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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES,1990)

M.P-126/2001 ordersheet pg-1
disposed date-18/10/2001

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SECTION OFFICER (Judl.)

FORM NO. 4
(*See Rule 42*)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET
APPLICATION NO. 165/2000 OF 199

Applicant(s) Narendra Nath Das

Respondent(s) Union of India and ors.

Advocate for Applicant(s) Mr. D.C. Borah
Mr. D. Borah

Advocate for Respondent(s) Rly. Advocate.

Notes of the Registry	Date	Order of the Tribunal
The application is in form and within time. C.F. of Rs. 50/- deposited vide IPO/BD No. 496233 Dated 3.5.2000	6.6.00	Mr. D.C.Borah, learned counsel for the applicant. Learned counsel for the applicant submits that copy of the application has been served on the learned Railway counsel Mr. B.K.Sharma. Mr. B. K.Sharma, learned Railway counsel is not present today. List on 13.6.2000 for consideration of admission. Member(J)
13/6/00 One Copy Short. Notice prepared and Sent to D/Section for issuing the Respondents No 2 to 3. vide D/No 1662 to 1664 dtd 20/6/00	13.6.00	Present: Hon'ble Mr.D.C.Verma, Judicial Member. Heard Mr.D.C.Borah, learned counsel for the applicant and Mr.B.K.Sharma learned counsel for the respondents. Application is admitted. Issue notice on the respondents by registered post. contd/-

O.A. 165 of 2000

(2)

Notes of the Registry	Date	Order of the Tribunal
13-7-2000 No. wts has been filed. Notice duly served on Respondents No 3 & 4. 14/7/00	13.6.00 13/6/2000 14.7.00	Written statement within 4 weeks. As regards interim reliefs no ground is made out to stay the impugned order. Interim prayer is rejected. List on 14.7.00 for orders. Member(Judl) Present : Hon'ble Mr.S. Biswas, Administrative Member. Mr.S. Sengupta, learned Railway counsel prays for two weeks time. Time is granted for filing of written statement. Post on 3.8.00 for filing of written statement and further orders. Member (A)
25.9.2000 No written statement has been filed. 25.9.	mk 3.8.00	There is no Bench today. Adjourned to 22.8.00. mk
No. wts has been filed. 25/10/2000	22.8.00 26.9.00	There is no Bench. Adjourned to 26.9.00. Present : Hon'ble Mr. Justice D.N.Choudhury, Vice-Chairman. Three weeks further time allowed for filing of written statement on the prayer of Mr. S.Sengtupta, learned Railway Counsel. Mr. D.C.Bora, learned counsel for the applicant is present. List it for orders on 27.10.2000. Vice-Chairman
	trd	

Notes of the Registry	Date	Order of the Tribunal
	27.10.00	Present : Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman. Three weeks time is granted to the respondents to file written state--ment on the prayer of Mr.B.K. Sharma, learned Railway counsel. List on 20.11.00 for written statement and further orders. Vice-Chairman
	mk 20.11.00	Further two weeks time is granted to the respondents to file written statemen on the prayer of Railway standing counse List on 7.12.2000 for order. Vice-Chairman
26-11-2000 "Vakalatnama" has been filed by the RY Advocate Mr. S. Sengupta. Bose	pg 7.12.00	Further four weeks time is granted to the respondents as a last chance for filing of written statement. List on 4.1.2001 for written statement and for further orders. Vice-Chairman
No written statement has been filed. By 6.12.2000	mk 4-1-	There was a reference. Next it 23-1-2001. By Hazra 4.1.
No written statement has been filed. By 8.1.2001	23.1.01	List again on 20.2.01 to enable the respondents to file written statement. Member Vice-Chairman
No W/S has been filed By 22.1.2001	pg 20.2.01	List the matter for hearing on 9.4.01. In the meantime the respondents may file written statement within two weeks from to-day. The applicantmay also file rejoinder if any within 2 weeks. Member Vice-Chairman
No written statement has been filed. By 19.2.01	lm	

Notes of the Registry	Date	Order of the Tribunal
16.5.2001 W/S has been submitted for and on behalf of the Respondents. [illegible]	9.4.	There is no DB/Division bench today. The case is adjourned to 17.5.2001. MA [illegible] 9.4.
	17.5.	Hearing Concluded. Order reserved. MA [illegible] 17.5

Notes of the Registry	Date	Order of the Tribunal
19.6.2001 Copy of the Judgment has been sent to the Deptt. for Rep. ins. Due to the Applicant as well as to the Govt Adv. for the Respts.	25.5.01 lm WS 28/5/2001	Judgment delivered in open Court. Kept in separate sheets. Application is allowed. No costs. Member Vice-Chairman

Notes of the Registry	Date	Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXX No. 165 of 2000

DATE OF DECISION 25.5.2001

Shri Narendra Nath Das APPLICANT(S)

Mr D.C. Borah and Mr D. Borah ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

The Union of India and others RESPONDENT(S)

Mr S. Sengupta, Railway Counsel ADVOCATE FOR THE RESPONDENTS.

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

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

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?
5. Judgment delivered by Hon'ble Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.165 of 2000

Date of decision: This the 25th day of May 2001

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

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Narendra Nath Das,
Resident of Railway Quarter No 906A,
New Guwahati Railway Colony,
Presently working as Highly Skilled Diesel Fitter-II,
New Guwahati Loco Shed,
Guwahati. .....Applicant

By Advocates Mr D.C. Borah and Mr D. Borah.

- versus -

1, The Union of India, represented by the
Principal Secretary,
Ministry of Railways,
Railway Board,
New Delhi.

2. The General Manager,
N.F. Railway,
Railway Head Quarter,
Maligaon, Guwahati.

3. The Divisional Railway Manager,
N.F. Railway,
Lumding, Assam.

4. The Senior District Mechanical Engineer (Diesel),
N.F. Railway,
New, Guwahati. .....Respondents

By Advocate Mr S. Sengupta, Railway Counsel.

.....

O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

Ths application under Section 19 of the Administrative Tribunals Act, 1985 has arisen and is directed against the order dated 6.1.1999, Annexure H, reducing the pay of the applicant from Rs.4400 to Rs.4200 for a period of two years with cumulative effect with effect from 21.11.1998 as well as the order dated 7.2.2000, Annexure L, rejecting the appeal of the applicant in the following circumstsnces:

The applicant is presently holding the post of HSD Fitter Grade II. He was initially appointed as Diesel Khalasi (Mechanical) in the year 1977 and thereafter promoted to the post of HSD Fitter Grade III. He was promoted to the present rank in the year 1990. While functioning as such the applicant was served with a Memorandum dated 22.8.1996 proposing to hold an enquiry against the applicant under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as the Rules). The substance of the imputations of misconduct or misbehaviour in respect of which the enquiry was proposed to be held was set out in the statement of articles of charge accompanied by the statement of misconduct or misbehaviour. The extract of the articles of charge framed against the applicant is reproduced below:

> "Shri Narendra Nath Das while posted and functioned as H.S.D. Fitter Gr. II/NGC during the period from October'92 to March'93 committed a gross misconduct in as much as Three sets of 2nd class privilege pass bearing numbers 515302, 515303 and 515304 dated 5.12.92, 5.12.92 and 5.12.92 respectively were issued in his favour as applied for by him. For commencing journey from Ghy. on 17.01.93 as per tour programme organised by Sri P.K. Das Sr. Clerk/ Diesel shed/NGC. But on the day of journey he did not attend and allowed Shri Ram Pathak a non railwayman to avail the said passes to undertake the journey in the said tour and thereby violated pass rules for his personal gain which tentamounts to serious misconduct for misuse of passes.
>
> Thus by above accused said Sri Narendra Nath Das exhibited lack of intigrity and devotion to duty and acted in a manner unbecoming of railway servant and thereby contravened the Rule 3(i), (ii), (iii) of Railway service(conduct) Rules 1966."

2. The applicant submitted his reply denying the allegations. The applicant in the written statement stated that the Sr. Clerk, Shri P.K. Das contacted him in November 1992 and informed him that he intended to organise "South India Tours" shortly and the members of the party would be only Railwaymen. When the applicant was asked whether he was interested to take part in the same, the applicant agreed to the proposal. The said Shri Das also asked the applicant to apply for three half set passes to cover the journey. The applicant stated that he applied for the passes and also for leave. Shri Das did

not.....

not contact the applicant any further. Neither the applicant's leave was sanctioned nor any pass was issued in his favour. He reasonably thought that the tour programme was abandoned and denied his involvement in the allegation. The Disciplinary Authority proceeded with the enquiry and the Inquiry Officer, on consideration of the materials, held that the charge was partly established. The Inquiry Officer in his finding observed: "The preponderence of probablity and the evidence (both oral and documentary) as discussed in the foregoing chapters and paras of this report, it is evident that the defendant Sri Narendra Nath Das HSD/Fitter/II did not allowed the non railway men Sri Ram Pathak to whom he does not know with his P/passes to undertake journey in the South India Tour. The passes are considered as money valued materials and as such he is responsible for not collected the passes from Sri P.K. Das, Sr. Clerk (G)/NGC to whom verbally authorised to collect from the pass issuing office/section and for non submission any information to his controlling authority for cancellation of pass application as applied for to prevent misuse of the pass. When he came to know that he could not participated in the tour prior to the commencement of journey."

3. The applicant was served with a copy of the report of the Inquiry Officer and the applicant submitted his representation. The Disciplinary Authority passed the impugned order dated 6.1.1999 and reduced the pay of the applicant from Rs.4400/- to Rs.4200/- for a period of two years and the punishment was to effect from 21.11.1998. The applicant submitted an apeal before the Appellate Authority and the Appellate Authority by order dated 7.2.2000 dismissed his appeal. Hence this application assailing the legality and correctness of the order imposing the punishment as well a the order dismissing his appeal.

4. The respondents submitted their written statement denying and disputing the assertions made in the application. It may also be mentioned that the applicant was initially placed under suspension by order dated 29.6.1993, but the same was revoked by order dated 21.7.1993.

5. No witnesses, as such, were examined. The applicant, in fact, insisted for production of Shri Ram Pathak, the non railwayman, who allegedly availed the passes meant to be used by the applicant and his party. The Inquiry Officer, in fact, summoned Shri Ram Pathak, but he was not found available.

6. We have heard Mr D.C. Borah, learned counsel for the applicant and Mr S. Sengupta, learned Railway Counsel. Before the enquiry, there was no material to show that the applicant collected the passes. The tour in question was also organised by Shri P.K. Das, Sr. Clerk in the establishment. It was the respondent Railway who permitted Shri Das to organise such tour. There was no iota of evidence that the applicant, in fact, received the passes and allowed Shri Ram Pathak a non-railwayman to use the same. The materials unerringly pointed out that passes were collected by Shri P.K. Das and not by the applicant. The Inquiry Officer found that the passes were with the team leader, Shri P.K. Das alongwith special tickets which were sought to be produced before the vigilance. The Inquiry Officer came to a positive conclusion that the applicant did not allow the non-railwayman, Shri Ram Pathak with the passes to undertake the journey to South India. Therefore, the allegation charging the applicant for allowing Shri Ram Pathak, a non-railwayman, to avail the passes thereby violating the pass rules fell to the ground. The Inquiry Officer, however, held that the applicant was responsible for not collecting the passes from Shri P.K. Das and for non-submission of information to the concerned authority for cancellation of the pass to prevent misuse of the pass. The applicant was not made known about the materials which was relied upon by the Inquiry Officer. The finding of the Inquiry Officer that the charge was partially proved, therefore, is perverse. The Disciplinary Authority mechanically accepted the report of the Inquiry Officer without applying his mind and imposed the punishment. The Appellate Authority also fell into error in not addressing its mind to the relevant aaspects of the matter. The

Disciplinary.....

three aforesaid authorities, namely the Inquiry Officer, the Disciplinary Authority as well as the Appellate Authority took into consideration extraneous considerations overlooking the relevant considerations which caused great failure of justice.

7. For the reasons stated above and also in view of the order passed by the Bench in the case of Basir Ali vs. Union of India and others, the impugned order dated 6.1.1999 imposing penalty of reduction of pay and the order dated 7.2.2000 dismissing the appeal of the applicant are set aside.

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

(K. K. SHARMA)
ADMINISTRATIVE MEMBER

(D. N. CHOWDHURY)
VICE-CHAIRMAN

nkm

तारीख Date of application for the copy.	संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	देने की तारीख Date of delivery of the requisite stamps and folios.	प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	तारीख Date of making over the copy to the applicant.
12/9/2K	12/9/2K	12/9/2K	13/9/2K	13/9/2K

IN THE GAUHATI HIGH COURT

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

CIVIL APPELLATE SIDE

Appeal from WP(C) No. 4851 of 2000
Civil Rule

The Union of India & ors — Appellant / Petitioner

Versus

Sri Basir Ali — Respondent / Opposite-Party

Appellant / Petitioner For — Mr. B.K. Sharma, S.C. Rly. Mr. D.K. Sarmah — Advocates

Respondent / Opposite-Party For — Mr. S. Nath, Mr. A. Hai, advocates for the caveator.

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

IN THE MATTER OF :-

1. Union of India represented through the General Manager, N.F. Railway, Maligaon, Guwahati-11.
2. The Chief Mechanical Engineer, N.F. Railway, Maligaon, Guwahati-11.
3. The Chief Vigilance Officer, N.F. Railway, Maligaon, Guwahati-11.
4. The Divisional Railway Manager (P) N.F. Railway, Lumding.
5. The Divisional Mechanical Engineer(P) N.F. Railway, Lumding.

... RESPONDENTS
PETITIONERS.

Vrs.

Shri Basir Ali, S/o. Khunsa Ali, Greaser under Sr. Section Engineer, Locoshed, N.F. Railway, New Guwahati.

... APPLICANT
RESPONDENT.

Contd.....3

BEFORE

THE HON'BLE CHIEF JUSTICE MR. BRIJESH KUMAR
THE HON'BLE MR. JUSTICE D.N.CHOWDHURY

06-09-2000

This writ petition is preferred against the order dated February 15, 2000 passed by the Central Administrative Tribunal, Guwahati.

We have heard Shri B.K. Sarma, learned counsel appearing for the appellant Railways and Shri S. Huda, learned counsel appearing for the respondent.

The respondent was proceeded against in a departmental proceeding on the charge that as a Railway employee, travelling pass facility was taken by him for travelling to Trivandram, which in fact was utilized by some outsider. It appears that one Shri P.K. Das, a Senior Clerk in the establishment arranged some tour programme to Trivandram and/in the touring party the respondent was also included. It further appears that Shri P.K. Das arranged for the reservation of the coach etc. But due to sudden illness of the respondent he could not accompany the rest of the members of the tour/party and according to him, he informed ~~xxxpass~~ to Shri P.K. Das. Later on it was found that some one was travelling on the basis of the pass issued in favour of the respondent. Initially, it appears that punishment of withholding of some increment etc. was awarded to the respondent, against which he preferred an appeal and since the appeal was not being decided, he preferred a petition before the Tribunal. The Tribunal, thereafter directed the appellate authority to decide the appeal. After the order passed by the Tribunal, again a show cause notice was issued to the respondent.....

06-09-2000
(Contd)

respondent for enhancement of the punishment and ultimately order of removal from service has been passed which has been impugned by the respondent before the Central Administrative Tribunal. The Central Administrative Tribunal recorded findings to the effect that no oral evidence was adduced during the course of the proceedings in proof of the charges by the Railways. It is also indicated that the documents were also not proved through any witness nor had been properly placed on record. Referring to the statement of P.K. Das made before the Vigilance Officer, it was also noticed and found that the passes were collected on behalf of all by said Shri P.K. Das who was the leader of the tour party. The petitioner-respondent is a Fitter Khalasi Helper in the Railway whereas Shri P.K. Das the organiser of the tour is a Senior Clerk in the stablishment. The learned Tribunal also observed that after passes were handed over to Shri P.K. Das what happened to the same would not be known to the petitioner-respondent that is to say, whether outsider was allowed by Shri P.K. Das or any one else to utilize the passes of the Respondent. Learned counsel for the petitioner submits that it was the duty of the petitioner-respondent to have handed over the passes to the authorities concerned in case he did not use them. There is no dispute that Shri P.K. Das has been the organiser of the tour and holds higher position being Senior Clerk in the establishment. Shri P.K. Das in his statement before the Vigilance Officer has himself stated that the passes were collected by him from the office on behalf of the employees who were to

join.....

06-09-2000
(Contd)

join in the tour including that of the respondent.

Apart from what has been indicated above, we find that there are laches on the part of the petitioner to approach this Court in filing the writ petition. The judgment and order was passed by the Tribunal on 15-2-2000 and the petition has been filed on August 25, 2000 that is to say more than 6 months after the judgment of the Tribunal. The laches are sought to be explained in paragraph 27 of the petition. According to the averments made in paragraph 27, the copy of the judgment was handed over to the learned counsel for the Railways on 14-3-2000. It is further submitted that since earlier the copies have been sent to the parties directly, the learned counsel for the Railways did not send the copy to the department. The change in the practice of supplying the copy to the counsel instead of party was not known since it was a recent development. It was thus only in May, 2000 that it came to the knowledge that copy was not supplied to the department. It was thus on 22-5-2000 that the copy was forwarded to the petitioner. In the third week of June, 2000 a decision was taken to file a petition. The counsel could be contacted only in July, 2000 and ultimately the petition was filed on 25th August, 2000. There is no denial of the fact that the judgment and order was passed in presence of the counsel for the Railways or the same was within his knowledge. There is no good reason that the decision which had gone against the Railways was intimated after three months. Even thereafter.....

06-09-2000
(Contd)

thereafter the matter was delayed and ultimately the petition has been filed after a lapse of more than 6 (six) months of the passing of the order. The respondent is merely a Class-IV employee of the Railway establishment being a Fitter Khalasi Helper. Without there being strong reasons, it is not in the interest of justice that he may be dragged into litigation to this Court unnecessarily after lapse of long time.

Considering all the facts and circumstances and the findings as recorded by the Central Administrative Tribunal, we do not consider that there is any such error in the order so as to call for any interference. The petition is, therefore, dismissed in limine.

Sd/- D.N. Chowdhury
Judge

Sd/- Benjesh Kumar
Chief Justice

Certified to be true Copy
Lilali Borah 13/9/2000
Superintendent (Copying)
GAUHATI HIGH COURT
Authorised U/S 76 Act of 1970
13/9/2000

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IN THE COURT OF THE CENTRAL ADMINISTRATIVE TRIBUNAL,

GUWAHATI BENCH

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

O.A. NO. 165 OF 2000

Narendra Nath Das ... Applicant.

Versus

Union of India & Others ... Respondents.

INDEX

Date of filing
9-5-2000
Date of Receipt by Post

Registration No.

Narendra Nath Das
Signature of Applicant.

Registrar.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Narendra Nath Das,
Son of Late Banti Ram Das,
Resident of Rly. Quarter No.906A,
New Guwahati Railway Colony,
Guwahati.
Presently working as Highly Skilled
Diesel Fitter-II at New Guwahati,
LOCO-Shed.

...APPLICANT

VERSUS

1. The Union of India,
represented by the Principal
Secretary, Ministry of Rlys.,
Railway Board, Rail Bhawan,
New Delhi-1.

2. The General Manager,
N.F.Railway,
Railway Head Quarter,
Maligaon, Guwahati-11.

3. The Divisional Railway Manager,
N.F.Railway, Lumding, Nagaon, Assam.

Contd..

Filed by - Narendra Nath Das through Bilipi Bora Advocate. 9.5.2002

4. The Senior District Mechanical Engineer (Diesel), N.F., Railway, New Guwahati.

... RESPONDENTS

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDERS AGAINST WHICH THE APPLICATION IS MADE.

(a) Senior Dist. Mechanical Engineer's (Diesel), New Guwahati, N.F.Rly. Order P/case dtd. 6.1.99 reducing pay from Rs. 4400.00 to Rs. 4200.00 for a period of two years with cumulative effect w.e.f. 21.11.98.

(b) Divisional Railway Manager's Lumding Division, N.F.Rly. order rejecting the applicants appeal against the aforesaid orders communicated vide No. SDME/D/SS-VIZ/3-90 dtd. 07.02.2000.

2. JURISDICTION OF THE TRIBUNAL

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

Contd..

3. LIMITATION

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

4. FACTS OF THE CASE :

(1) That the applicant was initially appointed as Diesel Khalasi (Mechanical) in the year 1977. He was duly promoted to H.S.D. Fitter Grade-III in the year 1985. Thereafter, he was promoted to Grade-II HSD fitter in 1990 and is still serving.

(2). That the petitioner always performed his duties with utmost sincerity and satisfaction and during this period he had never incurred any displeasure to his immediate boss and always served to their satisfaction and pleasure.

(3). That, in the month of November, 1992, one Sri P.K.Das, Senior clerk of the aforesaid establishment organising a "Tour to South India", approached the applicant whether he would be party to it under "Privileged Pass" as admissible to Rly. employees under relevant Rules.

(4) That the petitioner agreed to it and he ap-

Contd..

plied for due leave and "Privileged Pass". Therefor in the application form supplied by above-mentioned Sri Das and the applicant put his signatures in the respective forms which was filled up by Sri P.K.Das himself.

(5) That the petitioner, thereafter, did not know anything whether his "Privileged Pass" as applied above, was issued or not.

(6) Mention may be made that the applicant had never applied for nor availed any Privileged Pass on earlier occasion before this.

(7) And that as the immediate boss of the establishment in which the petitioner is serving, was in a mood not to spare the applicant to undertake the Tour even if the leave is sanctioned by the competent authority, the applicant had abandoned the idea of participating the Tour organised by aforesaid Sri Das. Accordingly, he did not take any follow up action for issuance of Privileged Pass in his favour or Sri Das had ever contacted him in this regard furthermore.

8. That, all on a sudden, the petitioner got a suspension order No. P/Case dtd. 29.6.93 (Annexure-A) which of course was subsequently revoked vide No. P/Case dtd. 21.7.93 (Annexure-B).

Contd

(9) That, then and only then, it came to the knowledge of the petitioner that "privileged Pass" had been issued in his favour and was mis-used by somebody else i.e. by a non Rlyman. And also, that, the petitioner could come to know that the leave as applied for was also sanctioned by the competent authority. But the petitioner was also in dark about this fact because of the fact that the immediate Boss had never spared the petitioner to avail the sanctioned leave nor informed him about sanctioning of leave.

(10) That suddenly, the petitioner got a summon from the CVO/Maligaon to appear before him.

(11) That from these above facts, the petitioner could come to know that the "Privileged Pass" as applied for was issued in his favour which, however, was handed over to said Sri P.K.Das, Senior Clerk by the concerned clerk issuing the passes.

(12) That the said Sri P.K.Das in collaboration with the issuing clerk had handed over the said passes to one Sri Pathak a Non-Rly employee who is completely unknown to the petitioner, may be, with some ulterior motive.

(13) That the petitioner, had never authorised

Contd..

either Sri P.K.Das, Senior Clerk to receive the "Privileged Pass" issued in his favour or the issuing clerk to handover the passes to Sri Das whatsoever either in writing or verbally. Moreover, as the petitioner was never in know that "Privileged Passes" as applied for was issued, question of authorising anybody either in writing or verbally does not arise at all.

(14) That the said Mr. Pathak, a non-Rlyman, who used the passes issued in the applicant's favour, also admitted that he never knew the applicant before.

(15) That the entire series of events had been deposed before the CVO/Maligaon who summoned the petitioner.

(16) That on this wild, false and fabricated charge, the petitioner was placed under suspension as mentioned above but the same suspension orders was revoked within a month's time subsequently.

(17) But, that surprisingly enough, a Departmental proceeding was started against the petitioner and accordingly a "Daft Association of Charge" was served on the petitioner vide letter No. P/Case (Loose No.6) dtd. 21.6.95 (Annexure-C draft article of charges).

(18) That, in response to the above draft associa-

Contd..

tion of charges, the petitioner had submitted his defence statement denying the charge levelled against him (Annexure-D)

(19) That, thereafter, an Inquiry Officer was appointed vide No P/Case (Loose No.6) dtd. 18.1.96 to enquire into the matter (Annexure-E).

(20) That, the Inquiry Officer finally held the regular Inquiry on 18.10.97 at 3.30 Hrs. and the Inquiry report was served on the petitioner vide letter No.SDME/D/SS-VIZ/3-90 dtd. 5.8.98 (Annexure-F).

(21) That the petitioner had submitted his representation to this Inquiry Report as directed on 12.8.98 (Annexure - G)

(22) That, the Disciplinary authority that is to say, the Senior District (Mechanical Engineer, N.F.Rly, Maligaon, inflicted punishment on the petitioner by issuing a cryptic order vide order No. P/Case dtd. 6.1.99 (Annexure-H).

(23) That, the petitioner, thereafter, preferred an appeal petition before the Divisional Railway Manager, Lumding Division of N.F.Railway vide petition dtd. 10.3.99 (Annexure-I).

Contd..

(24) That, since, the appeal petition was not disposed of and also because of the fact that, the petitioner had suffered both mentally and financially, he submitted two other petitions dtd. 29.6.99 and 7.9.99 respectively (Annexure-J) with a prayer for early redressal of the sufferings as reminder, ~~by~~ early disposal of the appeal.

(25) That, inspite of the above, the petitioner's appeal petition was yet to dispose of and finding no other alternative, the petitioner filed a petition before the Chief Mechanical Engineer, N.F.Rly. on 30.11.99 (Annexure-K).

(26) That, finally, the petitioner's above mentioned appeal petition was disposed of without offering any chance of hearing to the petitioner and delivered an order on 07.02.2000 which was communicated vide No.SDME/D/SS-VIZ/3-90 dtd. 07.02.2000 uphelding the punishment order issued by the Senior District Mechanical Engineer and rejected the petitioner's appeal petition (Annexure-L).

5. GROUNDS OF RELIEF WITH LEGAL PROVISIONS.

1) The impugned orders inflicting punishment on the petitioner reducing his pay to a lower stage by the

Contd..

Senior District Mechanical Engineer, N.F. Rly. vide P/Case dtd. 6.1.99 is illegal, motivated and whimsical which is liable to be set aside.

(2) The said impugned orders were passed defying the relevant Rules and procedure of D & A Rules 1968 and as such it is liable to be quashed.

3) The impugned orders were passed on mere whims, caprice and on malicious considerations on the fact that, the only one charge as framed, against the petitioner, could not be substantiated and as such it is bad in law.

4) The impugned orders were passed even though it was proved that the petitioner had never mis-used the privileged pass alleged to be issued in his favour and is being allegedly misused by a non-Rly man. The said Non-Rly. man had categorically stated that he (the non-Rlyman) had been never known to the petitioner and the alleged pass had not been handed over to him by the petitioner but by Sri P.K.Das, Senior Clerk. It was also established from the report of the Enquiry Officer, that the petitioner had not received the privileged pass issued in his favour and the same had not been mis-used by him. As such the main and the only one charge against the petitioner had failed. It is therefore, the

Contd..

impugned orders were nothing but malicious, capricious and imaginary. It has got no legal bearing and as such the said impugned orders shall be quashed.

(5) The impugned orders, as already submitted that the only charge had not been substantiated, were passed mainly on observation offered by the Enquiry Officer in his report that the petitioner had failed to intimate the authority about non-use of the privileged pass issued in his favour in time. This observation, it is submitted, is nothing but reflection of whims, malice and frustration on the part of the Enquiry Officer because of the fact that, the E.O. has been sufficiently posted with proper documents and statements and evidences ~~tant~~ That the issuance of so-called privilege passes in favour of the petitioner was never known to him, not to speak of having in possession. As such the said impugned orders was bad in law and shall be quashed.

6) It is also submitted that there are many a legal decision as to findings of Enquiry Officer Quote" Findings of Enquiry Officer based on matters outside scope of charge-sheet held no reasonable opportunity afforded and hence the order of the punishments liable to be quashed" unquote (1965 Cur LJ289). And also, quote "Railway servant charge sheeted for misconduct

Contd..

but penalised for negligence coupled with violation of Rules - held as conduct of servant did not amount to misconduct : charge must be treated as vague and penal order must be quashed" unquote (1965 FIR 262).

7) The impugned order passed on the so-called observation of the Enquiry Officer that the petitioner failed to intimate the authority regarding non-use of so-called privileged pass issued in his favour, is nothing but figment of imagination, whims and malice on the part of the Disciplinary Authority. It is also submitted that the Enquiry Officer too had totally failed to appreciate provisions of Railway Servants (Pass) Rules 1986" -- as there is no such provision in the said Rules for providing information to the authority for non-use of Passes except information to police when passes are missing from the possession of the Pass-holder. As such the entire proceeding is nothing but a gimmick and all such actions and punishment whatsoever had been inflicted on mere imagination and maligned design, upon the petitioner are illegal, motivated and whimsical and as such is liable to be quashed outright.

(8) The said impugned orders had been passed without any consideration of facts and applying any mind. It is humbly submitted that the said impugned orders is not a speaking orders and it is a cryptic and

Contd...

capricious order passed basically on whims and caprice. It is arbitrary and has been passed violating all relevant circulars issued by the Railways Authority that the punishment order, shall be a full-proof speaking orders and shall never be cryptic, arbitrary and whimsical. There are ample of legal decisions in this regard. As such, the said order shall liable to be quashed outright.

(9) It is also submitted that the Appellate authority which had for reason best known to him, had passed the Appellate orders so belatedly that it had violated all existing circulars and instructions issued by the Railway Authority from time to time, to quote "Appellate Authority should give high priority to the disposal of Appeals and ensure that no appeal suffer delay in disposal beyond a period of one month from the date of receipt of the appeal by the Appellate Authority....." unquote (R.B. No.E (D & A) 71 RG 6-22 of 11.6.71). As such it is also liable to be set aside.

(10) It is submitted that the impugned Appellate order passed by the appellate authority so belatedly has also violated the Rule of Natural Justices as no opportunity of being heard was given to the petitioner. The said order was also cryptic, sketchy and was passed without applying any mind. It has been laid down in

Contd..

judicial decision by the Hon'ble Supreme Court that the Appellate Authority should pass speaking orders and should also give a personal hearing to the concerned officer to inspire confidence that his appeal has been duly considered by the Appellate Authority. But in the instant case, the petitioner was never given the chance of hearing and to the contrary, the impugned appellate order was passed so late that the petitioner had to remind him thrice and at one time a petition was submitted before the higher authority than the appellate authority. As such, the said appellate order was presumed to have been passed out of anger and applying any mind and consideration. Rather, it had violated the Rule of Natural Justice. As such the said appellate order shall also be liable to be set aside.

6. DETAILS OF REMEDIES EXHAUSTED

The applicant declares that he had availed of all the remedies available to him under the relevant Service Rules.

7. MATTER NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT.

The applicant further declares that he had not previously filed any application, writ petition or

Contd..

suit regarding the matter in respect 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, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT:

In view of the above facts and grounds mentioned in the above paras the applicant prays for the following relief :

a) the impugned orders No P/Case dtd. 6.1.99 by the Disciplinary authority, the Senior District Mechanical Engineer, NFRly, reducing the pay of the petitioner to a lower stage which is cryptic, sketchy, erroneous and not in conformity with the established Judicial decision, be quashed. And also, the impugned orders no GDME/D/SS-VIZ/3-90 dtd. 7.2.2000 passed by the Divisional Railways Manager, Lumding Division, the Appellate Authority, rejecting the appeal of the petitioner which is also cryptic, inconsiderate and also violates relevant judicial decisions and established circulars of the Railway authority, be set aside.

Contd..

b) And also prayed that such order or orders may be passed as deem fit and proper in the interest of justice, equity and fair play.

9. INTERIM RELIEF

Pending final decisions on the application the applicant seeks the following interim relief :

a) The impugned order No P/Case dtd. 6.1.199 by the Senior District Mechanical Engineer, the disciplinary authority be graciously kept in abeyance.

(b) Restoration of pay of the petitioner to the original stage i.e. at Rs. 4400.00 P.M. which was reduced by the above mentioned impugned orders w.e.f. the respective date.

c) Orders may graciously be issued for payment of reduced amount with due compensation thereon as admissible to the petitioner w.e.f. date of reduction till date.

Contd..

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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 Bank draft/Postal Order filed in respect of application fee.

Postal order 06496239 drawn in favour of Registrar, Central Administrative Tribunal, Guwahati Bench.

Amount Rs. 50.00 Date of Issue 03.05.2000.

12. List of Enclosures:

1. Annexure - A : suspension order - 1 Page
2. Annexure - B : Revocation of Suspension orders - 1 Page
3. Annexure - C : Draft Articles of Charges - 4 Pages
4. Annexure - D : Defence statement of the petitioner. - 2 Pages
5. Annexure - E : Appointment of E.O. - 1 page
6. Annexure - F : Final Report by the E.O. - 13 Pages
7. Annexure - G : Representation by petitioner against the EO's report. - 2 Pages
8. Annexure - H : The impugned orders by the D.A. - 1 page
9. Annexure - I : Appeal petition by the applicant. - 3 Pages
10. Annexure - J : Reminder for disposal of appeal petition. - 2 Pages
11. Annexure - K : Petition by the Petitioner to the Chief Mechanical Engineer, N.R.Rly. for delay in disposal of the appeal of the petitioner. - 1 page
12. Annexure - L : Impugned Appellate Orders by the Appellate authority. - 1 page

Contd..

VERIFICATION

I, Sri Narendra Nath Das, s/o Late Banti Ram Das, aged about 47 years working as H.S.D. Fitter (II) in the office of the ..Diesel Shed, New Guwahati do hereby verify that contents of paras (8) & (17) to (26) under 4. are true to my knowledge and paras (1) to (7) & (9) to (16) & the paras under '5' ie (1) to (10) believed to be true on legal advice and that I have not suppressed any material fact.

Date : 9-5-2000

Place : Guwahati

Narendra Nath Das

Signature of the applicant.

ANNEXURE 'A' 18

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ANNEXURE-I

Standard Form of Order of Suspension(Rule 5(I)of the Railway Servants(Discipline and Appeal)Rules, 1968.

No. P/Conf.

(Name of Railway Administration) E.C. Railway (B)/NGP

(Place of issue) NGP Dated 29.6.93

ORDER

Whereas a disciplinary proceeding against Shri Narendra Nath Das, USD/Ill. (Name and designation of the Railway servant)is contemplated/pending

Whereas a case against Shri . . . . . (name and designation of the Railway servant)in respect of a criminal offence is under investigation/inquiry/trial.

Now, therefore, ~~the President/the Railway Board~~/the undersigned(the authority competent to place the Railway servant under suspension in terms of the Schedules I,II and III appended to Railway Servants(Discipline and Appeal)Rules,1968/an authority mentioned in proviso to Rule 5(I)of the Railway Servants(Discipline and Appeal)Rules,1968), in excercise of the powers converred by Rule 4/proviso to Rule 5(I)of the Railway Servants(Discipline and Appeal)Rules, 1968, hereby places the said Shri Narendra Nath Das USD/Ill. under suspension ~~with immediate effect~~/with effect from . . 29.6.93 .

It is further ordered that during the period this order shall remain in force, the said Shri Narendra Nath Das USD/Ill. shall not leave the head quarters without obtaining the previous permission of the competent authority.

*(~~By order and in the name of~~ the President)

. . . . (Signature) [illegible]

(Name)(Gopal Kumar)

Designation of the suspending authority (Secretary,Railway Board, where Railway Board is the suspending authority). (Designation of the officer authorised under Article 77(2)of the Constitution to authenticate orders on behalf of the President,where the President is the suspending authority).

Copy to:-

(1) Shri Narendra Nath Das USD/Ill. Gd. (name and designation of suspended Railway servant). Orders regarding subsistence allowance admissible to him during the period of suspension will issue separately. (2) SS(D)/Hqrs (3) O/Keep (4) F/Bill clerk (E)

* Where the order is expressed to be made in the name of the President.

Certified to be true copy

9/5/2000

Advocate

ANNEXURE 'B' 19

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ANNEXURE-IV

Standard Form of Order for Revocation of Suspension Order.
(Rule 5(5)(C) of Railway Servants(Discipline and Appeal) Rules, 1968).

No. P/Cases

(Name of Railway Administration). S.E.Rly/D/NGC

(Place of Issue) NGC Dated 21.7.93.

ORDER

Whereas an order placing Shri Narendra Nath Das, H.S.D. Fitter Grd II (name and designation of the Railway servant) under suspension was made/was demmed to have been made by DRM/D/NGC on 29.6.93

Now therefore, ~~the President/the Railway Board~~/the undersigned (the authority which made or is deemed to have made the order of suspension or any other authority to which that authority is subordinate). In excercise of the powers conferred by clause(C) of sub-rule(5) of Rule 5 of the Railway servants (Discipline and Appeal) Rules, 1968, hereby revokes the said order of suspension with immediate effect/with effect from 21.7.93.

*(~~By order and in the name of the President~~)

(Signature)
(Name) (Sri S. Jaiswal)
Designation of the authority making
S.E. Rly, New Guwahati
(Secretary, Railway Board, where the order is made by the Railway Board)
(Designation of the office authorized under Article 77(2) of the Constitution to authenticate orders of behalf of the President, where the order is made by the President)

Copy to:-

1) Shri Narendra Nath Das, H.S.D. Fitter Grd II (name and designation of the suspended Railway servant)

*Where the order is expressed to be made in the name of the President.

2) SS/D/NGC, 3) P/Case, 4) E/Bill Clerk

Certified to be true copy
9/5/2000
Advocate

STANDARD FORM OF CHARGESHEET ANNEXURE 'C' 20

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

P/CASE(LOOSE NO.6).

...N.F. RAILWAY/MCC.....(Name of Railway Administration)
(Place of issue)...SR.DME(D)/MCC.....Dated 22.8.76

MEMORANDUM

The ~~President/Railway Board~~/undersigned propose(s) to hold an inquiry against Shri. NARENDRA NATH DAS, HSD Fitter/D/SHED/MCC, under Rule 9 of the Railway Servants(Discipline and Appeal) rules, 1968. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge(Annexure-I) Statement of the imputations of misconduct or misbehaviour support of each article of charge is enclosed(Annexure-II). A list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed. (Annexure-III & IV). *Further, copies of documents mentioned in the list of documents, as per Annexure-III are enclosed.

2. *Shri Narendra Nath Das, HSD FITTER/ is hereby informed that if he so desired, he can inspect and take extracts from the document 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 to SR.DME(D)/MCC.... immediately on receipt of this memorandum.

3. Shri Narendra Nath Das, HSD/FITTER/MCC.....is further informed that he may, if he so desired, 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/or Note 2 thereunder as the case may be) for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of presence. Before nominating the assisting railway servants(s) of Railway Trade Union Official(s) Shri Narendra Nath Das, HSD FITTER/MCC 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 others case(s) if any, in which the nominees had already undertaken to assist and the undertaking should be furnished to the undersigned General Manager ..... along with the nomination.

4. Shri Narendra Nath Das, HSD FITTER/MCC 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 documents for the preparation of his defence, and within ten days after completion of inspection of documents if he desires to inspect documents, and also (a) to state whether he wishes to be heard in person and (b) to furnish the names and addresses of the witnesses if any, whom he wishes to call in support of his defence.

Contd....2

Confirmed to be true copy
9/5/2006
Advocate

5. Shri NARENDRA NATH DAS, HSD FITTER Gr.II/NGC is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should therefore, specifically admit or/deny each article of charge.

6. Shri N.N. Das, HSD Fitter-II/NGC...is further informed that if he does not submit has 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 purpuance of the said rule the inquiring authority may hold the inquiry ex-parte.

7. The attention of Shri N.N. Das, HSD FITTER-II/NGC...is invited to Rule 20 of the Railway Services (Conduct) Rules, 1968, 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 N.N. Das, HSD. FITTER, II/NGC...is aware of such a representation and that it has been made at his instence and action will be taken against him for violation of Rule 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)~~

(Signature)
Name and Designation of competent authority.
(AJAY KUMAR PUTHIA)
SR.EMD(B)/NGC

Enclo: As above

To

Shri NARENDRA NATH DAS, ...
HSD FITTER Gr.II/D/Shed, ..(Designation)
N.E. RAILWAY/NEW GUWAHATI.21. (Place)

@Copy to Shri.....(Name and Designation of the lending authority) for information.

Strike out whichever 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 of who would be arranging for inspection of the documents of 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 issued wherever applicable See Rule 16(1) of the RS(DA) Rules 1968. Not to be inserted in the copy sent to the Railway Servant.

ANEXTURE - I

Draft article of charge framed against Sri Narendra Nath Das, H.S.D. Fitter gr. II/D/Shed/NGC.

(Sri Narendra Nath Das while posted and functioned as H.S.D. Fitter Gr. II/NGC during the period from October'92 to March'93 committed a gross misconduct in as much as Three sets of 2nd class privilege pass bearing numbers 515302, 515303 and 515304 dated 5.12.92, 5.12.92 and 5.12.92 respectively were issued in his favour as applied for by him. For commencing journey from Ghy. on 17.01.93 as per tour programme organised by Sri P.K. Das Sr. Clerk/Diesel Shed/NGC. But on the day of journey he did not attend and allowed Sri Ram Pathak a non. railwayman to avail the said passes to undertake the journey in the said tour and thereby violated pass rules for his personal gain which tantamounts to serious misconduct for misuse of passes.

Thus by above accused said Sri Narendra Nath Das exhibited lack of intigrity and devotion to duty and acted in a in a maner unbecoming of railway servent and thereby contravened the Rule 3 (1), (ii), (iii) of Railway service(conduct) Rules 1966.)

Sd/ Illegible

Certified to be true copy
9/5/2000
Advocate

Statement of imputation of misconduct in support of article of charge framed against Sri Narendra Nath Das HSD Fitter gr II/Rs/Shed/VTC.

That said Sri Narendra Nath Das had the knowledge of fraud organised by Sri P.K. Das and as such he had signed the pass applications for issue of passes from GHY-Puri, Puri-MYS, MYS-KAPE, KAPE-BBVT, BBVT-Vascodagama, Vascodagama-GHY and were submitted to office duly forwarded by the competent authority. Accordingly 2nd class privilege passes bearing numbers 515302, 515303 and 515304 dated 5.12.92, 5.12.92 and 5.12.92 respectively were issued in his favour. But he did not avail himself the said passes and allowed a non-railwayman named Sri Ram Pathak in connivance with Sri P.K. Das to avail the said passes to undertake the journey in the said fraud commenced from GHY on 17.01.93. The said non-railwayman was detected by the anti fraud squad VTC/S.Rly while he was on way from Kanyakumari to BBVT by 1052 up Express on 03.02.93. The said Sri Ram Pathak admitted before the anti fraud squad that he was travelling with 2nd class privilege pass nos 515302, 515303 and 515304 issued in favour of Sri Narendra Nath Das and also furnished a written statement.

The anti fraud squad excersed Sri Ram Pathak for Rs 1200/- vide EFT no 100031 dated 3.2.93 and all the passes seized by the squad from his custody.

Thus said Sri Narendra Nath Das caused to misuse of the privilege passes for his personal gain.

Thus by above act said Sri Narendra Nath Das exhibited lack of integrity and devotion to duty and acted in a manner unbecoming of a Railwayman servant and thereby contravened the Rule 3.1(i)(ii)(iii) of Railway Servants (Conduct) Rules 1966.

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9/5/2000

Advocate

List of Relied upon documents on the basis of which article of charge framed :-

(1) Memorandum of Sri. DCM/TVC vide No V/C-567/91-Vigilance/Vol III dated 20.5.93.

(2) Statement of Sri. Ram Pathak ..... given before the anti-fraud squad/TVC/S.Rly on 3.2.93.

(3) Applications & papers submitted by Sri ..... Narendra Nath Das

(4) Seized 2nd class pirilege pass Nos. 5/5303 & 5/5304.

(5) Statement of Sri Narendra Nath Das ..... recorded at Maligaon on 17.7.93.

(6) Statement of Sri P.K. Das Sr. Clerk/Diesel Shed/NFSC recorded at Maligaon on 6.5.93, 17.5.93, 15.5.93.

Annexure - II

Certified to be true copy

9/5/2000

Advocate

ANNEXURE - D

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To,

The Asstt. Mechanical Engineer (Diesel)
The Sr. District Mechanical Engineer (Diesel)
N.F. Railway New Guwahati.

Through Proper Channel.

Sir,

Sub:- Defence.

Ref:- Your Memorandum No. P/ case (Loose No 6)
Dated 13 oct 1995

In reference to the ~~alone~~ above, I beg to submit the following for your kind application please.

That the article of charge brought against me vide your alone memorandum -- annexure I is denied.

The circumstances stated are as under:-

1. One Shri P.K. Das, Sr. Clerk/Diesel Shed/Ngc contacted me sometime in Nov, 1992 and told me that he intended to organise " South India Tours " shortly and the members of the party would be only Rly. men and if I was interested to take part in the same. I agreed to the proposal.

2. Shri Das also told me to apply ~~of~~ for 3 half set passes to cover the journey as follows:-

GHY -- PURI -- Madras -- Bangalore -- Kanyakumari -- Bombay and back to GHY. I applied for the passes and also for leave.

3. Shri Das did not contact me further and neither my leave was sanctioned nor any pass was issued ~~to~~ in my favour. I resonably thought that the tours programme was abondaned.

4. I was put under suspension by Sr. DME/D/Ngc on 29-6-93 and then only I came to know that there were some irregularities in the ~~tour~~ which was sponsored by Shri Das. However the matter was clear when I was called by CVO/Mlg's office and examined by the vigilence department. In course of examination I was told that all my 3 half set passes which collected from New Alipurduar. This was a surprise to me.

5. It may be seen from the document addressed to Sr. Divisional Commercial Supdt, Southern Rly. Trivandrum by one Shri Ram Pathak in his statement stated that he did never mention that the passes were given by me and or I was ever known to him. I do not know any such person " It may be seen from the statement of Shri P.K. Das given before vigilence organisation that he ~~to~~ took autharisation from me and during the journey the passes were in his costody till such time Ant- Froud Sqaud collected the same from him.

Certified to be true copy
9/5/2000
Advocate

13/10/95
13/10/95

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6. Shri P.K. Das did all the irregularities and allowed out sides to take part in the tour without valid journey ticket for them and when caught red handed he did ~~xxx~~ tell all lies to save himself. I demand that Shri Ram Pathak who ~~allaged~~ have given the statement as per document be produced for authorisation of the document and also for examination by the defence. Once again I placed myself not guilty, ~~and in appreciation to the alone~~ above you may like ~~without the alone memorandum~~.

If however, it is decided to hold any enquiry I nominate Shri B.S. Sen, Retired Sr. Controller Cost Comm Gby-12 to act as my defence assistance whose ~~will of agreement~~ Consent would be submitted shortly.

Yours faithfully,

Narendra Nath Das
H.S.D. Fitter Gr II (B.)
N.G.C. D/Shed
Dt 13-10-95

ANNEXURE VI

Standard Form of Order Relating to Appointment of Inquiry Officer/Board of Inquiry

(Rule 9(2) of Railway Servants (Discipline and Appeal) Rules, 1968)

No P/Case (Loose No.6)

(Name of Railway Administration) ....SR.DME(D)/NGC.....

(Place of Issue) .N.F. RAILWAY/NGC.....Dated. 18-9-96.....

ORDER

Whereas an inquiry under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 is being held against Shri NARENDRA NATH DAS, HSD FITTER, Gr.II/D/Shed/NGC. (name and designation of Railway servant).

AND WHEREAS ~~the Railway Board~~/the undersigned consider(s) that ~~a Board of Inquiry~~/an Inquiry Officer should be appointed to inquire into the charges framed against him.

NOW, THEREFORE, ~~the Railway Board~~/the undersigned, in exercise of the powers conferred by sub-rule(2) of the said Rule, hereby appoint(s).

a Board of Inquiry consisting of-

(1)
(2) Here enter names and designations of Members of the
(3) Board of Inquiry.

OR

Shri S.C. DEB, CEI/HQ.....(name and designation of the Inquiry Officer) as Inquiry Officer to inquire into the charges framed against the said Shri Narendra Nath Das, HSD Fitter, Gr.II/D/Shed/NGC.

.....(A. K. RUTHIA.).....
SR.DME(D)/NGC
(Name)
Secretary, Railway Board
OR
Designation of the Disciplinary Authority

Copy to (name and designation of the Railway servant) Shri Narendra Nath Das, HSD Fitter, Gr.II/Shed/NGC.

Copy to (name and designation of the ~~inquiry~~/Inquiry Officer) Shri S.C. Deb, CEI/HQ/MLG.

*Copy to (name and designation of lending authority) for information.

*Note.-To be used wherever applicable-Not to be inserted in the copy sent to the Railway servant.

Certified to be true copy
9/5/2000
Advocate

ANNEXURE - 'F'

Reports of the DAR enquiry into the charge trained against Sri N.N. Das HSD/Fitter/II NGC under Sr. DME/D/NGC.

INDEX

Certified to be true copy.
9/5/2000
Advocate.

REPORT OF THE DAR ENQUIRY INTO THE CHARGE TRAMED AGAINST SRI NARENDRA NATH DAS HSD/Fitter/III/NGC UNDER SR.DME/D/NGC VIDE CHARGED MEMORANDUM NO.P/CASE(LOOSE NO.6) DATED 22-8-96 ISSUED BY THE DA (SR. DME/D/NGC).

INTRODUCTION

Chapter - I

The Sr. DME/D/NGC in excerse to the power of DA appointed Sr. S.C.Deb CEI/HQ/MLG vide his memorandum as P/Case/Loose No.6 dated 10-10-96 under rule p/2 of Rs(D&A)/ to act as EO to findout the truth or otherwise into the alleged charge levelled against Sri Nagendra Nath Das HSD/Fitter/III/NGC vide above charged memorandum.

The above DAR case file was initially forwarded by the DA (Sr.DME/D|NGC) vide his letter No.SDME/D/SS-VII/3-90 dt. 13/14-2-96 for DAR enquiry and the same was remitted back by the EO vide CEI/HQr/MLG No.2/Vig/CON/CEI/106-112 dt.25-3-96 for major technical locunes. The said DAR CASE were re-submitted duly complied with vide Sr.DME/D/NGC letter No.SDME/D/Cap-ISS-Vig/3-90 dt.18-11-96 and concerned DAT enquiry w.e.f. 24-12-96.

The defendent Sr. N.N.Das HSD/Fitter/III/NGC nominated Sr. C.R. Mookherjee Rtd. HSR/GHY to assist him as his deference Counsil in course of the enquiry. While the DA did not appointed any presenting officer to present the case on his behalf as course of the enquiry. The defendent had to guated in all the dates to held the enquiry with his nominated defence counsil commenced on 24-12-96, 25-6-96, 26-6-97.

The DAR enquiry could not be initiated in between the period from 25-12-96 to 24-6-97 for want of addition documents from the Castodian as demanded by the defendant for his defence.

The regular heanry was completed when the defendant was asked to opt himself for his examination and with the direct examination while he was asked few question to clarify the circumstances appeared in the evidences, and the defendant was asked to submit his written brief in which he was allowed 5 days time as desired, the DAR enquiry proceedings & came to close on 26-6-97.

Contd....2

Article of charge

Chapter-III

The disciplinary authority has framed 1(one) article of charge against the defendant Sri Narendra Nath Das HSD/Fitter/III/NGC vide charged article I of annexure-I of the above C/memorandum are furnished below :

The said Sri Narendra Nath Das HSD/Fitter/III/NGC allowed one Sri Ram Pathak, Noonmati, Guwahati, a non railway man to avail P/Passes to undertake the journey in South India Tour programme organised by Sri P.K.Das Sr.Clerk(G)/NGC under Sr.DME/D/NGC and thus violated pass rules.

The supporting allegation in proof of the allegation of the charge are contained vide Annexure-II are not reproduced to avoid repetation. The DA may of felt necessary may refer to the said annexure-II for better appreciation.

The written statement of defence to the C/memorandum submitted by the defendant on 13-10-95 was confirmed vide his written statement dated 4-10-96 to which the defendant pleaded not guilty to the offences and he denied the charge on the ground stated in his above defence statement. The DA in consideration of his defence statement further action was initiated to proceed with the enquiry after issuing appointment letter vide memorandum No.P/Case (Loose No.6) dt.10.10.96 inform of Sri S.C. Deb CEI/HQ/MLG.

In persuation of this authorisation the enquiry was conducted by Sri S.C.Deb CEI/HQ/MLG commencing from 24.12.96 with regards to the rules & regulations extended under Rs(D+A)/1968.

Examination of Evidences

Chapter-III

TheDA has proposed to substantiate the charge against the defendant Sri N.N. Das HSD/Fitter/III on the basis of 6 (Six) documentary evidences vide annexure-III of the documentary charged memorandum. While the defendant demanded 4(four) nos. of addl. documents for production and 2(two) numbers of witnesses for examination for his defence. The defendant was afforded with 2(two) addl. documents out of 4 as demanded

Contd....3

from the custodian and one witness out of 2(two) as court witness could be made available inspite of summand with registered A/D letter in his residential address furnished in the evidence.

All the listed documents vide annexure-III were produce in original for defence examination and did not raised any objections during the enquiry to the genuines and authenticity to the copies suported and an being admitted these documents are marked as PD-1 Vs PD-6.

The oral and documentary evidence as advanced and recorded during the enquiry proceedings are examined and discaused below :-

PD-1 Reports of Sr.DCM/TVC vide No.V/C 569/Spl.Award/VD-III dated 20-5-93.

The said PD-1 indicated that the letter was issued by Sr. DCM/TVC addressed to CVO/MAS in regards to the misuse of IPS issued by the N.F.Rly. The photostat copy of the said letter forwarded to SDGM/N.F.Rly/MLG where in it was certained that the AIS|TVC detected is outsider travelling with Rly. free passes by 1082 Exp. on intergated they admitted that they are not railway employees. The AFS/TVC excessed them @ Rs.1200/- each.

In the above it is stated that the DA did not cited the members of AIS/TVC for examination to find out the truth whether the passes were detected from the custody of the alleged out siders or from the custody of the team leader of the term.

PD-2 Statement of Sri Ram Pathak, Noonmati Guwahati given before the AFS/TVC/S.Rly in 3-2-93.

The said PD-2 indicated that the above named vide his application dt. 3-2-93 submitted to Sr.DCM/TVC,S.Rly in which the cartu was that the above named was travelling in the name of Sri Narendra Nath (N.N.Das) HSD/Fitter/Gr.II/NGC with his 2nd Class pass No.515302,515303 and 515304 from GHY-MS/SBC to CAPE-BBVT-GHY. He submitted that he is not a railway employee and willing to buy ticket and say at permission to continue his further journey upto GHY in the said

Contd....4

Coach. He was excensed by an amount of Rs.1200/- being fare. Excess fare and surcharge vide EFT No.144037 dtd.3-2-93 by the AFS/TVC.

In the above, the EO stated that Sri Ram Pathak did not cited him as witness to authenticate his statement or the said statement vide PD-2 was not witnessed by any member of the tour party. The defendant demanded for his examination for which he was summond with regist. A/D letter but the said case returned in delivered on the ground that insufficient residential address furnished in the above statement and as such the said Ram Pathak dropped from the list of C/witness. His statement was Corrborted vide reply to Qns.9 of RD-6 which authrnticated before the enquiry and vide reports of Sr.DCM/TVC/S.Rly vide PD-1 and as such it was treated as partially relied upon.

PD-3 Applications for passes submitted by Sri.Narendra Nath Das.

The said PD-3 indicated that said application from was submitted on 28-11-92 duly filled up the column under the signature of the above name duly recommended & forwarded by the Sr. Subordinate (SS/D) to the Sr.DME/D/NGC to issue 3 sets passes ex. GHY-Puri-Mysore-CAPE-BBVT-Vakodagama-GHY with break journey at HWH, BZA, MAS, SBC, TVC Dadar, Pune & Miraj.

In the above, the defendant Sri N.N.Das admitted vide his defence statement dtd. 13-10-95 confined vide his statement dt. 4-10-96 that he applied for the above passes vide above PD-3. The application forms for passes was filled up by Sri P.K. Das was admitted during the enquiry that on request he had filled up the said forms.

PD-4 Seized 2nd class P/Pass No.515302,515303 and 515304.

The above passes dated 5-12-92 respectively was issued infavour of Sri N.N. Das HSD/Fitter/II/NGC alongwith his wife and one defendant sister aged 18 yrs. by the DME/D/NGC with the available validity up to 28-2-93 ex GHY-Puri-Mysore-CAPE-BBVT-Vascodagama-GHY with break journey at HWS,BZA,MAS, TVC,Dador, Pune & Miraj. The passes were not endroced with break journey and column of the reserve pay was left blank

Contd...5

and there was no other endrosement trade by any authority on the above passes.

In the above, it is stated the above passes were detected by the AFS/TVC that the out siders were travelling with the above passes vide PD-1.

The C/W Sri P.K.Das Sr.Clerk(G) ~~who~~ leader the team party submitted vide his statement vide PD-6 & during the enquiry that he was verbally authorised to collect the passes and accordingly he collect passes for submission in a list to the COPs/MLG for arranging T/Coach which was essential in the interest of tax. He informed the pass holders and distributed the passes to the pay holders prior to the commencement of the journey.

The defendant submitted during the enquiry that he did not authorised Sri P.K.Das to collect the passes and he did not received the passes either from Sri P.K.Das or from SS/D/NGC and as such harding on the passes to the out sider does not arises.

The defendant Sri N.N.Das when he came to know that he could not participated in the form for any reason and the passed did not received by hi, he did not inform the fact to his contrading authority through SS/D/NGC by an application for cancellation of the said passes application form and as such he failed to save guard against the the non issue and mis uses of the passes.

PD-5 Statement of Sri Narendra Nath Das recoreded at Maligaon on 17-7-93.

The said PD-5 submitted by the above named in which the contents on that he applied for leave and passes in which Sri P.K.Das filled up the application form and he simply put his signature. He did not received passes and the clerk of Shed told him that the passes not reached in SS/D/NGC's office. He did not authorised Sri P.K. Das to collect the passes. We could not participated in the tour due to non sanction of leave and family trouble. He does not know Sri Ram Pathak and it was not correct that the passes were sold to him.

Contd.....6

Statement of Written defence dt.13-10-95 confirmed written statement dt.4-10-96 submitted by Sri N.N.Das.

Sri P.K. Das Sr.Clerk(G)/NGC orga ised South India tour in which he agreed to participate and as such he applied for 3 sets of passes as per tour programme to car the journey from GHY-Puri-Madrass-Bamglore-CAPE-Bombay and back. Sri P.K. Das did not contact his father neither his leave was sanctioned nor passes were issued and resonably they at the tour programme was abondant. He doesnot know Sri Ram Pathak and he did not stated in his statement that the passes were given by Sr. Das, Shri P.K.Das stated vide his statement (PD-6) that he was authorised by Sri N.N.Das and during the period of term the passes were in the custody of Sri P.K.Deb The AFS/TVC collected the same from P.K.Das, Sri P.K.Das did not all the irregularity and allowed out siders to take part in the tour without valid journey ticket for them and when cought red handed he did tell all lies to save himself.

Statement submitted during the enquiry by Sri N.N.Das HSD/Fitter/II.

He had cofind & authenticated the above statement of deference. As further submitted that it was a shur lie that all the passes holder attended GHY station before start of the train. He could not attend the tour as he was not spared and due to family trouble to which he took the position earlier before the tour to the knowledge of Sri P.K.Das Sr. Clerk(G)/NGC.

The defendant Sri N.N. Das submitted in reply to clarification question no.1 to 9 put by EO that he had authenticated his statement vide PD-5 and contents are correct. The pass application forms were signed by him and filled up and got forwarded by Sri P.K. Das from Senior and got founded by Sri P.K.Das from Senior Foreman with his consent. He informed Sri P.K.Das in regards of his inability to participate in the tour in which he verbally told him before issue of the passes that those who will not participate in the tour, their passes will arranged for cancellation for which he did not informed the pass issuing authority with an

Contd...7

applke

application duly forwarded by SS/D/NGC. He further clarified that the sanction of leave or issue of passes was not comunicated to him to which it was not availed and it does not mean availing the same untill and unless spared to avail the same by the SS/D/NGC. After receipt of the grant of leave and issue of passes and for non availing of the same would constitude debit of leave and pass. He stated that after being consistant of the fact that the passes have been issued then only there was possibility of misuse of passes. He did not know the non railwayman and did not attended GHY Stn. to whom alleged to handing our passes. He keept information from Foreman office where the passes and leave information not receipt by them.

PD-6 Statement of Sri P.K. Das Sr.Clerk(G) D/Shed/NGC recorded at Maligaon on 6-8-93, 19-8-93 & 18-8-93.

The above PD-6 indicated that the above named in reply to Qns. No.9, 12, 13, 14, 15, 16 & 18 submitted that in the last part of Nov/92 he organised along with workers of D/Shed/NGC a tour programme for South India. As desired by the interested participant, he make out a tour programme and asked the interested workers of D/Shed/NGC who desired for participate in the said tour to submit application for passes and leave as per tour programme. He was verbally authorised to collect the passes from the pass issuing office for submission to the operating branch in a list and accordingly one T/Coach was alloted in his favour. He paid the security money for the purpose. All the pass holders attended the coach and got accommodated in coach against the passes.

The train left ex. GHY on 17-1-93 as per programme and in cause of journey chesed the coach to confirmation listed travelling persons and he become surpirse to find that 12 non railwaymen was in the coach and stated and claimed that they are travelling in the coach against the passes of the particular pass holder. We objected but insisted upon that they are travelling at their own risk. We confirmed with the difficulties of checking and allowed them to travel in the share of friedship. The T/Coach was checked

Contd....8

at HWH and Puri. At last the said Coach was checked by the AFS/TVC and these 12 man railway man was apprehended and charged with ~~forward~~ fare and penalties etc. as per tour programme and seized passes for 12 persons from him and from the possesive of the non railwaymen and cautioned them if they failed to pay the charges, these 12 passes ~~wi~~ will be made invalid.

In cause of the enquiry Sri P.K.Das Sr.Clerk(G) vide his reply to Qns. 1,2,3 put by EO authenticated his above statement vide PD-6 & stated that the constructs are correct. He filled up the passes and leave application form. Sri N.N. Das contributed security money for the form and thereafter refunded to him.

During cross examination vide reply to Qns.No.1,2,3 8 & 9 put by the difference submitted that no body of the participants had given him written authority but he collected all the passes in verbal authorisation. Sri N.N.Das did not participated ~~with~~ in the tour and passes were handed over to him. He could not remember whether Sri N.N. Das attended T/coach at GHY Stn. He did not submit any complain or report to the effect to the railway authority which he felt it was necessary to do so.

Observation of the EO from the evidences produced and recorded in the above.

It was evident from the above that -

1. Sri N.N.Das HSD/Fitter/II/NGC was aquinted with tour programme for South India.

2. He had applied for passes and leave duly recorded by the SS/D/NGC and submitted to DME/D/NGC to issue passes and grant of leave.

3. The leave was sanctioned and intimated to him in his own name and the same record by SS/D/NGC on 2-1-93 as per letter delivery peon book. The passes were issued and collected by Sri P.K.Das Sr. Clerk (G)/NGC.

Contd....9

The leave and the passes were debited accordingly from his account due to non submissions of information.

4. Shri P.K. Das Sr.Clerk(G) had filled up the application forms on his request and collected all the passes from pass issuing section and submitted to COPs for allotment of T/coach.

5. He had contributed security money for enlistment in the form and refunded thereafter.

6. He did not attended the T/coach at GHY Stn. on the day of department of tour party.

7. The passes were detected to be used in form of the non railwaymen in course of journey by AFS/TVC,S. Roy.

8. The information through SS/D/NGC to DME/D/NGC did not furnished when he could not participated in the tour either in his own course or for the administrative lapsy to cancell the application for passes and leave if not sanctioned or otherwise.

Reasons for Findings

Chapter - IV

The allegation of charge brought out vide annexure-I of the above C/memorandum Sri N.N.Das HSD/Fitter/II/NGC UNDER Sr. DME/D/NGC in which the evidences are addressed in comence of the enquiry are discussed and examined vide foregoing chapters and the reason for inference of the findings are as follows.

The defendant Sri N.N.Das HSD/Fitter/II/NGC was provided with all reasonable opportunities extended under the DAR procedure. He co-operated with the EO to held the enquiries in all the date with his nominated deference caused.

Contd....10

The prosecution documents vide annexure-III of C/memorandum has not been certified to thetrue copy of the original are vide J.R. Act/89 but since these documents were got verified during the P/enquiry and did not raised any objections and am being admitted these documents were marked as PD-1 to PD-6.

The statement of witness has been annexed vide annexure-III but the witness has not been cited vide annexure-IV of the C/memo to authenticate thier statement vide PD-2 & 6 However as desired by the deference, these witnesses were summand to attend the enquiry as C/witness to authenticate their statement and for examination. The non railwayman could not attend the enquiry and since his statement(PD-2) is corroborated partially with PD-1,4 & 6 the said PD-2 is considered partially relied upon.

The difference suport for the production of addl. documents vix. EFT though which exam. fare etc. @Rs.1200/- each was realised and the free EFT(tickers) issued against the free P/passes for travelling in the T/coach ex. GHY could not be made available dispite best affords of the EO & the Dy.CVO/T/MLG from the custodian.

The documentary and oral and evidences as addressed it is evident that the defendant Sri N.N. Das HSD/Fitter/II/NGC was aquinted with the tour programme organised by Sri P.K. Das Sr. Clerk(G)/NGC. He submitted application for passes and leave duly recommend and forwarded by SS/D/NGC and submitted to DME/D/NGC. The passes and the leave sanctioned and issued with the available date from 17-1-93 as applied for and the intimation of leave forwarded in his name was recorded by SS/D/NGC on 2-1-93 as per peon delivery letter book. The passes were collected by Sri P.K. Das Sr. Clerk(G) organiser of the tour on being authorised and it was essential in the interest of tour to arrange T/coach. We did submit any intimation to his controlling authority through SS/D/NGC in regards to the non availability of the said leave and passes due to his owner course of family trouble and accordingly leave and pass has been debited from his account.

Contd....12

The defendant contributed security money for enlistment in the form and the said and has been referended to him after termination of the tour. He did not attended the T/coach at GHY station prior to the departure of the train on 12-1-93. The alleged passes were detected by the AFS/TVC S.Rly. to have been travelling by the out sider Sri Ram Pathak in the name of the defendant Sri N.N.Das was produced by Sri P.K.Das.

The defendant when he came to know prior to the journey that he could not participate in the tour, he could submit confirmation either verbally or in written to the pass & leave issuing authority then the misuse of pass could be prevented in which he did not considered it was necessary.

In the above, the deference submission that he kept information for SS/D/NGC's office, where passes & leave intimation was not received, he could not participated due to due to non receipt of pass intimation and family trouble he did not authorised Sri P.K.Das Sr.Clerk(G)/NGC to collect passes, Sri P.P. Das did not contacted him etc. are all after though and considered not relied upon to defend his case.

It is stated that the defendant if exert his effective affords to intimate his controlling authority and the Estt. section though SS/D/NGC either by bervally or in written, the misuse of passes as alleged could be prevented and there should not be any charge against the defendant.

In regards to the travelling in the reserved tourist coach, the Rly. authority issued are consolidated special tickets against all the passes submitted in a list prior to the commencement of journey and the said tickets was kept with the team leader Sri P.K. Das Sr.Clerk(G)/NGC alongwith all the passes of participant in the tour for production in course of checking the said reserved coach by the checking party. The statement of one out of the 12 non railway men Sri Suren Deka travelling in the said coach for south India tour. In submitted that the team leader had produced passes before the PFS/TVC/S.Railway when he identified the team leader to produce tickets. on being asked by the AFS/TVC. Sri Deka stated that he is not a railway employee and charged him with fare & penalty

Contd....12

etc. The team leader had paid Rs.14,446/-(approx) being the total fare & penalty for 12 un authorised non railway men travelling in the reserved coach. The team leader thereafter collected money from them. (Ref. statement of Sri Suren Deka a non rly. men furnished by the DAR case of Sri A.S.Barma vide charged memo No. P/case (Loose No.3) dated 22-8-96 enclosed).

The statement submitted by the team leader Sri P.K. Das that passes were distributed/handed over to the pass holders prior to the commencement of journey are not considered relied upon. Thus it was evident that the passes were with the team leader Sri P.K. Das alongwith the special tickets and produced before the AFS/TVC S.Rly.

The preponderance of probability and the evidances (both oral and documentary) as discussed in the foregoing chapters and paras of this report, it is evident that the defendant Sri Narendra Nath Das HSD/Fitter/II did not allowed the non railway men Sri Ram Pathak to whom he does not know with his P/passes to undertake journey in the South India Tour. The passes are considered as money valued materials and as such he is responsible for not collected the passes from Sri P.K. Das, Sr. Clerk(G)/NGC to whom verbally authorised to collect from the pass issuing office/section and for non submission any information to his controlling authority for cancellation of pass application as applied for to prevent misuse of the pass. When he came to know that he could not participated in the tour prior to the commencement of journey.

Applied for pass

Contd....13

Findings

Chapter-V

On the basis of both documentary and oral evidances adduced in this case before the enquiry and in view of the reason for misused in the foregoing chapter. I considered and told that the allegation of charge vide annexure-I, brought against Sri N.N. Das HSD/Fitter/II/NGC under Sr. DME/D/NGC in partially proved.

Dated : 31/7/97 (S. C. Deb)

Certified to be true Copy.
9/5/2000
Advocate.

ANNEXURE G

63

To,
The Sr. DME (Diesel)/NGC.
N. F. Railway.

(Through Proper Channel)

Sir,

Sub : Supply of DAR Enquiry Report.
Ref :-Your No. SDME/D/SS-VIZ/3-90
dated 5.6.98

In reference to the above I beg to submit the following for your kind appreciation and sympathetic consideration please .

That sir, Enquiry officer (E.O). in his report vide chapter-I on the caption of " Articale of charge" explained that the charge levelled against me by the Disciplinary Authority was :-

" The said Shri Narendra Nath Dey H.S.D. fitter gr II ....one Ram pathak ..... a non-Rly man to avail P/Passes to undertake the journey in the south India Tour programme organised by Shri P.K. Das, Sr. Clerk/G/NGC/under Sr. DME/D/NGC and thus violated the pass Rules ".

That the E.O. came to the conclusion in the matter of the above charge which appeared in the report vide chapter -IV under the caption "Resons for Findings" after discussing the evidence values both oral and documentary as follows :-

" Thatthe defendant, Sri Narendra Nath Dey H.S.D. fitter gr II did not allow the non-Rly . Man Sri Ram pathak ..... to whom he did not know with his P/Pass to undertake journey in south India Tour ."So far, the charge framed against me by the Disciplinary Authority I have been freed .

The E.O. however crossed his limit or jurisdiction by adding fresh charges on his own accord which reads as under :-

" The defendant is responsible for not collecting the passes at his own effort from Shri P.K. Das to whom he verbally authorised to collect the pass from issuing section and for non submission of any intimation to his controlling Authority for cancellation of pass application as applied for to prevent misuse of pass when he came to know that he could not participate in the tour due to non-receipt of pass and sanction of leave prior to the commencement of journey. The E.O. held me responsible on the above side charge not sponsored (by Disciplinary Authority ".

Contd/-2

Certified to be true copy
9/5/2000
Advocate

12/9/98

That to prove the self made charge by E.O. he mainly accepted the statement of Shri P.K. Das, Sr. clark who had stated that he took the passes from pass section on being authorised by me. It may be seen from Enquiry Report that excepting the statement of prime accused Shri P.K. Das there was no otherevidence oral/documentary for my involvement in the case. and or to prove that I Verbally authrised him.

That the E.O. justified his stand by stating that I should have intimated the authority not to issue passes/cancellation of the pass application by not doing so I got myself implicated. But the E.O. conveniantly forgot to mention that passes are issued only when staff are sanctioned the leave and spared by the shed authority. The passes issued against my requisition was never handed over to me and I did not authorise orally or otherwise Shri P.K. Das Sr. Clerk/ G prime accused to draw the passes from pass section.

The E.O. for the sole purpose of establishing something against me had argued to his convenient not related with the main charge framed against me by the Discip;inary Authority and as such this particular position of the report be ignored.

The E.O. during the DAR proceedings did not mention anything in the matter of revesion of charges and as such actionis uncalled for and violates the DAR Rules, 1968.

The charge framed against me by D.A. since has not been proved, I may be exonerated from the charges and thus oblige.

Yours faithfully,

Nareshwar Nath Das
H.S.D. fitter gr II
N.C.R. D/Shed
12-8-98

ANNEXURE H 49

Received
9-2-99

Notice of imposition of Penalties under item(i), (ii) and (iii) of Rule 1707(i) and items (i) and (ii) of Rule 1707(2)-RI

P/Case

No

Dated. 6/1/99.

From Sr.DME(DIESEL)/NGC.
N.F. Railway

To

Sri Narendra Nath Das,
HSD Fitter Gr.II

With reference to your explanation to the charge sheet No P/Case(Loose).No.6.....Dated..22.12.98....you are hereby informed that your explanation is not considered satisfactory and passed the following orders as under.....

"His pay reduced from Rs.4400/- to Rs.4200/- for a period of two years with cumulative effect. This punishment is to take effect from 21.11.98".....

If he wants to appeal against the above order it should submitted to DRM/LMG with 45(Forty five) days from the date of issue of this NIP.

(V. Selvam), Sr.DME(DIESEL)/NGC
Signature and Designation
Sr. Divisional Mechanical Engineer
N.F. Railway, New Guwahati

*When the Notice is signed by and authority other than the Disciplinary authority here quote the authority passing the order.

*Here quote the acceptance or rejection of explanation and the penalty imposed.

(This portion must be detached, signed and returned the office of issued)

Certified to be true copy
9/9/2000
Advocate

ANNEXURE 'I' 43.

To

The Divisional Rly. Manager,
N.F.Rly. : Lumding.

Through Proper Channel.

Sir,

Sub.:- Appeal against the punishment Imposed by Sr.EME/D/NGC.

Ref.:- Letter No. P/Case dated 6-1-99.

.....

I have the honour to submit the following appeal to your good office against the punishment imposed by Sr.EME/D/NGC for favour of your sympathetic consideration and necessary action.

That Sir, the above punishment letter under reference was served on me on 9-2-99 (copy enclosed.

That the punishment was imposed in reference to the Major Memorandum issued to me by the Sr.EME/D/NGC, the Disciplinary Authority vide his No. P/CON/Less No. 6 dt. 10-10-96.

That the DAR enquiry was conducted by the Enquiry Inspector/HQ on being nominated by the DA.

The DA framed the following charges against me :-

That I allowed One Shri Ram Pathak, Noormati, Guwahati, a non Rly. man to avail privilage pass issued in favour of me to cover journey from GHY to South India and back.

In the above context it is placed for your appreciation :

a. That a tour was programmed under the leadership of one Shri P.K.Das, working under Sr.EME/NGC wherein I agreed to participate.

b. That accordingly I applied for passes and leave.

c. That neither leave was sanctioned nor the passes handed over to me as applied for.

d. That I was not spared for availing the leave/tour.

Contd.....2.

Received 10/3/99

Certified to be true copy
9/5/2000
Advocate

a. That passes were drawn by the Shri P.K.Das, Sr.Clerk from the pass issuing office without my knowledge and took outsider against my passes in the tem without my knowledge.

That the enquiring officer in his findings stated that the charge framed against me in the matter of allowing an outsider to avail the passes issued in my favour was not proved.

That the EO on his own way made me responsible in the matter of my failure to intimate the Sr.MME/NGC for cancellation of thepasses applied for.

The above alegation/charge was not framed by the DA and as such the EO had crossed his jurisdiction in forming the fresh charge and without allowing me to defend myself which tantamounts denial of natural justice.

Your good office may kindly appreciate that the previlage foreign passes have the life for 4 months and once issued I could avail the pass within that period to my convenience.

That since the passes are handed over to the employee only when leaves are sanctioned with clear contemplation by the Sparing Authority to release him. But in this instant case the Sparing Authority, the Fore-man/Shop floor never intimated me if my leave was sanctioned and passes issued. I have had no knowledge in the matter at all.

That in reply to show cause notice (the findings of the enquired report) I submitted my reply (copy enclosed) but the Disciplinary Authority while passing the order of imposition of penalty, the reasons for non-acceptance of points raised by me and as such it was an arbitrary order and not speaking one by which the natural justic has been denied to me. In conclussion I may be allowed to put before your good office that :

Contd.....3.

i. The Enquiring officer has violated the provision of DAR Rules, 1968 by framing fresh charges at my back and without giving me reasonable opportunity to defend.

ii. The Sr.EME/E/NGC the Disciplinary Authority has violated the DAR Rules, 1968 while imposing the penalty by not issuing a speaking order i.e. the reason for non-acceptance of my points elaborated in my reply on enquiry report.

In view of the above, you may kindly cancell the punishment imposed on me and thus oblige.

EA : 2 (Two.)

Yours faithfully.

Narendra Nath Das
H.S.Diffter Gr II
Dt Shed N.G.C.
Dt 10-3-99

ANNEXURE 'J' 46

69

To

The Divisional Rly. Manager,
N.F.Railway :: Lumding

THROUGH PROPER CHANNEL.

Sir,

Sub.:- Appeal against the punishment imposed lay Sr.DME/D/NGC.

Ref.:- Sr.DME/D/NGC's letter No. P/Case dated 6-1-99.

....

I beg to bring to your kind notice that the appeal against punishment imposed on me was referred to your good office on 10-3-99.

I am sorry to say that till date my appeal has not been disposed.

That I have been facing a financial loss of Rs. 200.00 plus 32% D.A. per month.

I shall be obliged if you will kindly in the merit of my case and also notation of the D.A.R Rules 1968 consider my appeal and quash the punishment imposed on me.

Thanking you.

Dated :: 29-6-99

Yours faithfully.
Narendra Nath Das
(Narendra Nath Das.)
H.S.D.Fitter Gr.II.

29/6/99

Certified to be true copy
9/9/2000
Advocate

47

To

The Divisional Railway Manager,
N.F. Railway, Lumding.

(Through proper channel).

Sir,

Sub.: Appeal against the punishment imposed by Sr.DME/D/NGC.

Ref.: Letter No. P/case dated 6.1.99.

.....

In the above context, I beg to submit that the above appeal was preferred to you through proper channel received by Sr. DME/D/NGC's office on 10.3.99(copy enclosed) I also submitted one reminder on 29.6.99(copy enclosed).

But during this long period of five and half months I have not been favoured with any decision on my appeal.

That I have been subjected to a monthly financial loss of Rs.500.00 p.m. on imposition of the penalty reducing my pay two stages below with cumulative effect which means of loosing over rupees 1 lakh during my service life including retirement benifits for no fault of mine.

That the DAR Rules have been violated both by E.O. and Sr.DME while imposing the penalty in as much as the Sr.DME passed a non-speaking order whileimposing the penalty by saying that my explanation dated 12.8.98(copy enclosed) was not found to be satisfactory.

In persuance to the Rules and letters issued on the subject by Railway Board time to time it is mandatory for the D.A. to narrate the reasons for not accepting the explanation submitted by the charged official but the Sr.DME/D/NGC did not show any respect either to the Rules or to the circular issued by the Rly. Board time to time in reference to the judgement delivered by the appex judiciary.

I shall pray to your good office to kindly dispose my appeal at earliest.

Thanking you,

DA/as above.

Yours faithfully,

Dated:

The 7-9-99

Received 07/9/99

Narendra Nath Das
H.S.D. fitter Gr II.

Advocate

ANNEXURE K'

48

To

The Chief Mechanical Engineer,
N.F. Railway, Maligaon.

(through proper channel)

Sir,

Sub.: Appeal against punishment imposed by Sr.DME/D/NGC.

Ref.: Sr. DME/D/NGC's No. S.DME/D/SS-Viz 3-30 dated 5.8.98.

.....

In the above contest it is placed for your appreciation as under:-

That the punishment imposed by Sr.DME/D/NGC, the disciplinary authority has imposed the punishment in violation of the DAR Rules.

That against the punishment imposed appeal was submitted to DRM/LMG through proper channel on 10.99 followed by reminder on 7.9.99 but till date the appeal have not been disposed.

In view of the above circumstances- I pray to your good office to kindly call for the paper and do justice to me so that I am released from the irregular punishment imposed by Sr. DME/D/NGC which ultimately will cause me to suffer worth of lakh of rupees during my service life including post retirement.

I am enclosing here with the following documents:

1. Sr.DME/D/NGC's letter No. SDME/D/SS-VIZ/3-30 dtd. 5.8.98.
2. Reply to above letter submitted by me of 12.8.98.
3. Sr.DME/D/NGC's letter No. P/Case dtd. 6.1.99 imposing the penalty.
4. My appeal to DRM/LMG submitted on 10.3.99.
5. Reminder on my appeal submitted to DRM/LMG on 29.6.99 and 7.9.99.

Yours faithfully,

Dated on 30th Nov/99

Narendra Nath Das

(Narendra Nath Das)
HSD - Fitter Gr.II/NGC/D/
Shed.

Recd
30/11/99

Certified to be true copy
9/5/2000
Advocate

.....

ANNEXURE L' 49

N.F.Railway. (Confidential)

Office of the
Sr. DME/ Diesel/NGC
Dated 7-02- 2000

NO: SDME/D/SS-VIZ/3-90

To
Shri Harendra Nath Das,
HSD- Fitter.Gr.II/D/NGC.

Sub:- Appeal against punishment imposed by Sr.DME/D/NGC for misuse of Pass.

Ref:- Your appeal to DRM/LMG dated 10.3.1999, & reminder dated 29-6-99 & 7-9-1999.

.....

While going through your appeal quoted above, DRM has passed the following orders:

" In the light of the appeal under consideration, I have carefully gone through the enquiry report and find that the E.O. has logically come to a conclusion that the CO did not inform and apply to authorities for cancellation of his pass. As the pass is issued to an employee by name, it is his responsibility to arrange for cancellation, for any reasons such as 'leave not sanctioned', family problems etc. due to which he is not in a position to avail the pass.

Since it is clear that he had authorised another person to collect the pass issued in CO's favour, it calls for all themore-alertness on hispart to keep track and see that the pass is not misused. From the Enquiry report, it is seen that the EO has not framed any fresh charge, but has only observed the employee's fault when he was not proceeding on the tour.

I also find that the DA has given speaking orders while imposing the punishment.

This is a serious case of fraud committed on the Railways, by way of misuse of pass and the CO had in fact contributed to the same from his side, by not taking back the passes from the Tour Organiser Shri P.K.Das. Even the person reportedly caught with the pass, is a man from Noonmati, which is very close to NGC. This does not rule out any deal between Shri H.N.Das, CO or Shri P.K.Das Tour Organiser and the beneficiary. However, due to the absence of beneficiary during the Enquiry, the same remains unsubstantiated.

Still keeping the possibility in view DA could have imposed a serious penalty, but has taken a very lenient view. As such, there is no scope for reduction of penalty.

The appeal is rejected."

Sr.DME/DSL/NGC.

Copy to:- OS/Estt. - To keep record in his P.Case.

Sr. DME/DSL/NGC
N. F. Railway.

Certified to be true copy
9/5/2000
Advocate

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI.

In the matter of :

O.A. No. 165 of 2000

Narendra Nath Das

... Applicant

-versus-

1. Union of India
2. The General Manager, N.F.Railway, Maligaon.
3. The Divisional Railway Manager, Lumding, N.F.Railway.
4. The Senior District Mechanical Engineer (Diesel), N.F.Railway, New Guwahati.

...Respondents

-AND-

In the matter of :

Written statement for and on behalf of the Respondents.

The answering respondents most respectfully begg to sheweth as under :

1. That, the answering respondents have gone through the copy of the application filed by the applicant and have understood the contents thereof.

2. That, the application suffers for want of valid cause of action and or right for filing the application.

Contd....

3. That the application is not maintainable in its present form and is fit one to be dismissed in limine.

4. That save and except those statements of the applicant which are admitted specifically herein below and/or those statements which are borne on records, all other averments of the applicant as made in the application are emphatically denied herewith and the applicant is put to strictest proof thereof.

5. That, all the action taken in the case are quite in consonance to rules and procedures in vogue and all actions are quite legal, valid and proper and have been taken after due application of mind and after thorough examination of the case and there has been no illegality, irregularity or arbitrariness in the case.

6. That, for the sake of bravity, the meticulous denial of each and every statements in the different paragraphs of the application have been avoided. The respondents have been advised to ~~the respondents have been~~ confine their remarks only on those points which are relevant to the issue and/or requires elaboration for a proper decision in the case.

7. That, the statements made at paragraph 4.1 of the application regarding the appointment, promotion etc. of the applicant are admitted.

8. That, the statements made at paragraph 4.2 of the application regarding discharge of his work etc., are not wholly correct. It is mentioned herein that the past records

Contd....

also indicates that the applicant did not hesitate to remain on unauthorised absence and for which such absence period had to be regularised as leave without pay etc. e.g. during the period from 22.4.1980 to 1.5.80 etc.etc.

9. That with regard to the averments at paragraphs 4.3 to 4.6 of the application through which he has forwarded some stories as to how and why he submitted application for issuing the Railway Passes and for sanction of leave for undertaking the tour ~~to Goa~~ South India etc. along with others etc. it is to state that the stories now narrated by him are his own assertions and ~~are~~ his personal matters about which respondents have no concern or knowledge and as such these cannot be admitted as correct and hence denied.

However, the answering respondents submits that the record reveals that the applicant Sri N.N. Das, H.S.D., Fitter, Grade II applied for 20 days L.A.P. from 17.1.93 to 5.2.1993 for undertaking south India Tour and this application was duly forwarded by his Shed Superintendent (Diesel), New Guwahati - Diesel Shed (now designated as ~~Section~~ Section Engineer (Diesel) and the said leave was also duly sanctioned by the Competent Authority. The applicant Sri Das also applied for issuing 6 half sets of privileged Railway Pass in his favour (for self, wife, and dependent sisters) for undertaking tour as under :

" (a) Guwahati - Puri

(b) Puri - Mysore

(c) Mysore - Kanya Kumari

(d) Kanya Kumari - Dadar

(e) Bombay V.T. - Vasco-d-Gama.

(f) Vasco-de-Gama - Guwahati.

Contd.

This application for issuing passes were also duly forwarded by the Shed Superintendent (Diesel). The 6 half set of passes as applied for by him were also issued in his name. The present plea of the applicant that he did not know anything whether his "Privileged Pass" as applied for was issued or not, is a quite wrong, unacceptable under rules, procedure and fact of the case.

It is submitted that all such pleas as have now been forwarded by the applicant are in the nature to hide the real incident of misuse of the said passes for which he applied and which were issued in his name and misuse of which were detected by the Ticket Checking Staff on the run. Such statements are nothing but the outcome of his after thought. It is quite immaterial as to how he submitted the pass applications and who supplied the forms or who were behind him or prompted him to apply for these passes and who wrote the pass application forms which he signed and whether he availed of passes in other years etc. From his actions, in applying for passes etc. it is well evident that Sri Das was well acquainted with the Tour programme said to have been organised by Sri P.K.Das, Senior Clerk, (E), working in New Guwahati, Diesel Shed. In the leave application, he clearly mentioned the purpose for which leave is required i.e.

"20 days LAP w.e.f. 17.1.93".

Further he has also mentioned the purpose for which the leave is required which is as under :

"due to South India tour.".

In fact, the tour started on 17.1.93 and he cannot disown his responsibilities in this regard by seeking some

Contd...

holes.

In this connection the photo copies of leave application submitted by him and intimation letter issued to him granting 20 days leave (LAP from 17.1.93 to 5.2.93) are annexed hereto as Annexures A & B respectively.

10. That with regard to the averments made at paragraph no. 4.7 of the application, it is to state that it is quite a wrong statement that immediate boss was not in a mood to spare him to undertake the tour even if the leave is sanctioned by the Competent Authority. Rather after his leave and pass application were recommended and forwarded, some were ~~recommended and forwarded~~, duly sanctioned/issued and there was no hinderance on his availing of the leave and proceeding on tour as per schedule. As such, the abandonment of the tour was not due to administrative action but was due to his own volition. The incorrectness of his assertions can well be evidenced from the fact that the applicant never applied for cancellation of the leave for which he already applied before the Railway Administration nor he submitted any application informing the Pass issuing authorities not to issue passes for which he applied. Follow up actions are his duty and not of the respondents.

11. That, with regard to averments at paragraphs 4.8 and 4.9 of the application it is to state that the applicant (Sri N.N.Das) had to be placed under suspension vide order No. P. Case dated 29.6.1993 as investigation regarding misuse of privilege passes etc. were in progress. The said suspension order was however subsequently revoked vide order No. P. Case dated 21.7.1993. The applicant's statement

Contd....

to the effect that then and only then (i.e. after receipt of the suspension order etc.) it came to his knowledge, that the Priviledged Pass" misused by a non-Railwayman and that leave as applied for by him was already sanctioned, and that, he was in dark so long about sanction of leave in his favour or issue of pass are quite unacceptable. There were sufficient time gap between the dates of submission of the applications by the applicant for sanction of 20 days leave and for issuing 6 half sets of Passes in his favour for undertaking the programmed south India tour etc. (which commended on 17.1.93) and nobody desisted him to proceed on leave and avail of the sanctioned leave and passes. Further, the applicant never submitted any application for withdrawing the leave application or pass applications/requisitions or cancelling those.

It is submitted that all such pleas now taken up by the applicant in above said paragraphs are unbelievable under the facts of the case and these are nothing but fabricated one and outcome of afterthought and hence denied herewith.

13. That the averments made at paragraphs 4.10, 4.11, 4.12 and 4.14 are not correct and hence not admitted.

In this connection it is to state herein that (i) from the clear statement/confession of the applicant himself in paragraphs 4.3 and 4.4 of this application it would appear that there was a complete understanding between the applicant and Sri P.K.Das (alleged organiser of the tour). (ii) it was for the staff concerned who applied for leave and for issue of pass to ascertain as to the fate of his applications for same, especially when there were no denial

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to sanction/issuing same from the Administration and it was quite illegal and improper to assert otherwise or take different pleas. (iii) It has also been stated/ admitted by Sri P.K.Das (the organiser of the tour) that the pass was accepted by him as the applicant (i.e. Sri N. N.Das) verbally authorised him (i.e. Sri P.K. Das, who organised the tour and filled up the pass from which was signed by the applicant Sri N.N.Das) to collect same i.e. the pass from office.

It is thus clear that question of hand-ing over of the pass to Sri P.K. Das by the clerk issuing the passes, suo motu without consent of the applicant does not arise in the circumstances of the case.

In any case, it was the responsibility of the staff concerned (i.e. the applicant) (i) To ascertain from office whether the leave appled for, was sanctioned in his favour; (ii) Either to proceed on leave or to get it cancelled by due application to the Competent Authority; (iii) To ascertain about the issuing of the pass for which he himself applied. Further, it is the personal matter of the applicant as to whether the person who was allowed to use the pass issued in favour of the applicant confesses or denies about knowing the applicant or there had been any collusion as alleged, and these cannot change the nature of fraudulent use of passes which is a grave offence and goes against the Service Conduct Rules as well.

14. That with regard to averments at paragraphs 4.15 and 4.16 it is to state that since the allegations involved

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misuse/fraudulent use of Railway passes, necessary investigation into the matter was conducted by the Vigilance Cell of the Railways i.e. the Chief Vigilance ~~Cellxxxxxxxxxxxx~~ Officer, N.F.Railway, Maligaon. As the conduct of the applicant was under investigation etc. and his presence in the office could hamper in the proper investigation, the applicant had to be placed under suspension. The suspension order was however revoked later on. It is emphatically denied that the applicant was placed under suspension on the basis of wild, false and fabricated charges as alleged by the applicant.

15.(a) That, with regard to the statements at paragraphs 4.17, 4.18, 4.19, 4.20, 4.21, 4.22 of the application, it is to state that it is quite incorrect to say that the departmental proceeding was started surprisingly as alleged by the applicant. In fact, considering the gravity of the offence such steps are bound to be resorted to by the Railway Administration in consonance with the provisions of the Railway Services (Discipline and Appeal) Rules, 1968 and under extant Railway servants Conduct Rules. A major penalty charge sheet (i.e. Memorandum of charges) was issued to the applicant vide letter No. P Case (Loose No.6) dated 21.5.1995 detailing the charges brought against him along with imputation of charges. As the reply to the charge sheet submitted by the applicant was not satisfactory and as such not acceptable by the Railway Administration/Authorities, the Inquiry Officer had to be appointed to conduct the enquiry vide letter P.Case(Loose) No. 6 dated 18.1.1996.

The Enquiry Officer hold the Enquiry after complying with all the requirements and formalities as

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required/contained in the said Railway Services (D&A) Rules, 1968 and giving him full opportunities for hearing and refuting the charges and examination of records and witnesses etc. and submission of the final defence statement.

(b) That, after completion of the enquiry, the Enquiry Report was submitted and a copy of same was also furnished to the applicant vide letter No. SD ME/D/SS-Viz/3-90 dated 5.8.1998. The Disciplinary Authority after going through the Inqiry report throughly and the submission made by the applicant/delinquent official, passed the speaking order vide P/Case dated 6.1.1999 (Copy enclosed as Annexure H to the Application) to the following effect :

> "His pay reduced from Rs. 4,400/- to Rs.4,200/- for a period of two years with cumulative effect. This Punishment is to take effect from 21.11.93."

It is emphatically denied that the said order dated 6.1.1999 is a cryptic order as alleged. Rather it is submitted, that considering the gravity of the offence, the punishment is towards the lighter side and reasonable, moderate and just.

16. That with regard to the statements made at paragraphs 4.23 to 4.26 of the application it is to state that the applicant preferred an appeal before the Divisional Railway Manager, Lumding against the punishment order dated 6.1.1999 passed by the Disciplinary Authority i.e. Sr. D.M.E. (Diesel), New Guwahati and the Divisional Railway Manager, Lumding after delving deep into the case and applying his mind passed the ~~follox~~ speaking order rejecting his claim vide the office letter No. S D M E/D/SS-Viz/B-90 dated 7.2.2000.

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Thus his appeal has alredy been considered and same has been disposed of with a speaking order after due consideration and examining the case thoroughly.

17. That, with regard to the grounds for relief sought and the legal provision as mentioned in paragraph 5 of the application, it is submitted that in view of what have been stated in foregoing paragraphs of this written statement and as to the nature of the case, none of the grounds put forward by th applicant are sustainable under law and rules in vogue during the material time and in view of the nature and fact of the case and hence these are emphatically denied herewith.

It is also to state herein that it is quite wrong to term the order no. P/Case dated 6.1.99 as illegal, motivated, or passed on ~~as liable to set aside as contended by the applicant~~ whimsical or capricious, imaginary or malicious, considerations as alleged or same is bad in law or any of the relevant Rules and Procedure of DCA Rules 1968 were defied or that it was based on matters outside the scope of the charge sheet or liable to be set aside. In fact, such order ~~emanated~~ emanated after enquired into by holding a confronted D & A R Enquiry as contemplated under extant Rules and order and passed after due consideration of his explanation and also serving him the notice for imposition of penalties.

(ii) Since, it is not a case of missing of the psss but a case of fraudulent use of the passes issued in applicant's name as per his requisition, question of informing the Police etc. does not arise and the said mis-use of Passes was established before the said Confronted D&AR. Enquiry.

(iii) Before disposal of his appeal, the Appellate Authority, had to go ghrough all th records of the case including the

Contd...

various enquiry reports etc. conducted by the authorities and had to satisfy himself fully about the merit of the case vis-a-vis the various points/allegations as raised by the applicant and as such it took sometime to examine each of the records in detail. The time taken by the appellate authority are quite reasonable and necessary for ends of justice and to avoid miscarriage of justice. The detailed speaking order of the Appellate Authority i.e. DRM/Lumding will clearly reveal same.

Further, as the case required no further clarification or querries from the appellant/applicant and records of the case were self explanatory and as all the allegations/points raised by th applicant were dealt with and considered and answered, the question of giving any further personal hearing to the applicant (i.e. Sri N.N.Das) did not arise and the present allegations are neither tenable nor supported by any specific rules and orders of the ~~xxxxx~~ ~~Railway Board etc on the subject~~ Railway Board etc on the subjedt, not to speak of any provisions/spedific rules in the Railway Services (D&A) Rules 1968 etc. It is also emphatically denied that the Appellate Authority passed the order out of anger etc and without applying mind and consideration as alleged or any rules of natural justice has been violated. By ~~xxxx~~ taking some reasonable time in the disposal of the appeal by the Appellate Authority, neither the merit of the case has been altered nor the fact of fraud in the case could be altered. The present case is a case of fraudulent use of Pass and a hasty disposal of appeal gould rather cause miscarriage of justice. The present plea of the applicant is nothing but an attempt

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to twist the concept of the natural justice giving a wrongful interpretation to it, which the law never encourages. In fact, records will also reveal that a very lenient view has been taken by both the Disciplinary Authority and the Appellage Authority in inflicting the punishment for the offence which is of very serious nature and unbecoming of a Government servant.

Further, none of the relief as claimed by the applicant at paragraph 8 of the application are admissible under rules, law and fact of the case and as such his prayer for granting of the relief prayed for by the applicant would only mean providing the ladder for more indiscipline in Government cadre and amongst staff besides giving support and encouragement to corrupt practices in use of fraudulent passes etc.

18. That, it is submitted that all actions taken in the case by the respondents are quite valid, legal and proper and taken after due application of mind and the present case has been filed with a view to create confusion and in order to derive illegal and unwarranted benefits and is also based on wrong premises and suffers from misinterpretation of rules and laws on the subject. There has not been any violation of the provisions laid down in Railway Services (D&A) Rules 1968, and the confronted D &A R enquiry was conducted within the frame of the charges drawn against the applicant.

19. That, necessary enquiries are still under progress to find out any other records/information etc., if there be any, and the answering respondents crave leave of the Hon'ble Tribunal to file additional written statement, if necessary, for ends of justice.

Contd..

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20. That under the fact and circumstances of the case, as stated in the foregoing paragraphs, the instant application is not maintainable and is liable to be dismissed.

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

I, Sri V. Selvam, son of Sri R. Venkittu aged about 37 years, by occupation service, at present working as Senior Divisional Mechanical Engineer (Diesel), New Guwahati of the N.F. Railway Administration, do hereby solemnly affirm that the statements made at paragraph no. 1 of the application is true to my knowledge and those made in paragraphs 8, 9, 11, 12, 13, 15 and 16, are true to my information as gathered from records which I believe to be true and the rest are my humble submissions before the Hon'ble Tribunal.

16.5.2001

वरिष्ठ मंडल यान्त्रिक अभियन्ता (डिजल)
न्यू गौहाटी

Deponent

Sr. Div. Mech. Engineer/Diesel
N.F. Railway, New Guwahati

Sr. Divisional Mechanical Engineer (Diesel
New Guwahati, N.F. Railway,

for & on behalf of Union of India.

Annexure - A

पूर्वोत्तर सीमा रेलवे — छुट्टी का आवेदन पत्र — प्र० सं० जी० 54

Northeast Frontier Railway — LEAVE APPLICATION FORM

विभाग/Department _____ कार्यालय/Office _____

(1) आवेदक का पूरा नाम तथा पदनाम/Applicant's name in full & designation _____

(2) नियुक्ति की तारीख/Date of appointment _____

(3) 55/58 वर्ष की उम्र पूरी होने की तारीख/Date of attaining the age of 55/58years _____

(4) छुट्टी की किस्म और अवधि तथा किस तारीख से चाहिये/Nature and period of leave applied for the date which required _____

(5) छुट्टी का प्रयोजन/Purpose for which leave is required _____

टिप्पणी—यदि छुट्टी अस्वस्थता के आधार पर हो तो अस्वस्थता प्रमाण पत्र संलग्न किया जाय।

Note—if on medical grounds, medical certificate should be attached.

(6) छुट्टी के दौरान पता/Address while on leave _____

तारीख/Date _____ 19 — आवेदक का हस्ताक्षर/Signature of applicant

छुट्टी का लेखा रखने वाले कार्यालय द्वारा प्रमाण-पत्र:—

Certificate by the office maintaining leave account:—

यह प्रमाणित किया जाता है कि छुट्टी की किस्म तथा अवधि/Period and nature of leave last taken _____

तारीख _____ से तारीख _____ तक मंजूर की गयी छुट्टी

तारीख _____ से तारीख _____ तक मंजूर की गयी छुट्टी

Total leave taken from _____ to _____ leave due on date _____

औसत वेतन पर छुट्टी/L. A. P. _____

अर्ध औसत वेतन पर छुट्टी/L. H. A. P. _____

प्रमाणित किया जाता है कि तारीख _____ से तारीख _____ तक _____ दिनों की छुट्टी मंजूर की जा सकती है

Certified that leave for _____ days from _____ to _____ may be granted

सं०/No _____

हस्ताक्षर/Signature _____

पदनाम/Designation _____

स्टेशन/Station _____

तारीख/Date _____ 19

क० मु० उ०/P. T. O.

Annexure 05

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N. F. RAILWAY

Office of the
Sr.DME(DIESEL)/NGC

Dated 2-1-93

No.P/Case

Sri Narendra Nath Das
Design. A.S.P. Filler Gr.I

Sub:- Grant of leave.

Ref:- Your application
dated.....

—

You are sanctioned 20 days
LAP from 12-1-93 to 5-2-93
114 days LAP due in your credit.

OS/Estt.

Copy to:- 1) SS/D/NGC, 2) SS/E/NGC
3) OS/G, 4) Sr.LS/NGC
5) SS/BG/NGC

OS/Estt.