr.Cashier/Pay Office/DBRT/N.F.Railway before the Appellate Authority (Chief Cashier (JA)/N.F.Rly.) dated 16.10.96 against the order of Dismissal dated 11.9.96 passed by the Disciplinary Authority - Sr. Asstt. Chief Cashier/Pay & Cash Office/N.F. Railway/Maligaon.

I have carefully, gone through the Memorandum of appeal dated 16.10.96 ^{filed} by Shri Ganesh Chandra Dehingia/ Ex. Sr. Cashier/Pay Office/N.F.Railway/DBRT against the order of Dismissal No. CP/EP/GCD/DAR dated 11.9.96 passed against him by the Sr. Asstt. Chief Cashier/N.F.Rly/Maligaon (Disciplinary Authority). I find in this case that during the working period of Shri Dehingia in the Pay Office/DBRT during the period 1977-78, the Railway Administration suffered a heavy financial loss of Rs.38,151.94. I have gone through the Judgment of the Hon'ble Special Judge/Guahati dated 13.7.83 in the Special Case No.11 of 1978 State Vs Ganesh Chandra Dehingia' and the Criminal Appeal No.85 of 1983 (Shri Ganesh Chandra Dehingia...Appellant- Vs D. S. P. E / Shillong (CSL)...Respondent) filed by Shri Ganesh Chandra Dehingia before the Hon'ble High Court/Guahati against the sentence order passed by the Hon'ble Special Judge/ Assam/Guahati dated 13.7.83. I have also gone through the proceedings of the Domestic Tribunal (the enquiry held under the provisions of the Railway Servants (Disciplines and Appeal) Rules- 1968) held against Shri Ganesh Chandra Dehingia and from it I find that the Disciplinary Authority has based his findings on the proceedings in the said Enquiry, the various evidences and records/Statements produced from both sides in the said D. A. R. Enquiry and also keeping in view the Enquiry Officer's findings etc. It is also seen that though Shri Dehingia was held guilty of the various charges by the Hon'ble Special Judge, Gauhati and was convicted and sentenced to R.I. and fine in the said Criminal Case filed by the 'State' under Section

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Enquiry, the various evidences and records/Statements produced from both sides in the said D. A. R. Enquiry and also keeping in view the Enquiry Officer's findings etc.

It is also seen that though Shri Dehingia was held guilty of the various charges by the Hon'ble Special Judge, Gauhati and was convicted and sentenced to R.I. and fine in the said Criminal Case filed by the 'State' under Section

- : 2 :-

Section 409 of the Indian Penal Code and Section 5(2) read with section 5(1) (c) of the Prevention of Corruption Act, 1947, and on subsequent appeal before the Hon'ble High Court/Assam/Guwahati, (Criminal Appeal No.85 of 1983), the Hon'ble High Court/Assam/Guwahati acquitted Shri Dehingia 'On benefit of doubt' and that after getting the Hon'ble High Court's above order dated 1.6.1995 Shri Dehingia, filed O.A.No.26 of 1994, before the Hon'ble Central Administrative Tribunal, Guwahati for his re-instatement in the Railway Service and also payment of back wages etc. in view of the Hon'ble High Court's order of acquittal dated 1.6.95, on benefit of doubt. From the Central Administrative Tribunal's order dated 29.8.95 in O.A.No.26 of 1994 it is seen that the Central Administrative Tribunal after hearing the O.A.No.26 of 1994, while passing orders for his re-instatement in service, further ordered inter-alia that since Shri Dehingia was acquitted on benefit of doubt and the acquittal was not a clean acquittal, it would be in fitness of things to leave it open to the respondents (i.e. Railway Administration to draw disciplinary enquiry proceedings against the applicant etc. and in the event of such proceedings the respondents (i.e. Railway Administration) will be free to take steps in accordance with the law and rules including suspension of the applicant, if so necessary. In view of above order of the Hon'ble Tribunal I find no illegality in holding the D.A.R. Enquiry.

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 In question by the Disciplinary Authority i.e. Sr. Assistant
 Advocate Chief Cashier, or placing Shri Dehingia under suspension after his re-instatement in Railway Service which are quite in consonance to Hon'ble Tribunal's above order/ observations.

I have also gone through the representation dated 25.6.96 submitted by Shri Dehingia to the Disciplinary

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Annex - A10

- : 3 :-

Authority in response to the Notice of Imposition of Major penalty dated 6.6.96 served by the Disciplinary Authority on him for the proposed penalty in question and also the final order passed by the Disciplinary Authority. From the speaking order of the Disciplinary Authority, I find that he has taken into the consideration all the aspects of the case and laws and rules on the subject and thus I could find no irregularity/ illegality in disposal of his representation against the proposed imposition of the penalty of dismissal order in question. I also find that the necessary subsistence allowances etc. have also been paid to him.

As Shri Dehingia wanted that a personal hearing should also be given to him before disposal of this appeal filed before the Appellate Authority, the same was granted to him by me. But the date of holding of such hearing had to be deferred as per own request of Shri Dehingia and the same could be held only on 9.1.97, and, he was granted all reasonable facilities for representation of his case in the said personal hearing.

On going through the entire case records and the D. A. R. Proceedings and his statements in the said personal hearing, I find that no new point could be put forwarded by Shri Dehingia which could enable me as an appellate authority, to reverse and, or, modify the decision/order of the Disciplinary Authority on the subject. On my several queries in the said personal hearing Shri Dehingia could not also satisfactorily explain as to why he did not get his Cash and accounts verified by the Inspector of Cashier who went there (to Diwargarh Cash Office) for this purpose and stayed at Pay Office/N.F.Railway/DBRT from 18.11.77 to 24.11.77 though from records it revealed that Shri Dehingia

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Advocate

Personal
Question

HAR 92

Annex - A 10

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-:- 4 :-

attended Cash Office/Dibrugarh on 18.11.77 and 20.11.77 and also as to why he handed over the bills pertaining to his beat to another Cashier without Authority and without providing the necessary funds for making payments of those bills for which cash amounts were provided to him much earlier and which cash amounts were provided to him much earlier and which bill cash amounts were provided to him much earlier and which bills were lying with him from sometimes past and also as to why he did not submit 10(ten) days statements to the Railway Administration in time or any date after 10.11.77 period relating to his bills, assets and liabilities etc. position as to reflect his cash and bill position at the end of each period. Further, it is on record that even though, there was acknowledgement and commitments from Shri Dehingia's side for payment of the shortage amount of Rs.38,151.94, he took no steps to deposit the amount of shortage to Railway Administration within those long period. In view of some, the present plea of him before the personal hearing that he would recoup the financial loss of Rs.38,151.94 to the Railway Administration if he gets the chance of re-instatement in Railway services appears to be a far from satisfactory assurance in that respect and as such the said assurance cannot be accepted or acted upon.

Q.P

In view of the facts and circumstances of the Certified to be true Copy case and also what have been detailed above, I could find no valid or valid grounds by which the allegations of Shri Dehingia against the Disciplinary Authority could be regarded as outcome regards biasness, vindictive mind, violation of rules and laws and hypothetical approach, overlooking of enquiry Officer in DAR proceeding etc. on the part of the Disciplinary Authority or that the charges

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A2X-A10

- : 5 :-

are not sustainable in the case etc. as have been alleged in this appeal.

Under the circumstances, I regretfully, state that I find no scope of helping Shri Ganesh Chandra Dehingia by reversing, and, or, modifying the order of Disciplinary Authority in this case even with sympathetic out look as all actions taken by the Disciplinary Authority were legal, proper, authorised and according to rules and laws, and were on the basis of facts and records of the case as revealed in the disciplinary enquiry and more so, when the Government cash was involved.

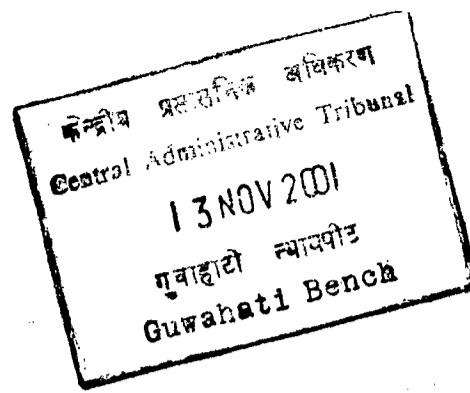
I, therefore, find no alternative but to reject the instant appeal of Shri Dehingia in this case and the appeal is therefore, hereby regretfully rejected.

My above decision may please be communicated to Shri Ganesh Chandra Dehingia (the appellant) / Ex. Sr. Cashier/Pay Office/DRRT, immediately.

J.C. Barai
Sd/- ~~.....~~, ✓
Appellate Authority,
(Chief Cashier (JA),
N.F.Railway, Maligaon.

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Advocate



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH,
GUWAHATI.

IN THE MATTER OF :

O.A. No. 380 of 2000

Sri Ganesh Chandra Dehingia ... Applicant

vs.

The Union of India & Ors. ... Respondents.

- AND -

IN THE MATTER OF :

Written Statement for and on behalf of the
Respondents.

The answering respondents most respectfully beg to
sheweth as under :

1. That, the answering respondents have gone through
the copy of the Application filed by the applicant and
have understood the contents thereof.
2. That save and except those statements of the
applicant which are specifically admitted herein below
or are borne on records, all other allegations/averments
as made in the different paragraph of the application are
denied herewith and the applicant is put to strictest
proof thereof.

Filed by
Sectional
Registrar
Guwahati
13 NOV 2001



-: 2 :-

3. That, for the sake of brevity, the respondents have been advised to confine their replies only on those averments/allegations of the applicant which are relevant for the purpose of decision in the case and have thus abstained from meticulous denial of each and every statements/allegations of the applicant as made in the application, without admitting the correctness of the rest of the averments.

4. (a) That, the applicant has got no valid cause of action or right for filing the application.

(b) That, the application is vexatious one.

5. That, the case suffers from non-joinder of necessary parties.

6. That, the case is hit under the principles of acquiescence, Res-judicata and also suffers from misrepresentation and suppression of actual fact.

At the very early stage of the departmental enquiry held under Railway Servants (Discipline and Appeal) Rules 1968, the applicant was provided with the full opportunity to peruse records and take extracts of the various relevant records on the basis of which the charges were framed. The applicant (Sri Dehingia) vide his letter dated 1.12.95 did not indicate about supply of the original bills Nos. 13 DWRF dated 27.10.1977 and No. 16 LXI dated 7.11.1977 in the list of documents

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J.S.B.
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-: 3 :-

enclosed with his aforesaid letter. On his further representation dated 5.12.95 about non-supply of the above two original bills vide Para 7 of his representation dated 5.12.95, the matter was further clarified by the Railway Administration vide letter No. CP/ GCD/Shortage/Pt-I dated 14.12.95 stating inter-alia that the original bills were not referred to as list of documents. However he was allowed to consult his charge report of Pay Beet No. 10DBRT dated 23.1.78 duly signed by him (i.e. the applicant himself) as a proof. It was only after being satisfied with the reply of the Railway Administration and necessary perusal of the relevant records of the case, the applicant forwarded his letter dated 16.12.95 expressing inter-alia his readiness to face D.A.R. enquiry at any stage. Besides, Sri Dehingia, in course of enquiry also accepted that he handed over the said two bills to Sri N.K. Baruah, Ex-Cashier/10/A/DBRT without fund (Cash) for payment to the concerned payees with the commitment that he would recoup the amount to Sri Baruah subsequently. This fact has also been further ratified by the applicant in his subsequent representation/ appeal dated 25.6.96 and corroborated by various documents/ statements.

Further, it was within his knowledge that these bills were seized by the C.B.I. and Judicial notice of these bills were taken in course of hearing of the Special case No. 11 of 1978 before the Special Judge/Guwalati.

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The applicant is now debarred from seeking production of those original records which are not in possession of the respondents and lying with C.B.I. and which fact is already in the knowledge of the applicant.

7. That, with regard to averments at paragraph 4(b) of the application it is stated that the statements/ contention of the applicant are not correct.

The applicant was appointed as Trainee Clerk in grade Rs. 60 - 130/- w.e.f. 11.5.59 in terms of Senior Accounts Officer/N.F. Railway, Pandu's appointment letter No. PNO/AD/56/39 dated 24.4.59. He was then appointed as temporary Junior Clerk w.e.f. 13.8.59. He was promoted as Senior Cashier in grade Rs. 425 - 640/- (RS) with effect from 1.12.1975 under the erstwhile Chief Cashier, N.F. Railway, Maligaon (Senior Scale) under Office Order No. CP/20 dated 1.12.1975.

The claim of the applicant that during the period from from 1959 to 1973 he had performed his duties well and no adverse remark was made in his service career are completely wrong satemnts forwarded/presented by him before the Hon'ble Tribunal. He has deliberately suppressed the fact that while working as Senior Cashier at Dibrugarh, the applicant was awarded a punishment of steppage increment for 1 (one) year (non-cumulative) under Office Order No.CP/EP/EMY/7/Loose dated 22.4.77 against Charge Sheet No. CP/GCD dated 24.2.77. In November and December, 1977, it also came to light that the applicant

violated the extent several provisions regarding payment procedures to be observed and he refrained from closing his Cash Books etc. regularly and resorted to retention of paid bills and unpaid amounts unauthorisedly beyond permissible period of one month as required under Rule 982-A.1 (Indian Railway Accounts Code Part I 1968 Edition). He also avoided the surprise check of his Cash and Accounts. On 18.1.78, on verification of Cash balance of the Applicant a shortage to the tune of Rs.38,151.94 P. was detected. Applicant also accepted the shortage while working as Senior Cashier-10 Dibrugarh. This proved mis-appropriation of Government money and deliberate non-maintenance/non-submission of records and returns by him during his period of working as Sr. Cashier by which the shortage in Cash was kept concealed.

A photo-copy of paragraph 982-A1 is annexed hereto as Annexure I for ready perusal.

8. That, in reply to averments made at paragraph 4(c) of the application the respondents state that the matter of shortage etc. was also reported to C.B.I. and Railway Vigilance Department as decided by the competent authority (since Government money was involved and the amount was substantial).

9. That, the averments at paragraph 4(d), 4(e), 4(f) are substantially correct.

10. That, in reply to the statements in paragraph 4(g) of the application it is to state that the applicant/accused was acquitted by the Hon'ble Gauhati High Court as benefit of doubt. Further, the action under the Railway Servants (Discipline and Appeal) Rules 1968, is a separate

domestic proceeding and not dependant on the original criminal case.

It is also to mention herein that as per Judgement of the Hon'ble Gauhati High Court dated 1-6-95 in Criminal Appeal No.85/1983, the applicant was not acquitted on merit but on benefit of doubt with further observation inter-alia that negligence on the part of the accused could not be ruled out. Further, the Hon'ble Central Administrative Tribunal vide their order dated 29-8-95 in O.A. No.26/1994 at Para 4 & 6 of the Judgement, while referring to the aforesaid Judgement of the Hon'ble High Court held the view that this acquittal on benefit of doubt is not a clean acquittal and as such it would be open to the Authority Concerned to draw up departmental disciplinary proceedings including suspension of the Applicant, if so necessary, after re-instating the Applicant to service.

11. That with regard to averments at paragraph 4(h) of the Application it is to state that the competent authority took necessary follow up action as per directions of the Hon'ble Tribunal in the matter.

12. That, with regard to averments at paragraph 4(i) of the Application it is denied that the Applicant was dismissed from the railway service on his conviction in the Court, without providing him the reasonable opportunity. It is to submit here-in that all the actions have been taken after observing the rules and the procedures in vogue. The Applicant was given reasonable opportunity by way of show cause notice issued to him vide Memorandum

No. CP/GCD/Shortage/Pt-I dated 9-12-93 by which opportunity was provided to him to make representation against the penalty proposed. The Applicant was dismissed from service with effect from 9-1-84 in exercise of the powers conferred under rule 14(i) of the Railway servants (Discipline and Appeal) Rules 1968.

A photo copy of rule 14(i) is annexed hereto as Annexure II for ready perusal.

13. That, with regard to overment at paragraph 4(j) of the Application it is to submit that no appeal appears to has been preferred by the Applicant within the limitation period as prescribed under rules and as such question of its disposal does not arise.

14. That, with regard to the statements made in paragraphs 4(k), 4(m), 4(n) and 4(o) of the Application, it is stated that after the order dated 29-8-95 of the Hon'ble Tribunal in O.A. No.26/94 and the Judgement dated 1.6.95 of the Hon'ble Gauhati High Court in Criminal Appeal case No.85/83 the Competent disciplinary Authority re-instated the Applicant as Senior Cashier on 16.10.95 and as the decision to hold the departmental enquiry under Railway servants (Disciplinary & Appeal) Rules 1968 was also taken by the competent Authority, the Applicant was simultaneously placed under Suspension on the same date i.e.16.10.95 as to proceed with such domestic enquiry.

A photo copy of the Suspension order dated 16.10.95 is annexed hereto as Annexure X for ready perusal.

It is to submit herein that in the departmental proceedings the Applicant was found guilty and consequently was dismissed from service with effect from 11.9.96. It is

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also to mention herein that as said herein before, as the Applicant was earlier dismissed from service with effect from 9-1-84 in exercise of powers conferred under Rule 14(i) of the Railway servants (Discipline and Appeal) Rules, 1968, and, as the fresh disciplinary proceeding held after the Hon'ble Tribunals' order dated 29.8.95 also resulted to the same conclusion, the question of making payment of any amount for the period from 10.1.1984 to 15.10.95 does not arise. Further, during the period from 10.1.84 to 15.10.95 the applicant neither performed any railway duties nor he was under suspension.

A photo copy of the dismissal order dated 9.1.84 is annexed hereto as Annexure for ready perusal.

It is also to submit herein that it does not appear that the Applicant submitted the certified copy of the Hon'ble High Court's Judgement dated 1.6.95 and his contention that in terms of the said Judgement dated 1.6.95 he is entitled to all the back wages and other beneficiary reliefs for the period from 19-1-1979 to 15-10-1995 as per F.R. 54(i) and decision of the Apex Court, is quite vague, imaginary and incorrect. The decision of the Hon'ble Tribunal dated 29-8-1995 as referred to herein before is quite clear on the point and requires no further elaboration.

It is re-interated that all the actions in his case have been taken quite in consonance to extant rules and laws on the subject and the directions/orders given by the Hon'ble Tribunal in O.A. 26/94 filed by the Applicant etc.

15. That, with regard to averments/allegations as made at paragraph 4(p) of the Application it is stated the

allegations are vague, imaginary, incorrect, completely baseless and unwarranted and appears to be the outcome of his after thought, and made with motive to divert the factual aspect of the case of shortage found in his cash and to evades the charges established against him in confronted enquires etc. and hence are denied herewith. As detailed herein before at paragraph 6 of the written statement a reply to the letter dated 5.12.95 was also given by the disciplinary authority under his letter dated 14.12.1995.

As regards the allegation of the Applicant regarding respondent No.2 being the Disciplinary Authority as well as Appointing Authority etc. this has happened because the post of the Chief Cashier was upgraded from Senior Scale to Junior Administrative Grade and there is nothing irregularity in this regard. The matter has been elaborately clarified at paragraph 23 of this written statement.

The contention of the Applicant that the two bills (original) as mentioned in paragraph 4(p) i.e. AB No.13 DW PF dated 27.10.77 and AB No. 16 LXL dated 7.11.77, which could not be produced to him due to seizure by the C.B.I. are most vital documents, can not be accepted as correct and hence denied. It is also beyond reasoning as to how these two bills have now become vital documents when the contents of the documents were well within his knowledge and the relevant information/entries regarding these two bills including his own writings were already shown to him during his inspection of documents.

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The following facts will quite reveal that these documents were not taken to be vital documents at earlier stages and the plea has been taken by the Applicant deliberately only to mislead the Hon'ble Tribunal and derive undue benefit out of the unrealistic confusion created by him.

i) The applicant is well aware that these documents were already seized by the CBI/SPE on 12.5.78 in connection with the criminal case filed by the State of Assam (Spl Case No.11 of 1978 before special Judge, Guwahati) and Judicial Notice of these documents (of these two bills) were already taken in his presents before the Hon'ble Special Judge in that case filed against him by CBI/State Government of Assam before the Special Judge, Guwahati (Case No.11 of 1978) and these bills were exhibit No.P 29 (AB No.13 DWPF dated 27.10.77 for Rs.11103.00) and exhibit No.P 15 (for 16 LXL dated 7.11.77 for Rs.13014.83 P) as seen from the Judgment.

ii) The Hon'ble Tribunal in O.A. No.198 of 1997 filed by the Applicant also observed as under :-

"After the Annexure A/15 order of dismissal was issued, the Applicant preferred an appeal which was dismissed. Thereafter, the applicant approached this Tribunal by filing OA No.26 of 1994. This Tribunal by order dated 29.8.1995 disposed of the said OA with directions to the respondents, namely to reconsider

the case of the applicant. Accordingly, the respondents reconsidered the case and found the applicant guilty of charges and the order of dismissal was found to be fit. Thereafter the applicant filed an appeal before the Appellate Authority. However, in the Memo of Appeal the ground for non-supply of documents was not taken by the applicant.

Only now, in this OA. the applicant has raised the point.....

Normally this Tribunal will not consider the points which have not been taken before the Appellate Authority. However for the ends of justice we feel that the applicant may file another appeal raising this point before the Appellate Authority within a period of one month."

iii) The applicant filed the second appeal dated 13.1.2000 and the same also had been disposed of on 30.3.2000 with a speaking order after giving the Applicant a fresh personal hearing on 2.3.2000 in obedience to the Hon'ble Tribunals direction as mentioned above. It was clearly mentioned in the reply that the Applicant already enlarged his appeal by raising other issued besides the matter of supplying the aforesaid bills which were raised in his previous appeal dated 16.10.96 and decision on which was already communicated by the Appellate

Authority. In the reply/order dated 30.3.2000 it was inter-alia reiterated that :

(a) The contents of these two bills were already in the knowledge of the Applicant.

(b) These 2 bills were personally handed over by Sri Dihingia Sr. Cashier (Applicant) to Sri N.K. Baruah Ex. Senior Cashier/Dibrugarh Town for payment to the ~~xxxxxx~~ payees concerned as mentioned in the bills, without providing Sri Baruah with the necessary funds (one on 18.11.77, and, the other on 20.11.77 without even clearing the dues of the bill handed over in the first occasion on 18.11.77) though the Applicant received the required fund/cash from the Government for making necessary payment to the payees concerned on much earlier dates i.e. 1st bill on 31.10.77 and 2nd bill on 17.11.77.

(iv) Even in course of D.A.R. enquiry proceeding and in the personal hearing also he did not make any assertion that he ever recouped the amounts of these two bills to Sri Baruah Ex. Sr. Cashier, Dibrugarh.

(v) The original bills (as mentioned by the Applicant) only indicate records about nature of claim, details of the amount drawn and payable in favour of particular payee or payees by a

nominated cashier in presence of witnessing official concerned, as well as, acknowledgement(s) of the payee(s) in support of receipt of payment, Accounts enforcement towards passing of Bills, reference to entry in the Chief Cashiers Cash Books (Payment) etc. and that the bills do not indicate recoupment of cash and these bills do not show whether money was handed over/recouped subsequently or in any time.

vi) The matters regarding receipt of these 2 bills by the Applicant from Railway Administration (with fund) and regarding handing over of these two bills by the Applicant to another Sr.Cashier Sri N.K. Baruah without handing over the fund which he received from Government at the time of handing over of the bills and not handing over the amounts on any subsequent dates also etc. are all matters of records and the Applicant (Sri Dehingia) already accepted these.

vii) Even prior to seizure of these two bills by C.B.I. on 12.5.78, Sri Dehingia (Applicant) clearly accepted the shortage of Rs.38,151.94 P in cash in his cash Balance as per Joint signed memorandum dated 23.1.1978.

On 18.1.78 in the statements of Assets and liabilities the Applicant Sri G.C. Dehingia recorded as under :

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"Shortage Rupees thirty eight thousand in my cash and the above shortage of Rs.38,165.15 P. (Rupees thirty eight thousand one hundred sixty five and paise fifteen) only is accepted and confirmed."

Sd/ G.C. Dehingia
Sr.Cashier/DBRT
at Maligaon.

Explaining the shortage, the Applicant also submitted a letter to the Railway Administration (Chief Cashier, N.F.Railway, Maligaon) on 18.1.78 the relevant portion of which is extracted herein below :

"....I beg to state that ~~I~~ under what circumstances the shortage of Rs. 38,165.15 P. (Rupees thirty eight thousand one hundred sixty five and paise fifteen) only have occurred is beyond my imagination....."

G.C. Dehingia
18.1.78
Sr.Cashier/DBRT
at Maligaon.

The shortage in cash was also recorded by the Applicant in the Memorandum dated 23.1.78 (in the statement and liabilities of Sri G.C. Dehingia Sr. Cashier/Dibrugarh) where he accepted and confirmed the shortages with following remarks :

"Shortage of Rs. thirty eight thousand one hundred fifty one and paise ninety four (Rs.38,151.94) only in cash and the above is accepted and confirmed.

Sd/-G. C. Dehingia
23.1.78

It is also to mention herein that the amounts of both the bills in question are included in the total sum of Rs.38,151.94 as reflected in Serial No.2 of the first page and Serial No.16 in page 2 of the statement annexed as Annexure..... to this written statement.

Even in answer to question No.5 in the personal ~~XXXX~~ hearing on 9.1.1997 before the Chief Cashier Sri G.C. Dehingia Sr. Cashier/DBRT (the applicant) informed as under :

"If I get the chance of re-instatement in Railway service, I will recoup the financial loss of Rs.38,151.94 P. by deduction from my salary bill".

The photo-copies of above said admission of debit shortage dated 18.1.78 and letter dated 18.1.78

of the Applicant explaining that he could not explain the cause of the shortage etc. and further writing dated 23.1.1978 in acceptance and confirmation of the shortage are annexed hereto as Annexure II, IV and V ^{respectively} to this written statement.

viii) The applicant (Sri Dehingia) could not produce any record/document by which it could be ascertained that he made good the above shortage in cash balance or he even made good the amount against the two bills (Total of the 2 bills are Rs.24,117.83) to Sri N.K. Baruah as the original bills can not exhibit that recoulement of funds for these two bills were made to Sri Baruah and even by adjustment of funds.

ix) The Applicants plea about his sickness or his wife's sickness during the period from 18.11.77 to 20.11.77 are not borne on records. Records revealed that he attended the cash office etc. on those dates and made payment of other bills during that period ^{and he was on duty}.

x) The Applicant at paragraph 3 of the letter dated 7.12.95 already informed as under :

"Your goodself informed me verbally that the documents in para 7 of my letter

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dated 5.12.95 are not available and accordingly you expressed your inability either to inspection or to furnish the extracts thereof".

(In para 7 of his letter dated 5.12.95 the Applicant mentioned about these two bills AB No.13 DWPF dt. 27.10.77 and 16 LXI dated 7.11.77) Photo copy of letter dated 5.12.95 is annexed hereto as Annexure VI for ready perusal. At paragraph 4 of the letter dated 7.12.95 the applicant informed that he completed inspection of the documents (except the two original bills) on 6.12.95 and wanted to file written statement).

On 16.12.95, the Applicant informed the Senior Assistant Chief Cashier as under and only after that the enquiry was proceeded.

" I am ready to face DAR Enquiry at any stage"

A copy of his letter dated 16.12.95 is annexed hereto as Annexure VII.

Thus, in view of above position and as these 2 bills for Rs.24,117.83 P out of total shortage amount in his cash balance Rs.38,151.94 P can not throw any light as regards recoulement of cash by him and the applicant could not also show any document that he ever recouped the cash though enquired from him many times in personal hearing stage and as he knew the contents of these two

bills and that the bills were already seized by the C.B.I. on 12-5-1978, etc. the Applicants present fresh plea for production of those documents are not tenable at all as his case was never prejudiced due to inability on the part of the ^{Original copy of bills} respondents to produce the documents already seized by the C.B.I. which have not yet been returned back.

16. That, in reply to the allegations/averments at paragraph 4(q) of the Application it is submitted that the allegations are quite uncalled for, unwarranted and incorrect and misconceived and hence emphatically denied herewith. There has been no malafide intention etc. and the prayer for extension of time would reveal the genuineness on the part of the respondents. No injustice, as alleged has been caused to the Applicant.

It is to state herein that the applicant was reinstated on 16.10.95 and was placed under suspension on the same date to proceed with the enquiry against him under Railway servants (Discipline & Appeal) Rules, 1968. A charge sheet for major penalty was accordingly issued on 20.11.95. But it is an admitted position that inspite of best effort, the enquiry could not be completed within February 1996, for reasons of observing departmental formalities known to the Applicant also.

It is also to state herein that since the Applicant was found guilty in the domestic D.A.R. enquiry conducted

against him, a notice for imposition of major penalty was issued against him by the disciplinary authority on 6.6.96 and Sri Dihingia (Applicant) was dismissed from Railway service with effect from 11.9.96 under ~~with effect~~ Rule 6(ix) of the Railway servants (Disciplinary and Appeal) Rules, 1968.

It is stated that the orders of the Hon'ble Tribunal dated 7.2.94 is OA 26/94 has been complied with. It is also to submit herein the Hon'ble Tribunal refused to pass orders for granting payment of subsistence allowance from February 1984 to January, 1994 as claimed by the Applicant, as will reveal from following observation of the Hon'ble Tribunal.

"Presently we pass no order on the claim of subsistence allowance from February '84 to Jan '94"

17. That with regard to averments at paragraph 4(r) of the Application it is submitted that the allegations are completely incorrect and baseless and hence denied emphatically. It is denied that the departmental enquiry was not conducted in accordance with the established procedure of law and rules made thereunder. It is stated that the enquiry officer could examine only 4(four) witnessess due to death of the remaining witnessess. The question of examining the C.B.I. official did not arise as it was not considered relevant and D.A.R. case was based on railway records and evidences.

18. That, in reply to the statements made at paragraph 4(s) of the Application, it is denied that the disciplinary authority dittoed the findings of the enquiry officer, as alleged. It is stated that the disciplinary authority, after applying his mind and thoroughly going through the case/proceedings, arrived at a conclusion to issue the penalty of dismissal from service based on and agreeing with the findings of the Enquiry Officer and also on the assessment by him on consultation of the relevant records.

19. That in reply to the statement made in paragraph 4(t) of the application it is stated that the order of dismissal from service was issued by the disciplinary authority along with detailed speaking order after delving deep in to the merit of the case and hence, question of re-instatement of the Applicant with all consequential benefits including promotion in service, payment of arrear salaries to the tune of Rs.6,15,123.00 P (as on October 1995) as claimed by the applicant, does not arise at all.

20. That, with regard to averments at paragraph 4(u) of the Application it is stated that the allegations are incorrect and baseless. It is stated that the Senior Assistant Chief Cashier under his letter No.CP/EP/GCD/DAR/Pt-II/90 dated 14.2.97 simply sent the reasoned speaking order passed by the Appellate Authority on the Appeal dated 16.10.96 filed by the Applicant against the order of dismissal dated 11.9.96. It is a completely wrong and misleading statement of the Applicant that

his appeal was rejected without mentioning a single word regarding back wages etc. It is reiterated that the entire enquiry was conducted under the provisions of the Railway servants (Discipline and Appeal) Rules 1968 and question of examination of C.B.I. Officer did not arise. The proceedings of the D.A.R. enquiry and the statement given by the Applicant in course of personal hearing before the Appellate Authority completely revealed the guilt of the Applicant and his taking no steps to deposit the shortage amount of Rs.38,151.94 (which shortage was established before the confronted enquiry and acknowledged/admitted by him). Since he was not exonerated from the charges and he could not prove his innocence even before the personal hearing granted by the Appellate Authority, question of reversal or modification of the order of dismissal etc. did not arise and as such question of granting any benefit as claimed by him does not arise. The speaking order in question is quite exhaustive in this regard. His submission that he would recoup the amount of shortage if again re-instated in service, could also not be accepted as he failed to deposit the shortage within the span of these about 20 long years and remained without taking effective steps in this regard and offence committed by him was grave one. The disciplinary authority considered the findings of Enquiry Officer and took lawful action. It is also stated that the Applicant has been dismissed from service and fact of the case does not warrant for his re-instatement in service. The Applicant has also crossed the normal super annuation age.

21. That, with regard to averments at paragraph 4(v) of the Application it is stated that these are his personal matters and also imaginary one and can not be accepted. Question of his re-instatement in Railway service could not arise in view of what have been detailed in foregoing paragraphs.

22. That, with regard to the averments at paragraph 4(w) of the application it is submitted that the actions taken by the railway administration regarding payment of subsistence allowance are quite in consonance to the Hon'ble Tribunal's orders in this regard. The orders of the Hon'ble Tribunal dated 7.2.94 in OA No.26/94 has been complied with. It is reiterated that the Hon'ble Tribunal refused to pass orders granting payment of subsistence allowance from February 1984 to January 1994 as claimed by the applicant. Moreover, such claim is not lawfully payable in view of the findings of guilt on the part of the Applicant as revealed from the D.A.R. enquiry held against him in terms of the Hon'ble Tribunals Judgement dated 29.8.1995 in OA 26/94.

Further, Government had to suffer huge loss in the case. To re-coup this loss occasioned by the actions of the Applicant, a separate pay order No.5080/Audit list 60 for Rs.38,151.94 had to be drawn and amount paid to him again to balance his cash account etc. and thus a double payment had to be made to him and loss of Government's money still remains unrecouped.

Photo Copies of letters dated 28.4.79, 30.4.79 and 2.5.79 are annexed hereto as Annexures VII Series.

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23. That, with regard to averments at paragraph 4(x) of the Application it is to submit that the respondents can not be held responsible for what the Applicant has mentioned in the Application and facts of the case will reveal that he is to blame himself for ~~what~~ the consequences and not others. Government can not remain as a silent spectator where Government fund are involved, leaving aside the question of conduct of the Government employee while performing Government job and handling Cash.

24.a) That in reply to the grounds given in paragraphs 5 and 8 of the Application it is submitted that in consideration of the facts and circumstances of the case, and in view of what have been submitted in the foregoing paragraphs of this written statement, none of the grounds as mentioned in paragraph 5 of the Application are sustainable and hence none of the ground are accepted and for the sake of brevity, meticulous denial of each and every of sub-paras and repetition of replies have however been avoided. It is also emphatically denied that the penalty imposed is not on the basis of evidences adduced during the enquiry or the dismissal order dated 11.9.96 is violative of Article 311(2) of the Constitution of India or there had been any arbitrary or malafide action, as alleged.

b) It is also to mention herein that Senior Assistant Chief Cashier/N.F. Railway/Maligaon being officer of equivalent rank (Senior Scale) to the appointing authority of the Applicant (Sri G.C. Dehingia) while he was promoted as Senior Cashier is the competent disciplinary authority of the Applicant.

Again, at the material period of re-instatement of the applicant in his service on 16.10.95, the post of Chief Cashier (J.A.) had been in operation in Junior Administrative Grade of the Central Government which is higher than the Disciplinary Authority. There is no legal bar in Signing the re-instatement order of the Applicant by an Authority higher than the Disciplinary Authority. Accordingly, Chief Cashier (J.A.) disposed of the appeal submitted by the Applicant as appellate authority against the dismissal order issued by the Competent Disciplinary Authority i.e. Senior Assistant Chief Cashier, N.F.Railway, Maligaon. Hence there is no irregularity disposing the appeal of the Applicant and question of setting aside the orders of the appellate authority does not arise.

Further, his appeals dated 10.10.96 against the order of dismissed dated 11.9.96 passed by the Disciplinary Authority (Sr. Assistant Chief Cashier/Pay & Cash Office, thoroughly gone through by the Chief Cashier, N.F.Railway and was disposed of by his speaking order rejecting his claim.

His appeal dated 12.1.2000 in pursuance to Hon'ble Tribunals order dated 30.11.99 in OA 198/97 was also through examined by the Appellate Authority (Deputy Chief Accounts officer (Cash & Pay) N.F.Railway, Maligaon) and the Appeal was disposed of by taking into consideration all relevant facts and legal provisions and this appeal also was rejected with the speaking order dated 30.1.2000 and hence his representations/ appeals were thoroughly considered by various personalities and officials and not by a single person.

c). From the following documents of which extracts were already supplied to the applicant i.e.

- i) The applicants letter dated 5.12.1995 addressed to the Chief Cashier (JA) mentioning at its paragraph 3 that extracts of documents of disbursement of the said two bills were already supplied to him; and
- ii) Applicants letter dated 18.1.78 by which he explained that he can not imagine as to how the shortage of Rs.38,165.15 P occurred; and
- iii) The statements of Assets and liabilities dated 18.1.1978 and memorandum dated 23.1.78 where Sri Dehingia clearly accepted and confirmed the shortage of Rs.38,151.94 P in cash and
- iv) The pay order No.5080/60 dated 6.2.78 by which duplicate amount of Rs.38,157.34 had to be provided to Sri Dehingia by Government as recoupment of shortage in fund; and
- v) The detailed particulars of the bills etc. as furnished in the Annexures to statement dated 23.1.78;

would also clearly reveal that the applicant was fully aware of the detailed particulars of the shortages and also the contents of these 2 original bills in question, relevant extracts etc. of which were furnished to the Applicant.

Further, besides the said 2 bills in question, (total amounts Rs.24,113.83) the applicant was also responsible for shortage of Rs.14,047.32 P.

Thus, the contention of the Applicant ^{that} his case, was prejudiced etc. due to non-production of the original of these 2 bills ^{only} are quite un-warranted and unacceptable.

Photocopies of the above said letter dated 5.12.95 Applicants letter dated 18.1.78 his acknowledgement of debit in statements of Assets and liabilities and memorandum dated 23.1.78, ^{further} recoupment pay order No.5080/60 dated 6.2.78 issued to balance the Accounts of Sri Dihingia (Applicant) are annexed hereto as Annexures V, V, V and V Series respectively.

It is also denied that any kind of relief as prayed for by the Applicant at paragraph 8 of the Application is admissible under law and rules on the subject and on consideration of the facts of the case.

25. That it is submitted that all the actions in the case have been taken in conformity of rules and law on the subject and are quite valid, legal and proper.

26. That the respondents crave leave of the Hon'ble Tribunal to permit them to file additional written statement, if found necessary, for the ends of justice.

27. That in the circumstances explained above the application deserves to be dismissed with cost.

VERIFICATION

I, Sri... Kanwaljeet Singh Asla.....
Son of..... MOHAN SINGH ASLA.....aged about
.....33.....years now working as Deputy Chief Accounts
Officer (Cash & Pay) N.F.Railway, Maligaon do hereby
declare that whatever have been stated at paragraphs...¹ and
...3...are true to my knowledge and those made at paragraphs
7,8,10,11,12,13,14,15,17,18, and 24 are based on records
and informations as gathered from records which I believe
to be true and the rest are my humble submissions before
the Hon'ble Tribunal.



Dy. Chief Accounts Officer
(Cash & Pay)
N.F. Railway, Maligaon
Guwahati-11.

ল্যাম্বেড় অফিসার (কেশ এবং মুদ্রাবলি)
Dy. C. of. (Cash & Pay)
N. F. Railway, Maligaon, Guwahati-11
N. F. Railway, Maligaon, Guwahati-11

979

PAYMENT PROCEDURE

979. Payments due to a contractor may be made to his authorized agent or to a financing bank, instead of direct to the Contractor in accordance with the provisions of para. 1239 of the Indian Railway Code for the Engineering Department. Every time a payment is made to an outsider (contractors etc.) for more than Rs. 250/- the Income Tax Department should be advised by the Paymaster, if such advices are not sent by the Executive Officers. The Accounts Officer should ensure that the Income Tax authorities are advised promptly and regularly of the details of payments made to contractors or other outsiders.

980. In the case of payment to party not in Government/Railway employment, the Paymaster shall use precautions for satisfying himself about the identity of the applicant for payment.

981. Unless specially mentioned in a bill, no witness need be required for payments made by cheque to contractors able to sign in English/Hindi.

982. **Time Limit for Retention of Bills.**—Pay clerks should not retain in their hands, any bills for more than one month from the date of their receipt, but should return them to the Paymaster with any amounts remaining unpaid. Where lower limits have been prescribed locally, the same should continue. This period may, at the discretion of the Accounts Officer, be extended or curtailed to suit the detailed procedure of the payment for particular staff, but in no case, should the bills be allowed to be retained by the pay clerks for more than three months. Any tendency to retain the bills for longer periods than is allowed, should be viewed seriously by the Accounts Officer and enquiries should be instituted in all cases of delay in the returning of vouchers after payment.

983. **Surprise Checks.**—The gazetted officer in charge of the cash and pay department should exercise a surprise check on the accounts of the pay clerks both at headquarters and on the line and such check should embrace a census of the bills in the possession of the pay clerks and the counting of the cash in their hand. A similar surprise check should be carried out by an Accounts Officer nominated by the Financial Adviser & Chief Accounts Officer. The Accounts Officer should also arrange for surprise checks of payments to labour paid on muster rolls in accordance with the rules in para. 1351 of the Indian Railway Code for the Engineering Department. Such checks should also be made on payments to monthly rated labour paid on pay sheets.

984. Impres
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exceeding three r
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any pay order

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(iii) whether the procedure laid down in rule 9 and rule 10 or rule 11 shall be followed in the proceeding.

Clarification and Railway Board's decisions

Intention of common proceedings.—The rule regarding common proceedings contemplates a common disciplinary authority for imposing penalties on one or more officials involved in the same case, intention being that offences committed by the delinquents involved in such cases should be weighed with one standard for imposing the penalty.

(Railway Board's letter No. E(D & A)71RG637 dated 19th October, 1971)

14. Special procedure in certain cases.—Notwithstanding anything contained in Rules 9 to 13:—

(i) where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an Inquiry in the manner provided in these rules; or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules:

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.

Clarifications/Railway Board's decisions

I. Dismissal, removal etc., is not to be automatic in cases of conviction in a criminal court.—Where action to impose a departmental penalty on a Railway servant is taken on the basis of facts which led to his conviction in a criminal court; dismissal, etc., is not to be automatic and each case should be examined on its merits and orders imposing the penalty passed if the charges against the Government servant on which his conviction is based, show that he was guilty of moral turpitude or of grave misconduct which is likely to render his further retention

In service undesirable or contrary to public interest. While action to dismiss, remove or reduce an employee or impose on him any penalty on the basis of conviction on a criminal charge, is to be taken on the merits of the case, it is not necessary to observe the usual disciplinary procedure before taking action to dismiss, remove etc. In such cases, it is not even necessary to serve a charge-sheet on any employee and the departmental penalty may be imposed straightforwardly on the ground of conduct which has led to his conviction on a criminal charge.

(Railway Board's letter No. E50RG6-6 dated 4th February, 1950 and E56RG6-6 dated 31st May, 1956).

2. An order by a court under Sections 107 and 117 of CPC, requiring a Railway servant to execute a bond for keeping the peace or in default, to undergo simple imprisonment, cannot be taken to be a conviction for the purpose of Rule 14 of the R. S. (D & A) Rules.

In such cases, it is open to the appointing authority to take the circumstances into consideration and consider whether in the light of the facts culminating in the order of the court, it is necessary to take disciplinary action. If such action is decided upon, the prescribed procedure should be followed and the provisions of Rule 14 (i) of R. S. (D & A) Rules will not apply in such a case.

(Railway Board's letter No. E(D & A)55RG6-36 dated 31st December, 1959)

3. Conviction under Customs Act cannot be considered a conviction on a criminal charge.—In such cases, the procedure prescribed in Discipline and Appeal Rules cannot be bypassed if it is intended to take departmental action against the Railway servant concerned in the circumstances leading to such conviction.

(Railway Board's letter No. E(D & A)63RG6-41 dated 16th October, 1963)

15. Provision regarding Railway servants lent to State Governments, etc.—(1) Where the services of a Railway servant are lent to any other Ministry or Department of the Central Government or to a State Government or an authority subordinate thereto or to a local or other authority (hereinafter in this rule referred to as "the borrowing authority"), the borrowing authority shall have the powers of the authority competent to place the Railway servant under suspension for the purpose of placing him under suspension and of the disciplinary authority for the purpose of conducting disciplinary proceeding against him;

Provided that the borrowing authority shall forthwith inform the authority which lent the services of the Railway

Statement of Assets and Liabilities of
 Shri G. C. Dchingis - Sr. Cashier/DOPT
as on 18.1.78

Liabilities

Unpaid for Oct/77 (WAD) 12,193.69
 " " Nov/77 " 6,208.97
 " " Nov/77 (Lmb) 13,463.13
 " " Sept/77 (PMD) 5,738.36
 " " Oct/77 (") 1525.00

Rs. 39,129.15

Assets

Rs. 20/- adco x 5 = 100.00
 10 x 30 = 300.00
 5 x 24 = 120.00
 2 x 45 = 90.00
 1 x 354 = 354.00

Rs. 964.00

Shortage - Rs. 38,165.15
Rs. 39,129.15

Shortage Rupees Thirty eight
 thousand One hundred Sixty five and
 Paise fifteen only in my cash and the
 above shortage of Rs 38,165.15 P (Rupees
 Thirty eight thousand one hundred sixty
 five & paise fifteen) on my is accepted
 and confirmed.

G. C. Dchingis
 18/1/78
 Sr. Cashier/DOPT
 at M.G.

Verification conducted by me & found shortage of Rs 38165.15 P
 only in his cash and the shortage is accepted by Shri G. C. Dchingis
 on 18/1/78 as per.

Shanty Adhikar P.M.

Sh. G. C. Dchingis
 18/1/78
 recorded in my finance.

18/1/78

Sh. G. C. Dchingis
 18/1/78
 Acc.

15N 34

NORTHEAST FRONTIER RAILWAY

• N. F. -- Au. G. 200 (Large)

A-1

1

Paymaster 6

Sir, ~~afc. L. 177.~~ N. F. Rly... No..... dated..... 197.....

~~I beg to~~ return by..... No..... vouchers enumerated below totalling Rs.....
.....(in words). The unpaid amount of Rs.....(in words) is
returned herewith in Cash in Challan. The closing balance of my Cash Book on.....
is Rs.....

Signature of District Asstt. Pay Clerk No.

Cash Office

Deposit Slip

Paid into the _____ as per _____ No. dated 19_____
Imperial Bank Ltd. T. B. 19_____
Deposit Slip

Imperial Bank Treasury Remittance Note

Imperial Bank Treasury Remittance Note
Received the documents and cash detailed above.
Dated 12

Dated.....19.....

Paymaster

123 5 or 33

NORTHEAST FRONTIER RAILWAY

N. F. - Au. G. 280 (Large)

A-14

Paymaster

N. F. Ry... No..... dated..... 197.....

Acct 17
I declare to return by..... No..... vouchers enumerated below totalling Rs.....
(in words). The unpaid amount of Rs(in words) is
returned herewith in Cash in Challan. The closing balance of my Cash Book on
is Rs.....

Signature of District Asstt. Pay Clerk No.

Cash Office

Deposit Slip

Paid into the _____ as per _____ No. dated 19_____
Imperial Bank Ltd. T. P. J. _____

Imperial Bank Treasury Remittance Note
Received the documents and cash detailed above.
Dated..... 18

Paymaster

To
The Chief Cashier
N. F. Railway/PWD.
Through proper channel.

Sir,

Sub:- Statement under what circumstances the shortage occurred in cash and the two bills are lying with Chion/083021

I beg to state that under what circumstances the shortage of Rs. 38,165.15/- (Rupees Thirty eight thousand one hundred sixtyfive and paise fifteen) only have been accused is beyond my imagination. I have no doubt about the integrity of any colleagues at 083021.

Two Bills bearing AB No. 13 DWPF dt 27.x.77 and 161xL dt 7.11.78 respectively as mentioned in the statement enclosed. I beg to state that due to sudden serious illness of my wife I hurriedly came to the office on 18.11.77 and handed over the above bills to Chion/083021 without fund for payment of carriage Labour Staff to avoid infringement of payment of wages Act.

I have no other Cash and Rs. in my cash box and safe lying at 083021 Pay Office.

Yours faithfully

Chion/083021
18.11.78

Sr. Cashier/083021
at 1126

Planned in my power

Blk 18.11.78
M. S. P. M.

Sri S.C. Shrivastava
Sr Cashier O.P.R.T.
at Maligaon.

Please do not
bank Maligaon.
Till further orders.

G.P. record

— 18/1/78

Chief Cashier

~~Mr. P. C.
G.P. record
18/1/78~~

Memorandum of 23.1.78

In presence of the signatories to this memorandum the cash held in the custody of Sri G. C. Dehingia, Senior Cashier No 10 SBRT in the embedded iron safe, cash boxes and wooden almirah etc of the strong room in Pay Office, N.T. Rly. Belpark was physically checked with reference to the cash books, vouchers and bills etc to day the 23rd January 1978 with the following results:-

Sri G. C. Dehingia, Cashier No 10, A.T. Rly. Belpark received the following bills with amounts on the dates as shown against each as per the Cash books maintained by him for payment to the incumbents:-

<u>Sl.no</u>	<u>Bills No & dt</u>	<u>PMR No & dt</u>	<u>Amount</u>	<u>dt of recpt by S. Dehingia</u>
1.	6 L55 94 L55 dt 8.11.77	11/480	Rs 81601=94	12.11.77 As per Cash Book
2.	16 LXL dt 7.11.77	11/791	Rs 13014=83	17. 11.77 As per Cash Book
3.	6 Pen dt 14.9.77	9/2823	Rs 5691=50	3. 10.77 As per Cash Book
4	9 Pen EP dt 17.9.77	9/2630	Rs 46=86	3. 10.77 As per P.W.O A/c
5.	159 S.B dt 22.9.77	10/1396	Rs 25.00	14.10.77
6.	36 XC dt 3.10.77	10/1087	Rs 750.00	14.10.77
7.	38 XC dt 3.10.77	10/1089	Rs 750.00	14.10.77

(P.T.O)

8. 243 WRAD	10/9	Rs 569=00	3.10.77
82 29.9.77			
9. 28 WRAD	30/9		
82 29.9.77			As per Cash
10. 111 WXM	10/15	Rs 163=00	3.10.77
82 6.10.77	10/30	Rs 200=00	8.10.77
			WAD A/c
11. 182 WAD	10/47	Rs 10=00	14.10.77
82 12.10.77			BBRT
12. 161 WS	10/53	Rs 266=56	14.10.77
82 6.10.77			
13. 183 WS	10 -	Rs 29=25	14.10.77
82 12.10.77			
14. 12 DWPF	10/79	Rs 30=00	25.10.77
82 14.10.77			
15. 121 WXM	10/52	Rs 252=00	25.10.77
82 18.10.77			
16. 13 DWPF	—	Rs 111.03=00	31.10.77
82 29.10.77			
17. 173 WS	11/14	Rs 299.75	8.11.77
82 3.11.77			
18. 170 WS	11/17	Rs 488.78	8.11.77
82 3.11.77			
19. 165 WS	11/18	Rs 14.36	8.11.77
82 14.10.77			
20. 9 DWPF	11/26	Rs 5406.08	82 8.11.77
82 7.10.77			
<hr/> Total Rs 120,711=91			

As per the entries in the respective
Cash books (Cash books of Lending A/c, Pandu A/c
and Workshop A/c, Belpark) maintained by
Shanti 20/11/78
(Contd. on P-3)

-3-

412/5A

by S. C. Behingra, Sr. Cashier, the aforementioned bills amount of Rs 1,20,711=91 remained outstanding with him but on thorough check of the aforesaid 20 bills except bill No 162XL dt 7.11.77 and 130WPF dt 24.10.77 it was found that Sri Behingra effected payment of Rs ~~81820=36~~ ⁸¹⁸²⁰⁼³⁶ out of Rs 1,20,711.91 received by him and thus a sum of Rs 39091.55 remained as unpaid amount.

It was also found that bill No 94LES dt 8.11.77 and bill No 161WS dt 6.10.77 do not contain revenue stamps amounting to Rs 34.40 and Rs 00=20 respectively.

As per the remarks given by Sri Behingra in cash books for Laundry A/c & Workshop A/c bill No 162XL dt 7.11.77 and bill No 130WPF amounting to Rs 24111=83 in total were charged over to Cashier No 10A, DBAT for payment without making over any fund on 20.11.77 and 18.11.77 respectively.

The cash balance in hand of Sri G. C. Behingra, Sr. Cashier was also checked after he opened all cash boxes, checked after he opened all cash boxes, wooden almirah and the embedded iron safe. The table, drawers and other containers etc were also thoroughly checked. During the said physical

23/11/78
Chabdy

23/11/78
G. C. Behingra

23/11/78

(P70)

Check a sum of Rs 970.01 in the form of currency notes and coins and 36 M.W.T revenue stamps amounting to Rs 7.20 the details of which are shown in Annexure 'A' were found available with Sir. Sehingra. Most of the currency notes as per Annexure 'A' to this memorandum are mutilated ones and non-acceptable.

The total shortage in cash was thus found as under:—

Liabilities in respect of unpaid bills - Rs 39091.55

Revenue stamps to be affixed - Rs 37.60

Total liabilities Rs 39129.15

Less cash and value of R/stamps Rs 977.21

Total Shortage Rs 38,151.94

(Rupees thirty eight thousand one hundred fifty one and paise ninety four) only

The above shortage of Rs 38,151.94 in cash has been accepted by Sir. G.C. Sehingra, Sr. Cash Cr. A.C. Rly. DTSRT. as per Annexure 'B'

Sehingra
23.1.78

S. N. Ganguli
23.1.78

23.1.78

Shatto

Declarator at DTSRT
23.1.78

P. Sarker
23.1.78

23.1.78

Shatto

Declarator at DTSRT
23.1.78

23.1.78
(G.N. (up to))

23.1.78
(G.N. (up to))

ANNEXURE 'A'

Lash physically found available in the
Custody of Sqn Lc. Dehing & Sq. Caahick
S.R.F. Ry. DBRT on 23.1.78 while checking
the/ in the Pay Office. DBRT

<u>SL No.</u>	<u>Currency notes - number</u>	<u>Amount</u>
1.	Rs 20/- denomination 5	Rs. 100.00
2.	Rs 10/- " 30	Rs. 300.00
3.	Rs. 5/- " 24	Rs. 120.00
4.	Rs. 2/- " 45	Rs. 90.00
5	Rs. 1/- " 354	Rs. 354.00
		Rs. 964.00

<u>Coins</u>			
Coins of .50P	1 =	Rs.	2'00
20 of .25P	6 =	Rs	1'50
20 of .10P	6 =	Rs	0'60
20 of .05P	7 =	Rs.	0'35
20 of .02P	5 =	Rs	0'15
20 of .01P	69 =	Rs.	1'38
	3 =	Rs	.03
		Rs	6.01

Revenue stamps of 20 Paisa each
numbering 36 only valuing $Rs - 7.20 = 7.20$
 $Rs 977.21$

Rupees nine hundred Seventy seven
and paise twenty one only

Fateh Singh

✓ Silver 2/11/17
Sr. Cashier
B.R.T.

Shahoff 28/11/78
ADL for a Dose

N. F. Ply, Press-1/7702/58 Feb 17/77 - 3,39,570 Terms.

23.1.78
(G. N. Bawden)
C.B. 1/68852009

23/11/04

11

10/11/1978 checked. Young see
10/11/1978

(P70)

40

Statement of Assets & Liabilities of
Sri G. C. Dehingia Sr Cashier / D.R.T

Liabilities

Unpaid for Oct '77 (Mto) Rs 12,193 = 69
- Rs - Nov '77 (-80-) Rs 6208 = 97
- Rs - Nov '77 (Ang) Rs 13463 = 13
- Rs - Sept '77 (Pto) Rs 5738 = 36
- Rs - Oct '77 (Pto) Rs 1525 = 00

Assets:-

Rs 20 denomination	100 = 00
10 " " 300 = 00	
5 " " 120 = 00	
2 " " 90 = 00	
1 " " 354 = 00	
<hr/>	
50 P. L. C. R.	2 = 00
25 " " 1 = 50	
10 " " = 60	
05 " " = 35	
03 " " = 15	
02 " " 1 = 28	
01 " " = 03	
Rs Stamp	7 = 20
<hr/>	
	Rs 977 = 21

Rs 39,129 = 15

Shortage Rs 38,151 = 94

Rs. 39,129 = 15

(Shortage of Rs Thirty Eight thousand one hundred
fifty one & Paise ninety four only.)

Shortage of Rs Thirty Eight thousand one hundred fifty one
& Paise ninety four only (Rs. 38,151 = 94) only in my cash
and the above is accepted and confirmed.

Rs. 38,151 = 94 P. only (Rs. Thirty Eight thousand one hundred
fifty one & Paise ninety four) only accepted by
Sri G. C. Dehingia Sr Cashier / D.R.T and dated 23/1/78
and the same is in presence.

Acting M.D.R.T

Dehingia
23/1/78

was present
23/1/78

(Dehingia
23/1/78)

23/1/78. Sr Cashier / D.R.T
23/1/78 (Under Suspension)
23/1/78 (Old)

Dehingia checked. finding the same proper
23/1/78

23/1/78

(P.T.O.)

From :

Shri Ganesh Ch. Dehingia
 Sr. Cashier/DBRT (Under Suspension)
 Chiringgaon Railway Colony
 Block No. 51-F.
 P.O. C.R. Building/Dibrugarh
 At Maligaon.

To :

The Chief Cashier (JA)
 N.F. Railway/Maligaon
 Guwahati-11.

Dated the 5th December/1995.

Ref :- 1) Charge sheet No. C.P./EP/GCD/DAR
 dated 20.11.95

2) My letter dated 1.12.95

Sub :- Inspection of documents and to
take extract thereof.

Sir,

May I draw your kind attention for the following
 few lines for your kind consideration and necessary action :-

1. That the aforesaid charge sheet No. CP/EP/GCD/DAR dated 20.11.95 was served on me on 23.11.95 alongwith the statement of Article of charges, statement of imputation of misconduct alongwith a list of documents and list of witnesses.
2. I having gone through the aforesaid charge sheet, decided to inspect the documents mentioned in the list of documents. Accordingly, by my letter dated 1.12.95 addressed to you, I expressed my desire to inspect all the documents mentioned in the list of documents furnished to me and to take extract thereof.

contd....2.

3. That though I was not allowed to inspect the documents, extract (Photo Copy) of the following documents were furnished to me.

List of documents furnished .

- 1) P. 4 Statement of Shri G.C. Dehingia Ex. Sr. cashier Beat No. 10/DBRT dated 18.1.78.
- ii) - do -
- iii) Statement of Assets and liabilities of Shri G.C. Dehingia Ex. Sr. Cashier/10/DBRT dated 18.1.78.
- iv) Letter from Shri G.C. Dehingia Ex. Sr. Cashier, 10/DBRT dated 18.1.78.
- v) WAO/DBRT's General Report dated 19.12.77 on the result of varification of cashier No. 10, 10A and 11/DBRT pay Ovvice.
- vi) Recoupmment pay Order No. 5080 of 6. 2. 78 for Rs. 38,151.94 issued by DAO/LMG.
- vii) Documents of disbursement of amount of bill under AB No. 13 DWPF dated 27.10.77 for Rs. 11,103.00 by Shri N.K. Borua, Ex. Sr. Cashier 10A/DBRT.
- viii) Documents of desbursement of amount of bill No. 16L x L of 7.11.77 by Shri N.K. Borua Ex. Sr. Cashier, 10A/DBRT.

contd.....3.

617

386

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- 3 -

ix) Rly. DFC No. 164 dt. 17.12.77 of Shri G.C. Dehingia, Ex. Sr. Cashier/10/DBRT pay Office.

x) Memorandum dated 23.1.78 with encloser - Annexure - A & B.

xi) Charge Report of pay beat No. 10/DBRT.

xii) Cash Verification held on 25.1.78 in the a/cs of Shri N.K. Borua, C/10A/DBRT.

xiii) Written letter from Shri G.C. Dehingia Ex. Sr. Cashier/10/DBRT dated 16.1.78 addressed to ADC/TSK for discrepancy of huge amount in his cash balance.

4. That I was neither allowed to inspect the following documents, nor did I was furnished with the extract thereof :-

Extract of
document
(1 to 5)
from (i) to (v)

Received on
date (6.12.95)

Shilling
Sr Cashier
(under Susp.)

i) Do. letter No. CP/86/B dated 23.12.77 from Shri G.P. Verma, chief Cashier/ MLG to Shri D.K. Chatterjee, ADC/TSK.

ii) Letter No. CP/86/B dated 21.12.77 from Chief Cashier/MLG to Shri D.K. Chatterjee Ex. ADC/TSK.

iii) SP/CBI/SPE/Shillong's letter No. 3/2/78 -SHG dt. 2.4.77.

iv) XR No. ADC/45/77 dated 27.11.77.

v) SP's report (CBI/SPE/Shillong) No. 16 dt. 25.8.78.

5. That by letter No. CP/EP/GCD/DAR dated 01/12/95 the Sr. Asstt. Chief Cashier informed me that the remaining

contd.....4.

documents in connection with this case may be allowed to inspect during the period of enquiry if the Enquiry officer permits on the issue.

6. That the documents mentioned in para 4 above are very vital and important having great bearing on the issue involved. It will be difficult on my part to submit my written statement as asked for without inspecting and taking extracts of the said documents, kindly note that denial of inspection of those documents mentioned in para 4 above and taking extract thereof would cause grave prejudice to my defence in the disciplinary proceedings.

7. That the original Bill No. 13 DWPF dt. 27.10.77 and bill No 16 L x L dt. 7.11.77 are very vital and important documents and the same are mentioned at serial No. 9 & 10 of the list of documents. Though the extract of documents mentioned in serial No. 9 & 10 relating to the disbursement of amounts of the connected bills were supplied to me on 4.12.95, I was neither allowed to inspect the bills mentioned therein, nor did I was allowed to take extracts of the bills. It will be difficult on my part to submit written statement without inspecting and taking extracts of the same, which will also cause prejudice to my defence in my disiplinary proceedings.

I therefore humbly request your goodself to allow me to inspect the documents mentioned in para 4 & 7 above and to take the extract thereof and thereafter allow me at least 15 days time to file my written statements.

Yours faithfully,

Ganesh Ch. Dehingi
Sr. Cashier/DBRT(Under suspension)
N.F. Railway. 5/12/95

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From - Sri Ganesh Chandra Dihingia
Sr. Cashier (Under Suspension)
Chiring Gaon Rly. Colony
Block No. 51-F
P.O. C.R. Building, Dibrugarh.

T₀

The Senior Asstt. Chief Cashier,
N.F. Railway/Maligaon
P.O. Guwahati-11

Dated the 16th December/95

Ref. : Your Memorandum of charge sheet
No. CP/EP/GCD/DAR dated 20-11-95

Sir,

My defence counsel Shri S.K. Chatterjee, Shop Supdt. M & P under CWE/Maligaon who is also Joint General Secretary of N.F. Railway Employees' Union was out of Head Quarter. So, I am unable to submit my written statement of Defence in details. However, I deny all the charges brought against me vide your Memorandum under reference. I am ready to face DAR Enquiry at any stage and I hereby nominate Shri S.K.

ChatterjeeShop Supdt/M & P under CWE/Maligaon to act as my defence counsel. I shall be grateful if you kindly arrange to spare of my defence counsel in all the days of Enquiry.

Thanking you.

"Yours faithfully,

Ganesh Ch. Dihingia
(Shri Ganesh Ch. Dihingia)
Sr. Cashier/DBRT
(Under Suspension)

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SPECIAL POLICE ESTT. C.B.I. SHILLONG.

Seizure Memo.

Case No. RC 2/78 SGD

Date of seizure: 2. 5. 1979.

By whom seized: G. N. GUPTA, Inspector of Police,
C.B.I./S.P.E., Shillong.

From whom seized: Sri G.P. VERMA, Chief Cashier,
N.F. Railway, Maligaon in his
office.

Particulars of document
seized.

Pay order No. 5080/60 passed under A.B.
No. 132 LBB dt. 6.2.1978 for Rs. 38157.34 being
recoupment of shortage in fund of G.C. Dehingia,
Sr. Cashier/DBRT. = 1 sheet.

Signature of the
person from seized.

G.P. Verma
(G.P. Verma)
Chief Cashier/N.F. Railway,
Maligaon.

Signature of Police
Officer.

G.N. Gupta
(G.N. GUPTA)
Inspector of Police, CBI/SPE,
Shillong.

N. F. Railway.

Confidential.

G. P. Verma.
Chief Cashier,

Office of the
Chief Cashier/N.F.Railway,
Maligaon, Gauhati-11.

D.O.No.CP/GCD/Shortage.

Dated: April 30, 1979.

My dear Choudhury,

Sub:- Supply of original paid voucher
bearing A.B.No. 132 LBB dated
6.2.78 and C07 No. 2 LB dated
6.2.78 (DAO-LMG's Pay order
No. 5080/60 dated 6.2.78).

Ref:- Your Confidential D.O. letter
No. LMG/A/RF dated 28th April,
1979.

I confirm the receipt of your Pay Order
No. 5080/60 dated 6.2.78 passed under A.B.No.132 LBB
dated 6.2.78 and C07 No. 2LB dated 6.2.78. The above
Pay order is required by S.P.E/Shillong who will be
handed over to them.

Yours sincerely,

(G.P. Verma)

Shri R.N.Choudhury,
A.D.A.O./N.F.Rly/LMG.

"CONFIDENTIAL"

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/* R.N.CHOUDHURY */
/DAO-LMG./

P.O. LIG/A/RF.

Dated, the 23th April '79.

71

My dear Verma,

Sub: Supply of Original Paid Voucher
 bearing AB No. 132 LBB dated 6.2.78
 and Co7 No. 2 LR dated 6.2.78
 (DAO-LMG's P.O. No. 5080/60 dt:6.2.78.)

As per telephonic discussion, I am sending
 herewith the original paid voucher against AB No. 132 LBB
 dated 6.2.78 for information and necessary action. The
 same may please be returned when done with.

With regards,

DA: One Pd. Vrs.

Yours sincerely,

*Verma**Handed over*

Sri G.P.Verma,
 Chief Cashier,
 N.F.Rly/Muliganj.

Copy to Sub-Head Record for information.

✓ DIVISIONAL ACCOUNTS OFFICER,
 N.F.RLY:LMG

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

OA NO. 26/94

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Ganesh Chandra Dehingia ... Applicant
 Vs.
 FA & CAO, NF Rly. & Ors. Respdt.

PRESENTS

HON'BLE MR. JUSTICE S. HAQUE, VICE CHAIRMAN
 HON'BLE SRI G.L. SANGLYINE, MEMBER (ADMN.)

For the Applicant ... Mr. S.N. Chetia
 For the Respdt. ... Mr. B.K. Sarma

ORDERS

7.2.1994 Heard learned counsel Mr S.N. Chetia on behalf of applicant Shri Ganesh Chandra Dehingia. Perused the statement of grievances and reliefs sought for in this application. The applicant was dismissed from service vide Memorandum No.CP/GCD/Shortage/ Pt.I. dated the 9th Japuary,1984 (Annexure A-4). He had preferred appeal dated 23rd August,1991 (Annexure A-5) which was not disposed of by the appellate authority within six months from date of filing. Hon'ble High Court vide order dated 12.5.93 in Civil Rule No.4333/1991 directed the appellate authority to dispose of that appeal within three months from 12.5.1993, but the appeal was not disposed of. Hence this application under Section 19 of the Administrative Tribunals Act,1985.

This application is admitted. Issue notice on the respondents under Registered Post. Learned

contd.

contd.

7.2.1994 | Railway counsel Mr B.K.Sharma receives copy of this application and prays for six weeks time to file counter. Time allowed as prayed for.

| List on 28.3.94 for counter and further orders.

| Heard Mr Chetia on the interim relief prayer. Also heard Railway counsel Mr B.K.Sharma on this point. Applicant has prayed for a direction on respondents to pay the subsistence allowances for the period from June,1983 to 9th January,1984 to him. We direct the respondents to pay the subsistence allowances to applicant for the period from June,1983 to 9th January,1984 within a period of 30 days from the date of receipt of this order in accordance with rules, if not already paid.

| Intimate respondents for compliance.

| Presently,we pass no order on the claim of subsistence allowance for the period from February, 1984 to January,1994.

TRUE COPY

Deputy Regd. Stts (Judicial)
Entitled: *Central Labour Tribunal*
Guru Nanak Dev Marg, Gwahati

Sd/- *Subhash Chandra*

Sd/- *Member (A)*

ANNEXURE - X

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FORM OF ORDER OF SUSPENSION (RULE 6(1))
RAILWAY SERVANTS (DISCIPLINE AND APPEAL)
1.1.1968.

L.C.W./DP/102/1968/1000

Name of Railway Administration: N.F.Railway.

(Place of Issue) Malgao. Dated 16/10/1968.

ORDERIn a DISCIPLINARY PROCEEDING against Sri Ganesh Chandra
Designation Sr. Cashier, Cash & Pay Office,
Malgao is contempnated. Charge Sheet No. 4/Mal.

Therefore, the undersigned (the authority competent to
place the Rly servant under suspension in terms of schedules
I, II and III appended to Rly. servants (Discipline and appeal)
Rule, 1968, an authority mentioned in proviso to Rule 6(1) of
the Railway servants (Discipline and appeal) Rule, 1968, in exercise
of the powers conferred by Rule 6 provision to Rule 6(1) of
the Railway servants (Discipline and appeal) Rule, 1968 hereby
issues the said Sri Ganesh Chandra Dehingia Designation Sr. Cashier
under suspension with immediate effect with effect from 16/10/68.

It is further ordered that during the period this order shall
remain in force the said Sri Ganesh Chandra Dehingia
Designation Sr. Cashier Pay & Cash Office/N.F.Rly/Mal shall not
leave the Rly Quarters without obtaining the previous permis-
sion of the competent authority.

S.C. Bara
(Signature)
Name S.C. Bara

(Designation of suspending
authority) S.C. (J.A.)

Copy to Sri Ganesh Chandra Dehingia Designation Sr. Cashier
Cash & Pay Office/N.F.Railway/Malgao

S.C. Bara
(Designation of suspending
authority/N.F.Railway/Malgao)

S.C. (J.A.)

Office of the
FA & Chief Accountant Officer,
N. F. Railway, Maligaon,
Gauhati - 781 011.

Memorandum No.CP/CCD/Shortage/Pt. I. Dated, the 9th Dec./83.

WHEREAS Shri Ganesh Ch. Dohingia, Senior Cashier (under suspension) has been convicted of criminal charges under Section 6(2) R/W Section 5(1) of the Prevention of Corruption Act and Section 409 of the I.P.C. and sentenced to undergo R. I. for a term of one year and to pay fine of Rs.30,000/- (Rupees thirty thousand), in default to R. I. for a further term of 20 months for the first offence and R. I. for a term of one year and fine of Rs.10,000/- (Rupees ten thousand), in default to R. I. for a further term of 10 months for the second offence by the Hon'ble Special Judge, Assam, Gauhati in the criminal case instituted against the said Shri Ganesh Ch. Dohingia in special case No.11 of 1978.

AND WHEREAS it is considered that the conduct of the said Shri Ganesh Ch. Dohingia which has led to this conviction is of grave misconduct so as to render his further rotation in the public service undesirable.

AND WHEREAS an opportunity was given to Shri Ganesh Ch. Dohingia to make representation on the proposed penalty of dismissal vide memorandum No.CP/CCD/Shortage/Pt.I dated 9th Dec./83 to which Shri Ganesh Ch. Dohingia has not submitted any representation.

2. NOW, THEREFORE, in exercise of the powers conferred by Rule 14(1) of the Railway Servants (Discipline and Appeal) Rules, 1968, the undersigned hereby dismisses the said Shri Ganesh Ch. Dohingia from service. W.C.F. 9.1.84

The receipt of this memorandum should be acknowledged.

(C. L. Chadda)
FA & Chief Accountant Officer,
N. F. Railway, Maligaon,
Gauhati - 781 011.

Shri Ganesh Ch. Dohingia,
Railway Quarter No. 51/F,
Firing Gom Colony,
Dibrugarh,
D. T. : Dibrugarh.

88Y
6/1