

GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 109/01.....

R.A/C.P No.

E.P/M.A No. 109/01.....

1. Orders Sheet..... BA Pg. 1 to 4
MP 109/01 order 25.6.02 102 Allowed 25.6.01
2. Judgment/Order dtd. 25.6.02 Pg. 1 to 4
25.6.02
3. Judgment & Order dtd. Received from H.C/Supreme Court
4. O.A. 109/01 Pg. 1 to 39
5. E.P/M.P. 109/01 Pg. 1 to 12
6. R.A/C.P. MA 79/01 Pg. to 5
7. W.S. Pg. 1 to 15
8. Rejoinder Pg. to
9. Reply Pg. to
10. Any other Papers Pg. to
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendement Reply by Respondents.....
15. Amendement Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Kahler
8.12.15

FORM NO.4
(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWHATI BENCH ::::: GUWAHATI

ORDER SHEET
APPLICATION NO 109 OF 2001

Applicant (S) Grotha Behari Paul

Respondent(s) U.O.I & om

Advocate for Applicant(s) K.K. Biswas

Advocate for Respondent(s) J.L. Sarkar, Railway Counsel

Notes of the Registry

Date

Order of the Tribunal

File copy in form
for information
and vide
C.F.
deposited vide
IPO/3 No 8-15-0005798
Dated 14.3.2001

20.3.01

Present: Hon'ble Mr. Justice
D.N. Choudhury, Vice-Chairman and
Hon'ble Mr. K.K. Sharma, Administra-
tive Member.

Heard learned counsel for the
parties. Application is admitted.
Call for records. Issue notice on
the respondents. Returnable 1 month.

List on 27.4.01 for orders
and for written statement.

Member

Vice-Chairman

lm

27.4.2001

Await service report. List for
orders on 29.5.01.

Member

Vice-Chairman

nk m

29.5.01

Office to appraise about the
service of Notice.

List for orders on 17-6-2001.

Vice-Chairman

bb

TRUE COPY

Section officer (Judicial,
Central Administrative Tribunal,
Guwahati Bench, Guwahati

26.3.2001

Service of Notice
prepared & issued to
the respondents vide
D No. 1153 to 1159 dtd.

24/3/01

✓
30/5/01 Respondent No 2, 3,
and 7 received by hand.
and acknowledgment received
for Respondent No. 4, 5, & 6.
Service complete.

30/5/01

13.6.01

Mr. J.L.Sarkar, learned Rly.

counsel for the respondents prays
for and granted four weeks and more
time to file written statement.

List on 17-7-2001 for orders.

K. C. Sharma
Member

Vice-Chairman

bb

① Service complete.

② No. written statement
has been filed.

30
12.6.01

17.7.01

No written statement has so far
been filed. Four weeks further time is
allowed to the respondents for filing of
written statement.

List on 14.8.2001 for further or-
ders.

K. C. Sharma
Member

Vice-Chairman

bb

14.8.01

No. written statement
has been filed.

30
17.9.01

List on 18/9/01 to enable the respondents
to file written statement.

K. C. Sharma
Member

Vice-Chairman

mb

18.9.01

No. written statement
has been filed.

30
17.10.01

List on 18/10/01 to enable the
respondents to file written statement.

K. C. Sharma
Member

Vice-Chairman

mb

18.10.01

No. written statement
has been filed.

30
29.11.01

On the request on behalf of Mr. J.L.
Sarkar, learned Railway counsel for four
weeks time is allowed to respondents
to file written statement.

List on 3.12.2001 for further
order.

K. C. Sharma
Member

bb

3.12.2001

No. written statement
has been filed.

30
8.1.02

At the request of Mr. J.L.Sarkar, learned
counsel for the respondents four weeks time is
allowed to the respondents to file written
statement.

List on 9.1.2002 for further order.

K. C. Sharma
Member (J)

K. C. Sharma
Member (A)

3
9
O.A. 109/2001

Notes of the Registry

Date

Order of the Tribunal

9.1.2002

List on 31.1.2002 to enable the respondents to file written statement. The ~~are~~ respondents are allowed time to file written statement as last chance.

No. written statement
has been filed.

30
30.1.02.

mb

31.1.2002

ICU Shau
Member

Vice-Chairman

Further three weeks time is granted to the respondents as a special case for filing written statement and no more time shall be extended thereafter.

List on 25.2.2002 for further order.

ICU Shau
Member

Vice-Chairman

bb

25.2.02

Heard learned counsel for the parties. The case may now be listed for hearing on 8.4.2002. The Respondents may file written statement, if any, in the meantime.

No. written statement
has been filed.

30
5.4.02.

mb

8.4.2002

ICU Shau
Member

Vice-Chairman

Prayer is made by Mr.M.Chanda on behalf of Mr.K.K.Biswas, learned counsel for the applicant for a little accommodation.

Prayer is accepted. List the case on 10.5.2002 for hearing.

No. writs have been
filed.

30
9.5.02.

bb

10.5.02

ICU Shau
Member

Vice-Chairman

It has been stated by Mr. S.Sarma, learned counsel appearing on behalf of Mr. J.L.Sarkar, learned counsel for the Respondents that Mr. Sarkar is unwell. Accordingly, the case is adjourned.

List on 4/6/2002 for hearing.

No. written statement
has been filed.

30
3.6.02.

ICU Shau
Member

Vice-Chairman

mb

Notes of the Registry

Date

Order of the Tribunal

4.6.2002

The case is adjourned on the prayer made on behalf of learned counsel for the Railways and listed for hearing on 25.6.2002.

In the meanwhile the parties may exchange the pleadings ^{before} the date of hearing. The respondents shall also file written statement and ^{produce} the connected records. No further adjournment shall be granted on this ground.

Member

Vice-Chairman

nh

4.6.02

The case is adjourned on the prayer made on behalf of learned counsel for the Railways and listed for hearing on 25.6.2002.

In the ~~meanwhile~~ meanwhile the parties may exchange the pleadings before the date of hearing. The respondents shall also produce the connected records. No further adjournment shall be granted on this ground.

Member

Vice-Chairman

bb

25.6.2002

Heard counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets.

The application is disposed of in terms of the order. No order as to costs.

Member

Vice-Chairman

pg

10.6.2002

W/S Submitted
by the Respondents.

Received by
Advocate
of 11/6/02

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. No. 109 of 2001.

DATE OF DECISION 25-6-2002..

Shri Gostha Behari Paul

APPLICANT(S)

Shri K.K.Biswas

ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

Union of India & Ors.

RESPONDENT(S)

Shri J.L.Sarkar, Railway standing counsel
ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE MR JSUTICE 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.



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 109 of 2001.

Date of Order : This the 25th Day of June, 2002.

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

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

Shri Gostha Behari Paul,
Assistant Station Master,
Office of the Station Manager,
N.F.Railway, Guwahati.

...Applicant

By Advocate Shri K.K.Biswas.

- Versus -

1. Union of India,
represented by the General Manager,
N.F.Railway,
Maligaon, Guwahati.
2. Chief Personnel Officer,
N.F.Railway, Maligaon,
Guwahati-11.
3. Chief Operations Manager,
N.F.Railway, Maligaon,
Guwahati-11.
4. Divisional Railway Manager,
N.F.Railway, Lumding.
5. Divisional Railway Manager(P)
N.F.Railway, Lumding.
6. Sr.Divisional Operations Manager,
N.F.Railway, Lumding.
7. Area Manager,
N.F.Railway, Guwahati.

...Respondents

By Shri J.L.Sarkar, Railway standing counsel.

O R D E R

CHOWDHURY J.(V.C)

This is an application under Section 19 of the Administrative Tribunals Act 1985 assailing the legitimacy of the imposition of penalty of reduction of

contd..2

pay by one stage lower in the same time scale of pay for 3 years with cumulative effect vide order No.T/2/22/95-96/LM dated 21.8.2000.

2. Mr K.K.Biswas, learned counsel appearing for the applicant raised numerous issues before us assailing the legality and validity of the proceeding vis-a-vis the penalty imposed. Apart from the legality of the proceeding Mr Biswas, the learned counsel also contended that on the facts and circumstances of the case the punishment imposed on the applicant is disproportionate and therefore it is unjust, unreasonable and arbitrary being violative of Article 14. We have also heard Mr J.L.Sarkar, learned Railway standing counsel for the respondents at length. Mr Sarkar submitted that the applicant was duly provided with all the reasonable opportunities to defend his case and considering the facts and circumstances of the case including the defence statement the penalty was imposed which on the facts and circumstances was just, reasonable and fair. Mr Sarkar also stated that the appeal preferred by the applicant on 13.10.2000 was duly disposed of by the DRM, Lumding vide order No.T/2/22/95-96/LM dated 30.3.2001. Mr Sarkar also placed before us a copy of the order which is reproduced below :

"In reference to above, once your punishment has already been reviewed by DRM/LMG, hence next appeal lies before COM/MLG if preferred within fortyfive days of receipt of the communication. But in any case there


is no provision of appeal to DRM after he has himself reviewed a case."


Mr.K.K.Biswas, learned counsel for the applicant however submitted that the copy of the order was not communicated to the applicant and therefore he was not aware of such order. Mr.Biswas further assailing the action of the respondents in the matter of disposal of the appeal was not disposed of as per rules.

3. We have heard learned counsel for the parties at length. On consideration of all the aspects of the matter it is difficult to hold that the applicant was denied with a fair procedure. Apart from providing the procedural safeguard, the fact remains that the applicant was made aware of the charges and as a matter of fact the applicant took a fair and upright stand and narrated the factual position, the authority accordingly acted upon and passed the impugned order. Mr. Biswas further submitted that even in the matter of imposition of penalty the authority ought to have acted justly and fairly taking into consideration his past services as well as the conduct of the applicant. Mr.Biswas, the learned counsel submitted that the applicant at all relevant time acted bonafide and as per the direction of his Superiors. The respondents on the facts and circumstances of the case and in the absence of any culpability of the applicant ought not have imposed the impugned order of penalty contended Mr.Biswas. Mr.Sarkar, learned counsel for the

respondents however submitted that in the matter of imposition of penalty also the respondents acted lawfully and therefore there is no scope for judicial review. Considering all the aspects of the matter we feel it just and expedient that ends of justice will be met if a direction is issued on the applicant to prefer a review application before the Chief Operations Manager indicated in Memo dated 30.3.2001 within 30 days from the date of receipt of this order narrating his grievances. If such review application is preferred before the authority the authority shall fairly examine the same and pass an appropriate order as per rule preferably within 3 months from the date of receipt of the review application.

Subject to the observations made above, the application stands disposed of. There shall, however, be no order as to costs.


(K.K. SHARMA)
ADMINISTRATIVE MEMBER


(D.N. CHOWDHURY)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :

GUWAHATI BENCH :: GUWAHATI

O.A. NO.....109..... of 2001.

Sri Gostha Behari Paul

APPLICANT

-VS-

Union of India and ors

RESPONDENTS

I N D E X

SL NO	ANNEXURES	Particulars	Page
1	-	Application	1 to 21
2.	A	Major Penalty Charge sheet	22
3.	B	Articles of Charges	23
4.	C	Joint enquiry Report of accident	24
5.	D	Appointment of Enquiry Officer	25
6.	E	Applicant's letter dt-12-95 requiring documents for defence	26
7.	F	Applicant was asked to give names of defence counsel	27
8.	G	Inquiry Officer's letter for attending enquiry	28
9.	H	Applicant's brief to Inquiry Officer	29
10.	I	Applicant's undertaking to Inquiry Officer on demand	30
11.	J	Sr.Divl: Operations Manager's letter holding the Applicant responsible	31
12.	K	Applicant's letter dt: 20.4.2000 to Sr:DOM/LMGdetailing everything-	32
13.	L&M	Imposition of Penalty & ITO's Report	33 & 34
14.	N	Order for Punishment operated	35
15.	O	Appeal submitted to Appellate Authority - not yet decided	36, 38
16.	P	General Manager shall review punishment cases	39
17.	-	Filed by-	40
18.	-	Ack: of Railway Advocate	41

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI
BENCH : AT GUWAHATI

O.A. NO. Of 2001.

IN THE MATTER OF :

Setting aside of the impugned Notice of
punishment orders issued by Senior Divisional
Operation Manager/N.F. Railway/Lumding
vide No. T/2/22/95-96/LM dated 21.08.2000.

-AND-

IN THE MATTER OF :

stay of the operations of the impugned order
of the Divisional Railway Manager(P)/N.F. Rail-
way/Lumding under No. ES-48-G(T) dated -09-2000.

Sri Gostha Behari Paul Applicant

-VS-

1) Union of India,
represented by General Manager,
N.F. Railway, Maligaon,
Guwahati - 781 011.

2) Chief Personnel Officer,
N.F. Railway, Maligaon
Guwahati - 781 011

3) Chief Operations Manager,
N.F. Railway, Maligaon,
Guwahati - 781 011

Contd....2..

Gostha Behari Paul

Filed by the Applicant
Veto: Advocate Sanku Bhowmik

15/3/2001
Advocate

- 4) Divisional Railway Manager ,
N.F. Railway, Lumding
- 5) Divisional Railway Manager (P),
N.F. Railway, Lumding
- 6) Sr. Divisional Operations Manager,
N.F. Railway, Lumding.
- 7) Area Manager,
N.F. Railway, Guwahati. Opposite parties.

Details of Application

1. Particulars of Applicant :
 - i) Name of Applicant : Sri Gostha Behari Paul
 - ii) Name of Father : Late Gopendra Chandra Paul
 - iii) Designation & Office: Assistant Station Master,
Office of the Station Manager,
N.F. Railway, Guwahati.
 - iv) Address of service : Office of the station Manager
of all notices N.F. Railway, Guwahati.

2. Particulars of Respondents :

- i) Name and/or designation : 1. Union of India
of the Respondents . represented by
General Manager,
N.F. Railway, Maligaon.

Contd.....3.....

Gostha Behari Paul

Mukherjee
15.3.2001
Advocate

ii) Office Addresses of the: Union of India

Respondents

represented by General
Manager, N.F. Railway,
Maligaon.

iii) Addresses for services of all notices.

2. Chief Personnel Officer,
N.F. Railway, Maligaon,
Guwahati - 781 011

3. Chief Operations Manager,
N.F. Railway, Maligaon,
Guwahati - 781 011

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

5. Divisional Railway Manager/P,
N.F. Railway, Lumding

6. Sr. Divisional Operations
Manager, N.F. Railway,
Lumding.

7. Area Manager,
N. F. Railway, Guwahati.

3. Particulars of the order against which

Application is made :

The application is against the following

order :-

- i) Order No. ; Impugned Notices of punishment
orders issued by Senior Divisional
ii) Date ;
Operation Manager/N.F. Railway,
iii) Passed by : Lumding vide No, T/2/22/95-96/LM
dated 21.08.2000 and the impug-
ned order of the Divisional
Railway Manager (P)/N.F. Railway

Gosha Belani Paul
Advocate
15/3/2001

: impugned order of the Divisional Railway Manager(P)/N.F. Railway/ Lumding under No. FS-48-G(T) dated -09-2000.

iv). Subject in brief : Prayer for setting aside of the impugned Notice of punishment orders issued by Senior Divisional Operations Manager/ N.F. Railway/ Lumding vide No, T/2/22/95-96/LM dated 21.08.2000. and stay of the operations of the impugned order of the Divisional Railway Manager (P)/N.F. Railway/ Lumding under No. ES-48-G(T) dated -09-2000.

Gosha Belaw Patel

K. B. Sen
15.3.2001
Advocate

4. Jurisdiction of the Tribunal :

The Applicant declares that the subject matter of the orders against which he wants redressal is within the jurisdiction of the Tribunal.

5. LIMITATION :

The Applicant humbly submits that this Application is within the period of Limitation as per Administrative Tribunal Act. of 1985.

6. Facts of the case :

The facts of the case are given below :-

6. 1) That despite my ardent zeal and sincerest efforts in discharging my duties as an Assistant Station Master at Guwahati I was given a memorandum of Major Penalty

contd...5..charges..

Chargesheet by Area Railway Manager-Guwahati
vide ~~Report~~ TA/NGC/3 dated 14.11.95 enclosing
a copy of Article of charges for the ~~charges~~ averted
accident of 4055 Down Bramhaputra Mail on 18.05.95
(Annexure-A~~B~~) while advancing on consequent of the
point No. 61 got busted. A photo copy of the
findings of the joint enquiry committee was also
supplied to me in the said accident (Annexure-C).

6. 2. On receipt of the memorandum of charges I submitted
my explanation requiring some vital documents and
informations to be supplied to me towards preparing
my defence for the charges levelled against me in
the said memorandum of charges as per Discipline
and appeal Rule, 1968, vide my application dt:20-12-95
) Annexure - A).

6. 3. That despite my repeated approaches to the authori-
ties concerned I was neither given a required docu-
ments for submitting my defence nor given an asser-
tive/positive assurance in supply of those documents/
informations so that I could prepare my grounds for
my defence for which I was held responsible in the
said memorandum of charges mentioned at under para
(1) above.

6. 4. It is really astonishing of major penalty charges
as per DAR 1968 to me the administration kept chilly
silent over the matter either proceeding further with
the charges or supplying me any documents/informations
so that the proceedings as per Railways own set of
Rules could ^{be} advanced.

...6..that it was...

Gosha Behari Paul

15.3.2001
Advocate

6. 5. That it was only in 28.01.2000 I was advised by Divisional Railway Manager (O)/Lumding vide his letter No. TI/2/22/95-96/LM dated 28.01.2000 that DAR enquiry will be held against me and for which I may be given the names of two defence counsels by me for my defence in the enquiry proceedings (Annexure - F).
6. 6. That as per Railway Board's modal statutory period of finalising the DAR is 150 days. But it fails to understand as to after issuance of the major penalty chargesheet on 14.11.95 how a letter for submitting my defence counsel towards holding DAR enquiry be communicated on 28.01.2000, that is, after lapse of complete four years time.
6. 7. That without giving me any reasonable opportunity for my defence in supplying the required documents desired by me right since the issuance of the major penalty chargesheet and without holding the proceedings of DAR, as per DAR Rule, 1968, the notice of imposition of penalty communicated by Sr. Divisional Operation Manager/Lumding to me holding me responsible for the ^{averted} accident mentioned under para (1) above and thereby imposed the penalty of reduction of my pay to one stage lower in the same time scale of pay for 3 years with cumulative effects vide Sr. Divisional Operation Manager/Lumding's (NIP) notice of imposition of penalty No. T/2/22/95-96/LM dated 21.08.2000 (Annexure - L).

Contd..7..duly...

17
Goshta Belavi Pavi

Advocate
15.3.2001

duly instructing me to file an appeal to the next immediate superior to the authority passing the order i.e. Divisional Railway Manager, but without ~~that~~ mentioning any time-limit.

6.8 . However, on receipt of the notice of imposition of penalties ~~to~~ I submitted an appeal ~~to~~ the Divisional Railway Manager /Lumding on 13.10.2000 detailing the whole fact and highlighting the injustice ~~caused~~ caused to me and praying for adjudging justice to relieve me ~~of~~ the charges (Annexure O to Q/2).

6.9. That the decision of the Appellate Authority of the aforementioned appeal mentioned under para-8 above ^{is still pending but} the punishment order has been issued ~~to be and~~ operated vide Divisional Railway Manager (P) ~~4~~ Lumdings's Office Order No. ES-48-0(T) dated -09-2000 (Annexure -N).

6.10. That the Administration has taken a very hasty decision in imposing the punishment order and to operate the said order without giving me any reasonable opportunity for defence, albeit the memorandum of charges was issued about 5 years back, violating all the statutory norms and rules.

6.11. That fairness of administrative justice was not at all observed either in holding the joint enquiry committees' report for holding me ~~the~~ responsible vide Annexure-C) nor in the advancement of proceedings nor in the findings of the enquiry officer.

Gosha Behari Paul

10/10/2001
15/10/2001
Substantive

6.12. That the imputation of charges against me brought in the Article of Charges (Annexure-B) annexed to the Memorandum of Chargesheet were for violation of Rule: 3.38 and 3.70(3) of G&SR whereas the Inquiry Officer in his report held me responsible under Rule 3.68/1(b) and in the Notice of Imposition of Penalty the Senior Divisional Railway Operations Manager/ N.F. Railway / Lunding simply mentioned " after finding him responsible for the charges levelled against him" without quoting any rules supportive for his orders for imposition of penalty. This is not only highly astonishing but also contrary to the DAR Rules. The relevent provision of the aforementioned Rules embodied in the G&SR are reproduced ad verbatim:

Rule-3.38. Points affecting movement of train.-

The Station Master shall not give permission to take signals 'off' for a train until-

- (a) all facing points over which the train will pass are correctly set and locked,
- (b) all trailing points over which the train will pass are correctly set, and
- (c) the line over which the train is to pass is clear and free from obstructions.

Rule 3.70(3) Duties of Station Master when a stop departure Stop signal is defective —

For the purpose of handing over the written authority mentioned in sub-rules (1) and (2), the train shall be

cond. & stopped,

Goshta Behari Paul
Advocate

stopped at the station where the defective signal is located. The written authority to pass a defective departure Stop signal shall not be handed over to the Driver unless all the conditions for taking 'off' such signal have been fulfilled.

Rule 3.68/1(b)- Before issuing OP/T-27 for a defective signal at his station or before granting Line Clear for a train for which OP/T-27 has been issued by the nominated station /rear station, the Station Master shall ensure by his personal inspection that the relevant points over which the train will pass, are correctly set, clamped and padlocked and the key of the padlock is in his possession and also that the lock bar(s) where provided in its proper position.'

6.13. That although the charges and enquiry report differ from each other so far the reasons of the averted accident of the train, nevertheless, all those Rules candidly and categorically emphasize for the Duties of a Station Master generally when a signal is defective and surely not of an Assistant Station Master whose primary duty is in a Cabin like Guwahati Station who is to depend solely upon the instructions of the Station Master and the time-to-time informations from his junior staff in operation of a train's run. This humble Applicant could not get any scope to cross-examine the Station Master on duty on the date & time of the aforementioned train-accident, as the Disciplinary authority totally denied me and/or evaded me to give me such scope for my defence.

6.14. That the vision of the Enquiry Officer was totally

26
Gosha Defamer Panel

15.3.2001
Advocate

eclipsed in conducting the enquiry for the above averted accident and holding me responsible. The Inquiry Officer has completely failed to explain, understand and implications of the Rules of the G'SR mentioned above. The literally meanings of the Rules of 3.38, 3.70(3) and 3.68/1(B) are quite different from each other and those are exclusively meant for the Station Master/Manager whose accountability for the responsibility in operation of a Train passing is personal at the time of a defective signal and/or such circumstances.

6.15. That the Sr:Divisional Operations Manager/N.F. Railway/Lumding has also either failed to mention or bypassed the brief of the charged officer submitted to the Inquiry Officer dated 24-5-2000 (Annexure-H) and the brief dt; 24-5-2000 of Sh K.Mukherjee, P/Man, (Annexure-O/2) who is ^{co-}accused of responsibility for the aforementioned averted accident, to the Inquiry Officer and upon whose considerations and the background of the cause of action the Inquiry Officer pertinently and rightfully recommended in his Report-" The Disciplinary authority is requested to consider it before passing any order." But neither the Disciplinary Authority nor the Sr: Divisional Operations Manager/N.F.Railway/Lumding being the Punishment -giving authority has mentioned anything in the impugned Notice for issuance of Punishment which is highly in derogation to the DAR Rules, 1968 and other statutory instructions.

6.16. That the Procedure for imposing Major Penalties as laid down under Rule.9(6) & (7), among others,

Gosha Behari Paul
Advocate
15.3.2001

of Railway Servants (D&A) Rules, 1968, are as follows:-

Rule-9 ()- Where it is proposed to hold an enquiry against a railway servant under this rule and rule 10, the disciplinary authority shall draw up or cause to be drawn up-

- (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge.,
- (ii) a statement of the imputations of misconduct or misbehaviour in support of each article of Charge which shall contain-
 - (a) a statement of all relevant facts including any admission or confession made by the railway servant,
 - (b) a list of documents by which, and a list of witnesses by whom, the articles of charges are proposed to be sustained.

Rule(7)- The disciplinary authority shall deliver or cause to be delivered to the railway servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each articles of charge is proposed to be sustained and shall require the railway servant to submit a written statement of his defence within ten days or such further time at the disciplinary authority may allow.

Note.- If copies of documents have not been delivered to the Railway servant, along with the articles of charge and if desires to inspect the same for the preparation of his defence, he may do so, within 10 days from the date of receipt of the articles of charge to him and complete inspection within 10 days thereafter and shall

22

Gos/Ra Behari Paul

15.3.2001
Advocate

shall state whether he desires to be heard in person."

6.17. That the said proviso of RS(D&A) Rules, 1968 were totally denied in giving the Memorandum of Major Penalty Chargesheet to me and thus the Disciplinary authority have violated the Railways' own set of rules to try a DAR Case, though the punishment order has already been imposed and operated vide impugned orders mentioned above (Annexures L.. & N.).

6.18. That my appeal submitted to the Divisional Railway Manager/N.F.Railway/Lumding, the Appellate Authority in the instant case, is still pending and during pendency of the Appeal the Divisional Railway Manager(N)/N.F.Railway/Lumding issued Office Order NOES-48-G(T) dated -09-2000 with reduction of one stage lower in the same time scale of Pay for 3 years with cumulative effect (Annexure-N).

6.19. That in terms of Railway Board's Notification communicated under No: 94/Safety(A&R)25/6 dated 17-8-94 all cases of punishments arising out of Train-accident shall have to be reviewed personally by the Chief operations Manager and all cases must invariably be put up to the General Manager (Annexure.P.). But in the instant case it has not been done so far, although the punishment order has already been imposed and operated.

6.20. That without considering and attaching 'due'

23
Vidya
15.3.2001
Advocate
Gosha Belani Paul

importance to my requirements for the documents
prayed for vide my application dated 12-95
(Annexure E.) for submitting my defence in the
form of written statement in ~~the~~ reply to the
Memorandum of charges and without attaching
any importance to my detailed written representation
dated 20-4-2000 to Sr; Divisional Operations Manager/
N.F.Railway/Lumding, ^(Annexure - k), the Sr; Divisional Operations
manager/N.F.Railway himself as the Disciplinary Authority issued Notice of Imposition of Penalty under
No. T/2/22/95-96/LM dated 21-08-2000 (Annexure E..) to impose the penalty of reduction of pay to one
stage lower in the same time scale of Pay for three
years with cumulative effect.

6.21. That the Sr. Divisional Operations Manager/N.F. Railway/Lumding has violated the Railway Board's mandatory instructions contained under Railway Board's letter No. E(D&A)71RG 6-4 dated 27th February, 1971, in appointing the Inquiry Officer in the instant case . Railway Board's said letter runs thus-

"The officer selected for appointment as an Inquiry Officer, should be sufficiently senior in rank to the officer whose conduct is being inquired into and should be one who did not have an occasion to express an opinion on the merits of the ~~xxxxx~~ case ~~xxx~~ at an earlier stage . Disciplinary cases except in cases arising out of fact-finding enquiries

contd....14....like

24
Goshta Bedani Paul

Advocate
15.3.2001

like accident enquires, enquiries made by Vigilance Organisation, inquiries consequent to audit reports and report from Special Police Establishment, should not be entrusted to an officer lower in status than that of the officer who conducted the fact-finding enquiry."

6.22. That the punishment imposed and operated to this humble applicant was by way of exparte -fashion and is not only violative of RS(D&A) Rules, 1968, but also unheard, unjust and unfair of Administrative justice and in derogation to all codes of conduct and instruction to deal with the DAR case to try the delinquency of alleged charged official under memorandum of Major Penalty Charges.

6.23. That as a result of the abuse of powers to initiate and process a DAR case of Major Penalty Charges with all lapses, flaws and shortcomings for depriving the legitimate right and claim of the alleged charged official this humble Applicant has been utterly victimised and put the the strict and stringent hardships of both mind and pecuniary ambiances.

15
Gosha Belaxi Pave

Nutson
15.3.2001
Advocate

6.24. That albeit the cause of action is one that is the averted accident of 4055 Dn. Brahmaputra Mail at Guwahati Railway station on 18.05.95 at point No. 61 but the disciplinary Authority have become two in the instant DAR case, which, it is felt is perhaps the only one and the last example in the DAR-history, as the chargesheet was issued by the Area Manager/Guwahati and Notice of imposition of punishment issued by Sr.DOM/LMG mentioned under paras 6.7.6.8... and 6.9.... above, which is not according to rules. Moreover, the punishment giving authority shall be in higher status than that of disciplinary Authority.

6.25. That in the findings of joint enquiry (Annexure-C) the Committee recorded "after careful cross examination of involved staff" and " Sri Paul is primarily responsible for the accident" but it was not mentioned there as to who were the "Involved Staff" and what were the contents of the cross-examination and without proving how they had held Sri Paul responsible, the enquiry concluded, though no details were Communicated to me. This is purely a partial surface view of a matter with limited prudence. The depth of the actual picture should have been detailed and a copy of which supplied to this charged Official to unveil the truth and eliminate the impropriety imputed.

6.26. That the letter no. T/2/22/95-96/LW dated 28.01.2000 asking me to give two names of my Defence Counsels was signed by somebody " for DRM/Lumding". Which does not

Gosha Behari Paul

M. P. Paul
15-3-2001
Advocate

signify that it was issued by the D.A. as required by DAR, 1968.

6.27. That the Inquiry Officer simply gave a "Ditto" to the joint enquiry Committee report on the accident holding the responsible (vide Annexures-C).

6.28. That the Inquiry Officer made me under compulsion to give my undertaking on 24.05.2000 (Annexure-I) wherein I accepted the charge conditionally and without knowing the whole papers of DAR proceedings as those were required to be furnished before me and the presenting Officer. No subsequent show cause notice was also issued to me to record my final say, for the ends of justice. Now, under the pretext of the whole pictures of DAR so far revealed to me, I totally deny the said charge and assertively submit that the entire DAR proceedings were arbitrary, unfair, unjust, partial, irregular and violative of all norms and rules of DAR and other rules and, hence, totally vitiated to arrive any conclusion

6.29. That it is, therefore, clearly evinced that their might be some vested authority or interested Official who wanted to meet with his/their malafide attitude towards this humble employee and as a result of which has/have caused a 'bias' and observed, brought and passed unfair, unjust, irregular and unlawful charges and unlawful orders of imposition of penalty

Gosha Belani Paul
Advocate
15-3-2001

:: 17 ::

to, this charged Officialx, your humble applicant
in the instant OA.

6.30. That for the said causes and reasons the memorandum of charges mentioned under para (1) above and notice of imposition of penalty suffer from violation of the prerogative laws/rules and attracts malafid, bias and unfair administrative decision.

6.31. That the wanton attitude of the disciplinary Authority for conducting the DAR enquiry in a most callous, uncareful, irregular and unlawful way" "NO REASONABLE OPPORTUNITY" was given to the charged Official and as a result of which have attracted and invited clear violation of "The Principles of Natural Justice".

6.32. That for the causes of actions involved due to the irregular, unlawful & unjust imposition of the impugned notice for imposition of punishment and issuance of punishment order have hit the provisions of the Arts. 14, 16, 39(A), 309 and 311(1) of the Constitution of India and are liable to be set aside.

7. GROUND FOR :-

(1) The Memorandum of Chargesheet for Major penalty charges under rule 9 of the RS(D&A) Rules, 1968 issued by Area Manager/N.F. Railway/Guwahati issued

Gosha Belavai Patel
15-3-2001
Advocate

under No. TA/NGe/3 dated 14.11.95 does not contain the names of witness to be examined by the charged Official and its enclosed Articles of charges is defective and not in conformity with the RS(D&A) Rules, 1968.

- (2) The joint enquiry report is incomplete, partial and vindictive.
- (3) The required documents not supplied to the charged Officials for his defence in the form of written statement and thus denied the "reasonable opportunity" to the charged Official.
- (4) The proceedings initiated on 14.11.95 but still remains undisposed of with the Appellate Authority although NIP imposed and punishment ordered to be operative.
- (5) Inquiry Officer was not appointed according to the statutory Rules of RS(D&A) Rules, 1968.
- (6) Findings of the enquiry Officer was exparte on the vague contemplation of charges and shadowed from the charges mentioned in the chargesheet and observations for a major penalty chargesheet.
- (7) Fairness of Administrative Justice was not observed and the Railway's own set of rules flouted.
- (8) Constitutional guaranteed rights for the Govt. employee have been infringed.
- (9) Principles of Natural Justice have been totally evaded.

29
Gosha Belawi Paer
Advocate

:: 19 ::

8. RELIEF SOUGHT :-

That this humble applicant most fervently prays that this Hon'ble Tribunal may be pleased to look into the records by calling upon the opposite parties and administer justice by setting aside the impugned order of notice of imposition of penalty to this employee mentioned under para^{6.7} (Annexure- L) and till finalisation of this Original Application by your Lordships the operative portion of the order of the M.F. Railway Administration be stayed and for which a separate Misc. Petition under No. of 2001 has been filed before this Hon'ble Tribunal along with this original application for the kind perusal and justice by your Lordships and any other relief/reliefs further as deem fit and proper by this Hon'ble Tribunal may kindly be granted.

Gosha Belaw Patel

N. K. B. 15-3-2001
Advocate

Gosha Bekani Fare!

Verdons
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15.3.2001
Advocate

iv) Post Office at which Payable : Guwahati Head Office

13. DETAILS OF INDEX

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

14. LIST OF ENCLOSURES:

Annexures: A, B, C, D, E, F, G, H, I, J, K, L, M, N ,
O, O/1 & O/2, P.

VERIFICATION

I, Sri Gostha Behari Paul, son of Late Gopendra Chandra Paul, aged about 40 years, a resident of Rly Qrs: No. 25/A, Central Gota-nagar, P.O. Maligaon, Guwahati-781011, by occupation Railway Service, working as Assistant Station Master under Station Manager/N.F. Railway Guwahati, do hereby solemnly affirm and verify that the contents of Paragraphs 6.1 to 6.2 are facts of the case and true to my knowledge, information and belief and that I have not suppressed any material facts and the paras- 6.21 to 6.32 are my humble and respectful submission before this Hon'ble Tribunal.

And I sign this VERIFICATION on this .15th. day of March, 2001.

Place, Maligaon.

date: 15/3/2001

Gostha Behari Paul

Signature of the Applicant.

To

The Deputy Registrar,

Central Administrative Tribunal,

Guwahati.

15.3.2001
Advocate.

B 19/11/95 = 22 =

Annexure - A

FORM OF CHARGESHEET

(STANDARD FORM NO.5)

(Rule: 9 of the Railway servants (Discipline, and appeal rules 1963)

TA/NGE/3

N.F. Railway

(Name of Railway Administration)

(Place of issue) ARN/CH's Office

Dated 14.11.95

MEMORANDUM

The President/Railway Board/undersigned propose(s) to hold an inquiry against Shri G. B. Paul, ARN/CH under rule-9 of the Railway servants (Discipline and appeal) Rules 1963. The substance of the imputations of misconduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement or articles of charge (Annexure: I). A statement of the imputations of misconduct or mis-behaviour in support of each articles of charge is enclosed (Annexure: II). A list of documents by which and a list of witnesses by whom, the articles of the charge are proposed to be substantiated are also enclosed (Annexure: III and IV). Further copies of documents mentioned in the list of documents as per Annexure: III are enclosed.

2. * Shri G. B. Paul is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure: III) at any time for during office hours within 10 (Ten) days of receipt of this Memorandum.

For this purpose he should contact ** ARN/CH immediately on receipt of this Memorandum.

3. Shri G. B. Paul is further informed that he may, if he so desired, take the assistance of any other Rly: servant an official or Rly. 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 & there under 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 preference. Before nominating the assisting Railway servant(s) or Railway Trade Union official(s) Shri G. B. Paul should obtain an undertaking from the nominee(s) that he (they) is (are) willing to assist him during the disciplinary proceeding. The undertaking should also contain the particulars of other case(s), if any, in which the nominee(s) had already undertaken to assist and the undertaking should be furnished to the undersigned/General Manager, N.F. Railway along with the nomination.

Shri G. B. Paul is hereby directed to submit to the undersigned (through General Manager SS/CH Railway Board) written statement of his defence (which should reach the said General Manager) within 10 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:

- To state whether he wishes to be heard in person and
- To furnish the names and addresses of the witnesses if any whom he wishes to call in support of his defence.

Contd.....2

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true copy
Ullin
15/3/2001
Advocate

5. Shri G. B. Paul, Asst. Secy. 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/ each article of charge.

6. Shri G. B. Paul is further informed that if he does not submit his written statement of defence within the period specified in para 2 or does not appear in person before the inquiry authority or otherwise fails or refuses to comply with the provisions of rules 9 of the Railway servants (Discipline and Appeal) Rules 1968 or the order/directions issued in pursuance of the said rule the inquiring authority may hold the inquiry ex parte.

7. ~~xxxxx~~ The attention of Shri G. B. Paul is invited to Rule 20 of the Railway service (conduct) Rules 1968, under which no Rly 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 with in these proceedings, it will be presumed that Shri G. B. Paul is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of rule 20 of the Rly. services (conduct) Rules 1968.

8. The receipt of this Memorandum may be acknowledged.

Encl:

One

By order and in the name of the President

Signature

Name and designation of competent authority.

16/11/95
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2. AR
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To Shri G. B. Paul, Asst. Secy.
Through: SS/AR
Design and place

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

Strike out which ever is not applicable.

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

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

Where the President is the Disciplinary authority.

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

To be used wherever applicable. See Rule 16(1) of the Rly. (DA) Rules 1968. Not to be inserted in the copy sent to the Rly. servant.

14/11/95

certified to be
true copy
15/11/2001
Advocate

ANNEXURE TO STANDARD FORM NO. 5.

Memorandum of charge sheet under Rule: 9 of the RS(D&A) Rules: 1968.
.....

Annexure: I.

Statement of articles of charge framed against Shri G. B. Paul, Asm/CH

Article: I

That the said Shri G. B. Paul, Asm/CH while functioning as Asm/CH during the period from 13.10 to 21.10 hrs. ^(here enter) on 18.5.95 failed to ensure proper setting of point and issued Opt-27 and Opt-38 for the dispatch of 4055 DN resulting Point no. 61 got bursted and thus caused the accidt.

proper Set & point

(R. K. SINHA)
S. P. Rly. Manager
16/11/95

Annexure: II.

Statement of imputations of misconduct or mis-behaviour
in support of the articles of charge framed againstShri G. B. Paul, Asm/CH

Shri G. B. Paul was on duty Asm/CH on 18.10.95. During his duty train 4055 DN Brahmaputra mail was departing from CH station met with an accident on point no. 61 which was set and clamped in favour of Line 3, 4, 5 & 6 and not in favour of Line 7 wherefrom 4055 DN was to start.

On duty Asm, Shri G. B. Paul failed to ensure proper setting of point and issued Opt-27 & Opt-38 for the dispatch of 4055 DN resulting point no. 61 got bursted and thus caused the accidt. This is a serious negligence in duty on the part of a Asm and he violated Rule: 3.38 and 3.70(3) of R.S.

Hence, Shri G. B. Paul, Asm/CH is charged with negligence in duty.

certified to be
true copy
15/3/2001
Advocate

(R. K. SINHA)
S. P. Rly. Manager
16/11/95

List of documents by which the articles of charge framed against Shri G. B. Paul, Asst. M. A. are proposed to be sustained.

- ① A Photo copy of Joint Enquiry findings in connection with the bursting of Bomb No. 61 on 18.5.95 at A. M.

(Signature)
16/11/95
(R. K. SINGHA)
Asst. M. A.
Railway Manager
V. P. Rly. Guwahati

Annexure: IV.

List of witnesses by whom the articles of charge framed against Shri G. B. Paul, Asst. M. A. are proposed to be sustained.

NIL

(Signature)
16/11/95
(R. K. SINGHA)
Asst. M. A.
Railway Manager
V. P. Rly. Guwahati

*Original to be
done copy.
15/3/2001
Advocate*

causings of joint enquiry in connection with the bursting of joint NO. 61 on 18.5.95 at GHY.

ref description: - On 18.5.95, while 4055 on Brahma puzar Rail ^{was} departing from L/M. 7 of GHY Station met an accdt. on point NO. 61 which was set and clamped in favour of L/M. 3, 4, 5 & 6 a. not in favour of L/M. 7 where from 4055 on was to start. Consequently to this wrong setting of point, point NO. 61 got busted and this caused the accdt.

findings: - After careful cross-examination of involved staff, it was revealed that the point got busted due to wrong setting.

Responsibility: -

a) Primary: - On duty A.S.M., Shri G.B. Paul could not ensure prop setting of point and issued OPT-27 & OPT-38 for the depart of 4055 on. Hence Shri Paul is primarily responsible for the accdt.

b) Secondary: - On duty points man, Shri K. Mukherjee did not see for which purpose he was setting the point NO. 61 and also clamped it in wrong place. Hence Shri Mukherjee is secondarily responsible for accdt.

For 18/9/95
AEN/GHY

For 18/9/95
A.M.E./GHY

certified to be true copy
15/3/2001
Advocate

= 25 =

Sri Gostha Bahari Paul, Asm/6hy
Through - SS/6hy

W. F. Railway.

Annexure - D

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

No. T/2/22/95-96/LM

Name of Railway Administration: W.F. Railway.

Place of Issue- DRM(O)/IMG's Office.

Dated 27/1/2000

O R D E R.

Whereas an Inquiry under Rule-9 of the Railway Servants
(Discipline and Appeal) Rules, 1968 is being held against Sri
Gostha Bahari Paul, Asm/6hy. (Name & Designation of the Rly. Servant).

AND WHEREAS the undersigned consider(s) that an Inquiry officer
should be appointed to inquire into the charges framed against him.

AND NOW, THEREFORE, the undersigned, in exercise of the powers
conferred by Sub-Rule (2) of the said rules, hereby appoints
Shri Philip Injundor, TI/SWR/LMG. (Name & designation of the
Inquiry Officer) as Inquiry Officer to inquire into the charges
framed against the said Sri Gostha Bahari Paul,

This in connection with this office Memorandum of even No.
dated 14/1/95

(H.P. Mehta)

Signature: Sr. DOM/LMG.....

For Divl. Operations Manager.....

Designation of the Disciplinary
Authority.

(1) Copy to:- Sri Gostha Bahari Paul, Asm/6hy
(Name & Designation of the Rly. Servant).
Through - SS/6hy

(ii) Copy to: Philip Injundor, TI/SWR/LMG. He is also advised to
conduct the enquiry and submit report early.

(iii) Copy to:-

*certified to be
correct copy.*

Advocate
15/2/2001

man
For Divl. Operations Manager
W.F. Railway, Lucknow

To,
The ARM,
N.F. Rly.,
Guwahati.

(Through proper channel).

Sir,

Sub :- Memorandum of Charge (S.F.S.).

Ref :- C.S. No. TA/NGC/3 Dt. 14/11/95.

While acknowledging the receipt of your Memorandum under reference on 19/12/95 I beg to request your good offices to kindly arrange to furnish me with the complete proceedings of the Joint Enquiry in connection with the bursting of point No. 61 at GHY on 18/5/95 so that I may get a reasonable opportunity to defend my case by cross-examining those who were examined by the Committee.

The above may not kindly be construed as my representation against the Memorandum and oblige.

Date : /12/95.
Guwahati.

Yours faithfully,

Gostha Behari Paul

(GOSTHA BEHARI PAUL)
ASM/GHY.

*certified to be
true copy.
Mr. Paul
15/3/2001
Advocate*

= 27 =

Shri G. B. Paul, ASM/Gdy
Through SM(Gaz)/Gdy.

39

N.F.RLV.

Annexure - F

No.T/2/22/95-96/LM.

Office of the
DIRM(O)/LMG.
Dt/-23.1.2000.

To:
Shri G. B. Paul, ASM/Gdy
Through SM(Gaz)/Gdy.

Sub:- DAR action against SF-5 No.TA/MGC/3
dtd. 14.11.95.

In connection with the above, a DAR enquiry will
be held against you.

Please submit the name of at least 2(Two) Defence
counsel along with their consent letter duly signed by
them to this office early so that DAR enquiry may be
initiated.

Delivered
for DIRM(O)/LMG
7/2

for DIRM(O)/LMG
28/1/2000

....
Certified to be
true copy.
15/3/2001
Advocate

= 28 =

Shri G. B. Paul, ASM/GHY,
Through SM(GAZ)/GHY

40

Annexure - 5

N.F.RLY.

No.T/2/22/95-96/LM.

Office of the
DRM(O)/LMG
Dt.11.5.2000.

To

1. Shri G. B. Paul, ASM/GHY,
2. Shri K Mukerjee, P/Mn/GHY.

Through:- SM(GAZ)/GHY.

Sub:- DAR enquiry against SF-5 No.TA/NG²/3/
dtd.14.11.95.

The date of DAR enquiry is fixed on 24.5.2000 at
10 hrs in DRM(O)/LMG's office against the above subject.

Hence you are advised to attend enquiry along with
yours defence counsel and with their consent letter, the
above date and time without fail.


D. Majumdar
TI/WR/LMG.

Inquiry Officer/LMG.

Copy to:- SM(GAZ)/GHY for information, He is also requested
to spare and direct S/Shri G.B.Paul,
ASM/GHY and K. Mukerjee, P/Mn/GHY^{on} the
above mentioned date and time without
fail.

Copy to:- DM/GHY for information and pursue the above
subject please.

Inquiry Officer
TI/WR/LMG.

Delivered to
Staff concerned
16/5

Copy to be
done
Microfilm
15/3/2001
Advocate

Final brief.

To

Enquiry Officer.

Sir

With due respect I lay the following for your kind consideration and sympathetic action please.

That Sir, though I have accept the charge brought against me, but the fact is that just after taking over charge in the evening shift on 18.5.95 Sri S.N. Mitra Dy SS/CHY advise me to despatch 4055 DN. which was on line no. 7 and all the relevant point is set and locked and is handed over op/T-27 and op/T-38 to Sri Samarendra Bhattacharyya Dy SS/CHY. All the points were set and locked under the supervision of Sri S.N. Mitra by P/aman Srikumar. Moreover I handed over the op/T-27 and op/T-38 to Sri Samarendra Bhattacharyya Dy SS/CHY who came to cabin to take this. All this done to minimising the detection of 4055 DN.

That Sir I have just carry out the order of my Superior and it is my ill luck the incident occurred.

So it is my pray to you please consider my case and I assure you I shall be more careful in future.

Thanking you

Yours faithfully,

Copy to be
sent copy.
Advocate
15/3/2001

Gostha Behari Paul.

Asm/CHY at Lardding

24.5.2000

Final brief.

To

Enquiry Officer,

Sir,

With due respect I lay the following for your kind consideration and sympathetic action please.

That Sir, though I have accept the charge brought against me, but the fact is that just after taking over charge in the evening shift on 18.5.95 Sri S.N.Mitra Dy SS/GHY advised me to despatch 4055 DN. which was on line no. 7 and all the relevant point is set and locked and to handed over op/I-27 and op/I-38 to Sri Samaresh Bhattacharjee Dy/SS/GHY. All the point were set and locked under the supervision of Sri S.N.Mitra by p/man Sri K.Mukerjee Moreover I handed over the op/T-27 and op/T-38 to Sri Samaresh Bhattacharjee Dyss/GHY who came to cabin to take this. All this done to minimissing the detention of 4055 Dn.

That Sir I have just carry out the order of my superior and it is my ill luck the incident occurred.

So it is my pray to you please consider my case. and I assure you I shall be more carefull in future.

Thanking you.

Yours faithfully,

Sd —
Gostha Behari Paul.
Asm/GHY at Lumding,
Dt. 24-5-2000.

///

Typed copy of Annexure-H-
at Page-29.

Advocate
15/3/2001
Advocate

2. A. Proceedings into the charges framed against
Shri Gosta Behari Paul, Asm/GHY vide Asm/GHY's
Memorandum of charges sheet no. TA/NGE/3 dt. 14.11.95. 47

Q.No.1: Are you in a position to face the enquiry without
any assistance from any defence Counsel?

A:— Yes, I am willing to participate in the
enquiry without any defence Counsel. I shall
represent my case.

Article - I of charge:

"That the said Shri G. B. Paul, Asm/GHY while
functioning as Asm/Asst Cabin/GHY during the period from
13.00 hrs. to 21.00 hrs. on 12.5.95 failed to ensure proper
setting of point and issued OPT-27 and OPT-38
for the despatch of 4055 in resulting point no. 61 got
burst and thus caused the accident."

The above charge has been read out & explain to him.

Q.No.2: Do you accept the above charge brought against you?

A:— Yes I accept the above charge. But I have
an appeal to state that I was compelled by
circumstances when I had to hand over the
OPT-27 without ensuring correct setting of point
no. 61 as I was advised to hand over OPT-38
& OPT-27 to Shri Samarendra Bhattacharya, Dy. Secy/GHY
after as by Shri M. C. Mitra, Dy. Secy/GHY. I have
a impression that if the work is done under their
supervision, everything will be ok.

Q.No.2: Are you not required by rule to personally
satisfy yourself re: correct setting & location
of point before handing over OPT-27?

A:— Yes, but I failed for the above reason as
stated in my answer to Q.No.1

certified to be
true copy
M. S. B. / 2001
Advocate

Gosta Behari Paul

Asm/GHY, at LMG.
24.5.2000

DAR Proceedings into the charges framed against Shri Gostha Behari Paul, ASM/GHY vide ASM/GHY's Memorandum of charge sheet No.TA/NBC/3 dtd.-14-11-95.

Q.No.1 : Are you in a position to face the enquiry without any assistance from any defence Counsel?

Ans :- Yes, I am willing to participate in the enquiry without any defence counsel. I shall represent my case.

Article-I of charge:

"That the said Shri G.B.Paul, ASM/GHY while functioning as ASM/west Cabin/GHY during the period from 13.00 ins. to 21.00 ins. on 18.5.95 failed to ensure proper setting of point and issued OPT-27 and OPT-38 for the despatch of 4055 Dn resulting point No.61 got bursted and thus caused the accdt."

The above charge has been read out & explain to him.

Q.No.1 : Do you accept the above charge brought against you ?

Ans :- Yes, I accept the above charge. But I have an appeal to state that I was compelled by circumstances where I had to hand over the OPT-27 without ensuring correct setting of point No.61 as I was advised to handover OPT-38 & OPT-27 to Shri Samarsh.Bhattacharjee, Dy.SS/GHY by Shri S.N. Mitra, Dy.SS/GHY. & had a impression that if the work is done under their supervision, everything will be O.K.

Q.No.2 : Are you not required by rule to personally satisfy yourself reg. Correct setting & locking of point before handing over OPT-27 ?

Ans :- Yes, but I failed for the above reason as stated in my ~~answer~~ ^{answer} to Q.No.1.

*Corrected Setting
of point.*

SG—
Gostha Behari Paul
ASM/GHY. at Lmg.
24.5.2000

*Typed copy of Annexure - I at
Page 30.*

*K. B. S. S.
15/3/2001
Advocate*

NO:- T/2/22/95-96/LM

Office of the
DRM(O)/LMG
Dt/-13/7/2000To, Sri G.B. Paul, ASM/GHY.
Through : SM(GAZ)/GHY.Sub :- Show-cause notice along with DAR inquiry
report in connection with major memoran-
dum No.TA/NGC/3 dtd. 14/11/95.

- 000 -

In connection with the above, one copy of DAR enquiry proceedings containing 2 pages duly received from I.O.is sent herewith for your information. The charges framed against you have been established.

In view of the above, you are therefore directed to submit your further representation, if any within 10 days otherwise competent authority will take suitable action as per rules.

please acknowledge receipt.

DA/As Stated.

Senior Divl.Operations
Manager,Landing.

certified to be
true copy.
15/3/2001
Advocate

To
Sr. DOM/LMG
N.F. RAILWAY

Dated, Guwahati
20 - 04 - 2000

46

(Through proper channel)

Sir,

Sub: - DAR action against SF-5 No.TA/NGC/3 dt.14.11.96.

Ref:- Your No.T/2/22/95-96/LM dt. 24.3.2000.

The communication under reference has been received by me on 30.02.2000.

In the above context I beg to submit as under :-

That a memorandum No.TA/NGC/3/dt. 14.11.95 was received by me on 19.12.95.

That on receipt of the said memorandum in which the article of charge vide Annexure-I was framed - I requested the disciplinary authority (ARM-GHY) on 28.12.95 to furnish the enquiry proceedings of the joint enquiry held by AME/GHY and AEN/GHY (Ref : to Annexure-III of the said memorandum) on the basis of which the findings were drawn holding me primary responsible for the derailment of 4055 DN on 18.5.95 (copy enclosed).

The said document stated :-

" Findings : - After careful cross-examination of involved staff, it was revealed that the point got busted due to wrong setting." The materials taken into consideration were those came out on cross "examinations" on the basis of which the finding was drawn.

In such circumstances - I have due right to get the proceedings of the enquiry covering the "cross - examinations" for preparation of my defence which have not been supplied during the last 5 years.

That - I find myself helpless in preparation of my defence to for consideration by the disciplinary authority due to non supply of the above documents. ✓

I want to make it clear that I have no intention to block in holding the DAR enquiry but at the same time I may request your good office to kindly consider following.

- 1) That against a stipulated time of 150 days for holding the DAR - enquiry - the above being proposed to be held after 5 years,
- 2) That the Hon'ble CAT - Calcutta in a judgement stated that after 150 days from the date of issue of memorandum - if no DAR - enquiry conducted it stood lapsed.
- 3) That against such judgement if the Hon'ble CAT - Calcutta the Revision Petition to the Appex Court moved by N.F.Railway Administration was dismissed.
- 4) That a part of document cannot be suppressed by the disciplinary authority for conveniences of the prosecution.

*certified to be
true copy.
N. B. Das
15/3/2001
Advocate*

47

- 5) That the joint enquiry proceedings as referred to be supplied to the charged employee in full and not in part as has been done in this case by supplying the part dealing with "findings" part only.
- 6) That my letter for supplying the full proceedings have not been taken into consideration by the disciplinary authority (ARM-GHY).
- 7) That the letter dated 28.1.2000 as mentioned in the caption was signed by somebody for DRM(O)/LMG. Which is irregular in as such as the disciplinary authority was ARM(GHY).
- 8) That the DAR proceedings inter-alia provides –
 - (a) the charged employee be granted full support by supplying in the relevant documents for the purpose of his preparation of defence.
 - (b) On submission of defence DA – he will consider the same and pass speaking order if the DAR enquiry was to be conducted
 - (c) On all papers after issue of the memorandum – sent to the charged employee be signed by the disciplinary authority only after taking into consideration of all the facts.
- 9) In this case – since I was not given the reasonable opportunity for submission of my defence, the question of holding the same at this stage does not arise.

In view of the above – I refrain in submission of the name of my defence counsel which will be furnished if necessary along with my defence for consideration of the disciplinary authority.

The disciplinary authority may kindly consider if after a lapse of 5 years it will be correct to held such enquiry specially when the charged employee has been denied of the necessary opportunity for submission of his defence. It is also further may kindly be considered if on a memorandum signed by ARM/GHY further order can be taken on the same memorandum by DRM(O)/LMG without altering/modifying the disciplinary authority i.e. ARM/GHY.

Thanking you,

DA : As above

Yours faithfully,

Gostha Behari Paul.

(Gostha Behari Paul)

ASM/GHY

certified to be
true copy
15/2/2001
Advocate

20.4.2000

= 33 =

Shri Gostha Bihari Paul, ASM/Gly
Through - SM(Gaz)/Gly.

Annexure - L

NOTICE OF IMPOSITION OF PENALTIES UNDER RAILWAY
SERVICES DISCIPLINE & APPEAL RULES, 1968.

No. T/2/22/35-36/DM.

Dt/- 21/2/2000.

From:- DM(C)/T/DM office.

To Shri Gostha Bihari Paul, ASM/GHY.

Through SM(Gaz.)/GHY.

With reference to your explanation to the Memorandum

No. T/2/22/35-36/DM dt. 14.11.95 you are hereby
informed that your explanation is not considered satisfactory,
hence not accepted.

As ASM on duty he was supposed to ensure
personally correct setting & clamping of points before
allowing any train to pass over defective points which
he failed to do. Hence after finding him responsible
for the charges levelled against him, I have decided
to impose upon him the penalty of reduction of his pay
to one stage lower in the same time scale of pay for
three years with cumulative effect.

(M. P. Mehta)

Signature & Designation of the
Disciplinary Authority.

*When the Note issued by an authority other than Disciplinary
authority here quote the authority passing the order.

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

Copy to:- ET/Chd & ET/DM Section of this office and SS/SW SM(Gaz)/GHY.
for information and necessary action.

INSTRUCTION : (i) An appeal against this order lies to
(Next immediate Superior to the Authority passing
the order DM.

Dr. DM/Lundig.

Divl. Operations Manager

1. श्री. रमेश, कामलि

2. श्री. रमेश, कामलि

3. श्री. रमेश, कामलि

4. श्री. रमेश, कामलि

5. श्री. रमेश, कामलि

6. श्री. रमेश, कामलि

7. श्री. रमेश, कामलि

8. श्री. रमेश, कामलि

9. श्री. रमेश, कामलि

10. श्री. रमेश, कामलि

Report of DAR Inquiry into the charges framed against Sri G. B. Paul, ASM/GHY vide ARM/GHY's memorandum of charge sheet No.TA/NGC/3 dated : 14/11/95.

I was appointed by Sr.DOM/LMG to act as an Inquiry Authority to inquire into the charge framed against Sri G.B.Paul, ASM/GHY vide Sr.DOM/LMG's letter No.T/2/22/95-96/LM, dated 27/1/2k. I have completed the enquiry on the basis of documentary and oral evidences, and the report is as under :-

The charged official was asked to submit the name of defence counsel, vide this office letter No.T/2/22/95-96/LM, dated 24/3/2000, but he did not nominate any D.C.

The date of DAR Enquiry was fixed to be held on 24/5/95. On the date of inquiry Shri G.B.Paul, ASM/GHY stated that he does not require any D.C.

The following article of charge has been framed against Shri G.B. Paul, ASM/GHY. :-

ARTICLE :- 1

"That the said Sri G.B. Paul, ASM/GHY while functioning as ASM/ West Cabin/GHY during the period from 13.00 hrs. to 21.00hrs. on 18/5/95 failed to ensure proper setting of point and issued OPT/27 and OPT/38 for the despatch of 4055 Dn resulting point No.61 got bursted and thus caused the accident".

HISTORY OF THE CASE :-

On 18/5/95, while 4055 Dn Brahmaputra Mail was departing from L/No.7 of GHY Station it met with an accdt. on point No.61 which was set and clamped in favour of L/No.3,4,5 & 6 and not in favour of L/No.7 wherefrom 4055 Dn was to start. Consequent to this wrong setting of point, point No.61 got bust and this caused the accdt.

FINDINGS :-

After careful consideration of all the evidences on record, I am of the opinion that Sri G.B.Paul, ASM/NG C is responsible for the charge brought against him under Article -I of the charge sheet. Sri Paul has also accepted the charge in his and to Q.No.1 below article of charge in the DAR proceeding.

REASONS FOR FINDING :-

On 18/5/95 at West Cabin/GHY during this time, the power supply as well as the generator was not functioning, as a result of which points and signals could not be operated from panel. Points were being operated by crank handle and for allowing signals to be passed at 'ON', OPT/27 was being issued to the drivers of the trains.

While despatching 4055 Dn from L/No.7, it was the bounden duty of ASM on duty at West Cabin/GHY, Sri G.B. Paul to ensure personally that all the points over which the Train will pass is correctly set and locked.

(Contd... 2/-)

Copy to be done copy
15/3/2001
Advocate

- : 2 : -

without ensuring this aspect, he handed over the OPT/27 for Dn Starter Signal for L/No.7 to Mr. Bhattacharjee Dy. SS/GHY for onward handing over to driver as per advice of Sri S.N. Mitra, Dy. SS/GHY, as stated by him, as a result of which point No. 61 burst which was wrongly set while the engine of 4055 Dn passed over it.

In this connection, relevant rule is appended below for ready reference which shows the ASM to be solely responsible for this accident.

G. & SR NO. 3.68/1(b) :-

" Before issuing OP/T-27 for a defective signal at his station or before granting line clear for a train for which OP/T-27 has been issued by the nominated station/rear station, the station master shall ensure by his personal inspection that the relevant points over which the train will pass, are correctly set, clamped and padlocked and the key of the padlock is in his possession and also that the lock bar (S) where provided is in its proper position. "

Note to administration :-

Shri G.B. Baul, ASM/GHY has submitted his final brief which is attached with the enquiry report. The disciplinary authority is requested to consider it before passing any order.

Dated :- 25/05/2000.

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

*Original to be
done copy
Mufson
19/3/2001
Advocate*

= 35 =

Thro-SS/CHY

Annexure - N

N. F. Railway.

Office of the
Divil. Rly. Manager (P),
Ludhiana, dtd : 19/2000,

OFFICE ORDER.

In terms of Sr. DOM/LMG's RLP No. T/2/22/95-96/EN dt. 21/8/2000, Shri Gostha Behari Paul, ASM/CHY, in scale Rs. 5000-8000/- has been punished with reduction of one stage lower in the same time scale of pay for 3 years with cumulative effect.

And as such, his pay is fixed as under:-

Present Pay and scale (5000-8000/-)	Pay to be drawn on reduction in scale Rs. 5000-8000/- for 3 yrs. with cumulative effect.
Rs. 6050/- 1-6-2000	Rs. 5900/- 21/ 8/2000 to 20/8/2003
	Rs. 6050/- 21-8-2003(effective)

for Divil. Rly. Manager (P),
N. F. Rly. Ludhiana.

No. ES- 43- C(T) Ludhiana, dtd: 19/09/2000.
Copy forwarded for information and n/action to:

- 1) DGM/LMG. (2) APO/CHY (3) SS/ CHY.
- 4) Shri Gostha Behari Paul, ASM/CHY thro
SS/CHY (5) Spare copy for P/case.

Staff concerned
Shahid
18/9.

for Divil. Rly. Manager (P),

Original to be
sent copy.
Mubashir
15/3/2001
Advocate

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

Through Proper Channel.

Sir,

Sub :- Appeal against punishment imposed by Sr.DOM/LMG.

Ref :- DOM/LMG's No. T/2/22/⁹⁵⁻⁹⁶96/LM dtd.21.8.2000.

I beg to place the following appeal for favour of your kind consideration and necessary action please.

In this context it is stated that a major Penalty memorandum was issued to me by Sr. DOM/LMG vide his no. T/2/22/95-96/LM dt. 27.01.2000.

In the above context a DAR enquiry was held and the findings drawn by the enquiry committee hold me responsible for violation of GSR no. 3.68/1 (b) which reads as under.

"Before issuing op/T-27 for a defective signal at his station or before granting line clear for a train for which op/T-27 has been issued by the nominated station/rear station, The station Master shall ensure by his personal inspection that the relevant points over which the train will pass are correctly set, clamped and padlocked and the key of the padlock is in his possession and also that the lock bar(s) where provided is in its proper position."

The Sr. DOM/LMG on acceptance of the above findings imposed the penalty vide his numbers mentioned in the reference.

I beg to state that ^{there} was no violation of GSR 3.68/1(b) by me. The grounds are placed for your appreciation :

1. That the said Rules have been framed keeping in view of the utmost operational safety for which it has been stated in the Rules that the person issued the op/T-27 shall satisfy himself personally and on his personal Supervision operation of points be made and set.

Recd

[Signature]

HST/08

13/10/2000.

Copy to be
forwarded to
Advocate
15/12/2001
Contd.....p/2.

2. The above observation clearly indicates that sufficiently responsible persons should be present while setting points manually and not by lower graded staff.

3. In connection with the above accident Sri K. Mukharjee P/Man/3/GHY was also charge ^{Shaded} ~~should~~ and during the Enquiry conducted against him vide his answers to Q.No. 1 stated:—

" At that time Sri S.M. Mitra Dy. SS/GHY was supervising shunting operation stationing himself near the west cabin. He advised me to reverse the point no. 61 from present position to opposite position. Accordingly I reversed the point no. 61. I am not supposed to ask my superior as to why point is being reversed. My duty is to only carryout their (superior's) orders :

It means beyond any doubt that the operation of points were supervised by on duty Dy. SS/GHY Sri S.M. Mitra near the cabin. After setting up the points Sri Samaresh Bhattacharjee Dy. SS/GHY in evening shift. collected the op/T-27 from me. It may please be appreciated that Sri Mitra was holding a higher position than me and since he supported that the operation of points were done in his ^{presence} ~~present~~ the Rules as stated above have been followed.

I may be allowed to submit humbly that in case. AOM/GHY had supervised the points setting and asked the on duty cabin ASM to issue op/T-27 would it be necessary for the cabin ASM again to Check the points himself, ^{had} ~~hence~~ it not ^{been} ~~be~~ treated as in subordination?

Your good office may review the punishment imposed by Sr. DOM/IMG on the spirit as stated above.

The copy of the proceeding drawn in the DAR enquiry is enclosed for your ready reference.

Thanking you,

Your's faithfully,

Yr. Obedt. Gopalabali

Gostha Behari Paul

(Gostha Behari Paul)

Corrected to be
true copy.
Mukharjee
15/3/2001
Advocate

Advocate ASM/GHY

Memorandum of Charge Sheet No. TA/NGE/3 dtd. 11-11-95.

Q. No. 1: Are you in a position to face the enquiry without any assistance from any Defence Counsel?

Ans: Yes, I shall represent my case. I don't require any defence assistance.

ARTICLE - 1 of Charge:

"That the said Shri K. Mukherjee while functioning as P/Man/GHY/Post Cabin during the period of his duty hours on 18.5.95 failed to ask Asm on duty for which purpose he was letting and clamping the point No. 61 resulting the point got braked and thus caused the accident."

Balaram Paul
Pr 000

The above charge was read out and translated in Bengali in presence of Shri G.B. Paul.

Q. No. 2: Do you accept the above charge brought against you?

Ans: At that time, in alibi, I was supervising shunting operation stationing himself near the Post Cabin. He advised me to ~~reverse~~ the point No. 61 from present position to opposite position. Accordingly, I reversed the point No. 61. I am not supposed to ask my superior as to what point is being reversed. My duty is to only carry out their (Superior) orders.

Q. No. 3: Had you any talk with the Asm, Shri G.B. Paul before the accident took place?

Ans: No, I had no talk with Shri G.B. Paul, Asm before the accident.

K. MUKHERJEE

P/Man (B) 24/5/2000

copy to be
Nubowar
15/3/2001
Advocate

DAR Proceedings into the charges framed against Shri K. Mukherjee, P/Man'B'/GHY vide ARM/GHY's Memorandum of charge sheet No.TA/NGC/3 dtd. 14.11.95.

Q.No.1 : Are you in a position to face the enquiry without any assistance ~~from~~ any Defence Counsel ?

Ans :- Yes, I shall represent my case. I don't require any defence assistance.

ARTICLE -I of Charge :

"That the said Shri K. Mukherjee while functioning as P/Man/GHY/west cabin during the period of his duty hours on 18.5.95 failed to ask ASM on duty for which purpose he was setting and clamping the point No.61 resulting the point got ~~burst~~ ^{burst} and thus caused the accident."

The above charge was read out and translated in Bengali in presence of Shri G.B.Paul.

Q.No.1 : Do you accept the above charge brought against you ?

Ans :- At that time, Sri Mitra, Dy.SS/GHY. was supervising shunting operation stationing himself near the west cabin. He advised me to reverse the point No.61 from present position to opposite position. Accordingly,

I reversed the point No.61. I am not supposed to ask my superior as to why point is being reversed. My duty is to only carry out their(Superiors)orders.

Q.No.2 : Had you any talk with the ASM, Sri G.B.Paul before the accident took place ?

Ans :- No, I had no talk with Sri G.B.Paul, ASM before the accident.

Sd/-

K. Mukherjee,
P/Man(B) 24/5/2000.

Typed copy of Annexure-0/2
Page 38

///

Mukherjee
15/3/2001
Advocate

Annexure - P

TAC- 528.

NO. 2/74/Cit.XV(C)

Maligaon, dated 1-9-94

28-9-

To : All ROEs
All DMs
All DAOS, WAOS/IDOs & DWS,
all Controlling Officers of the non-
Divisionalised Offices, N.E. railway

The General Secretary/HERMU & HERMU/PRO with 50 spare copies each
The General Secretary/GOBREA/Maligaon with 20 spare copies

Sub: ~~Punishment~~ to staff involved in accidents.

-0000-

A copy of Railway Board's letter No.94/safety(A&R)/25/6 dated 17-8-94 on the above subject is forwarded for information and necessary action,

Chandra
17/9/94
for CHIEF PERSONNEL OFFICER

(Copy of Railway Board's letter No.94/Safety(A & R)/25/6 dated 17-8-94)

-0000-

Subject:- As above.

-0000-

Board in their meeting, held on 22nd July/94 ^{have} directed that:

"The GMs should review the punishments imposed in accident cases ~~periodically~~ Also, all cases after disposal of appeal / Review petitions must invariably be put up to the General Managers. Details of DMs/PHODs who have violated the punishments should be compiled and furnished to the Board".

The instructions may be noted for compliance.

Sd/-MG Arora
Exec. Director/Safety
Railway Board.

GC.29/8/94.

-0000-

to be
certified
copy
M. P. S. S.
15/3/2001
Advocate

56

वसिष्ठ कर्मिक अखिलेश्वरी
Divi. Personal Office.
उ. गो. रेलवे, लाहौर
N. F. Ry., Landings

Filed by the respondent
Moorey D. Chatterjee only
Sargood
7/6/2002

Sri ~~6~~ B. Paul

Union of India & Ors.

Written Statement on behalf of the respondents.

1. That, the respondents have gone through the Original application and have understood the contents thereof.

3. That in regard to statements made in Para 6.1 of the application. It is stated that the applicant was penalized against under Disciplinary and Appeal Rules on specific charge for causing accident of 4055 Dn. B.P. Mail on 18.05.95. Admittedly a photocopy of the findings of the Joint Enquiry Committee based on which the charge had been framed was supplied to the applicant.

contd...p/2

5. That in regard to statements made in para 6.3 ibid, the allegation is categorically denied. It is stated that in so far as supply of copies of documents are concerned the delinquent Rly. Servant is not entitled to have access to the entire file. Instead, he can have access to only those documents which he considers relevant for the purpose of defending himself.

contd...p/3

in the enquiry. Since the applicant was already supplied with a copy of the Joint enquiry Committee report which is the basis on which the charge had been framed, he was fully aware therefrom as to which documents/ Statements he could use for his defence. He did not do it. When the opportunity offered to him twice to appear before the Disciplinary Authority so as to identify the documents he needed, he declined to accept the offer. It is further stated that the applicant had another opportunity in terms of Rule 9(12) of RS (D&A) Rules 1968 to give a list of documents to the Inquiry Officer to be discovered and produced in the enquiry. No such request was made by the applicant before the enquiry officer as will be evident from Enquiry Proceedings annexed to the application as ANNEXURE-'I'.

6. That in regard to statements made in paragraph-6.6 ibid, it is stated that the model time schedule supplied by the Railway Board for finalisation of disciplinary cases is not mandatory. However, after appointment of the Enquiry Officer the case has been finalised expediting.

7. That in regard to statements made in paragraph -6.7 ibid, it is denied that the applicant was denied reasonable opportunity of defending himself as will be evident from Annexure-'I' to the application. The applicant had admitted his guilt vide. Answer to question No.1 put by the Enquiry Officer. It is a well settled principles of law that where the charge is admitted by the Govt. Servant and no argument is offered

contd...p/4

52
S. Divl. Personnel Officer
N. F. Rly., La. J.

5/1
अधीनस्थ अधिकारी
S. Div. Personal Office
गोपनीय, सावधान
N. F. Rly., La. d. 13

about the facts alleged. It is sufficient for the purpose of Disciplinary Authority to punish him on the basis of his admission alone. The applicant also submitted a written brief dated 24.5.2002 (Annexure-H) to the Enquiry Officer where too he did not raise any objection about denial of reasonable opportunity or any violation of Rule, Instead he harped on shirking his responsibility on others. There after in response to a Show-cause Notice enclosing a copy of Enquiry report sent to him vide letter dated 13.7.2000 (Annexure-'J') of the applicant made up another story which he neither narrated in the enquiry nor in his final brief. He further stated in his representation against the finding of the enquiry officer that he would be more cautious in his performance and would leave no scope for complaint in future. Hence on the basis of evidence adduced during the enquiries and his own admission of guilt, the disciplinary authority imposed the penalty. It is evident that neither there was any procedural error nor any denial of reasonable opportunity to the applicant.

8. That in regard to statements made in paragraph-6.8 & 6.9 *ibid*, the same are matters of record, hence accepted.

9. That in regard to statement made in paragraph-6.10 *ibid*, I deny that any hasty action was taken in imposing the penalty. I reiterate that the procedure laid down in the rules has been scrupulously followed

contd...p/5


and the opportunities were given to the applicant to defend his case but in so far as supply of any particular documents are concerned the applicant himself by his conduct declined to avail the opportunity offered and on his own admission of the charges before the Enquiry Officer the applicant was punished and now he can not turn around and complain that opportunity was not given.

10. That in regard to statements made in paragraph 6.11 *ibid*, I state that Administrative justice was given in all fairness and there was no occasion for the applicant to agitate the matters of denial of opportunity in the Enquiry before coming to the Hon'ble Tribunal.

11. That in regard to statements made in paragraph 6.12 *ibid*, it is stated that while Rule 3.38, 3.70(3) & Rules - 3.68/1(b) of G&SR are all related to the duties of Station Master in giving permission to take signals of in certain circumstances. The Enquiry Officer in course of the Enquiry found that appropriate rule applicable circumstances of the case that had been violated was Rule 3.68/1(b) of G&SR and accordingly he gave a findings. There was nothing wrong on the part of the Enquiry Officer drawing a conclusion independently of the allegation levelled against the charged Official. The Disciplinary Authority imposed the penalty on the basis of the findings of the Enquiry Officer and no duty is caste upon the Disciplinary Authority to quote the relevant rule. It was sufficient that the Disciplinary Authority recorded the fact that Charged Official as ASM on duty was supposed to ensure personally that points have been correctly set and clamped before allowing any

contd...P/6

60
S. Divl. Person Officer
N. P. Rly. Ltd. Secy


S. Div. Person. Office
N. J. Rly., Landing

train to pass over defective point which the charged official failed to do. The Charged Official himself had admitted the charge vide Answer to Question No. 1 put to him by the Enquiry Officer where he specifically admitted the charge and that he handed over the OPT/27 (Authority to proceed for the train) without ensuring correct setting of points.

12. That in regard to statements made in paragraph 6.13 *ibid*, it is stated that the averments made in this paragraphs are absolutely false in as much as there is no difference in the Charge-Sheet and the Enquiry Report in so far as the reasons for the accident are concerned. The applicant has intimated that the rules for whose violation he was charged relates to Station Master and not to an Asst. Station Master which he was, where as Rule- 1.02(53) of G&SR defines Station Master as the person on duty who is for the time being responsible for the working of Traffic within Station limits, and includes any person who is for the time being in independent charge of the working of any Signals and responsible for the working of trains under the system of working in force. Therefore, the argument of the applicant that as an Asstt. Station Master of a Cabin he was to depend solely on the instruction of the Station Master does not hold water. His submission that he could not get any opportunity to cross examining the Station Master on duty as the Disciplinary Authority denied him this opportunity is totally false in as much as at no

contd...P/7

52
Personal Office
17.1.2014

stage of Enquiry the charged Official demanded production of any Station Master for the purpose of cross examination. It is a well settled law that if there is no demand at the Enquiry Stage for cross examination of a witness, non-examination of such a witness is not a denial of reasonable opportunity.

13. That in regard to statements made in paragraph 6.14 *ibid*, it is stated that averments made are totally baseless in as much as the applicant was Station Master within the meaning of Rule - 1.02(53) of G&SR as he was responsible for working of the Traffic within Station limits and he was also responsible for working of the trains in accordance with G&SR and as such on being found guilty and on his own admission of guilt he was found responsible for violation of Rule- 3.68/1(b) of G&SR which caused derailment of an important passenger carrying train . It is sheer luck that this derailment did not cause any loss of life.

14. That in regard to statements made in paragraph 6.15 *ibid*, it is denied that there was any failure on the part of Disciplinary Authority in properly considering the relevant documents, Inquiry Report and written brief of the charged official. There was no requirement on the part of the Disciplinary Authority to mention anything about the written brief in the Show-Cause Notice issued before imposition of penalty.

15. That in regard to statements made in paragraph 6.16 and 6.17 *ibid*, it is denied that there was any violation of procedure laid down in RS (D&A), 1968 in issuing the Charge-Sheet, conduct of the Enquiry and imposition of penalty.

16. That in regard to statements made in paragraph 6.18 *ibid*, it is stated that since DRM/LMG had already exercised the power of revision after imposition of penalty in accordance with proviso to Rule - 25(2) read with Rule - 25(1) and as such in all fairness to the applicant he was directed to prefer the appeal to Chief Operations Manager / MLG in terms of DRM(O)/ Lunding's letter No. T/2/22/95-96/LM dated 30.3.2001. But the applicant failed to prefer any appeal to the Chief Operations Manager / MLG.

17. That in regard to statement made in paragraph 6.19 *ibid*, it is stated that the applicant has misrepresented the purport of Railway Board's Notification dated 17.9.94 as will be evident from Annexure 'P' of the application which shows that General Managers have been directed to periodically review the punishments imposed in accident cases and also such cases should be put up to GM after disposal of appeal/review petition. This circular does not amend the provision of Rule - 25 in any manner as stated herein above the applicant failed to prefer appeal to COM as he was directed to do. Hence, he cannot complain of non consideration of his appeal.

65
रहस्य-आधिकारिक अधिकारी
Div. Personnel Officer
जम्हूरियत, लार्डिंग
N. B. Rly., Lucknow

18. That in regard to statements made in paragraph 6.20 ibid, it is stated that the documents sought by the applicant vide his application dated 12/95 were not specific and when the Disciplinary Authority called him twice to appear before him so as to enable him to identify the specific documents he needed for the purpose of his defence, the applicant declined to avail this opportunity . Further he had another opportunity to seek discovery and production of documents with Enquiry Officer during the enquiry, which too he failed to avail. It was after the conclusion of the enquiry that he started making up stories apportioning blame on others. Hence, the Disciplinary Authority was justified in not taking cognizance of these stories and confirm himself to the evidence adduced during the Enquiry which included his admission of guilt also. Hence, the penalty imposed was commensurate with his guilt.

19. That in regard to statement made in paragraph 6.21 ibid, it is stated that sr. DOM/LMG did not violate Railway Board's letter No.E/D&a 71 RG 6-4 dated 27.2.71 as the instruction regarding appointment of an Inquiry Officer lower in status than that of Officer who conducted the fact findings Inquiry is not applicable in cases arising out the fact Finding Enquiries like Accident Enquiry, enquiries made by Vigilance Organisation etc. The Enquiry Officer in this case was sufficiently senior in rank than the charged official as the Inquiry Officer was a Traffic Inspector in Scale of

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65
S. Div. Officer's Office
N. B. Rly., La. d.

Rs. 7450-11,050/- whereas the Charged Official was in scale of Rs. 5000-8000/-.

20. That in regard to statements made in paragraph - 6.22 ibid, it is denied that the applicant was punished unheard and that there was any violation of D&A rules.

21. That in regard to statements made in paragraph - 6.23 ibid, it is stated that the averments made was no lapses flaws in short coming in the proceedings of the applicant and all reasonable opportunities were offered to him to effectively defend himself but the applicant chose not to avail the opportunity and decided to adopt non confirmational course in the enquiry by admitting his guilt and begging to be excused with the assurance of remaining more alert in future. But when the punishment was imposed the applicant decided to pick holes in the disciplinary proceedings by claiming denial of reasonable opportunity, non-observance of Rules etc. But it is a well settled principle of law that reasonable opportunity is not just a matter of form but it is a matter of substance . In this case facts speak for themselves, namely, that he was issued a Charge-Sheet with definite and distinct Articles of charges along with the list of documents based on which the charge was to be sustained, the Charge-Sheet was duly served on him, he acknowledged the same, he sought the entire records of the Enquiry proceedings but when he was asked to appear before the Disciplinary Authority on two different occasions he did

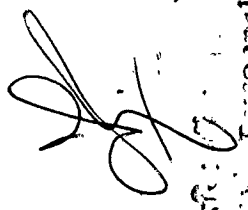
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S. Div. Operations Manager
N. D. N.Y. Landings

not appear and finally when the Enquiry was held he admitted the charge and assured calling in question the Enquiry Proceedings which was without any substance and never he has stated anything about his own admission of guilt during the Enquiry. His appeal to DRM could not be considered by DRM by following the principles of natural justice as DRM had already exercised his power of revision and hence he could not consider his appeal and so the applicant was directed to agitate the matter in appeal before Chief Operations Manager. The Opportunity too was not availed by him. As such the application filed by him on frivolous and fictitious grounds are liable to be rejected and dismissed with cost to the Respondents.

22. That in regard to statements made in paragraph - 6.24 ibid, it is stated that although the Disciplinary proceeding was initiated by issuance of Charge-Sheet by the Area Manager/Guwahati, the case was transferred to Sr.Divisional Operations Manager/ Limding for expeditiously finalising the proceedings. Accordingly Sr. Divisional Operations Manager took over as Disciplinary Authority and issued the Order datred 27.1.2000 apointing Inquiry Officer. In terms of Schedule - II appended to Rule - 7 of RS (D&A) Rules, 1968, Sr. Divisional Operations Manager and other Higher Authorities are competent to impose any penalty on any Group 'C' and 'D' staff. Hence, there is no procedural error on the part of Sr. Divisional Operations Manager in taking over as Disciplinary Authority.

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N. J. Kly, -ending

23. That in regard to statements made in paragraph - 6.25 ibid, it is stated that the proper forum to quibble over the findings of the joint Enquiry Committee was the Dicipinary Enquiry where he had the right to demand production of as many witnesses as he deemed relevant but the fact that he did not do so does not entitle him to agitate the matter before Hon'ble Tribunal, as the Hon'ble Tribunal is not a fact finding body.

24. That in regard to statements made in paragraph 6-26 ibid, it is stated that there is no procedure requirement that each and every letter should be signed by the Disciplinary Authority himself. Hence, an innocuous letter asking the Charged Official to submit the names of Defence Counsel was issued by the office.

25. That in regard to statements made in paragraph - 6.27 ibid, it is stated that the Enquiry Officer held the enquiry and arrived at the findings independently and uninfluenced by the findings of the Joint Inquiry Committee as will be evident from the Enquiry report itself.

26. That in regard to statements made in paragraph - 6.28 ibid, it is stated that the applicant has vainly tried to squirm out of his predicament of admission of guilt by stating that he made the admission of guilt under compulsion of the Enquiry Officer where as had it

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68
N. F. Rly., L.
Office
N. F. Rly., L.

been correct, he had opportunity to retract from admission and complained against the Enquiry Officer in his written brief or in his final representation to Disciplinary Authority on receipt of Enquiry report or in his appeal to Divisional Railway Manager. It demonstrates that the applicant refuge behind falsehood. It is categorically denied that there was any coercion in extracting the admission from him by the Enquiry Officer. It is falsely claimed by the applicant that no Show - Cause Notice was issued to him whereas, infact after the conclusion of Enquiry, the Disciplinary Authority issued a Show-Cause Notice by letter dated 13.7.2000 enclosing a copy of the Enquiry Report and directing him to submit representation within 10 days if any. The applicant also replied to the Show-Cause Notice by representation dated 9.8.2000.

It is submitted that there was no arbitrariness, unfairness, injustice and irregularity in the Disciplinary Proceedings and procedure laid down in the rules have been properly followed.

27. That in regard to statements made in paragraph - 6.29 ibid, the averments made in this paragraph are categorically denied and the onus of establishing bias or malafides squarely lies on the applicant.

28. That in regard to statements made in paragraph -6.30 ibid, it is stated that there was no violation of

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S. Divl. Officer
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N. P. Rly., La. C. 12

any laws or rules in the conduct of the Disciplinary proceedings and imposing of penal order and there is no malafide or unfairness in the administrative decision and as such the application deserves to be rejected with cost to the Respondents.

29. That in regard to statements made in paragraph -6.31 ibid, I denied that there was any violation of principles of natural justice or denial of reasonable opportunity to the Charged Official and as such the application is liable to be dismissed with cost to the Respondents.

30. That in regard to statements made in paragraph - 6.32 ibid, it is categorically denied that there was any irregularity or illegality in imposition of penalty. The facts stated here in above do not establish any violation of Article - 14, 16, 39(A), 309 & 311(1) of the Constitution and as such the application is liable to be dismissed with cost to the Respondents.

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

contd.....to....Verification

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

I, Bri. Trikalagya Babhe....., working as
Senior Divisional personnel officer..... N.F. Railway,
Lumding
Maligaon, do hereby verify that, the statements made in
the paragraphs 1 to 31 are true to my knowledge.

Trikalagya Babhe

S I G N A T U R E

Guwahati,

31/05/2002.

वरिष्ठ कर्मिक अधिकारी
Divl. Personnel Office
पु.सी.रेलवे, लामडिंग
N. F. Rly., Lumding