

2/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓
O.A/T.A No. 417/2000

R.A/C.P No.

E.P/M.A No.

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SECTION OFFICER (Judl.)

Bahts
22/12/17

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI, 5

ORIGINAL APPLICATION NO. 417/2000.

Gajendra Mishra Applicant.

versus

Union of India & Ors Respondents.

For the Applicant(s) Mr. D.C. Baruah,
" D. Barua

For the Respondents. Rly. Counsel...

NOTES OF THE REGISTRY

This application is in form
but not in time Condensation
Petition in O.C. & vide
M.P.N. C.F.
for Rs. 571
IPO/33 No. 77/030
Dated..... 27.11.2000

Dy. Registrar.

Steps & envelopes
are filed along with
application.

Notice prepared and sent to S/O
for giving the respondents No 1 to 5
by Regd. S/O. vide S/N 3014 to
3018 dtd 7/12/2000

2-1-2001

① Notice duly served on
R. No. 1 & 2 (by hand).

② Service report are
still awaited on R. No
3, 4 and 5.

DATE

ORDER

1.12.00 Present : Hon'ble Mr. Justice D.N.
Chowdhury, Vice-Chairman.

Mr. D.C. Baruah, learned counsel for the
applicant for the applicant.

Admit. Call for the records.
Returnable by four weeks. Mr. S. Sarma,
learned counsel appears on behalf of Mr.
B.K.Sharma, learned Railway Counsel
accepts notice.

List on 3.1.2000 for further
orders.

Vice-Chairman

trd

3.1.01 List on 31.1.01 to enable the
respondents to file written state-
ment.

Vice-Chairman

1m

9.2.01 List on 13.3.01 to enable
the respondents to file written
statement.

Member

Vice-Chairman

1m

5-1-2001

12x2x01

"Vakalatnama" has been
filed by the
respondents through
Mr. B.K. Sharma.

B.K.

No written statement
has been filed.

13.3.01

By
8.2.01

12.3.01

lm

no reply filed
la

11.4.01

No written statement
has been filed.

By
14.6.01

18.5.01

lm

bb
15-6-01

No written statement
has been filed.

By
14.8.01

LIST ON 11.4.01 TO ENABLE THE
RESPONDENTS TO FILE WRITTEN STATEMENT

Member

Vice-Chairman

311. No D.M. adjourned to 9.2.2001
on
August
9/1.

List on 11.4.01 to enable the
respondents to file written statement.

K.C. Chawla
Member

Vice-Chairman

List on 18.5.01 to enable the respon
dents to file written statement.

Vice-Chairman

Three weeks time is allowed to the
respondents to file the written statement.

List for orders on 15.6.2001.

K.C. Chawla
Member

Vice-Chairman

Mr.S.Sarma, learned counsel for the
respondents has already been granted suff
cient time for filing of written statement
Today again he prays time for the same pu
pose. As a matter of last opportunity, we
allowing him four weeks and no more time
file written statement. Rejoinder, if any,
may be filed within two weeks thereafter.

List on 16-8-2001 for orders.

K.C. Chawla
Member

Vice-Chairman

3

O.A. 417/2000

Notes of the Registry	Date	Order of the Tribunal
	16.8.01	No written statement so far been filed. List on 26/9/01 for hearing. The respondents may file written statement within 3 weeks from today.
	mb	<i>ICU Sharma</i> Member
		<i>[Signature]</i> Vice-Chairman
24.9.2001 W/s has been submitted by the respondents.	26.9.01	Mr.D.Bora, stated that he has received the written statement today only, and he wants to go through the same. The case is accordingly adjourned. The applicant may file written statement rejoinder, if any, within seven days. List on 8/10/01 for hearing.
No. rejoinder has been filed. <i>By</i> 5.10.01	mb 8.10.2001	<i>ICU Sharma</i> Member
		<i>[Signature]</i> Vice-Chairman
		Prayer has been made on behalf of the applicant by Mr.D.C.Borah for adjournment of the case to enable him for filing of rejoinder. Prayer allowed. List the case on 22.11.2001 for hearing.
Rejoinder filed by the applicant. <i>By</i> 21.11.01	bb	<i>ICU Sharma</i> Member
		<i>[Signature]</i> Vice-Chairman

Notes of the Registry	Date	Order of the Tribunal
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19.10.2001

22.11.01

Reminder to Wfs
on behalf of Applicant
has been submitted.

Heard learned counsel for the parties. Hearing concluded. Judgment delivered in the open court, kept in separate sheets. The application is allowed to the extent indicated in the order. No costs.

7.12.2001

Copy of the Judgment
has been sent to the
Office for issuing 15
line to the applicant
as well as to the L/Ps.
in the Resp. Bn
HS

trd

Member

Vice-Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. NO. 417/2000 of

DATE OF DECISION 22.11.2001..

Sri Gajendra Mishra

APPLICANT(S)

Mr. D.C.Bora

ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

Union of India & Ors.

RESPONDENT(S)

Mr. B.K.Sharma, Mr. S.Sarma..

ADVOCATE FOR THE
RESPONDENTS.

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

THE HON'BLE MR. K.K.SHARMA, MEMBER(A).

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 ?

5.

Judgment delivered by Hon'ble Vice-Chairman.

No

h

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 417 of 2000.

Date of decision : This the 22nd day of November, 2001.

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

Hon'ble Mr. K.K.Sharma, Member (A).

Shri Gajendra Mishra
Son of Late Nageswar Mishra
Village & P.O. Loma Via Jhandahar
P.O. Trishinta
District - Baisali, Bihar
Presently working as Deputy Station
Superintendent (Cabin),
New Guwahati Railway Station (Leave Reserve).

...Applicant

By Advocate Mr. D.C.Bora.

-versus-

1. The Union of India
represented by the General Manager,
N.F.Railway, Maligaon.
2. The Chief Railway Operational Manager,
N.F.Railway, Maligaon.
3. The Divisional Railway Manager,
N.F.Railway, Lumding.
4. The Senior Divisional Operational Manager,
N.F.Railway, Lumding
5. The Chief Personal Officer,
N.F.Railway,
Maligaon.

...Respondents.

By Advocates Mr. B.K.Sharma, Mr. S.Sarma.

O R D E R (ORAL)

CHOWDHURY J. (V.C.).

A disciplinary enquiry was conducted under Rule 9 of
the Railway Servants (Discipline and Appeal) Rules, 1968 on
the following charges :

Contd...

" That the said Shri G. Mishra, Dy. SS/GHY at West Cabin/NGC, while functioning at west cabin/NGC during the period on 15.9.1999 at 1.20 hrs. (Night shift) (here enter definite & distance article of charge). was found sleeping while on duty in lying posture with pillows, bed sheets etc.

Hence, he is charged with lack of devotion to duty and gross neglect of duty for violation of rules No.3.1 (ii), (iii) of Rly Service conduct rules, 1966.

ARTICLE II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Gajendra Mishra, Dy. SS/GHY at west cabin/NGC. (here enter definite & distinct article of charge)

On 15.9.1999 Shri Gajendra Mishra Dy. SS/GHY while performing night duty at west cabin/NGC had not even acknowledged the charge taken over from his relief upto 1.50 hrs. in the diary though he was on duty from 22.00 hrs. of 14.9.1999 nor he made entry of any train in the train register. He kept the particulars in a rough paper which was maintained by his cabin man and P/man. By the act of sleeping, he had allowed his staff to handle the block instrument and TLBI.

Hence, he is charged with lack of devotion to duty and gross neglect of duty for violation of rules No.3.1 (ii), (iii) of Rly. Service Conduct Rules, 1966."

The applicant submitted his explanation in writing denying and disputing the allegations. An enquiry was conducted through the Enquiry Officer. The enquiry officer submitted his report holding that the charge no.1 was proved and charge no. 2 was partly proved. The disciplinary authority accepted the enquiry report and the penalty of reduction of pay by three stages lower in the same time scale of pay for three years with cumulative effect was imposed. The applicant preferred an appeal to the Appellate Authority and the Appellate Authority upheld the order of penalty by order dated 23.10.2000. Hence this application assailing the legitimacy of the order imposing punishment as illegal and arbitrary.

2. The respondents submitted its written statement denying and disputing the claim of the applicant. According to the respondents the delinquent officer was served with the

Contd..

allegations as per law and an enquiry was made after giving reasonable opportunity to the applicant and the enquiry officer on the basis of material on records found the applicant guilty of the charges. The disciplinary authority on the assessment of the materials on records including the report of the enquiry officer found the applicant guilty of the charges and accordingly imposed the aforementioned penalty. The penalty imposed on the applicant was lawful and adequate.

3. We have heard the learned counsel for the parties at length. Mr. D.C.Bora, learned counsel appearing on behalf of the applicant submitted that the applicant was denied a fair opportunity by the respondents to defend his case. The enquiry officer, despite time prayed by the defence assistant refused to grant time and proceeded with the enquiry. Mr. D.C.Bora further submitted that the enquiry officer acted in a most unjust and unfair manner. Mr. D.C.Bora, the learned advocate also submitted that the findings of the enquiry officer is perverse and the disciplinary authority mechanically accepted the said report without application of mind. Mr. Bora, the learned counsel further submitted that his appeal was not duly considered by the Appellate Authority. Lastly Mr.D.C.Bora submitted that in the instant case the DRM who disposed of the appeal was himself the complainant and therefore the appeal of the applicant was not fairly disposed of. Mr. S.Sarma, the learned advocate appearing on behalf of Mr. B.K.Sharma learned counsel for the Railways placed before us the records of the proceeding. Mr.S.Sarma, the learned advocate submitted that the authority provided the applicant all the opportunities. Mr. Sarma further submitted that the DRM was the Appellate

Contd..

Authority but in view of the fact that DRM was the complainant and therefore the appeal was placed before the ADDitional DRM who disposed of the appeal as per law.

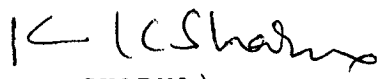
4. We have already indicated as to the two charges. As per the charge no., it was alleged that the applicant was not found in sleeping, on the other hand the enquiry officer held that the applicant, about was just relaxing. The enquiry officer in his report held that relaxation was improper, it was also held that lying on a table during trains passing duty militates against the first principle of decency, decoram, safety and discipline. The applicant was not charged for any improper behaviour. The applicant was only charged for negligence of duty for sleeping in the duty hours. The findings reached by the enquiry officer did not lead to the conclusion that the applicant was found guilty of sleeping during the duty hours. As to the charge no. II enquiry officer found that he did not acknowledge to have taken over charge upto 1.50 hours was not sustained and proved. The charge that delinquent officer did not perform his duty and allowed his staf to handle the Block instrument was not established. He however found that the delinquent officer used a separate paper for taking down the train passing particulars whcih were required to be written on the Train Register instantly and immediately at the time of transaction/communication of information. As mentioned earlier as to the charge no. II the applicant was charged that by his act of sleeping he allowd his staff to block instrument and TLBI, as per findings of the enquiry officer the applicant was not found guilty in allowing his staff to operate the block instrument and and TLBI. The disciplinary authority did not address its mind to the materials on record and mechanically held that charges were proved though in fact as per the findings of the enquiry


Contd..

officer the charge no. II was not fully proved. Under the Disciplinary Rules the disciplinary authority is to independently examine the materials on record and to reach its own conclusion on assessment of the facts but the same is discernible in act of Disciplinary Authority. The disciplinary rules provides for statutory appeal and the appellate authority is entrusted to decide the appeal on merit. The applicant in his appeal questioned to the findings reached by the enquiry officer as perverse. The Appellate Authority also did not address his mind to those charges only held that punishment is adequate.

5. For the reasons stated above, the impugned or penalty dated 25.7.2000 and the order of the Appellate Authority dated 23.10.2000 are not sustainable and accordingly the same are set aside.

6. The application is accordingly allowed. There shall however be no order as to costs.

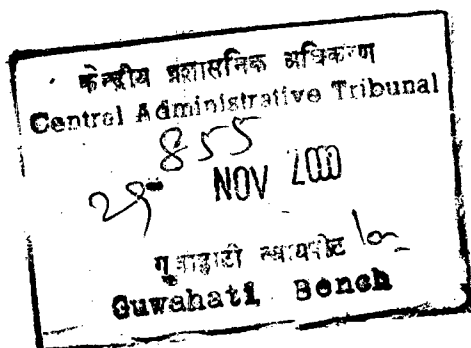

(K.K.SHARMA)
Member (A)


(D.N.CHOWDHURY)
Vice-Chairman

trd

IN THE COURT OF THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(Application Under Section 19 of the Administrative
Tribunal Act, 1985)



C.A. NO. 417 / 2000

Shri Gajendra Mishra

... Applicant

-Versus-

Union of India and others

... Respondents

I N D E X

<u>Sl. No.</u>	<u>Particulars of documents relied upon</u>	<u>Page No.</u>
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2	Annexure-'B' : Written statement	28-32
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Date of filing: 29.11.2000

Date of receipt by post:

Registration No. :

Gajendra Mishra

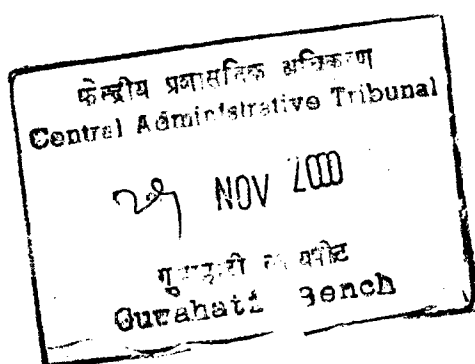
Signature of applicant

Registrar

IN THE COURT OF CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(Application under Section 19 of the Administrative
Tribunal Act, 1985)

Q. A. NO. 417 / 2000



Sri Gajendra Mishra

Son of Late Nageswar Mishra

Vill & P. O. : Loma Via Jhandahar

R. S. : Trisinta

District : Baisali, Bihar

Presently working as Deputy Station

Superintendent (Cabin), New Guwahati Railway
Station (Leave Reserve).

... APPLICANT

- Versus -

1. The Union of India
represented by the General Manager,
N. F. Railway, Maligaon.
2. The Chief Railway Operational Manager,
N. F. Railway, Maligaon.
3. The Divisional Railway Manager, N. F. Railway,
Lumding.
4. The Senior Divisional Operational Manager,
N. F. Railway, Lumding.
5. The Chief Personal Officer, N. F. Railway,
Maligaon.

.... RESPONDENTS

Contd. 2

13
Filed by -
Gajendra Mishra
Applicant
Shobh -
Advocate
29.11.2000

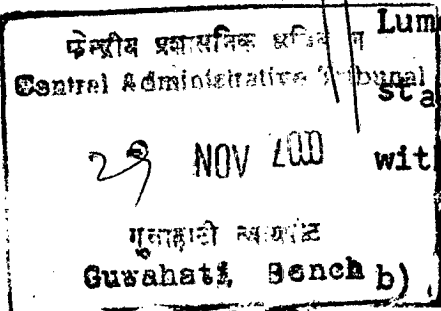
Gajendra Mishra

1. Details of Application:

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

a) Order No. T/134/1/Sr. DOW/LM dt. 25.7.2000 issued by the Senior Divisional Operational Manager, N.F. Railway,

Lumping reducing the pay of the petitioner to three stages lower in the same time scale for 3(three) years with cumulative effect.



b) Order No. T/134/1/DOW/LM dt. 23.10.2000 by which the order passed by the Divisional Railway Manager, N.F. Railway Lumping Maligaon, who is the appellate Authority, confirming the punishment order as mentioned in above, had been intimated.

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the order as mentioned above against which he wants redressal is within the jurisdiction of the Tribunal.

3. Limitation:

The petitioner further declares that the application is within the limitation period as prescribed in Section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the Case:

The humble petition most respectfully stateth :

Contd.... 3

Gajendra Mishra

i) That the applicant is a citizen of India as such he is entitled to all the rights, privileges and protections as guaranteed by the Constitution of India.

ii) That the petitioner was recruited as Assistant Station Master in the year 1965 and joined as Assistant Station Master in Cabin of Guwahati Railway Station on 30th November, 1965.

iii) That the petition^{or} was duly and timely promoted^{ed} to Senior posts such as Sr. Asstt. Station Master (Cabin) and then as Deputy Superintendent in respective period of time without any impediments.

iv) That during this long period of service life the petitioner served the cause and welfare of the Railways with utmost dedication and sincerity and to the best satisfaction of his seniors.

v) That during this long period of service, the petitioner had been ever charged for any dereliction of duty or dis-obedience. On the other hand he could earn applause and appreciation from all corners of high-ups.

vi) That for utter misfortune, the petitioner had to be victimised of certain arbitrary whimsical and mala-fide attitude of certain higher officer, may be due to some calculated jealousy and vested interest.

Contd... 4

Gajendra Mishra

vii) That on a very fate-ful moment i. e. at 1-20 AM of 15-9-99, a most unfortunate incident happened when the petitioner alongwith other staff were inside the West Cabin of New Guwahati Railway Station, the Divisional Railway Manager, NF Railway, Lumding, whom the petitioner had never seen on any earlier occassion, accompanied by 4(four) other officials, knocked the door of the Cabin levelled a baseless, false and imaginary charge that the petitioner was in deep sleep during duty hours on a very colourful and impossible hypothesis that it took two to three minutes to open the door at knocking.

viii) That the Divisional Railway Manager, NF Railway, Lumding i. e. the respondent No. 3 was pre-occupied with such a venom of vindictiveness that immediately after entering the Cabin, he began ^{to} shout with such a filthy language which not only shocked the petitioner but also made him complete dump and at the same time the respondent No. 3 threatened the petitioner with dire consequences even removal from the service too.

ix) That the charge levelled by the respondent No. 3, was so ^{silly} ~~silly~~, false and fabricated, that he could not even find any sleeping materials which are most essential for a person to go on fast sleep and as a result, the respondent No. 3 could not seize such materials as Tusak, mosquito-net, bed-sheet or any pillow etc.

Contd. 5

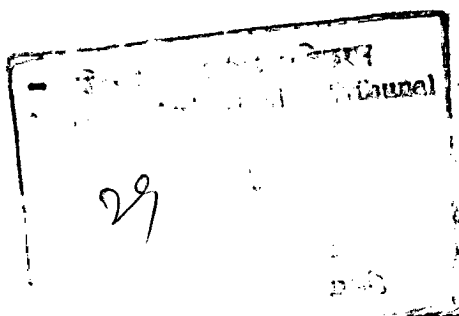
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x) That the charge levelled by the respondent No. 3 was such a shilly that he could not even imagine ^{what} a shortest possible time that might be required by an aged man like the petitioner at nearly 56 years and plies to go to deep sleep at such a condition where no minimum required materials for sleeping is available and that too at this dead of ~~night~~ night nearly 1-18/19 AM by the time when the petitioner had given clearance pass-signal as required for a train to pass through, just at 1-15 AM on 15.9.99 which can be ascertained from the Register of Trains maintained in the Cabin which normally takes two to three minutes, to fill up the register after a pass-signal is given. As such to go to deep sleep at this dead hour of night after performing a ~~str~~ straneous and risky job like train-passing by an aged man like the petitioner is humanly impossible.

xi) That thereafter, on the aforesaid false, fabricated, vindictive and frivolous charge, the petitioner was placed under suspension by an order dt. 15.9.99 in terms of the threatening word which the respondent No. 3 had uttered at 1.20 AM on 15.9.99 which of course was ^{later} revoked, ~~on~~ on, by an order dt. 21.7.2000 subject to drawal of departmental proceedings.

xii) That the respondent No. 3 was so vindictive and revengeful that in order to feed fat the grudge against the petitioner, the respondent No. 3 had with malafide



Gajendra Mishra

intention and capriciously transferred the petitioner by an order dt. 21.7.2000 during the pendency of the afore-said Departmental proceedings for which the humble petitioner had to knock the door of the Hon'ble CAT, Guwahati Bench for ameliorating the injustice caused to the petitioner by means of an application which was registered as OA 384/2000 and was disposed of by an order dt. 14.11.2000 keeping the said order of transfer in abeyance.

~~xix)~~
xiii)

That in the meanwhile, consequent upon the so-called departmental proceedings, memorandum of charges alongwith statement of Articles of Charges were framed against the petitioner and was served on him wherein mainly two charges had been shown as

1. In deep sleep while on duty and
2. Not acknowledged the charge taken over at the change of shift.

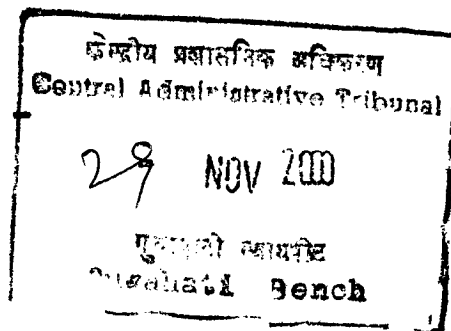
ANNEXURE - 'A'

xiv) That the petitioner accordingly submitted his written statement inter-alia denying all alleged charges framed against him which were nothing but off-shoots of ~~char~~ imagination and vindictiveness.

ANNEXURE - 'B'

xv) That interestingly enough, the memorandum of charges as mentioned in para xiii) was received by the

Contd.....7



Gajendra Mishra

petitioner on 3.6.2000 though it was shown to be issued on 5.11.99, the mystery behind non-delivery of the above mentioned memorandum of charges, obviously shows the callousness and confusion of the concerned authority over the motivated departmental proceedings upon the petitioner.

xvi) That, appointment of enquiry Officer was finally done vide letter dt. 27.1.2000, whereby Sri D.K. Mazumdar, TI, WR, Lumding, who happens to be of ^{same} ~~same~~ rank and status with that of the petitioner.

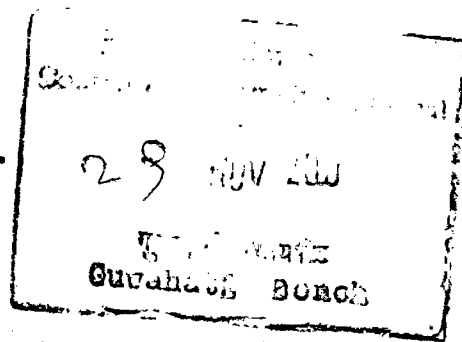
ANNEXURE- 'C'

xvii) That, while acknowledging the appointment letter of Enquiry Officer, the petitioner had furnished the name of the defence counsel as has been provided under D & A rules alongwith the consent letter from the nominated defence counsel.

ANNEXURE - 'D'

& ANNEXURE- 'E'

xviii) That, the Enquiry Officer finally fixed 22.5.2000 at Divisional Head Quarter at Lumding for hearing but to this, the petitioner had objected by submitting a petition dt. 22.5.2000 before the Enquiry Officer that the said date may be deferred inter-alia stating that (i) his defence counsel could not be available on that day due to his pre-arranged programme at Guwahati on 23.5.2000 which the defence counsel



Gajendra Mishra
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himself intimated the E. Q., (ii) Some important documents which the petitioner relied upon be produced for inspection and also (iii) That certain defence witnesses who are most essential for defence purpose be called for.

ANNEXURE- 'F'

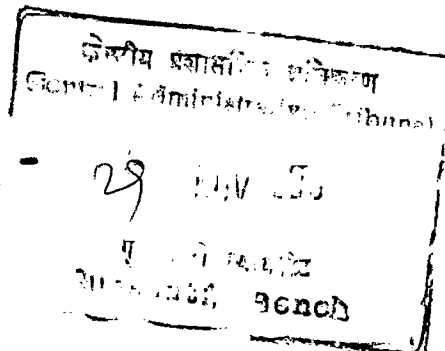
xix) That, inspite of specific provisions in the concerned D & A rules as in force, and ^{conniving} ~~canning~~ all norms of Rule of natural justice, the E. Q. rejected the above-mentioned petition, rather forced and threatened the petitioner to take part in the Enquiry as fixed on ~~22.5~~ 22.5.2000 and proceeded wholly on one-sided and pre-conceived attitude that the petitioner would have to be victimised.

xx) That, as had been planned earlier in collusion with certain interested corner and at the behest of some high-ups in the administration, the E. Q. had finalised a guided and frivolous enquiry report which was furnished to the petitioner by a letter dated 31.5.2000.

ANNEXURE- 'G'

xxi) That, immediately after holding the one-sided Departmental enquiry on 22.5.2000, the petitioner had submitted a letter which inter-alia completely in disagreement with the Enquiry held in such a biased and illegal manner.

ANNEXURE- 'H'



Gajendra Mishra

xxii) That, the petitioner, being so hurt and depressed at the manner of holding Enquiry by the biased Enquiry Officer one-sidedly without giving any reasonable opportunity of being properly heard and conniving all norms of 'Natural Justice' as has been provided under Article 14 of the Constitution of India, had furnished his written statement as been shown by ANNEXURE- 'B'.

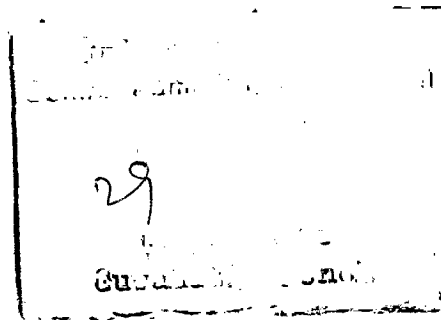
xxiii) That, the concerned authority was so heavily infested with venom of punishing the petitioner that without going through the representations/petitions by the petitioner and conniving all sorts of Rules of Law and Natural Justice and that too conniving the existing Disciplinary and Appeal Rules, passed a cryptic and ~~sp~~ *Sketchy* order dt. 25.7.2000 which imposes a punishment of reduction of pay to three stages lower in the same time scale with cumulative effect for three years.

ANNEXURE- 'I'

xxiv) That, thereupon the petitioner filed an Appeal petition dt. 25.8.2000 as provided under Discipline & Appeal Rules, 1968 before the appellate authority who being the Divisional Railway Manager N. F. Railway, Maligaon i. e. the Respondent No. 3.

ANNEXURE- 'J'

xxv) That, in the abovementioned ^{appeal petition, 2} the petitioner being deeply mourned and frustrated at the alleged

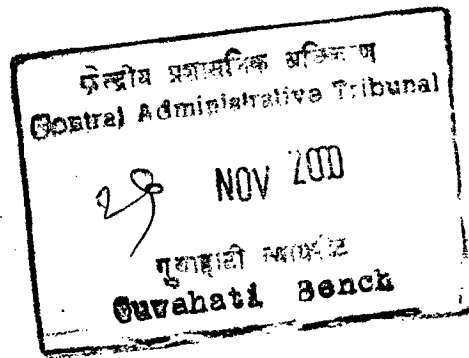


Gajendra Mishra

punishment metted upon the petitioner, had inter-alia narrated what a great injustice and harm had been caused by the Enquiry Officer through his biased guided and premeditated venomous enquiry report and also the manner and method that had been ascribed by the disciplinary authority i.e. the respondent No. 4 in inflicting the punishment order which had surpassed all limits of arbitrariness, illegality and violation of all establishment rules and regulations in this direction. Besides more, the petitioner, even being unable to forbear the shock and frustration due to all these biased enquiry report and the unethical arbitrary whimsical and sketchy punishment order, was compelled to ponder for a voluntary retirement leaving back nearly 4(four) years of Valuable service.

xxvi) That, most unfortunately, the appellate authority i.e. the respondent No. 3 who was the main brain behind to bring all such alleged charges of dereliction of duties against the petitioner, had as expected, ~~had~~ rejected the appeal petition of the petitioner upholding the arbitrary and whimsical punishment order dt. 25. 7. 2000. While in disposing the appeal petition, the respondent No. 3 who being the main prosecutor but sitting on the seat of judgement, had passed the rejection order which was communicated vide Memo No. T/134/1/IRM/LM dt. 23. 10. 2000, in complete connivance of Rule of Natural Justice and all other judicial decisions from time to time while in disposal of Appeals. Besides, the said order is also

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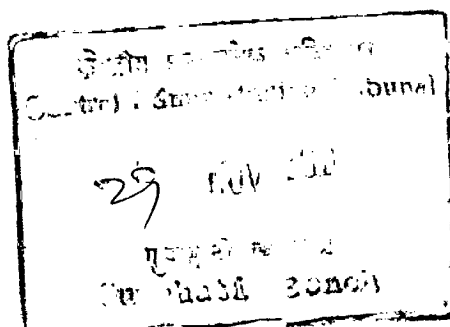
cryptic, sketchy and arbitrary and was passed with complete venegance and jealousy.

ANNEXURE- 'K'

5. Grounds of Relief with Legal Provision :

The petitioner most respectfully beg to state that the impugned punishment order dated 25.7.2000 which imposes punishment on the petitioner reducing his pay to three stages lower in the same time scale with cumulative effect for a period of three years was a cryptic and sketchy one which is bad in law and contravenes all Rules and ^{procedures} ~~freedoms~~ as provided in the Discipline and Appeal Rules and also violates the very principles of Natural justice and Audi-alterum partem. As such the aforesaid impugned order No. T/34/1/Sr. DOM/LM dt. 25.7.2000 passed by the Respondent No.4 reducing the pay of the petitioner to 3(three) stages lower ⁱⁿ ~~to~~ the same time scale with cumulative effect for a period of three years be quashed on the grounds hereunder :-

- a) The impugned punishment order passed by the Senior Divisional Operation Manager, NF Railway, Lumding i. e. the respondent No. 4 is totally guided illegal, motivated and whimsical which is liable to be quashed.
- b) The impugned punishment order passed, on the basis of certain charges those had been framed against

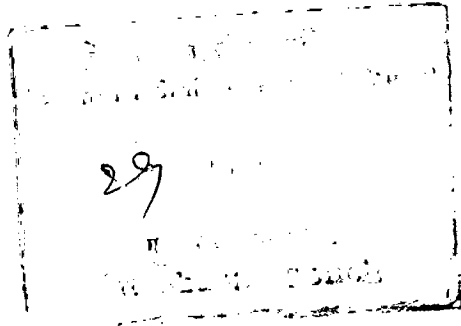


Gajendra Mishra

the petitioner merely out of sheer anger, vengeance and jealousy of the respondent No. 3 who, at the time of detection of so-called alleged dereliction of duties, had lambasted and threatened the petitioner of dire consequences including removal from service, had not been passed in quite resonance with relevant rules and ~~pro~~ procedure of D & A Rules and other judicial decisions in this regard but had been passed just to please the boss i. e., the respondent No. 3 in terms of his (respondent No. 3) guidance and satisfaction. As such the said impugned order is liable to be set aside.

c) For that the respondent No. 4 while passing the impugned punishment order had been relied upon the report of the Enquiry Officer which is nothing but on one-sided, guided and had violated all established principles of Natural justice and audi-alterem partem. It is further stated that the respondent No. 3 while going through enquiry Officer's report had not applied his minimum bare necessities of common sense, not to speak of legal entities, and to the contrary passed such a cryptic, arbitrary and whimsical order that it had violated all sorts of legal aspects which, in general, an ordinary man with slightest common sense, would have hesitated. As such the said impugned order of punishment which is pre-meditated and off-shoot ^{of} well-planned conspiracy be quashed.

d) For, that the petitioner most humbly begs to state that the report of the enquiry Officer is

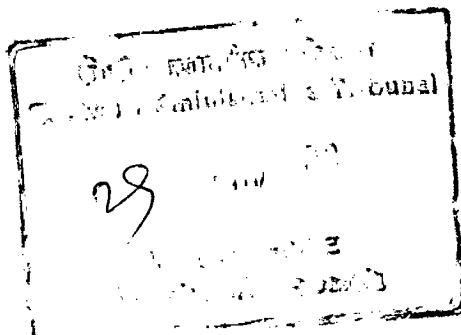


Gajendray Mishra

such a biased, one sided and which had violated all sorts of principles of natural justice that can be very well be elaborated as under :

(1) The Enquiry Officer, who being a subordinate Officer of the respondent No. 3, had intentionally rather guidedly and deliberately ~~omitted~~ omitted the main material prosecution witnesses viz (i) the Divisional Railway Manager, N. F. Railway, Lumding who had allegedly detected the so-called dereliction of duties of the petitioner that he (DRM) found him (the petitioner) in deep sleep at 1.20 AM on 15.9.99 and (ii) The A. R. M., Guwahati Railway Station who accompanied the D. R. M. on that fateful time and date i. e. at 1.20 A. M. on 15.9.99. The Enquiry Officer while holding the enquiry, did not even dare to call for a statement whether in writing or verbal from the respondent No. 3 and the A. R. M. Guwahati, rather was induced to be satisfied with what the ~~appained~~ ^{attendants} attendants of the Respondent No. 3, the main detector of the alleged dereliction of duties of the petitioner, had deposed before him. As such it might very vividly be inferred that the Enquiry Officer being frightened or under pressure from high-ups had submitted a colourful report.

2) For that, the Enquiry Officer while submitting his report failed miserably to appreciate that an aged man like the petitioner could go to deep sleep within 2(two) to 3(three) minutes of going to

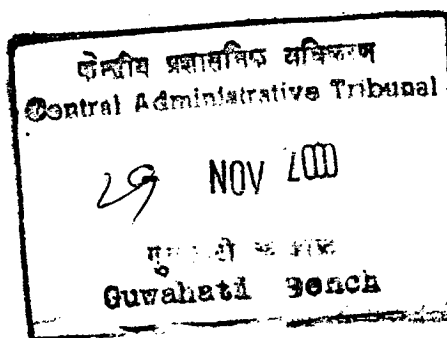


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sleep and that too without any required bedding materials like 'Tushak', 'Pillow', 'Mosquitonets' etc and on a table-top. Because of the fact that from the 'Train Register' and other available documents it had established beyond doubt that the petitioner gave a 'Signal Pass' to a train to pass off at 1.15 AM and after giving such 'Signal Pass' another two to three minutes' time will be required to complete the relevant paper works relating to a passing Train through the Station and as such, the time available at hand of the petitioner, to go to deep-sleep after doing all such straneous and risky job including that of required paper works, is hardly two to three minutes.

Furthermore, the Enquiry Officer was totally blindfolded regarding seizure of any bedding materials, which of course were not there, by the D.R.M. i.e. the respondent No. 3 during the time of surprise checking.

3) For that, the Enquiry Officer was so induced that he had violated all sorts of Rules of Natural Justice and he even denied the petitioner, the minimum requirement of offering reasonable opportunities such as a) The Enquiry Officer held the enquiry without appearance of the defence counsel who had duly intimated the Enquiry Officer that he (the defence counsel) would not be able to appear on 22.5.2000 because of his pre-occupation elsewhere and requested to defer the date of holding enquiry to a later date.

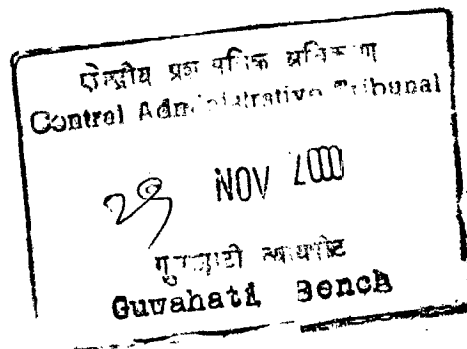


Gajendra Mishra

4) For that the petitioner himself while appearing before the Enquiry Officer on 22.5.2000 had requested the Enquiry Officer to postpone the date of hearing to a later date by a petition at Annexure- 'F' inter-alia stating other main issues like (i) calling of certain valuable defence witnesses (names of those had been furnished). ii) to inspect some vital documents which are sufficient enough to prove that the charges levelled against him are false and fictitious. But the Enquiry Officer was so pre-occupied with biasness and inducement that he not only rejected the above-mentioned petition of the petitioner but also influenced the petitioner to take part in the Enquiry with threatening that otherwise it would be held ex-parte.

5) For that the most serious lapse that had been committed by the E. O. that the E. O. had examined the charged official i.e. the petitioner in ahead of the other prosecution witnesses and thereby deprived the petitioner of the opportunity from refuting the depositions whatever those prosecution witnesses had deposed.

Thus from the above grounds it is most humbly submitted that the entire report of the Enquiry Officer is nothing but a ^afiasco which had violated all established rules and Regulations and procedure and also relevant judicial decisions in this regard. And as such,



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the impugned punishment order which was purportedly passed relying upon this enquiry report is nothing but perverse, whimsical and arbitrary and shall therefore be liable to be set aside.

E) For the said impugned order dt. 25.7.2000 had been passed without any consideration of facts and applying any mind. It is most humbly submitted that the said impugned order is not at all a speaking order and it is a cryptic, capricious and sketchy order passed basically on whims and with maligned intention to feed fat the anger, vengeance and jealousy of certain high-ups against the petitioner.

F) For that the impugned punishment order dt. 25.7.2000 is arbitrary and had been passed violating all relevant circulars issued by the Railway Authority that the punishment order, when passed, shall be a full-proof speaking order and shall never be a cryptic, arbitrary and whimsical. There are ample of legal decisions in this regard. As such, the said impugned punishment ^{order} shall be liable to be quashed out right.

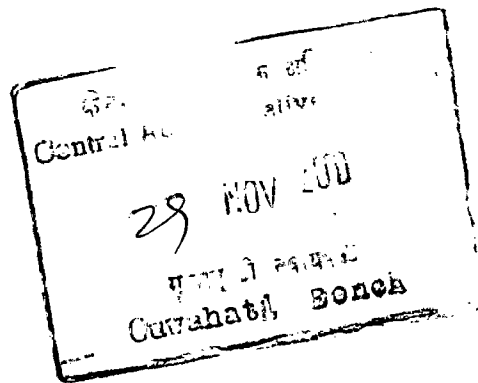
G) It is most humbly submitted that the impugned appellate order passed by the appellate authority i.e. the respondent No. 3, had also violated the rule of Natural Justice as no opportunity of being heard, was given to the petitioner. The said impugned order was



also cryptic, sketchy and was passed without applying any mind, as such the said impugned order shall be liable to be set aside.

H) For that the respondent No. 3 who happened to be the appellate authority as per provision of the Railway Servants(Discipline and Appeal Rules, 1968), was the main brain behind all agonies and miseries that was loaded on the petitioner's head owing to the alleged dereliction of duties alongwith threatening that the petitioner was going to be taught a good lesson including removal from the service. It is therefore, humbly submitted that the respondent No. 3 who was ab-initio determined to thrash the applicant with heavy punishment for no fault on the part of the petitioner, had immediately caught hold of the opportunity as an appellate authority and without consideration of all such legal liabilities and obligation as an appellate authority and also without adherence of 'Rule of Natural Justice', passed the impugned appellate order dt. 23.10.2000. As such, the said impugned appellate order which was passed in a pre-planned manner with complete malice, whims and arbitrariness is liable to be set aside.

(I) It is further humbly submitted that, to expect a proper justice from an individual, who being the prosecutor occupies the seat of judgement is nothing but running after a mirage in the desert, likewise, it is also an unbelieveable truth, that the respondent No. 3, who being



the main instrument in bringing up false, fabricated and fictitious charges of dereliction of duties against the petitioner and being also completely overwhelmed with venom of revenge and anger, would pass none but the impugned order. As such, this illegal, biased and illogical impugned appellate order shall be set aside.

6. Details of remedies exhausted :

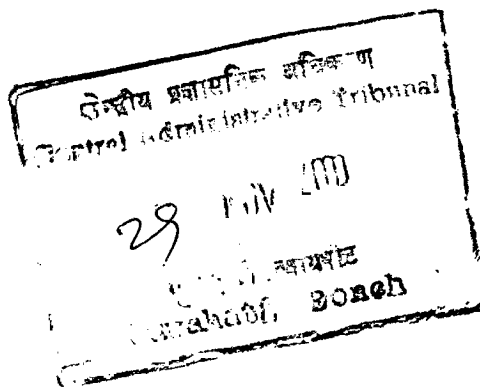
The applicant declares that ^{he} had availed all the remedies under the relevant Rules and submitted representations/appeals to the concerned competent authority who had not only disposed of the same but also paid an unsympathetic and defiant attitude.

7. Matter not previously filed or pending with any Court

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

8. Relief sought:

In view of the abovementioned facts and circumstances, the applicant most respectfully prayed that Your Lordships be so graciously enough to admit the application issue notice calling upon the respondents to show cause as to why impugned order dated 25.7.2000 at (Annexure-'I')



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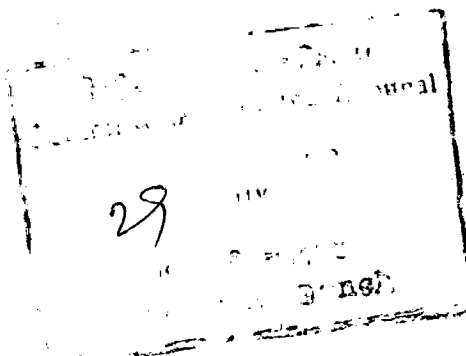
punishing the petitioner with reduction of pay to 3(three) stages lower in the same time scale with cumulative effect for 3(three) years and also the impugned appellate order dated 23.10.2000 (Annexure-'K') shall not be quashed and after cause or causes if any shown by the respondents, hearing the parties, the following relief may be bestowed upon the petitioner.

- (a) The impugned punishment order dated 25.7.2000 (Annexure-'I') reducing the pay of the petitioner 3(three) stages lower in the same time scale with cumulative effect for 3(three) years be quashed.
- (b) The impugned appellate order dated 23.10.2000 (Annexure-'K') upholding the above-mentioned punishment order dated 25.7.2000 be set aside.

9. Interim Relief :

Pending final decision on this petition, the petitioner seeks the following interim relief :-

- (a) As has been stated in the humble petition, the petitioner had to suffer a heavy loss in form of financial resources that being nearly Rupees one thousand & five hundred a month due to this unjustified and illegal impugned punishment order dated 25.10.2000(Annexure-'I') which reduces the pay of the petitioner to 3(three) stages lower in the same time scale of pay with cumulative effect



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for a period of three years, it is therefore most humbly prayed that Your Lordships be so kind enough to suspend the operation of the said impugned order dt.25.7.2000.

10. The application is being filed at the office of the Tribunal and the applicant undertakes to take all information from the office.

11. Particulars of Postal Order filed in respect of application fee:

Postal Order No.6G771030 dt.27.11.2000 at GPO, Guwahati drawn in favour of Registrar, Central Administrative Tribunal, Guwahati Bench.

12. List of document :

1. Annexure - 'A' : Memorandum of Charges.
2. Annexure - 'B' : Written statement
3. Annexure - 'C' : Appointment of E.O.
4. Annexure - 'D' : Nomination of defence counsel
5. Annexure - 'E' : Acceptance by nominated defence counsel.
6. Annexure - 'F' : Objection petition to holding enquiry on 22.5.2000
7. Annexure - 'G' : Enquiry Report.
8. Annexure - 'H' : Disagreement petition against holding enquiry on 22.5.2000.
9. Annexure - 'I' : Punishment Order
10. Annexure - 'J' : Appeal Petition
11. Annexure - 'K' : Appellate Order

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V E R I F I C A T I O N

I, Shri Gajendra Mishra, Son of Late Nageswar Mishra aged about 56 years working as Deputy Superintendent in the Cabin of New Guwahati Railway Station now on casual leave do hereby verify that contents of paras 2, 3, 4(i) to 4(xi), 4(xv), 4(xix), 4(xxv) are true to my knowledge and belief and paras 1, 4(xiii), 4(xiv), 4(xvi), 4(xvii), 4(xviii), 4(xx), 4(xxi), 4(xxii), 4(xxiii), 4(xxiv), 4(xxvi) are believed to be true on legal advice and that I have not suppressed any material fact.

Date : 29.11.2000

Place: Guwahati

Gajendra Mishra
SIGNATURE OF THE PETITIONER

Annexure A'

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STANDARD FORM OF CHARGE SHEET.

S. Form No. 5.

(Rule 9 of Railway servants (Discipline & Appeal) Rules, 1968) प्रशासनिक अदालत
Central Administrative Tribunal

No. T/134/1/LMC/LM.

(Name of Railway Administration) N. F. RLY.

Place of issue) DRM(O)/LMC'S Office

Dt/- 05/11/99

23 NOV 2000

Guwahati Bench

MEMORANDUM.

The President/Railway Board/undersigned propose(S) to hold an inquiry against Shri Gajendra Mishra, Dy. SS/CHY at NCC. Under Rule 9 of the

Railway servants(Discipline and Appeal)Rules,1968.The Substance of the imputations of misconduct or mis-behaviour in respect of which the inquiry is proposed to be held is sent out in the enclosed statement of articles of articles of charge (Annexure-I). A statement of the imputations of misconduct or mis-behaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which, under list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure-III & IV), Further, copies of documents mentioned in the list of documents, as per Annexure-III are enclosed.

2.* Shri Gajendra Mishra, Dy. SS/CHY at NCC is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure-III) at any time during office hours within ten days of receipt of this Memorandum. For this purpose he should contact ** SR. DOM/IMG

immediately on receipt of this memorandum.

Shri Gajendra Mishra, Dy. SS/CHY is further informed that he may, if he so desires, take the assistance of any other railway servant an official of Railway Trade Union (who satisfies the requirements of rule 9, (13) of the Railway servants (Discipline and Appeal) Rules, 1968 and Note 1 and 7 or/there under as the case may be) for inspecting the documents and assisting him in presenting his case before the Inquiry Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting railway servant or Railway Trade Union Official (S), Shri Gajendra Mishra, Dy. SS/CHY at NCC. should obtain an undertaking from the nominee (S) that he (they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case(S) if any, in which the nominee(S) had already undertaken to assist and the undertaking should be furnished to the undersigned General Manager

(Railway) along with the nomination.

4. Shri Gajendra Mishra, Dy. SS/CHY at NCC is hereby directed to submit to the undersigned (through General Manager

Railway) a written statement of his defence (which should reach the said General Manager) within ten days of receipt of this Memorandum, if he does not require to inspect any-- for the preparation

of his defence, and within ten days after completion of inspection of documents if he desires to inspect documents, and also
(a) to state whether he wishes to be heard in person; and
(b) to furnish the names and addresses of the witnesses if any whom he wishes to call in support of his defence.

Divi. Operations Man.

q. n. k. n. n.

W. N. Railway, London.

(Cond.....2/- true Copy
Certified to be true Copy
Advocate

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5. Shri Gajendra Mishra, Dy.SS/GHY at NCC. is informed that an inquiry will be held only in respect of those articles of charges as are not admitted. He should, therefore, specifically admit or/deny each article of charge.

6. Shri Gajendra Mishra, Dy.SS/GHY at NCC is further informed that if he does not submit his written statement of defence within the period specified in para 2 or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 9 of the Railway servants (Discipline and Appeal) Rules, 1968, or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry ex-parte.

7. The attention of Shri Gajendra Mishra, Dy.SS/GHY is invited to Rule 20 of the Railway services (conduct) Rules, 1966, under which no railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Shri Gajendra Mishra, Dy.SS/GHY at NCC. is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rules, 20 of the Railway services (Conduct) Rules, 1966.

8. The receipt of this Memorandum may be acknowledged.

/- By order and in the name of the president.

(M. P. MEHTA)

SR. DOM/IMG.

(Signature)

Name & designation of competent Authority

Authority

at Railway, Coimbatore

To

Shri Gajendra Mishra, Dy.SS/GHY at NCC.

DY.SS/GHY. (Designation)

YS/NCC. (Place)

@ Copy to Shri YS/NCC. (Name & Desig. of the sending authority for information.)

/- Strike out which ever is not applicable.

To be deleted if copies are given/not given with the Memorandum as the case may be.

**Name of the authority. (This would imply that whenever a case is referred to the disciplinary authority by the investigating authority or any authority who are in the custody of the listed documents or who would be arranging for inspection of the documents to enable that authority being mentioned in the draft memorandum.

££ Where the President is the disciplinary authority.

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

@ To be wherever applicable SEE Rule 16 (I) of the RS(DA) Rules, 1968 Not to be inserted in the copy sent to the Railway Servants.

@@@@@@@@@

N.F.RLY.

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AN NEXURE TO STANDER FORM NO . 5
MEMORANDUM OF CHARGE SHEET.
UNDER RULE -9 OF THE RS (D & A) RULES 1968.

ANNEXURE

Statement of Articles of charge frame against
Shri G. MISHRA, DY.SS/GHY at west cabin/NGC.

(Name and Designation of the Rly. servant.)

ARTICLE-I.

That the said Shri G. MISHRA, DY.SS/GHY at west cabin/NGC . while
functioning at west cabin/NGC during the period
on 15.9.99 at 1.20 hrs (Night shift) -
(here enter definite & distinct article of charge.)

Was found sleeping while on duty in lying posture with pillows, bed
sheets etc.

Hence, he is charged with lack of devotion to duty and gross
neglect of duty for violation of rules No.3.1(ii), (iii) of Rly. (Service conduct rules, 1966.

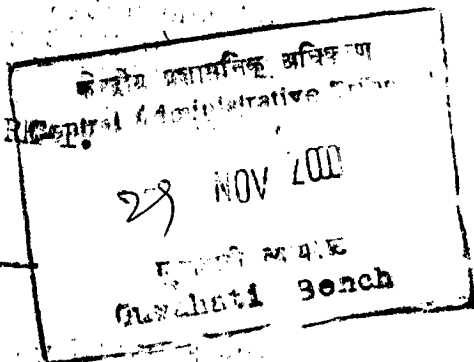
ARTICLE-II.

That during the afore said period and while functioning in the
aforesaid office, the said Shri Gajendra Mishra, Dy.SS/GHY at west
cabin/NGC .

(here enter definite & distinct article of charged)

On 15.9.99 Shri Gajendra Mishra Dy.SS/GHY while performing night
duty at west cabin/NGC had not even acknowledged the charge taken
over from his relief upto 1.50 hrs in the diary though he was on duty
from 22.00hrs of 14.9.99 nor he made entry of any train in the train
register. He kept the particulars in a rough paper which was maintained
by his cabin man and P/man. By the act of sleeping, he had allowed
his staff to handle the block instrument and TBI.

Hence, he is charged with lack of devotion to duty and
gross neglect of duty for violation of rules No.3.1(ii), (iii) of
Rly. service conduct rules, 1966.



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ANNEXURE-II.

Statement of imputation of misconduct or misbehaviour in support of the articles of charge frame against Shri Gajendra Mishra Dy.SS/GHY at west cabin /NGC.

(Name of & Designation of the Rly. Servant.)

ARTICLE-I.

That while working at west cabin /NGC, on 15.9.99 at 1.20 hrs. he was found sleeping in lying posture with pillows, bed sheets etc.

ARTICLE-II.

On 15.9.99 Shri Gajendra Mishra Dy.SS/GHY at NGC while performing night duty at west cabin /NGC had not even acknowledged the charge taken over from his relief upto 1.50 hrs in the Diary though he was on duty from 22.00 hrs. of 14.9.99 nor he made entry of any train in the train register. He kept the particulars in a rough paper which was maintained by his cabin man and P/Mn. By act of sleeping he had allowed his staff to handle the block instrument and TLBI.

ARTICLE-III

NIL

Contd---3/-

Divl. Operations Manager
Railway Junction

Surprise night inspection by DRM/LMG of GHY-NGC area on 14-15/9/99.

WEST CABIN NGC AT 1/20 HRS. OF 15/09/99.

1. Staff on duty: Shri G.Mishra, Dy.SS/GHY at NGC, C/man, Ahmed Ali, C/man S.B.Sengupta, P/man P.Singh were performing night duty from 22.06 hrs. All were found sleeping on duty lying posture with pillows, bedsheets etc. except P.singh, P/man. Sri.G.Mishra, was ordered for immediate suspension and others to be issued SF-11. The above negligence of duty by staff was witnessed by TI/GHY, B.N.Bordoloi, ASI/RPF/LMG(PSO to DRM) Sri P.R.Baishya, Hd.Constable, B.C.Deka and constable Latifar Rahman of Oc/RPF post GHY.

Shri Mishra, Dy.SS/GHY at NGC had not even acknowledged the charges taken over from his relief upto 1.50 hrs.in the diary though he was on duty from 22.00 hrs. nor he has made entry of any train in the train register. He kept the train particulars in a rought paper which was maintained by his cabin Man and P/man. By the act of sleeping, he had allowed his staff to handle the Block Instrument and TLBI.

Handwritten signature

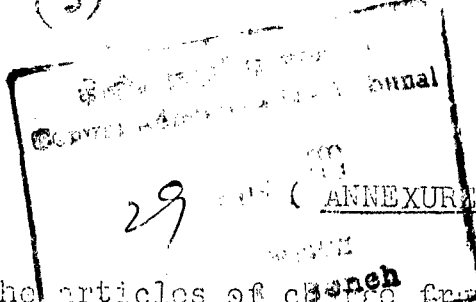
Operations Manager
M. T. Railway. Lumding

<p>केन्द्रीय प्रशासनिक प्रणाली Central Administrative Tribunal</p> <p>28 NOV 1999</p> <p>नया दिल्ली New Delhi</p>

(3)

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List of documents by which the articles of charge framed against
Shri **G. MISHRA, DY. SS/GHY AT NGC.**

(Name and Designation of the Railway Servant).

Are Proposed to be sustained :-

1. **DEM/LMG's surprise night inspection note No.2/166/IM/DEM dtd/-21/9/99.**
is enclosed.

(ANNEXURE - IV)

List of witnesses by whom the articles of charge framed against
Shri **G. MISHRA, DY.SS/GHY AT NGC WEST CABIN.**

(Name & Designation of the Railway Servant) are

Proposed to be sustained.

1. **Shri B.N. Bordoloi, TL/GHY.**
2. **Shri P.R. Baishya, ASI/RPF. IMG (PSO to DEM).**
3. **Shri B.C. Deka, Hd.Constable of OC/RPF post GHY.**
4. **Latifar Rahman, Constable of OC/RPF post GHY.**

*Confid to be
true copy
Advocate*

main
for the purpose of
the District Magistrate
2-9-99, GHY
for the purpose of

Annexure B

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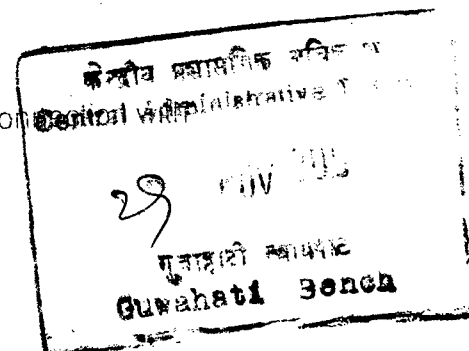
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To
The Sr. DOM / NFR / LMG
Through Proper Channel.

Sub :- Show Cause notice along with Enquiry Report in Control and
office major memorandum even no dt. 5.11.99

Ref :- Your No T / 134 / 1 / DRM / LM



Sir,

The above notice has been received by me on 3.6.2000.

In the above context I beg to submit for your kind perusal as under :-

That the DAR Rules – 1968 amended time to time have been mostly Violated while preparation of the memorandum, holding the enquiry and also preparation of findings.

The Article of charges:

The charges both Article I & II framed vide the memorandum under reference were composed by Sr ARM / GHY vide his letter dt. 15/9/99 (photo copy enclosed) much prior to the charges framed by the Disciplinary authority have had no opportunity to apply his mind, which happens to be the basic requirements.

The basic documents such as Dairy, Train Registers, the alleged of keeping train particulars in a rough paper-maintained by the cabin man have not been listed in the documents relied upon vide Annexure III in the memorandum for Substantiating the charges. This clearly shows that the Disciplinary authority did not apply his mind while framing the charges.

The irregularities in holding the Enquiry :-

(a) As per rule 9 of the DAR 1968 a preliminary enquiry is to be conducted to be followed by the regular hearing. In this case no preliminary hearing was conducted.

That although I submitted the name of my nominated defence counsel well in advance but the EO did not arrange to call him in the enquiry fixed on 23.03.2000

*Confirmed to be
the Gby [Signature]
Advocate*

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(b) The next date of enquiry conducted on 22.05.2000 i.e. leaving a gap of 59 days but my nominated defence counsel was intimated the date only 7 days earlier. My defence counsel since have had an appointment with Regional Labour Commissioner (Central) on 23.05.200 for holding negotiable with GM(P) Maligaon on some industrial disputes could not attend the enquiry but the EO conducted the enquiry without granting me the service of the Defence Counsel which is in violation of DAR – Rules.

(C) The prosecution witness are to be examined first under Rule 9 and the charged employee may be examined by the EO to clarify the points came in light. But in this enquiry the charged employee was examined by the EO as a prosecution witness and then examined other witnesses which is a clear violation of DAR Rules.

(d) While examining the charged employee the EO did not ask him any clarifications on any points raised by witness have also not been mentioned in the proceedings. This act of dropping relied witnesses is a clear violation of DAR Rules 1968.

(e) The charged employee submitted a note to the EO on 22.05.2000 before the regular hearing started (Copy enclosed) but in the proceeding the EO did not make any mention in the matter of either acceptance or rejection which is in violation of DAR Rules.

(f) The EO has not examined two witness namely Shri P. R. Baishya SL No. 2 and Latifur Rahman SL No. 4 Annexure IV and the reasons for dropping the prosecution witness in his defence submitted in reference to the memorandum.

Enquiry Report

The EO while preparing his report, he started in para 2 that the consent letter from my Defence Counsel was submitted on 1.02.2000 and in para 3 it was mentioned that in the enquiry fixed to be conducted on 23.03.2000 my defence counsel was not at all intimated.

In the 4th para the EO mentioned that the journey pass for the Defence Counsel was issued on 10.05.2000 which shows clearly that my Defence Counsel was not intimated well in advance. In the same para the EO stated that my nominated Defence Counsel since had an appointment with Regional Labour Commissioner (Central) at Guwahati on 23.05.2000 for which he sought for a postponement of the seating.

The EO did not give his rulings on the above point either agreeing or disagreeing with reasonable grounds but conducted the enquiry and forced me to participate as a disciplined employee.

30
✓

The above comments of the EO from para 2, 3, 4, 5 in the Enquiry Report were his own observation and did not find any place in the DAR proceedings and as such be ignored.

As per prescribed format made under the DAR Rules the "findings" point comes only after reason for findings and by defying the DAR Rules the findings drawn did not tally with the evidences recorded in the DAR proceeding.

Evidences

Prosecution witness Sri B. N. Bardolai T9 / GHY in his answer to Q No. 1 put by EO stated "DRM himself peeped through the door glass and told us that all were in deep sleep excepting one staff. We have ~~been~~ also been asked to see the position and myself also saw that except one staff (Sri P. P. Singh P. man) all other were sleeping of which two staff on the floor of the cabin and G. Mishra on the table.

In his answer to Q No. 1 asked by the defence he stated that when the officers entered the cabin no staff was seen sleeping. But they seemed to get up from sleep.

केन्द्रीय प्रशासनिक न्यायालय
Central Administrative Tribunal
The witness was not certain of their sleeping since he stated that it "seemed" to him that they were sleeping.

25 NOV 2000
गुवाहाटी न्यायालय
Guwahati Bench
This witness further stated in his answer to Q No. 3 put by EO that he found all the staff covered their bodies by face to foot with bed-sheet. If that was the position then how he could identify Shri Mishra sleeping while peeping through the window (in his answer to Q No. 1).

The second prosecution witness never stated that either DRM or anybody in the party had peeped through the door glass as stated by the P W 1. So the statement of P W 1 was not corroborated. This witness P W 2 stated in his answer to Q No. 1 put by EO that when he entered inside into the cabin along with DRM he found that all the staff excepting one who had opened the door was in "lying position and sleeping".

The P W-1 had stated in his answer to Q No. 1 put by defence that had he seen the staff including the cabin employee sleeping when he entered into the cabin - his answer was "No".

The P. W. 1 while entered inside the cabin he did not see the charged employee sleeping but the P W 2 found the charged employee sleeping. This contradiction has escaped the eye of the EO. This happened since he wrote his verdict first followed by the reasons.

31/12

In view of the above the Article of charge No I is not sustainable against me.

In regard to Article of charge No II no documentary evidences were produced by the prosecution to show :-

- (i) That I did not take up the charge while picked up my duty and recorded in the diary.
- (ii) That I did not make any entry in the train register.
- (iii) That I allowed anybody to maintain the particulars in a rough paper.

I denied the charges during the enquiry and the prosecution could not prove otherwise. The charge therefore has no basis and tenable.

In the conclusion, I beg to furnish here under the engagement chart on the date of the alleged occurrence showing the spare time available in between :-

केन्द्रीय प्रशासनिक न्यायालय
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Guwahati Bench
NOV 2001

That I took up my duty at 21:10 hrs on 14/9/99

No.	asked	L/C recd./given	P/No/T No	Out-report	In-report	Line
Up NGC	21-05	21-06	18x23	21-20	21-40	S/L
M. Oil						
74 Dn	22-20	22-21	44xPLC	22-42	22-47	N/L
Pass.						
74 Dn	22-22	22-23	40xTBI	22-47	23-00	N/L
Pass						
Up L/E	23-17	23-18	89x04	23-35	23-45	S/L
Of 74 Dn						
Up HBN	23-40	23-41	26xTBI	23-50	00-05	N/L
Fertilizer						
Up HBN	23-42	23-43	29xPLC	00-15	00-40	N/L
Fertilizer						
Dn BCN	01-15	01-16	80x15	(To yard)		
E/S						
Dn BCN	01-45	01-46	20x29	01-50	02-12	S/L
E/S						

From the above it may please be seen that during the time from 00:40 hrs and 1-15 hrs I had the maximum gap of 35 minutes.

I was very much alert till 1-15 hrs and as such I could not have been found sleeping at 1-20 hrs. by the DRM along with my other staff.

I may be permitted to say that the DRM during his inspection at 1-20 hrs might have seen us relaxing by covering the lower portion of the body with sheet for protection from mosquito bites and he might have mistaken the cushion as pillow seeing it on the table which might have caused confusion.

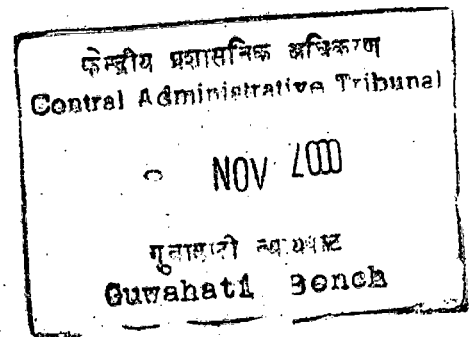
I beg to once again state that non of the Article of charges has been established and I categorically deny the same.

The EO has also not submitted my protest notes submitted on 22.05.2000 was against the manner the DAR enquiry was conducted in the enquiry report.

In view of the above your good office may exonerate me from the charges and oblige.

Enclosures :

1. MY notes to EO dated 23/03/2000
2. My notes to EO dated 22/05/200 (Two notes)



Yours faithfully

G. Mishra

9/6/2000

(GAJENDRA MISHRA)
LR. Dy SS/GHY at NGC.

*Certified to be
true copy
Advocate*

Annexure 'e'

107

33
45

STANDARD FORM OF ORDER RELATING TO APPOINTMENT OF INQUIRY OFFICER.
RULE-9(2) OF RAILWAY SERVANTS (DISCIPLINARY & APPEAL) RULES, 1968.

NO T/134/I/DM/LM.

Name of Railway Administration. N. F. Railway.

Place of Issue- DM (O)/LMG's office. Dated... 27/1/2000.

O R D E R.

Where as an inquiry under Rule-9 of the Railway servants
(Discipline and Appeal) Rules, 1968 is being held against

Shri Gajendra Mishra, Dy.SS/GHY at NCC (Name & Designation of the Rly.Servant).

And whereas the undersigned consider(S) that an inquiry officer
should be appointed to inquire into the charges framed against him.

NOW, THEREFORE, the undersigned, in exercise of the powers
conferred by Sub-Rule (2) of the said rules, hereby appoints.

Shri D.K.Mazumder, TI/WR/Lumding (Name & designation of the
inquiry officer) as inquiry officer to inquire into the charges
framed against the said Shri Gajendra Mishra, Dy.SS/GHY at NCC.

This is in connection with this office memorandum of even No.
dated 5.11.99.

केन्द्रीय प्रशासकीय न्यायालय Central Administrative Tribunal
29 NOV 2000
मुख्य न्यायाधीश Chief Justice:-

Signature msu

Name (Shri D.K.Mazumder, TI/WR/Lumding.
Designation of the inquiry officer
Authority N.F. Railway, Lumding.

Copy to:- Shri Gajendra Mishra, Dy.SS/GHY at NCC. (Name & Designation of the Rly.Servant).

(ii) Copy to :-

(iii) Copy to :- Shri D.K.Mazumder, TI/WR/LMG. He is advised to
conduct the DAR enquiry and submit enquiry report
within target.

Confirmed to be true
Copy
Advocate

From - G. Mishra,
LR. Dy. S.S./GHY,
at NGC.

To - Sr. Divisional Operation Manager,
N.F.Rly., Lunding.

Through-YS/NGC.

Dt. 1-2-2000.

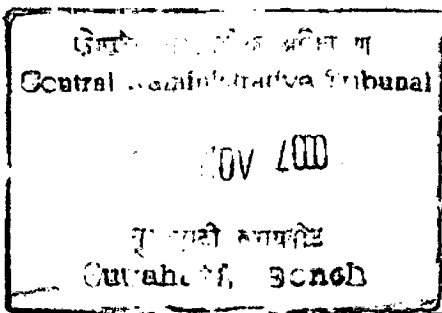
Ref - T/134/1/DRM/LM/ dt. 10-1-2000.

Sir,

In acknowledging your above cited letter on
27-01-2000, I beg to submit the name of my defence
counsel as under-

Sri Amiya Ganguli, Retired C.T.T.I.,
Rly Qrs. No. 22-'B',
Rest Camp, Pandu,
Guwahati-11.

His consent letter follows.



Yours faithfully,

(Gajendra Mishra)
L.R. Dy. SS/GHY,
at NGC.

Dt. 1-2-2000.

Certified to be true Gfye.
[Signature]
Advocate

From-
G.Mishra,
LR.Dy SS/GHY,
at NGC.

To
The Divisional Operation Manager,
N.F.Rly/IMG.

Through- Ys/NGC.

Sub- Consent letter of my Defence Counsel.

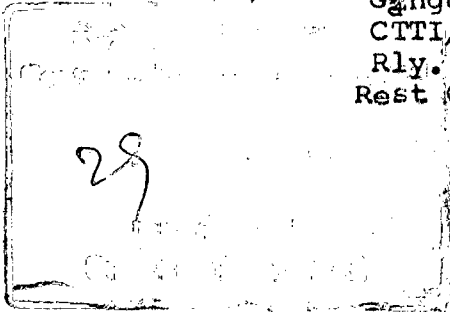
Ref- My Application dt. 1-2-2000 in ref. to your
letter No. T/134/1/DRM/IM dt. 10-1-2000.

Sir,

In reference to my earlier application No. nil
dt. 1-2-2000 I am sending the consent letter of my defence
counsel, Sri Amiya Ganguli, retired CTTI/NFR/Maligaon.

Yours faithfully,

Encl- Consent letter (Gajendra Mishra)
of Sri Amiya LR Dy SS/GHY,
Ganguli, retired at NGC
CTTI/NFR/Maligaon, Dt. 23-2-2000.
Rly. Qrs. No.22-'B',
Rest Camp, Guwahati-12.



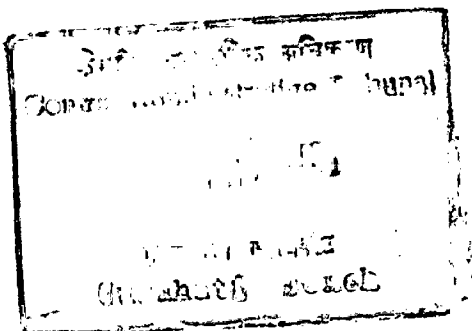
Certified to be true copy.
[Signature]
Also sent

36
48

To whom it may concern.

I agree to defend Sri G.Mishra, Dy. SS/GHY
in the proposed DAR enquiring to be held in Defence to
M/No. T/134/1/DRM/IM dt. 5-11-99.

Sd/- Aniya Kumar Ganguli
dt. 22-2-2000.



Copy to be made -
Advocate

To
The Enquiry Officer,
N.F.R/LMG.

Annexure 'F'

37.

Sir,

It is placed for your kind appreciation as under -

That as per DAR procedure while holding a DAR Enquiry the formal first seafings is a preliminary one prior to holding regular Hearing.

That in the preliminary hearing the documents are introduced after verification by the charged official and also the Defence is asked if any defence documentary witnesses be produced by him.

That in this instant case the charge has been framed on the basis of the inspection Report of DRM/LMG. In the said report mentioned some documents have been relied upon such as-

(a) Diary for taking over/making over duties while I took over my duties at 21-10- Hrs. on 14-09-99.

(b) The Train Register mentioning the details of trains.

(c) A rough paper maintained by the cabinman and P/man.

The above three documents are required by the Defence for examination and only on production/introduction of such evidences the Regular hearing can proceed.

The Defence also submit to arrange the attendance of ASM's on duty of NMY East Cabin and GHY East Cabin who took over duties in the night shift on 14-9-99 as defence witness (who will prove that there were regular dialogue/exchange of informations for trains passing during the period from 2200 Hrs. of 14-09-99 to 1.50 Hrs. on 15-09-99.

The cabin men/pointsman who were on duty along with me may also be called as courts witness to help the defence to examine them in the matter of alleged charge that they were allowed to maintain any particulars on the rough paper.

You may kindly fix up the date for regular hearing after making available the documents/statements of witnesses etc. to the charged official.

It is also submitted that the DAR enquiry may kindly be held at GHY/NGC since one of four prosecution witnesses three belong to Guwahati and all the defence witnesses are also posted at GHY/NGC. This may be helpful for administration and myself.

It is also stated that my defence counsel in future may kindly be intimated the date of enquiry well in advance so that he can adjust his programme accordingly.

A letter addressed to you by my defence counsel is placed herewith .

Thanking you,

Yours faithfully,

(Gajendra Mishra)
LR.Dy SS/GHY
at NGC
Dt. 22-05-2000.

Confirmed to be true
Copy
Advocate



Annexure 'B'

9

H. F. RIX.

No. 7/101/1/DEP/LM.

Office of the
DHM(O) Lunding.
Dated : 31.05.2000.To
Shri Gajendra Mishra,
DY.SS/GNY at West Cabin/NGC.

Thru :- YS/NGC.

Cause
SUB : Show ~~case~~ Notice along with
Enquiry report in Connection
with office Major Memorandum
even No. Dtd : 05.11.80.

In connection with above, one copy of DMR
enquiry proceedings containing 1 to 3 pages is
sent herewith for your information and charge
framed against you.

In view of the above, you are therefore,
directed to submit your further representation
if any within 10 (Ten) days on receipt of
this letter, otherwise authority will take
suitable action as per Rule.

Please acknowledge receipt.

<p>28</p> <p>DA : ASMAbove.</p>

SR.DCM/LME.

Received on
31/6/2000

Confined to be true & correct
Dra
Advocate

Ser-44
39

Report of D&AR enquiry into the charges framed against Sri Gajendra Mishra, Dy.SS/GHY at NCC vide Sr.DOM/LMG's memorandum of charge sheet No.T/134/1/DIM/LMG dt. 5.11.99.

I was appointed by Sr.DOM/LMG (D.A.) to act as Inquiry Officer to inquire into the charges framed against the defendant Sri Gajendra Mishra, Dy.SS/GHY at NCC vide Sr.DOM/LMG's letter No.T/134/1/DIM/LMG dt. 27-1-2000. I have completed the enquiry on the basis of documentary and oral evidences & the report is as under.

The defendant was asked to submit the name of his defence counsel, accordingly he submitted the name of Shri Amiya Kr. Ganguli, Retd. CMT/HQ. N.F.Rly.Maligaon on 01/2/2000. Mr. Ganguli's consent letter was sent later on by him.

23/3/2k
Adf.

The 1st date of D&AR enquiry was fixed onx to be held on 23rd March/2000 at Sr.DOM/LMG's office. On this day, the defendant Sri G. Mishra attended office at LMG but expressed his unwillingness to participate in the inquiry as his defence counsel could not attend enquiry as he was not supplied with Rly.pass to cover his journey Ex. KYQ to LMG. So the date of D&AR inquiry was postponed and a fresh date of inquiry was fixed to be held on 22/5/2000.

22/5/2k

On 22/5/2000, all those who were summoned to attend inquiry attended office at LMG except the defence counsel. At this instance though the Defence counsel was supplied a Rly.pass (1st class) bearing NO. 628563 dt. 10/5/2000 issued by DIM(P)/LMG, he did not attend on the ground that he is otherwise engaged with Regional Labour Commission meeting at Guwahati to be held on 23/5/2000. The pass was returned by him with a request to postpone the enquiry.

The defendant Sri G.Mishra, was asked whether he was agreeable to proceed with the enquiry without the assistance of D.C. if he was allowed all sorts of facility and opportunity by allowing him to put any question to prosecution witnesses. He agreed and the enquiry was held and completed.

17/5/2000
17/5/2000
17/5/2000

Sri Gajendra Mishra demanded the attendance of ASMs on duty at IMY East cabin and GHY East cabin, the Cabinman & Pointsman who were on duty along with him at NCC West cabin on 15/9/99 to act as defence witness, but finding no relevance with the charges to be sustained against him, the above demand was not entertained.

He also demanded the following documents of NCC West cabins:-

17/5/2000
17/5/2000
17/5/2000

(i) Station Master's Diary, (ii) Train Register & (iii) A Rough paper.

27/5/2000
27/5/2000
27/5/2000

Above dt, as the documents were not seized at the time of inspection there is no point in consulting them at this stage after a lapse of long time. It is evident that all the documents have been properly filled up and maintained after the inspection Team had left the cabin. Vide TI/Sri Pordelei's Answer to question No. 2 of his cross examination. Hence, it was not felt necessary to bring these documents only to prolong the enquiry.

(Contd...2)

Staff Attended Inquiry:-

- (i) Sri Gajendra Mishra, Dy.SS/GHY at NGC
Charged Official.
- (ii) Sri Bipin Ch. Deka, HC/PPF(P) COY/GHY-
Prosecution witness.
- (iii) Sri D.N. Dardolei, TI/GHY,
Prosecution witness.

The following two articles of charge have been framed against Shri Gajendra Mishra, Dy.SS/GHY at NGC.

ARTICLE- I.

13/9 That the said Shri G. Mishra, Dy.SS/GHY at West cabin/NGC, While functioning at West cabin/NGC during the period on 15.9.99 at 1.20 hrs. (Night shift) was found sleeping while on duty in lying posture with pillows, bed sheets etc.

ARTICLE-II.

On 15.9.99 Shri Gajendra Mishra, Dy.SS/GHY while performing night duty at West cabin/NGC had not even acknowledged the charge taken over from his Relief upto 1.50 hrs. in the Diary though he was on duty from 22.00 hrs. of 14/9/99 nor he made entry of any train in the Train Register. He kept the particulars in a rough paper which was maintained by his cabinman & Pointsman. By the act of sleeping, he had allowed his staff to handle the Block instrument and TLM.

FINDINGS:- After careful study and scrutiny of the inquiry proceedings and all other connected relevant documents, I find Shri Gajendra Mishra, Dy.SS/GHY at NGC responsible for the charge under Article- I & Article-II in the following manner.

- 28 (i) Shri Gajendra Mishra, Dy.SS/GHY at NGC was lying down on a table inside the NGC West cabin covering his whole body from head to foot with a bed sheet at 1/20 hrs. of 15/9/99 during his train passing duty hours.
- (ii) Shri Gajendra Mishra, Dy.SS/GHY at NGC recorded the timings & particulars of trains passing in a separate rough sheet of paper instead of instantly recording it on Train Signal Register itself just at the time of such transaction of messages and information.

REASONS FOR FINDINGS:-

From the DM's proceedings of Shri Gajendra Mishra, Dy.SS/GHY at NGC, the cross examination of Shri D.N. Dardolei, TI/GHY and Shri Bipin Ch. Deka, HC/PPF(P)/COY/GHY it is seen that both of them confirmed that during inspection of DM/LMG at West cabin/NGC at about 01.20 Hrs. on 15/9/99 it was noticed by all of them that Shri Gajendra Mishra was in a lying down posture on the table. Shri Dardolei also stated in his cross examination that while he peeped through the door of West cabin/NGC he found Shri Mishra lying down covering his whole body from head to foot by a bed sheet. Shri Mishra during interrogation, accepted that it is improper to bring bed sheet during duty hours. Waive (Contd...3)

SA-42 4/ 57

- 3 -

While a person relaxes covering his whole body, it is very probable that this sort of relaxation will induce sleepiness during duty hours.

Hence, this sort of relaxation is very improper. Again lying down on a table during trains passing duty militates against the first principle of decency, decorum, safety & discipline and it is unbecoming of a Govt. employee.

Regarding Article- II, it is to state that as the train passing documents were not seized at the time of inspection and Shri Mishra was allowed to perform his duty upto 06/30 hrs. in the morning hence, it is assumed that all the missing caps were filled up after the Inspection Team had left the cabin vide Shri Dardolei's Answer to question No.2 in his cross examination. Hence the charge that he did not acknowledge to have taken over charge upto 1.50 hrs. could not be sustained and proved. Again that the charged official allowed Pointsman / Cabinman to operate Black instrument and TIR could not be established due to lack of ocular proof. Only one charge is sustained and proved i.e. he used a separate paper for taking down the Train Passing particulars which are actually required to be written on the Train Register instantly and immediately at the time of transaction/communication of information. Use of separate paper keeps room/scope for chance of particulars/information subsequently which is a unsafe practice and goes against the accepted norms of procedure.

Hence, Sri Gajendra Mishra, Dy. as/GHY at WGC is found responsible for adopting such method of filling up particulars at a later stage as accepted by him in Answer to Q.No. 8 in his DAR proceedings.

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Central Administrative Tribunal
NOV 2000
गुवाहाटी बेंच
Guwahati Bench

(D. Majumder)
Inquiry Officer,
TI/WR/Lumding.

Found sleeping while on
duty in lying postures
with pillows, bed sheets etc.
Appellants answer - witness
of car

42

DAR proceedings in connection with the charges framed against Sri Gajendra Mishra, Dy.SS/GHY at NGC in connection with case No. T/134/1/ARM/LM dt. 05-11-99.

The articles of charge as follow -

ARTICLE- I.

That while working at west cabin/NGC on 15-9-99 at 01.20 hrs. he was found sleeping in lying posture with pillows, bed sheet etc.

ARTICLE- II.

on 15-09-99 Sri Gajendra Mishra, Dy.SS/GHY at NGC while performing night duty at west cabin/NGC had not even acknowledged the charge taken over from his relief upto 01.50 hrs in the diary though he was on duty from 22.00 hrs. of 14-09-99 nor he made entry of any train in the train register. He kept the particulars in a rough paper which was maintained by his C/man and P/man. By act of sleeping he had allowed his staff to handle the block instruments and TLBI.

Q. No. 1- Do you accept the articles of charge mentioned above?

Ans. - No, I do not accept the charge under ARTICLE-I and

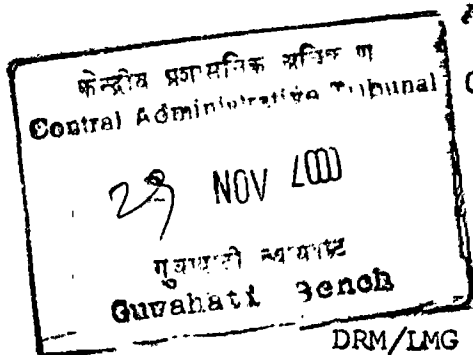
ARTICLE-II, Now regarding ARTICLE-I, I have to say that at 01.15 hrs. I granted line clear to Dn. BCNE/Stock.

Sd/-G.Mishra
Dt. 22-5-2000.

DRM/LMG & Sr. ARM/GHY entered cabin at 1.20 hrs. so it is not possible to sleep within 5 * minutes.

Q. No. 2 - DRM/LMG has reported and it has been confirmed by cross examination of Sri B.N.Bordoloi, TI/GHY and Sri B.C. Deka, HC/RPF (P) Coy/GHY that you were lying found in lying posture inside the cabin when they peeped from outside and also when they entered the cabin ?

Contd.....2.



Ans. - They have accepted that they found all the staff including myself in awakened position when they entered the cabin & at 01.20 hrs. on 15-09-99. I donot know what they peeped through the door when it was closed.

Q. No.3 - On the basis of what document/statement you say that they have accepted that they found all the staff including yourself in awake condition ?

Ans.- TI has accepted it that while he entered he found me awake. ✓

Q.No.4- Why did you bring the pillows & bedsheet with you during your duty hours in the cabin ?

Ans. - There was no pillow at all in the cabin. There was cushion as put on the chair. Bed sheets were there to cover leg/foot to get rid of mosquitoes. Moreover, I have mentioned & everything in detailed in my defence submitted on 19-11-99.

Sd/- G.Mishra.
dt. 22-5-2000.

Q.No.5.- Is it not sufficient by use of socks & shoes to protect your leg/foot from mosquitoes ?

Ans.- Not fully.

Q.No.6.- It is very improper to bring bed sheet in your place of duty. what have you to say in this regard ?

Ans.- It is not proper to keep bed sheet in the cabin if the proper sanitation of the cabin in and around the cabin is properly maintained by the administration.

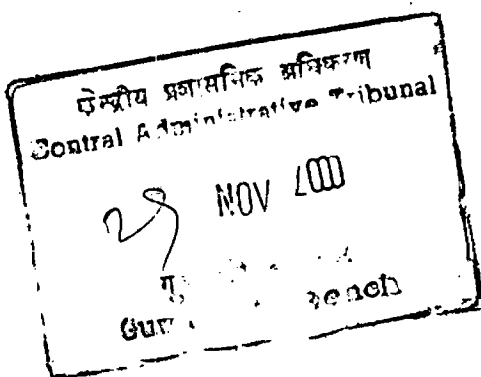
Contd.....3.

44
50

Q. No. 7 .- Regarding ARTICLE-II what have you to say wherein it has been inter alia showed that you kept the train particulars in a rough paper and no entries were made in the train register upto 01.50 hrs. of 15-9-99 ?

Ans. - I have already submitted an application on date to the Enquiry Officer asking him to produce (i) ASM's diary, (ii) All the train Registers & a rough piece of paper maintained by C/man. But unfortunately these documents/Registers were not produced for inspection.

Q. No.8. - In your defence dt. 19-11-99, you have stated that all particulars were first hand recorded in a rough sheet of paper so that there could not have been any scope for over writing etc. and train register was kept clean and good. Are you supposed as per rules and procedures of working to write the particulars in connection with train running in a separate paper first then subsequently filling up the train registers at convenience ? Does it not keep room/scope of change of particulars/informations at your advantage which is unsafe from safety point of view and enables one to shift the responsibility on other after an untoward incident takes place ?



Ans. - New Guwahati cabin is treated as cabin being a full flaged station. It is one of the busiest cabins/stations of LMG division where a ASM is supposed to blow the accident siren, x issue of sick memo, control of diamong key for trasfer of loads. As the cabin is very busy, the record train position received from the control on a rough piece of paper and during that busy period sometimes train particulars are recorded on that piece of paper so that I ^{may} not forget the train particulars. Immediately there enter in the train register when the situation become convenient for me.

I do not find any scope for manipulation of train particulars.

Contd.....4.

45
5

Q. No. 9 . - Did you allow your staff to handle TLBI and Block instrument ?

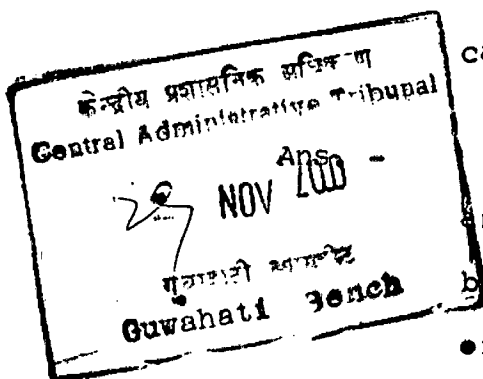
Ans. - No, I never allowed my P/man & C/man to handle., the TLBI & Block instrument. My statement may please be confirmed by asking my defence witnesses like ASMS on duty at the other end of my cabin (GHY East Cabin & NMY East cabin).

Sd/- G.Mishra

dt. 22-5-2000.

Cross-examination of Sri B.N. Bordoloi, TI/GHY in connection with DAR enquiring against the charges against Sri Gajendra Mishra, Dy SS/GHY at NGC in connection with case No.T/134/1/DRM/LM dt. 5-11-99.

Q. No. 1 .- On 15-9-99 at about 1/20 hrs when DRM/LMG inspected west cabin of NGC, did you accompany him and do you remember what you noticed on entering the cabin ?



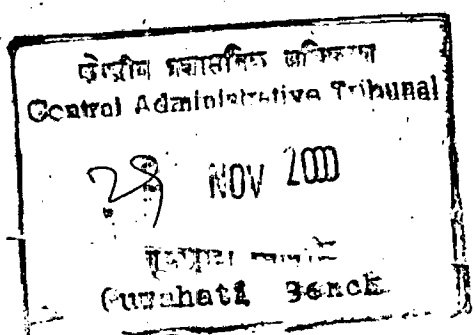
Ans. - Yes I accompanied DRM along with Sr. ARM/GHY and security personnels at 1/20 hrs. of 15-9-99 and before entering the cabin it was found that the door of the cabin was closed from inside. DRM himself peeped through the door glass and told us that all were in deep sleep except one staff. We have also been asked to see the position and myself also saw that except one staff (sri P.P. Singh) person all were sleeping of which two staff on the floor of the cabin & sri Mishra on the Office table.

Q. No. 2 . - Did any inspecting official seize the station records M2. SM's diary, Train Register or a piece of paper on which particulars of trains were being recorded as charged ?

Contd.....5.

(0. 00000 - 0.00000)

মোৰা ১৫.৯.৯৯ ৰে, অসম চৰকাৰৰ ডাৰম চাহাবৰ লগত
মৰা চাহাবৰ লগত চেকিং-উপ-লিভ গাৰ্ছী-কোবিলত গাৰ্ছী(লা।
কোবিলত ডাৰম চাহাবৰ লগত ডিউবৰ দৰ্জাৰ দিয়া দিয়া
আল। চাহাবৰ দৰ্জাৰ-মুৰব্বীৰ দিয়াৰ-বিলত-
ডিউবৰ-বৰা-এক্স-ডিউব-অৰ্জি-দৰ্জাৰ-মুৰব্বী
দিয়া-। বাকি কোবিলত-মুৰা-মুৰব্বী-কোবিলত-মুৰা-
আল। ডাৰম চাহাব ডিউবত-মুৰা-মুৰব্বী-কোবিলত-
ডিউবত-মুৰা-মুৰব্বী-কোবিলত-ডিউব-মুৰা-। নিউ
ডাৰম চাহাব-মুৰা-মুৰব্বী-কোবিলত-ডিউব-মুৰা-কোবিলত
লিভ দিয়া-। এক মুৰ-কোবিলত-মুৰা-মুৰব্বী-কোবিলত-
কোবিলত-দিয়া-। মুৰ-মুৰা-মুৰ-মুৰ-কোবিলত-মুৰা-
মুৰ-কোবিলত-দিয়া-। মুৰ-মুৰ-কোবিলত-ডাৰম চাহাব-কোবিলত-মুৰা-
মুৰ-কোবিলত-দিয়া-।



JIC/ Bipin Ch. Deka
RPF (P) Coy GHY
Deli- 22.5.2000

ENGLISH TRANSLATED

I accompanied the DRM on 15.9.99 last for a surprise checking at the New Guwahati Cabin on climbing up to the Cabin. I found that the door was closed. After DRM's knocking at the door, somebody from inside opened the door. The rest of the people were sleeping inside the Cabin. After DRM's entrance into the Room, the sleeping persons got up. After that DRM had written xxxxxxxx something in a piece of paper having some talk and then asked me to sign the paper. Accordingly I signed. Hereafter the DRM left the Cabin.

Sd/-
Bipin Ch. Deka
RPF (P) Coy, Guwahati
22.5.2000

HC/Bipin Ch. Deka.
RPF (P) Coy GHY. Dt. 22-5-2000.

Q. No. 1 . - Did you personally see the staff inside the cabin were in lying posture and sleeping ?

Ans. - When the door of the cabin was ~~marked~~ knocked by DRM , it was opened by a staff and I found that all the staff inside the cabin was in lying posture and sleeping.

Q.No. 2 . - When did they get up ?

Ans. - After DRM/LMG entered the cabin, probably by hearing the sound, they got up.

Q. No. 3 . - What did you notice after DRM/LMG entered the cabin ?

Ans. - After I entered the cabin alongwith DRM/LMG I found that DRM/LMG was scolding the staff and the staff were keeping ~~in~~ aside bed sheet and other clothes which were used while they were lying down.

Question put by charged official. -

সেই প্রশ্নের উত্তর
Central Administrative Tribunal
দায়িত্ব
অফিসার
উত্তর

Q. No. 1 . - What did Sr. ARM/GHY tell ~~me after~~ he came after he entered the cabin alongwith you ?

Ans. - As it is a incident which took place long days back, I cannot remember as to what was stated by Sr., ARM/GHY to you.

The contents of the above cross examination was translated into Assamese language and explained to Sri Bipin Ch. Deka, Hd. constable in presence of the charged official.

Sd/- Bipin Ch. Deka.

HC/ RPF (P) Coy GHY

Date 22-5-2000.

Certified to be true
Advocate

To
The Enquiry Officer,
N.F.Rly/LMG.

Sir,

I beg to state as under -

(1) That I am in total disagreement with the way of enquiry held on 22-05-2000 at IMG for the reasons as stated under-

(a) Prosecution witnesses Sri Bipin Ch. Deka Hal/Constable/GHY and Sri B.N. Bardoloi TI/GHY were not ~~ex~~ cross-examined by my defence counsel because of his absence due to pre-engagement in connection with industrial disputes to be heard by Regional Labour Commissioner on 23-5-2000 at GHY.

(b) No any document such as

(i) ASM's diary dt. 15-9-99.

(ii) Train Registers.

(iii) A rough sheet of paper maintained by P/man-C/man was presented to me.

(c) No any defence witness such as ASM on duty GHY East Cabin and ASM on duty NMY East Cabin was asked to be present at the time of enquiry.

<p>Central Administrative Tribunal</p> <p>NOV 2000</p> <p>Sri P.P. Singh P/man A</p> <p>Sri S.B. Sengupta P/man A</p> <p>Sri Ahmed Ali C/man</p>	<p>On duty</p>
--	----------------

(d) No any court witnesses such as -

Sri P.P. Singh P/man A

On duty

Sri S.B. Sengupta P/man A

Sri Ahmed Ali C/man

was asked to remain present at the time of enquiry.

In view of the above mentioned facts, I request you to fix up another date of enquiry at GHY to examine all the records/documents and defence witnesses.

Yours faithfully,

(Gajendra Mishra)
LR.Dy SS/GHY
at NGC.

Copy to be made
Advocate

Received on
17/8/2000 at
YS/NGC's Office

Annexure I
Gajendra Mishra, Dy. SS/GHY
at West Cabin/NGC
Thru- YS/NGC
5062

NOTICE OF IMPOSITION OF PENALTIES UNDER
RAILWAY SERVANTS DISCIPLINE & APPEAL RULES - 1968.

NO.T/134/I/Sr.DOM/LM.

Dt/- 25.7.2000.

From.:- ERM(O)/LMG.

To :- ✓ Shri Gajendra Mishra, Dy.SS/GHY at West Cabin/NGC.
(Through):- YS/NGC.

With reference to your explanation to the Memorandum No. Even
dtd. 5.11.99 you are hereby informed that your explanation
considered satisfactory, hence not accepted.

Since the charges have been established by the P.O, I have decided
to impose upon you the penalty of reduction of your pay to three
stages lower in the same time scale of pay for 3 (Three) years,
with cumulative effect, P.i.e.

(M. P. Mehta)
SR.DOM/LMG.

Signature Designation as the
Disciplinary Authority in

*When the Note is signed by an authority other than
authority here quote the authority passing the order.
***Here quote the acceptance or rejection of explanation and the
penalty imposed.

Copy to : E/III/IV(T), R/Pass. section of this office and
SE/SM for information & necessary action.

INSTRUCTION :- (1). An appeal against this order filed to (Next
immediate superior to the Authority passing
the order). ERM/LMG.

Copy to : ERM(P)/ET/Cadre/LMG and APO/GHY for information.

Certified to be true
Advocate

SR.DOM/LMG.

Divl. Operations Manager
P. S. - 1000
P. Railway, Mumbai

ANNEXURE J
The Divisional Railway Manager,
N.F. Railway,
Lumding.
(Through Proper Channel)

22
5/67

Subject:- Appeal against unjust and arbitrary punishment.

Reference:- Sr. DOM/LMG'S Notice of imposition of penalty vide letter No. T/134/1/
Sr.DOM/LM/ dtd. 25.07.2000 received on 17.8.2000.

Sir,

With due deference and utmost constraint, I have the honour to submit the prayer mentioned herein under for favour of your honours benign and judicious decision thereby exonerating me from the above cited unjust and undeserved punishment at the fag end of my service.

That, Sir, in support of submission regarding unjust and arbitrary punishment, ibid, I lay before your honour the following irrevocable infirmities and irregularities which rendered the proceedings of the inquiry under D.A. Rules totally void and ultravires.

That, Sir, although, my defense counsel informed the Inquiry Officer about his inability to attend the inquiry at LMG on 22.05.2000 owing to his preoccupation in the court of Labour Commissioner (Central) Guwahati requesting him to fix up another convenient date, the Inquiry Officer ignored the said request of the Defence Counsel and threatened me that he would continue, the inquiry and submit the exparte findings. Thus having no option left for me, I attended the inquiry on 22.05.2000 by submitting a written objection to the Inquiry Officer a copy of which, is enclosed for your kind perusal.

Sir, this arbitrary action of the Inquiry Officer has violated the stipulations of the DA Rules, in regard to affording reasonable opportunities to the charged official and as such the entire DA proceeding has been vitiated from the sanctity of the inquiry and is, therefore, liable to be treated as highly irregular and void ab-initio.

That Sir, I had exhaustively replied to the allegations of charges parawise in my defence dtd. 09.06.2000 on Article I & II and asserted therein that both the Article of charges had any foundation and deposition of the two prosecution witnesses were contradictory to each other, particularly in respect of finding me sleeping in that, witness No.1 Sri B.N. Bardoloi, TI/Guwahati deposed that he did not find me sleeping while the other witness, Sri B.C. Deka, Head Constable/RPF/ Guwahati deposed that he found me sleeping hence the allegation about myself being found sleeping remained not only uncorroborated in as much as the Inquiry Officer ought to have relied upon the deposition of Sri Bardoloi as he is a far more dependable witness due to himself being a very responsible and reliable senior subordinate while the other one is a R.P.F. Constable. A Photocopy of my above mentioned defence is enclosed for your kind perusal.

Certified to be
the copy of 22.05.2000
Advocate

52 / 23
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Further, Sir, since the alleged charges emanated from the surprise inspection Note No. Z/166IM/D/M dtd. 21.09.2000, the deposition of DRM/LMG before the Inquiry Committee and extending opportunity to the charged employee to cross-examine him was inescapably essential and failure of the Inquiry Officer in this regard has rendered the DA proceedings against me as incomplete and established beyond reasonable doubt about his prejudicial and premotivated bias against me which prompted him to hold me guilty of charges.

Surprisingly, Sir, it will be evident from the observation of the Inquiry Officer in regard to non-seizure of relevant Train passing documents and his assumption that all the missing gaps were filled up after said inspection was nothing but figment of his imagination and conjecture and not at all a substantiated fact.

It may be appreciated, Sir, that had there been any lacunae in the relevant Train passing documents, the highly responsible officer like DRM/LMG and Sr. ARM/GHY with T.I. Mr. Bardoloi must have seized them as a reliable document to establish charges against me.

Surprisingly enough, the Inquiry Officer arbitrarily observed in his findings against Article II, quote "only one charge is sustained and proved i.e., he used a separate piece of paper for taking down the train passing particulars which are actually required to be written on the Train Register instantly and immediately at the time of transaction/ communication of information etc." unquote.

Here also, the Inquiry Officer exposed himself as a prejudiced, imaginative and biased Inquiry Officer for the very fact that neither the said separate paper nor the Train Register were produced as exhibits which were essential documents to substantiate the aforesaid charge. My assertion in the enquiry proceedings that it has been the age old prevalent practices of ASM's all over the Railway system to note down the train passing particulars in a separate paper and enter them in train passing Register after couple of minutes to avoid erasing or overwriting. It was obvious that the Inspecting Officials viz. DRM/LMG and Sr. ARM/GHY with TI/GHY did not seize the separate piece of paper and the Train Register because of the very fact that they found the Train Register updated during their Inspection.

The conjecture of Inquiry Officer about non-seizure of the said Train Register and other relevant document was unsustainable rather fallacious and holding me responsible on this account was wholly unjustified because the law of the land, particularly the DA Rules 1968, ammended from time to time do not permit any Inquiry Officer to declare the charges as established on **assumption** and **presumption**.

Lastly I would crave your honour's indulgence to humbly submit that during my long 34 years of service, I was never charged for any dereliction of duty or disobedience. On the other hand I was the lone ASM not only on duty but also worked round the clock for three days in NGC Cabin and passed 16 trains during that period with the direction of the then Area Officer, Sri K.K. Choudhary and Sri G.N. Bhattachariya, the then Area Manager. To my good luck, I was able to earn the confidence and blessings of all the officers under whom I had the privilege to work including Sri Kranti Kumar, Sri A.K.Ghosh, Sri K.K.Choudhary now OSD/Safety/Railway Board, Sri M.C. Srivastav presently AGM/NF RLY/ Maligaon.

during 1974 all India Strike

53 - 24

I am confident that your honour will please agree that keeping me under suspension for the alleged fictitious charge, *ibid*, that, too, on half of the basic pay for the entire period of 310 days was wholly unjustified and stemmed from his ~~and~~ premotivation. This sort of humiliation at the fag end of my service has not only humiliated me to the worst extent but had also caused unwarranted serious mental agony and pecuniary hardships during these 310 days of suspension.

Under the above circumstances, I would most humbly urge on your honour to be gracious and benign enough to exonerate me for the unfounded and unestablished charges and treat the said suspension as null and void and cancel my transfer order thereby allowing me to go on premature retirement to retrieve my lost prestige and dignity and regain my mental peace of mind at this old age. I have about four years left for retirement on superannuation.

Yours faithfully,

Encl:- (i) A photocopy of my objection
Notes to I.O. dtd. 22.05.2000
(ii) A photocopy of my final
defence dtd. 09.06.2000

(GAJENDRA MISHRA)
LR-DY.SS/GHY at NGC

[Signature]
25/8/2000

A copy in advance is forwarded to Sri V. Subramanyam, DRM/LMG for favour of his perusal and early action thereon.

(GAJENDRA MISHRA)
25/8/2000

Forwarded
[Signature]
25/8/2000
[Signature]
25/8/2000
[Signature]
25/8/2000

Certified to be true
[Signature]
Advocate

ANNEXURE 'K'

N.F.RLY.

G. Mishra

Dy. SS/4114

No.T/134/1sr.DM/LM.

Office of the
DM(O)/LMG.
Dt/-23.10.2K.

54/60

To
✓ Shri Gajendra Mishra,
LR Dy.SS/4114.

Thro.YS/LMG.

Sub:-Your appeal dtd.25.3.2000 against NIP
No.T/134/1sr.DM/LM dtd. 25.7.2000.

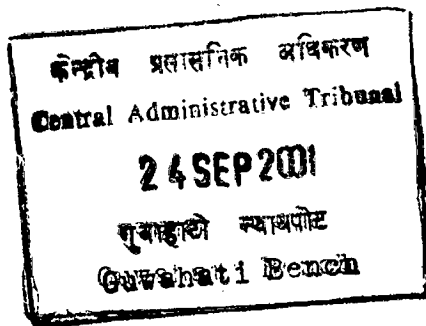
This is to inform you that appellate authority has passed the
following order:-

"In view of the above fact I find that punishment awarded
by Sr.DM/LMG to the tune of reduction of pay to 3 stages lower in
the same time scale of pay for 3 years (cumulative effect) is adequate
to meet the ends of justice and his appeal stands disposed off".

for DM(O)/Lumping.

Stc
Arrange Delivery
26/10

...
Certified to be true
Advocate



Filed by
Siddhartha Law
Associate
19/9/2001
SS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

O.A No. 417/2000

Shri Gajendra Mishra

versus

Union of India & Ors.

IN THE MATTER OF

Written statement on behalf of
Respondents.

The answering Respondents beg to state as follows

1. That the answering Respondents have gone through the copy of the OA as served on them and have understood the contents thereof. Save and accept the statements which are specifically admitted herein below, other statements made in the OA are categorically denied.
2. That with regard to the statements made in paragraph 4.I to V of the OA, the answering Respondents do not admit anything contrary to the relevant records, it is deny that the Applicant could earn applause and appreciation from all corners of high ups.
3. That with regard to the statements made in paragraph 4.VII to XI of the OA, while denying the contentions raised therein, I beg to state that the Respondent NO. 3 being the highest administrative authority of the Division is to look to after the safety, security and service for smooth functioning of the Railway system for the cause of public interests. In course of such

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(A)

dhu

duties and liabilities, the Respondent No. 3 append to conduct a surprise inspection at West Cabin, New Guwahati on 15.9.99. A Cabin is one of the important operational nerve centre of the train running of NF Railway. Any kind of negligence or fault will lead to loss and disaster of hundreds of lives and Government assets putting a question mark on public safety. But at that inspection on 15.9.99 being such a sensitive operational centre, the Applicant along with others were found sleeping while on night duty. Moreover, it was also found that the Applicant had not even acknowledged the duty charges taken over from his relief upto 01.50 hours in the SM's diary. Though he was on night duty from 22.00 hours, he did not even make any entry of any train in the train registrar and kept the train particulars in rough paper. Accordingly he was issued a major penalty chargesheet an enquiry was held affording him all reasonable opportunity and he participated in the enquiry without raising any objection as regards the opportunities provided to him. In the enquiry, the witnesses namely Shri B.N. Bordoloi, Traffic Inspector, Guwahati and Shri Bipin Chandra Deka, Head Constable/GRPF/Guwahati stated that the Applicant was sleeping using the bedsheets and cushion, which the Applicant admitted in the enquiry. The recording of train running particulars on rough papers instead of recording the same in the train registrar was admitted by the Applicant during the enquiry. This kind of approach of the Applicant towards discharge of his duty connected with train running is

very unsafe and is against the public safety which should be the paramount consideration for every Railway employee. After the departmental proceeding, it was found that the Applicant is guilty of the charges leveled against him and accordingly he has been imposed with the penalty.

The inspection team had found that the train registrar was not filled up with the train particulars. Though the records were not seized during the inspection, later on it was sealed that the register was filled up. However, the Applicant during the course of enquiry admitted of having used rough piece of paper, he maintain the train particulars, which is naturally is an unsafe practice from the whole circumstances and corroboration of the witnesses it was established that the Applicant is guilty of the charge. It is a fact that the Applicant was put under suspension in terms of the relevant Rules.

4. That with regard to the statements made in paragraph 4.XII of the OA, the answering Respondents deny the correctness of the statement. It is stated that transfer is an incident of service. The Applicant was transferred to Longrangajao station. The Applicant challenge his order of transfer by filing OA No. 384/2000 before this Hon'ble Tribunal. The Hon'ble Tribunal by its order dated 14.11.2000 was pleased to direct the Railway Respondents to dispose of the appeal dated 25.8.2000 preferred by the Applicant by giving a reasoned order preferably within a period of three months and during that period the order of transfer was

= 4 =

kept in abeyance. However, in the meantime the Appellate authority had already dispose of the appeal and the same was communicated to the Applicant by letter dated 23.10.2000. Thereafter the transfer order of the Applicant was kept in abeyance as per the order of the Hon'ble Tribunal and was made operative vide DRM(P)/LMG's letter No. ES/56-G(T) dated 19.3.2001.

5. That with regard to the statements made in paragraph 4. XIII to XV of the OA, while denying the contentions raised therein, it is stated that the Applicant submitted his defence vide representation dated 19.11.99 which is not found convincing. The major penalty Memorandum of chargesheets was received by the Applicant on 19.11.99 under his clear signature and as such the allegation is categorically denied.

6. That with regard to the statements made in paragraph 4.XVI of the OA, the answering Respondents state that Shri D. Majumdar, Traffic Inspector/Working Rules, Lunding happens to be in the scale of Rs. 7450-11,500/- whereas the Applicant is in the scale of pay of Rs. 6500-10,500/-. As such Sri D. Mazumdar was holding the higher rank and status wit that of the Applicant.

7. That with regard to the statements made in paragraph 4.XVII of the OA, the answering Respondents do not admit anything contrary to the relevant records and reiterate and reaffirm the statements made above.

8. That with regard to the statements made in paragraph 4.XVIII of the OA, the answering Respondents state that the enquiry officer vide letter No. T/134/1/DRM/LM

dated 14.3.2000 summoned the Applicant and witnesses namely Sri B.N. Bordoloi and Sri B.C. Deka to attend the enquiry fixed on 23.3.2000 at Respondent No. 4's office along with the defence counsel of the Applicant, but as the Applicant expressed his unwillingness to face the enquiry due to non issue of Railway pass to the defence counsel (as the I.O. was not aware of the defence counsel's name in time). The enquiry officer had to defer the date of enquiry and accordingly the I.O. vide letter No. T/134/1/DRM/LM dated 9.5.2000 again summoned the Applicant and witnesses namely Sri B.N. Bordoloi and Sri BC Deka to attend the enquiry fixed on 22.5.2000 endorsing copy to the defence counsel. The defence counsel was also provided with the Railway pass. All the witnesses got themselves present in Respondent No. 4's chamber while the Applicant arrived and submitted an application dated 22.5.2000 interalia for shifting the place of enquiry from lunding to Guwahati. He also submitted the letter of the defence counsel dated 21.5.2000 whereby the defence counsel informed the enquiry officer his inability to participate in the enquiry on 22.5.2000 for his engagement in the Regional Labour Commissioner's office on 23.5.2000 and to refix the date of DAR enquiry. However, the Applicant agreed to participate in the enquiry and accordingly the enquiry was held with the participation of the Applicant along with the two other witnesses.

9. That with regard to the statements made in paragraph 4.XIX and XX of the OA, while denying the contentions

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raised therein, the answering Respondents reiterate and reaffirm the statements made hereinabove.

10. That with regard to the statements made in paragraphs 4.XXI and XXII of the OA, the answering Respondents state that the Applicant himself participated in the enquiry without raising any objection and did not insist for the presence of his defence counsel. It was under these circumstances, the enquiry proceeded and the Applicant was given all reasonable opportunities in the enquiry and the same was taken by him. At no point of time, during the course of enquiry, the Applicant raised any objections regarding absence of his defence counsel and he himself volunteered to participate in the enquiry without the defence counsel.

11. That with regard to the statements made in paragraph 4.XXIII to XXV of the OA, while denying the contentions raised therein, the answering Respondents reiterate and reaffirm the statements made hereinabove.

12. That with regard to the statements made in paragraph 4.XXVI of the OA, the answering Respondent state that the appeal dated 25.8.2000 was put up to the Appellate authority i.e. the Respondent No. 3. But as the proceeding was initiated on the basis of his inspection report, it was observed by the appellate authority that the appeal withheld with by the Additional Divisional Railway Manager, Lumding. Accordingly the ADRM, Lumding went through the appeal and other relevant documents and passed the reasoned

order upholding the order of punishment. The order was communicated to the Applicant vide letter No. T/134/I/SR DOM/LM dated 23.10.2000.

13. That the answering Respondents submit that the relevant records of the case including the documents reference of which have been made above will be produced before the Hon'ble Tribunal at the time of hearing of the OA.

14. That the answering Respondents submit that under the facts and circumstances stated above, the OA is not maintainable and liable to be dismissed with costs.

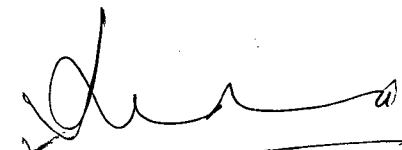
Verification

= 8 =

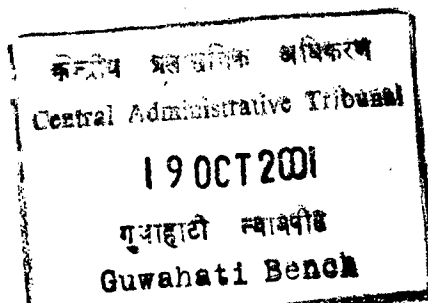
VERIFICATION

I Shri A.K. NIGAM, aged about 47 years, son of Late S.P. GAURHA, resident of Maligaon, Guwahati-11, presently working as Chief Personnel Officer/Admin. N.F. Railway do hereby verify and state that the statement made in paragraphs 1-2, 9, 10, 11, 13 and 14 are true to my knowledge and those made in paragraph 3, 4, 5, 6, 8 and 12 being matters of records are true to my information derived therefrom, which I believe to be true and the rest of my humble submissions before this Hon'ble Tribunal. I am also authorised to competent to sign this verification on behalf of all the Respondents.

And I sign this verification on this 14th day of September 2001.

Deponent

(A)



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Filed by -
Sri Gajendra Misra
Applicant
Through -
D.C. Borah
Advocate
18/10/2001

In the Central Administrative Tribunal, Guwahati Bench.

O.A. No. 417/2000

Sri Gajendra Misra

-Vs-

Union of India & ors.

IN THE MATTER OF :-

Rejoinder to W.S. on behalf of
the Applicant.

The Applicant most respectfully states
as follows :-

1. That the averment made in para No. 3 of the written statement has been denied as totally false and exaggerated that the applicant who has rendered long 35 years of service only in the cabin was fully aware that how the functioning in the Cabin which is involved in maintaining the smooth running of the trains to found fit and he is quite aware how the work is full of responsibilities and risk and also aware that any false in the said work may lead to serious disaster and keeping this view in mind the petitioner with utmost care and dedication had performed his duties since start of his career.

contd.....2/-

He is also very much alive to the fact that any lapse would be fallen upon the petitioner first - and that is why he performed his duties with utmost sincerity, care and dedication and for this reason ~~for~~ ^{he} could function throughout his long innings in service without any mishap.

On that fateful day at 1.15 AM of 15/9/99 the petitioner after giving clearance a train to pass on all necessary particulars which are to be filled up in the train register had been noted down in a rough paper so that no overwriting or erasement takes place in the register itself which fact the petitioner emphatically admitted go that the register be clearly maintain without any erasement etc.

It is therefore from the above statement it is clearly seen that after giving a train pass on at 1-15 AM of 15/9/99 it naturally would take minimum 2/3 ^{minutes} ~~minutes~~ to complete this exercise which when added up it goes to 1-17/18 AM of 15/9/99. Thereafter the doors of the cabin was bolted from inside for security reason or else some miscreants might enter the cabin and by overpowering the staff inside might cause some sabotage activities which might lead to serious accidents etc.

contd.....3/-

- 3 -

At this moment at 1.20 AM ie, just after 2/3 minutes after bolting the door, the DRM accompanied by other officials had knocked the door and the door was opened and the DRM & other officials had entered the room at 1.20 AM which had been admitted by the Respondents and his companions. From this it is quite rather humanly impossible to go or fall in deep sleep with a minutes or so in such a unhygienic condition which is infested heavily by mosquitos etc. Therefore the charge levelled against the petitioner of found in deep sleep is nothing but a mere conspiracy to harass him at this feg and of his carrer because of the fact that the petitioner who is in late fifties and is also suffering from many old age ailments including Asthma could go on deep sleep within a minute or two in such a pathetic condition of the room which is heavily infested within bad dour and mosquito-bites and even without any well needed bedding apparels although he admitted that mere bad sheet had been used below to cover the legs to protect from the attack rather bites of insects including mosquito because, no proper sanitation facilities had ever been made to make the room a congenial one for working on the other hand it is not an air conditioned room in which the DRM is working even in day time.

Besides no witness had ever had stated that after opening the door when they entered had any occassion

contd.....4/-

to awake the petitioner from deep sleep rather all of them admitted that the officials inside the room including the petitioner was found in standing condition.

2. That with regard to the statement made in para No. 4 of the written statement, the applicant begs to state that the petition filed before this Hon'ble Tribunal registered as OA No. 384/2000 was mainly against the unjust transfer orders dt. 21/7/2000 which accordingly the Hon'ble Tribunal was kind enough to dispose of the petition vide order dtd. 14/11/2000. But the respondents instead of complying with the said order was seemed to be satisfied with the a criptic and sketchy order which was communicated on 23/10/2000 where in no mention about the so called challenged (transfer order was evermentioned. Thus the respondents had wilfully violated the orders of the Hon'ble Tribunal dtd. 14/11/2000. This criptic order had been annexed vide Annexure -K with the main petition.

3. That with regard to the para No. 8 of the W.S. the applicant states that the enquiry report of the enquiry officer as annexed vide Annexure -G is totally biased and influenced on the following counts :

a) Although on the fateful day i.e. on 1.20 AM of 15/9/99 , the DRM who is the actual appellate authority under D & A Rules alongwith other senior officials and security personnels had only examined two lower level officers namely the -

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1) Traffic Inspector, Mr. Bordoloi and another (2) a security constable namely Mr. Deka, The Enquiry Officer deliberately and under influences of fear he being the subordinate officer of the DRM, had biasedly omitted the key witnesses namely (1) DRM himself and (2) the Senior ARM which is a gross irregularity because of the judicial decision in this respects which reads as "when the key witness is not examined the disciplinary enquiry is vitiated (ATR 1989(1) page 29) (b) Again the enquiry officer who should have to examine the Deligent official after PWs were examined. In this regard the judicial dedision is such . The delinguent official should be examined only after the prosecution witnesses have been examined. The procedure not permitted by law cannot be allowed.

(SLJ 1989 (C) CAT 103 and SLJ 1988(1) 477).

C) The enquiry officer, had rather biasedly and intentionally did not agree to the petition filed by the petitioner's defence counsels plea that as the defence counsel cannot attend the enquiry on the day fixed due to defence counsels prior pre occupation rather forced and threatened the petitioner to take part in the so called enquiry without the help of the defence counsel, he further did not even care to the objection petition filed by the petitioner as annexed at Annexure -H at page 49. The judicial decision in this regard as "Refusal of Enquiry officer to adjourn enquiry to enable the accused employee to

have assistance of another railway employee as defence counsel constituted denial of effective opportunity to employee to defend himself Enquiry vitiated "(AIR 1968 DL1854).

d) The Enquiry officer too had deliberately and malignly did not consider the petitioner's petition before it which is annexed at Annexure -F at page 37 of the named petition in arranging the appearance of certain named defence witness and also for inspection of certain important documents and thereby the enquiry report is vitiated and illegal as per judicial decision as

"Disciplinary proceedings prosecution not examining certain cited witnesses - Delinquent's prayer for attendance of such witnesses for examination as defence witnesses Trial vitiated if prayer is not granted even if prayer is made at the hearing only " (1969 Lab IC 773).

Although it is a fact that under threatening and duress the petitioner was rather forcefully compelled to take part on the enquiry proceedings in the face of the above mentioned anomalies and he completely defended 'admission' of taking part which is ventilated in his petition at Annexure -H at page 49.

e) The enquiry officer while submitting his enquiry report had even care to apply his mind to the recorded statements of the only two witnesses who had never corroborated that they while entering the room at 1.20 AM

on 15/9/99 had found the petitioner in deep sleep, even none had even has to awake them from deep sleep nor even the bolted door of the room was broken but all of them admitted that it was being opened from the inside and all the members in the room was found standing.--

f) The enquiry officer had furnished a report which according to the report itself is seen that it mainly is based on 1) Assumption (2) presumption and probability and not based on material facts, records and depositions which can be very well been at the report of the enquiry officer at page 41 of the petition such as to quote "While a person relaxes covering his whole body, it is very probable that this sort of relaxation will induce sleepiness " unquote , not deep sleep as alleged.

Thus the charge No. 1 could not be sustained and proved - "That the petitioner was in deep sleep ".

Regarding charge No. 11 the enquiry officer clearly reported "Hence the charge that he did not acknowledge to have taken over the charge upto 1.50 hrs. could not be sustained and proved. Again that the charged official allowed pointsmen/ cabinmen to operate block instrument and TBI could not be established due to lack of proff."

4. That the averments made in paragraphs No. 10 & 11 of the W.S. had been emphatically denied and treated as false in the face of the statements as made in the

main petition and also the points at aforesaid paras of the reply.

5. That with regard to the statement made in para 12 of the W.S. the applicant begs to state that the respondents No. 3 i.e. the DRM had agreed that the appeal was not disposed of by him. This is nothing but the complete violation of the D & A Rules and other relatives standing circulars where the specific authority had been presecibed to dispose of the appeal petitions etc and this power, under any circumstances be deligated to exercise by any other authority subordinate to him. As such the entire proceedings is illegal and not maintainable at all.

Verification

I, Shri Gajendra Mishra, Son of Late Nageswar Mishra, aged about 57 years, working as Deputy Superintendent in the Cabin of New Guwahati Railway Station now on casual leave do hereby verify that contents of paras 1, 2, 3 & 4 are true to my knowledge and belief and paras — are believe to true on legal advice and that I have not suppressed any material facts.

Gajendra Mishra
Signature