

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

✓ (DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 302/2001

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(See Rule 42)

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

Original APPLICATION NO. 302 OF 2001

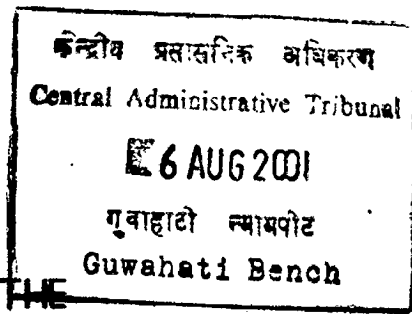
APPLICANT (S) Ghanashyam Dho

RESPONDENT (S) H. O. I Jones

ADVOCATE FOR APPLICANT(S) B.M. Sarma, A.D. Chaudhary
ADVOCATE FOR RESPONDENT(S) Case.

ADVOCATE FOR RESPONDENT(S)

Notes of the Registry	dated	Order of the Tribunal
<p>(this application is in form but not in the proper form. Petition is filed vide M.F. No. 1000 C.F. for Rs. 50/- deposited vide IPO/BD No 66792744 Dated 29.5.2001)</p> <p>Dy. Registrar 9/8/01</p> <p>mb</p> <p>13/8/01</p> <p>7.8.2001</p> <p>Copy of the order has been sent to the Office. Issuing the fine to Applicant as well as the Dr. C.S.C. for the same.</p>	13.8.01	<p>Mr. B.M.Sarma, learned counsel for the applicant submitted that he has wanted to withdraw the application. The application is allowed, kept it open in the appropriate forum. The application is dismissed on withdrawal.</p> <p>Member</p> <p>Vice-Chairman</p>



Filed by 3

Ghanashyam Das
Though, Arun Das Choudhary Adv.
06-08-01

IN THE

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI.

BENCH: GUWAHATI.

(An application U/S. 19 of the Administrative Tribunals
Act 1985)

Title of the Case: _____ O.A No. 302/2001

Ghanashyam Das ----- APPLICANT.

Vs

Union of India & Ors -----RESPONDENTS.

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For use in Tribunal's Office:

| Date of Filing: |

| Registration No.: |

| REGISTRAR |

Filed by -1-

IN THE
CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI.

BENCH: GUWAHATI

(An application U/S 19 of the Administrative Tribunals Act, 1985)

O.A.No. _____/2001

-BETWEEN-

Shri Ghanashyam Das,

S/o Late Shri Ram Chandra Das.

Vill. Kathalantary, P.O. Sarutapa,

P.S. Bhabanipur, Dist. Barpeta -----APPLICANT

-VERSUS-

1. Union of India through the General manager,
N.F. railway, Maligaon, Guwahati-11
2. Chief Security Commissioner, N.F. Rly., Maligaon,
Guwahati-11
3. Addl. Chief Security Commissioner, N.F. Rly.,
Maligaon, Guwahati-11
4. Divisional Security Commissioner, N.F. Rly.,
Katihar, Bihar ----RESPONDENTS

1. THE APPLICATION IS AGAINST THE FOLLOWING:

Against the Appellate order passed by the Addl. Chief Security Commissioner, N.F. Railway, Maligaon vide order No. P/ 213/Pro-183/2001 dated 27-3-2001 upholding the order of removal from service of the applicant passed by the Divl. Security Commissioner, N.F. Railway, Katihar vide memo No. AP/Pro-26/ 153/91 (MAJOR) dated 31-1-2001.

2. JURISDICTION OF THE TRIBUNAL.

Ghanashyam Das
Through Arun Das Choudhary, Adv. 06-08-01

That the Appellate Order being passed by the Addl. Chief Security Commissioner, N.F. Rly Maligaon, Guwahati, the Central Administrative Tribunal: Guwahati has jurisdiction to examine the impugned order of removal from service.

3. LIMITATION.

That the appeal preferred by the applicant before the Addl. Chief Security Commissioner, N.F. Rly, Maligaon, Guwahati against the order of removal of service of the applicant passed by the Divl. Security Commissioner, NF Railway, Katihar being disposed of by the order dated 27-3-2001, this instant application is within the limitation prescribed by Section 21 of the Central Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE.

(i) That the applicant joined the Railway Protection Force in the year 1962 and was appointed as constable and in course of time was duly promoted to the post of Head Constable. The applicant herein states that through out his service life he had been rendering his service to the best of his abilities, with utmost sincerity and due diligence.

(ii) That, by order dated 27-9-91 vide Memo. No. NB/G12/DAR/91, the Asst. Security Commissioner, N.F. Rly, New Bongaigaon, in exercise of the powers conferred by Rule 40 of the Railway Protection Force Rules, 1959, placed the applicant under suspension in contemplation of a disciplinary proceeding against the applicant.

A copy of the order dated 27-9-91 passed by the Asst. Security Commissioner, N.F. Rly, New Bongaigaon is annexed hereto and marked as ANNEXURE-1

(iii) That , having placed the applicant under suspension by Order Dated 27-9-91 vide memo. No. NB/G12/DAR/91, the Asst. Security Commissioner, N.F. Rly, New Bongaigaon, vide Memo. No. AD/Pro 26/153/91 (MAJOR) dated 8-10-91 issued memorandum to the applicant under section 9(1) (i) of the RPF Act, 1957 read with Rule 153 of the RPF rules, 1987, proposing to hold an enquiry against him on the alleged charge that " the applicant, while functioning as NK/RPF/NBQ/WS during the period 25-9-91, while he was on duty in workshop beat No. 1+6+8 of NBQ/WS from 18/ hrs of 25-9-91 to 06/hrs of 26-9-91, he committed the theft of Rly. Materials 251 Nos. of welding Electrodes containing in 3 Pkgs or unlawfully obtained the same from the workshop and disposed at the outside of the workshop leaving his duty beat unauthorisedly which ultimately tantamount a gross misconduct, negligence and poor integrity on the part of the NK." By the said memorandum, the applicant was intimated that Sri Binen Brahma/IPF/P/NBQ was nominated as Enquiry Officer.

A copy of the Memo. No. AD/Pro 26/153/91 (MAJOR) dated 8-10-91 is annexed hereto and marked as ANNEXURE -2

(iv) That, vide Memo No. FPF/DAR-2/92 dated 27-2-92, the applicant was informed that to start with the DAR enquiry , 3/3/92 was the date fixed.

A copy of the Memo No. FPF/DAR-2/92 dated 27-2-92, is annexed hereto and marked as ANNEXURE-3

(v) That the applicant states that the enquiry officer Shri B. Brahma held the DAR on different dates and during the enquiry

proceedings recorded the statements of 5 witnesses in connection with DAR enquiry against the applicant. The applicant was also given opportunities to cross-examine the aforesaid witnesses. The applicant craves the leave of this Hon'ble Tribunal to refer to and rely upon the said depositions as and when required.

(vi) That the applicant states that vide order No E/265/AP/92 dated 19/8/92, the Divisional Security Commissioner, N.F.RLY Alipurduar Jn., in exercise of the powers conferred by Rule 239.2 of the RPF Rules, 1987 was pleased to revoke the suspension order No.NB/G12/DAR/91 dated 27-9-91, with immediate effect. The reason for revocation as set forth was that the applicant was taken up under section 3 (a) RP (UP) Act vide IPF/NBQ/WS Post case No. 1 (9)91 and the case was subjudice. Moreover, the applicant was also taken up departmentally and the DAR enquiry has been completed in the meanwhile and since, the RP (UP) Act case which was subjudice before the Court of law and might take considerable time to finalise and might cause loss of exchequer to the Rly. Administration, if he remains under suspension. It was further indicated in order dtd.19/8/92 that the period of suspension would be regularized on the merit of the Court's Judgement.

A copy of the order No.E/265/AP/92 dated 19/8/92 is annexed hereto and marked as ANNEXURE-4

(vii) That the applicant states that the criminal proceeding was initiated under section 3(a) of the RP (UP) Act in the Court of the Special Judicial Magistrate, N.F. Railway, Guwahati against the applicant and one Shri Paritosh Sutradhar.

(viii) That the learned Special Judicial Magistrate, N.F. Railway, Guwahati, upon perusing the evidences on record and relying upon the

statements of the prosecution witness, P.W.5, namely Shri B. Brahma, the Enquiry Officer in the Departmental Proceedings, by judgement and order dated 7-8-2000 came to the conclusion that the applicant and Shri Paritosh Sutradhar are guilty under section 3(a) RP (UP) Act. However considering the facts and circumstances of the case held that since the applicant is an RPF constable on the verge of retirement while accused Shri Paritosh Sutradhar is a petty businessman and the stolen property of the case record were recovered and seized immediately after the incident and the value of which is not very high and moreover, since this is an eight years old pending case and no previous conviction is proved against the accused persons and so considering the age, character and antecedents of the offender, it is expedient to release the offenders Shri Paritosh Sutradhar and the applicant on probation of good conduct by applying Probation of Offenders Act, 1958 instead of sentencing them at once to any punishment and accordingly the learned Special Judicial Magistrate, N.F. Railway Guwahati ordered that the accused persons, the applicant and Shri Paritosh Sutradhar be released on probation of good conduct on entering into a bond of Rs.5000/- each with one local surety to appear and receive sentence when called upon during a period of one year as the court may direct and in true mention to keep the peace and be of good behaviour.

A copy of the judgement and order dated 7-8-2000 passed by the Special Judicial Magistrate, N.F. Railway, Guwahati is annexed hereto and marked as ANNEXURE-5

(ix) That the applicant states that inspite of the Special Judicial Magistrate, N.F. Railway, Guwahati releasing him on probation by his judgement and order dated 7-8-2000, the Divl. Security

Commissioner, N.F. Rly, Katihar vide order No. AP/Pro-26/153/91 (MAJOR) dated 31-1-2001 removed the applicant from service with immediate effect and further passed order that the suspension period shall be treated as on suspension.

A copy of the order dated 31-1-2001 is annexed hereto and marked as ANNEXURE-6

(x) That the applicant states that the aforesaid order No. AP/Pro-26/153/91 (MAJOR) dated 31-1-2001 was passed on the ground that the enquiry officer Shri. B. Brahma, who conducted the DAR enquiry against the applicant found the applicant guilty of the charges levelled against the applicant. The Divisional security Commissioner, NF Rly., Katihar observed that the Hon'ble Special Judicial Magistrate, N.F. Railway, Guwahati has finalized the case by holding the applicant guilty and convicted under RP (UP) Act and under the circumstances, the Divl. Security Commissioner, N. F. Rly , Katihar, opined that the applicant is not worthy member of the force and the end of justice will not meet unless the party charged is removed from service. And accordingly awarded the applicant the punishment of removal of service with immediate effect, by his order dtd.31/01/2001

(xi) Being aggrieved by the order No. AP/Pro-26/153/91 (MAJOR) dated 31-1-2001, the applicant preferred an appeal before the Dy. Chief Security Commissioner, N.F. Rly, Maligaon.

A copy of the appeal preferred by the applicant before the Dy. Chief Security Commissioner, N.F. Rly, Maligaon, is annexed hereto and marked as ANNEXURE-7

(xii) That by order No. P/213/Pro-183/2001 dated 27-3-2001, the Addl. Chief security Commissioner passed the appellate order against

the appeal preferred by the applicant and therein opined that since the Departmental Enquiry as well as the Court of Law has found the applicant guilty, there is no ground to intervene into the matter and hence upheld the decision of the Disciplinary Authority.

A copy of the Appellate order No. P/213/Pro-183/2001 dated 27-3-2001 is annexed hereto and marked as ANNEXURE-8

(xiii) That being aggrieved by the aforesaid Appellate order dated 27-3-2001 passed by the Addl. Chief security Commissioner, N.F.Rly, Maligaon, Guwahati, the instant application is preferred by the applicant.

5. GROUNDS FOR RELIEF WITH LEGAL REMEDIES.

a.) For that, the order of removal from service passed by the Divl. Security Commissioner, N.F. Rly, Katihar vide order no. AP/Pro-26/153/91 (MAJOR) dated 31-1-2001 suffers from serious irregularities and is not tenable under the well established provisions and principles of law and as such the impugned order of removal from service is liable to be set aside and quashed.

b.) For that, the learned Special Judicial Magistrate, N.F. Rly, Guwahati having released the applicant on probation by judgement and order dated 7-8-2000, the Divl. Security Commissioner, N.F. Rly, Katihar ought not to have passed the impugned order of removal from service taking into consideration the order passed by the learned Special Judicial Magistrate, N.F. Rly, Guwahati and as such the impugned order of removal from service is liable to be set aside and quashed.

c.) For that, the Divl. Security Commissioner, N.F. Rly, Katihar erred in passing the impugned order of removal from service on the same charge as that was before the learned Special Judicial Magistrate, N.F. Rly. Guwahati who after taking cognizance passed order against the applicant on those same charge and as such the impugned order of removal from service is liable to be set aside and quashed.

d.) For that, the learned Special Judicial Magistrate, N.F. Rly, Guwahati erred in law in coming to the conclusion that the applicant is guilty under section 3 of the R.P.(UP) Act by taking into consideration and giving undue importance to the evidence of the Prosecution witness P.W.5 namely B. Brahma who incidentally was the Enquiry Officer in the Departmental Proceeding conducted against the applicant. Had not the learned Special Judicial Magistrate, N.F. Rly, Guwahati relied upon the false, fabricated evidence of the Enquiry officer Shri B. Brahma, the learned Special Judicial Magistrate, N.F. Rly, Guwahati would not have erred in coming to the conclusion that the applicant is not guilty under section 3 of the R.P.(UP) Act and would have honourably acquitted the applicant of all the alleged charges and as such the impugned order of removal from service is liable to be set aside and quashed.

e.) For that, the impugned conviction passed by the learned Special Judicial Magistrate, N.F. Rly, Guwahati is vitiated by the fact that the enquiry officer Shri B. Brahma, who conducted the departmental enquiry proceeding against the applicant came before the Hon'ble Court as witness and deposed and such deposition is clearly contradictory to the principles governing the law of evidence and the reliance upon such evidence by the learned Special Judicial Magistrate, N.F. Rly, Guwahati makes the very conviction order

contradictory and questionable in the eyes of law and moreover such conviction is miscarriage of justice and the reliance of such conviction by the concerned authority while passing the order of removal from services subjects the order to grave irregularities and as such the impugned order of removal of the applicant from service is liable to be set aside and quashed.

- f.) For that, notwithstanding the fact that the judgement and order dated 7-8-2000 passed by the learned Special Judicial Magistrate, N.F. Rly, Guwahati has not been appealed against, the disciplinary authority could not press into service the findings of the criminal proceeding against the applicant in piecemeal manner in isolation of the ultimate order of the criminal court and therefore the impugned order of removal of the applicant from service is liable to be set aside and quashed.
- g.) For that, the evidences on records and the statements of the witnesses recorded in connection with DAR enquiry against the applicant does not lead anywhere close to any sort of prima facie conclusion that the applicant was anywhere connected with the alleged offence he was charged with and as such the impugned order of removal from service is liable to be set aside and quashed.
- h.) For that, except the alleged confessional statement of the applicant there are no evidences on records or independent eye witnesses to corroborate the fact that the applicant has and no one else has committed the offence charged with. Moreover, no inferences can be drawn from the statements of the witnesses recorded in connection with the DAR enquiry against the applicant that the applicant is the offender. The allegation that the applicant is the offender and thus guilty of the charge is drawn from the mere fact that the witnesses noticed one person wearing Khaki uniform was

seen near the place of offence and on the basis of such mere fact no allegation can be leveled against the applicant, but having done so, the finding of the Department enquiry proceeding suffers from grave irregularities and as such the impugned order of removal from service is liable to be set aside and quashed.

i.) For that, the Departmental enquiry officer has solely relied upon the alleged confessional statement of the applicant without any independent corroborative evidence and such reliance defeats all principles of fairness and proper appreciation of evidence and as such the impugned order of removal from service is liable to be set aside and quashed.

j.) For that, the applicant states that the alleged confessional statement on which the Department Enquiry officer has solely relied upon to arrive at the purported conclusion that the applicant is guilty of the offence charged with was obtained from the applicant under duress and undue influence and as such no evidentiary value can be attributed to such statement obtained by means of duress and undue influence and as such the impugned order of removal from service is liable to be set aside and quashed.

k.) For that, taking into consideration the entire findings of the Departmental enquiry proceeding, there is no material/evidences to justify any sort of conclusion that the applicant is guilty of the alleged offence charged with and as such the impugned order of removal from service is liable to be set aside and quashed.

l.) For that, the applicant states that the quantum of punishment awarded by the concerned authorities is totally disproportionate with the gravity of the alleged misconduct, if any, and thus is in violation of the doctrine of proportionality and as such the impugned order of removal from service is liable to be set aside and quashed.

m.) For that, the applicant who joined the concerned department in the year 1962 has rendered almost four decades of valuable service. The concerned authorities ought to have taken into consideration the length of the valuable service rendered by the applicant and restrained itself from unnecessarily harassing the applicant by passing the impugned order of removal from service when the applicant had only one month of service left before superannuation. Malafide is writ large on the action of the disciplinary authority and such vindictive attitude is anathema in service jurisprudence and as such the impugned order of removal of the applicant from service is liable to be set aside and quashed.

n.) For that, if the impugned order of removal from service is not set aside and quashed by this Hon'ble Tribunal there would be miscarriage of Justice and the applicant would be subjected to grave difficulties and serious pecuniary hardships at the fag end of his life and his hard toil for nearly four decades would be a complete waste.

o.) For that, in any view of the matter the impugned order of removal from service is liable to be set aside and quashed.

6. DETAILS OF REMEDIES EXHAUSTED:

The applicant preferred an appeal against the order of removal from service dated 31-1-2001 passed by the Divl. Security Commissioner, N.F. Rly, Katihar and the same was dismissed by order dated 27-3-2001 by the Addl. Security Commissioner, N.F. Rly, Guwahati.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT:

The applicant further declares that he has not filed any writ application or suit regarding the matter in respect of which this application has been made, before any court of law or any other authority or any other bench of this Hon'ble Tribunal and no such application or suit is pending.

8. RELIEF SOUGHT FOR:

In the premises aforesaid your applicant prays that your Honour may be pleased to call for the records, calling upon the respondents to show cause as to why the order No. AP/Pro-26/153/91 (MAJOR) dated 31-1-2001 and the Appellate Order No.P/213?Pro-183/2001 dated 27-3-2001, removing the applicant from service be set aside and quashed and/or pass such further or other order/orders as this Hon'ble Tribunal may deem fit and proper.

And for this the applicant as in duty bound shall ever pray.

9. APPLICATION IS FILLED THROUGH ADVOCATE:

- I. B.M. Sarma
- II. A.D. Choudhury

10. PARTICULARS OF IPO

I.P.O. - 66 792744
DATE OF ISSUE: 29/05/2001
ISSUED FROM: GPO, Guwahati
PAYABLE AT: Guwahati

11. LIST OF ENCLOSURES

As stated in Index

VERIFICATION.

I, Shri Ghanashyam Das, S/o Late Shri Ram Chandra Das. Aged about 60 years resident Vill. Kathalantary, P.O. Sarutapa, P.S. Bhabanipur, Dist. Barpeta, Assam, do hereby solemnly affirm and verify that the statements made in the accompanying application in paras 1,2,3, and 4 (i, v, vii, x, xiii) are true to my knowledge and those made in paras 4 (ii, ii, iv, vi, viii, ix, xi, xii) being matters of records are verily believed to be true on the basis of the information derived therefrom and the rest are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts

And I sign this affidavit today the 6th day of August'2001 at Guwahati.

Ghanashyam Das.

N. F. RAILWAY.

RAILWAY PROTECTION FORCE
ORDER OF SUSPENSION.

RPF/E-16(A)

Dated- 27-9-91.

NO. NP/G10/SAR/91.

Place of issue:- New Bongaigoan.

O R D E R.
(SCE RULE 40)

Whereas disciplinary Proceedings
against sri- Ghanashyam Das.
NK/RPF/NBQ- ws.
(Name and designation of Member
of the force) is contemplated/
ending.

Whereas a case against.
sri- X

(Name and designation of the
Member of the Force) in respo
nse of criminal offence is
under investigation/ trial.

NOW, therefore, the undersigned (the appointing authority
or any Authority to which it is subordinate or any other
Authority in scheduled #1), in exercise of the powers conferred
by Rule-40 of the Railway Protection Force Rules, 1959, hereby
place the said sri. Ghanashyam Das NK/NBQ- ws for suspension
with immediate effect.

(Designation of the)
suspending authority.

✓ Copy to sri. Ghanashyam Das NK/NBQ- ws through IPF/NBQ- ws
(Name and designation of the suspended Member
of the Force) During the suspension period
will get subsistence allowance. He will give
his daily attendance at During suspension
his Hd/qrs is fixed at TE/COY/APDJ temporarily.

2. P/case, E/Bill.

3. IPF/NBQ- ws 4. IPF/TE-coy/APDJ.

Asstt. security commissioner.
N.F.RLY. New Bongaigoan.

*placed under
suspension
from 28-9-91
at 9-22
BEL NO. 22*
25/10/91
Certified to be true copy
Adv.

Received
26/12/91

CHARGE SHEET

(Under Section 9(1)(i) of the RPF Act 1957
read with Rule 153 of RPF Rules, 1987.

N. F. Railway

RAILWAY PROTECTION FORCE

NO AD/Pro 26/153/91 (Major)

Place of issue Alipurduar Jn.

Date 8-10-91

MEMORANDUM

Shri. Ghanashyam Das/NK/RPF/NEO/WS (Name & designation of the Member of the Force) is hereby informed that it is proposed to hold an enquiry against him under Rule 153 of Railway Protection Force Rules, 1987. The allegations on which the enquiry is proposed to be hold are set out in the enclosed statement of allegations are specified in the enclosed statement of charges. A list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed.

2. Sri Binen Brahma/IPF/P/NEO is nominated as enquiry Officer/ who I will conduct the enquiry myself.

3. The enquiry is fixed on at IPF/NEO/WS's office at 10.00 hrs. You should attend the enquiry, failing which the enquiry will be conducted ex parte.

4. Sri Ghanashyam Das/NK/RPF while presenting himself before the enquiry Officer may :-

- a) Furnish names and addresses of witnesses, if any, whom he wishes to call in support of his defence.
- b) Furnish the list of documents, if any, which he wishes to produce in support of his defence.
- c) Sri Ghanashyam Das/NK/RPF is further informed that if for the purpose of preparing his defence he wishes to inspect and take extracts from any official records, he should furnish a list of such records to the enquiry

Contd.....2/

Verified to be true copy
Adv.

(RPF, T-16(C)).

Officer not later than seven days (indicate allowing atleast clear one week) so that arrangements may be made to provide facilities for the purpose. He should however, note that if in the opinion of the Enquiry Officer such records are not relevant for the purpose, or it is against the public interest to allow him access to such records, he will not be permitted to inspect or take extracts from such records.

5. The attention of Sri Ghanashyam Das/NK/RPF is invited to Rule 113 and 143 of the RPF Rules, 1987 under which members of the Force are forbidden from ~~his~~ bringing or attempting to bring any political or other outside influence to bear upon any superior authority to further his interest in respect of matter pertaining to his service under the Government. If any representation is received on his behalf from any other person in respect of any matter dealt with in these proceedings, it will be presumed that Sri Ghanashyam Das/NK/RPF is aware of such representation and that it has been made at his instance and action will be taken against him for violation of the said Rules.

6. Sri Ghanashyam Das/NK/RPF should acknowledge receipt of this Charge Sheet on the date, it is presented to him by giving his signature ~~and~~ thumb impression on the _____ from.

[Signature]
Signature & Designation of
the Disciplinary Authority

Designation _____

Dated : _____

Cand.....3/6

[Signature]

- 17 -

20

Page No. 3.

Charge Sheet (See Rule 153 RPF Rules - 1987)

SRI Ghanashyam Das/NK/RPF/NBQ/WS (Name, Design, & Badge No. of the Member of the Force) is hereby charged with negligence in the discharge of duty/unfitness for duty in that he:-

CHARGE No. 1.

While functioning as NK/RPF/NBQ/WS during the period 25-9-91, while he was on duty in workshop beat no. 14648 of NBQ/WS from 18/hrs of 25-9-91 to 06/hrs. of 26-9-91 he committed the theft of RLY Materials 251 Nos. of welding Electrodes containing in 3 Pkgs or unlawfully obtained the same from the workshop and disposed at the out side of the workshop leaving his duty beat unauthorisedly which ultimately tantamount a gross misconduct, negligence and poor integrity on the part of the NK.

Statement of allegations on the basis of which charge/charges are framed against Sri Ghanashyam Das, NK/RPF/NBQ/WS.

Allegations regarding charge NO. 1.

On 25-9-91 NK/Ghanashyam Das of NBQ-WS was detailed to perform Y shift duty from 18/hrs of 25-9-91 to 06/hrs of 26-9-91 in beat No. 14648 inside the workshop. During his duty period he committed the theft of 251 Nos. of welding Electrodes containing in 3 pkgs or unlawfully obtained from the workshop which is Railway Material. He also left his beat unauthorisedly and delivered the booty to one outsider named Paritosh Sutradhar at a Bengali Shop near Park Road at about 4/30 hrs on 26-9-91.

Record checked upon

SPT/NBQ-WS

REPORT NO. NK/RPF/LEN-1/91

DATE: 27-9-91

3/10/91
Asstt. Security Commissioner
N. P. By New Barrage

UNPAID COVER Copy to Sri Gnanashyan Das/NK/RPF/NBQ/NS
 (Name and Designation of the enrolled member of the Force charged) through
IPF/NBQ/NS DA/One charge sheet

PAID COVER Copy to Sri B. Brahma/IPF/NBQ
 (Name and designation of the nominated enquiry officer). DA/ One Pro. Case file

Copy to IPF/NBQ/NS
 (Designation of the Office under whom the enrolled member of the force servicing) who shall deliver the charge sheet to the enrolled member of the force charged on or before at least seventy two hours before the commencement of the enquiry as fixed above) under clear acknowledgement receipt acusing Diary Entry etc. under intimation direct to the enquiry officer, endorsing a copy to this office without fail. He should not detail the place nor give leave without permission till conclusion of the disciplinary proceedings. If the staff concerned is not available the C/8 to be pasted on the Notice Board keeping Diary entry and send the extract to E.O.

7/11/81
 Asstn. Security Commissioner
 B. P. Bly. New Bazar

NO. FPM/DAR-2/92.

OFFICE OF THE

INSPE/RPF/FKM

Dt- 27-2-92.

ANNEXURE-3

To

Sri Ghanashyam Das, Const/RPF/NBA-Q
Through IPF/TE-Coy/APDJ.


Subject :- DAR enquiry date fixed on 3-3-92.
at NBA-QS.

Ref :- AP/Pro-26/153/91 (Major) dated 8-10-91.

This is to inform you that, to conduct DAR proceeding against you vide DSC/APDJ's L/NO. cited under reference 9 Sri B. Brahma Insp/RPF/FKM have been nominated.

To start with the DAR enquiry a date is fixed on 3-3-92 at 10:00 hrs. in the office premises of IPF/NBA-QS, you are therefore requested to attend accordingly.


No any information received from your end that for the purpose of preparing your defence that you wishes to inspect or take extracts from any official records up till now.

 27-2-92
IPF/FKM (E.O).

Copy to :- Ase/NBA for favour of kind information please. It is learnt that the staff concerned has resumed duty at APDJ TE-Coy.

IPF/NBA-QS. For information and n/a pl.

He is requested to produce his report No. NWPF/Con-1/91 dt- 27-9-91. This record is relied upon into the case.

Certified to be true copy
 Adv

IPF/FKM (E.O).

17/10/92

Date of Issue : Alipurduar Jn.
Date of Issue : 19/8/92.**ORDER.**
(See rule-239, 2)

Whereas an order placing Sri Ghanashyan Das/NK/RPF/NBQ/WS under suspension was made/ was deemed to have been made by ASG/NBQ vide his order No. NB/G-12/DAR/91 dated 27/9/91.

Now, therefore, the undersigned (the authority which made or is deemed to have been made the order of suspension or any authority to which that authority is subordinate) in exercise of the power conferred by Rule-239, 2 of the RPF rules-1987 hereby revokes the said order of suspension with immediate effect.

Designation of the authority making this order.

Divl. Security Commissioner

N. F. Rly. Alipurduar Jn.

1. Copy to Sri Ghanashyan Das/NK/RPF/NBQ/WS at TE/Coy/APDJ, Thro: IPF/TE/APDJ.

2. Copy to : IPF/NBQ/WS

3. Copy to : IPF/TE/APDJ

4. Copy to : E/Bill, 5, P/Case, 6, D.O.Book.

(Reasons for revocation)

Sri Ghanashyan Das/NK/RPF/NBQ/WS has been placed under suspension w.e.f. 27/9/91 by ASG/NBQ vide his order No. NB/G-12/DAR/91 dated 27/9/91 in connection with theft of 3 Pkt. of Welding Electrodes from NBQ-WS. He has been taken up under 3(a)RP(UP)Act vide IPF/NBQ/WS Post case No. 1(9)91 and the case is subjudice. He has also been taken up departmentally and the DAR enquiry has been completed.

The RP(UP)Act case which is subjudice before the court of law and may take a considerable time to finalise and may cause loss of exchequer to the Rly. Administration, if he remain under suspension. Considering the above fact he is released from suspension with immediate effect.

The period of suspension will be regularised on the merit of the Court's judgement.

Divl. Security Commissioner,
N.F. Rly. Alipurduar Jn.

Authorised to be true copy
Adv.

ANNEXURE-5

-21-²⁴

9-5- 21-5 21-5 22-5- 22-5-2001

IN THE COURT OF SPECIAL JUDICIAL MAGISTRATE

N.F. RAILWAY ::: GUWAHATI

C.R. CASE NO. 13/98

State -Vs- (1) Paritosh Sutradhar

(2) Ghanashyan Das . Accused persons

Under Section :- 3(a) R.P.(up) Act.

Present :- Shri P. Saikia

Special Judicial Magistrate ,

N.F. Railway, Guwahati.

Evidence recorded on - 26-4-96, 18-9-99,

11-1-2000, 16-2-2000

9- 3-2000, 28-3-2000

25-4-2000.

Argument heard on - 16-6-2000

Judgment delivered on - 7-8-2000

Appeared - (1) Shri B.K. Singh, Ld. P.I. for Railway

(2) Shri S. Majumdar, Ld. Counsel for defence.

contd...

entire to be true copy
Adv.

-2-

J U D G M E N T

1) The case of the prosecution in brief is as follows. On 26-9-91 from 3/00 hours to 5/00 Inspector/RPF/CBB/MLG HQ Shri A.K. Was CIB/Team/MLG H.Q. Consisting of Constable Girja Mohan Sarmah. Constable Sankar Bahadur under the supervision of Inspector Shri L. Bhuyan laid an ambush against the plaintiff of Railway property from Railway yard and Workshop in front of N.B.Q. ... In course of ambush at about 4/50 hours from notice the person wearing khaki uniform was coming from the Workshop in a bicycle carrying something in the bi-cycle carrier and delivered one box to a person in a bicycle shop. On seeing immediately left the place with his bicycle. In no time the Inspector/RPF/CIB/MLG H.Q. Shri A.K. Was along with the team attended the bi-cycle shop and enquired him about the box which was delivered by the person attend in khaki uniform. Then the person who was in the bicycle shop produced the said bundle before him. On opening the bundle which was wrapped by a checked Ganocha (Towel) they found 10 welding Electrodes manufactured in India by IOL Limited which were Railway property on being interrogated the said person in the bi-cycle shop disclosed his name as Paritosh Sutradhar and owner of the bicycle shop. Thereafter, on being asked him to produce legal documents in support of his lawful possession of those Railway materials the bicycle shop owner Paritosh Sutradhar could ^{neither} ~~.....~~ produce valid documents nor could he justify lawful possession of the recovered materials.

contd...

-3-

As such the recovered materials were seized on the spot by A.K. Das Inspector/RPF/CIB/MLF H.Q. as per seize list. On further interrogation the bicycle shop owner ~~Raxksh~~ Paritosh Sutradhar also disclosed the name of the person who delivered the said materials as Ghanashyam Das. Later the bi-cycle shop owner Paritosh Sutradhar was taken into custody and produced before IPF in charge/RPF/NBQ Workshop along with the seized material where the Inspector/RPF/CIB/HQ/ ~~SIB~~ MLF at N.B.Q. A.K. Das also lodged a complaint in connection with the incident.

2) On the strength of the complainant IPF/NBQ/Workshop registered a case and enclosed the case for enquiry to himself. During enquiry the Enquiry Officer recorded the statement of the accused Paritosh Sutradhar. Moreover, during enquiry the wanted accused Ghanashyam Das surrendered before the court and subsequently appeared before him and his confessional statement was also recorded by the Enquiry Officers. That apart, he also got the seized materials examined by Expert and obtained expert certificate with opinion that the seized materials are exclusively Rail property. The Enquiry Officers also recorded the statement of the prosecution witnesses and being completed formal enquiry, prosecution report was submitted against the accused persons for the offence under Section 3(a) RP(up) Act. appeared to have been written by him.

contd...4

3) After execution of interim witnesses before charge and on perusal of entire material on the case record a prima facie case was found against both the accused persons. So a final charge under Section 3(a) RP (up) Act was found read over the explained to the accused persons to which they pleaded not guilty. The witnesses were from cross examined. In total 5 witnesses were examined.

4) After the clouser of the prosecution evidence the accused persons were examined under Section 313 of Criminal Procedure Code. Their case is of clear denial. They also declined to adduced any evidence in support of their defence.

I have heard arguments from Ld. counsels for both sides and carefully give through the entire materials on the case record.

6) The points for determination in this case are set forth as

(i) Whether the seized materials are exclusively Railway property ;

(ii) Whether the seized materials can be suspected of having been stolen or unlawfully obtained ;

(iii) Whether the seized materials were recovered from the custody of the accused persons ;

-5-

6) Shri A.K. Das (P.W.3) I.P.F./NGC is the complainant as well as the seizing Inspector. He has categorically stated that the seized materials were recovered from the bicycle shop owned by accused Paritosh Sutradhar which had been delivered by a person who came to the said bi-cycle shop wearing khaki uniform on a bi-cycle but managed to escape before he could be caught by them. He has marked the seizure list as Ext.2 and Ext.2(1) as his signature. He has also marked the complaint lodged by him as Ext.3 and Ext.3(1) as his signature.

7) P.W. 2 Sankar Bahadur and P.W. 4 Girija Mohan Sarna are the other seizure witnesses. They have supported and substantiated the statement made by the seizing Inspector (P.W.3) as regards the material fact of where the materials were recovered and seized from the possession of the accused Paritosh Sutradhar. Both P.W. 2 and P.W. 4 have marked their signatures as Ext. 2(2) and Ext.2(3) respectively in Ext.2 the seizure list. The basic point is that the seized materials were seized from the possession of the accused Paritosh Sutradhar and after their cross examination.

During arguments the Ld. Advocate for the defense contended that the prosecution was failed to prove that the seized materials were Railway materials and recovered from the exclusive possession of the accused persons since the seizure witnesses disclosed in their statements before the court that they could not identify the person who had actually

contd...

-6-

delivered the material to the accused Paritosh Sutradhar who (.....) sleeping in his bicycle shop.

8) In deed it appears from the testimony of P.W. 2, P.W. 3 and P.W. 4 that they could not identify the person who delivered the seized materials in the cycle shop of accused Paritosh Sutradhar as because the said person who was dressed in khaki uniform left the said bicycle shop with his bi-cycle immediately after delivering the seized materials. In this content the evidence of the Enquiry officer B. Brahma (P.W.5) is most vital who recorded the statements of both the accused persons in course of enquiry marked as Ext. 4 and Ext.5. The statements of the accused Paritosh Sutradhar (Ext.4) and Ghanashyan Das (Ext.5) has been brought on record without any objection. There is nothing in the evidence to them that the statements (Ext.4 and Ext.5) were procured under threat..... on upon evident. I have gone through the statements (Ext.4 and Ext.5) which give a deticted picture of how the crime was committed. The statement of accused Paritosh Sutradhar clearly reveals the home of the other accused Ghanashyan Das who delivered him the seized materials in order to sale for three person. Similarly the statement of accused Ghanashyan Das (Ext.5) clearly discloses to accused Paritosh Sutradhar at his bi-cycle shop of the day of the alleged occurrence for the purpose of selling them some where else. The nature of the statements made by the accused persons. indicate that they made their statements voluntarily. Moreover P.W.5 has also deposed to

contd...

-7-

the effect that accused Ghanashyan Das appeared before him during enquiry after obtaining court bail and voluntarily made his confessional statement (Ext.5) which was read over and explained to him and admitted also correct by the accused Ghanashyan Das by putting his signature. So, it is evident that the other evidence on record against accuseds Ghanashyan Das and Paritosh Sutradhar have been re..... and corroborated by their self. Incriminatory statenents (Ext.4 and Ext.5) which were admissible in Railway property (unlawful possession) Act. So, it is al... dently clear that the accused Ghanashyan Das who in possession of the recovered materials at one point of time before delivering thexx said recovered materials to accused Paritosh Sutradhar. Which were subsequently seized by the RPF personal made seizure list marked as Ext.2 from the accused Paritosh Sutradhar from his construction possession. Moreover, as regards the possession of the recovered materials by accused Ghanashyan Sutradhar it is seen from the evidence on record that his possession was submitting possession. As per Sect. 3(a) RP (up) Act, it is not receiving that unlawful possession of Railway materials shall be construction possession.

9) In view of the record, it is found that the seized materials were recovered from the unlawful possession of the accused persons. Hence, I donot find any merit in the contention of the Ld. Advocate for the defence that the seized materials were not recovered from the possession of the accused persons.

-6-

10) Now turning to the point of whether the seized materials were Railway property or not, it is to appreciate the evidence of P.W. 1 Ajit Kr. Mazunder who examined the seized materials. His evidence is quite categorical that the seized materials were exclusively Railway materials. He has proved and marked the certificate by him as Ext.1. He also identified the material exhibits before the court as Mat. Exts 1-2 and 3 respectively. Nothing could be decided in his cross examination to show that the seized materials were not exclusively railway materials. There is also no describing on record between the oral testimony of the Expert (P.W.1) and the certificate marked as Ext.1. Hence it is seen that the seized materials were exclusively Railway property which were recovered have the unlawful possession of the accused Paritosh Sutradhar and Ghanashyan Das. Moreover, there is nothing on the record to show that the accused persons are rightful owner the seized materials. So, it is evident those railway materials were either stolen or unlawfully obtained by the accused persons as there is not an iota of evidence from the accused persons will preponderance of probability to show that their possession of Railway materials were lawful.

In the result, the accused person (1) Paritosh Sutradhar and Ghanashyan Das are held guilty under Section 3(a) IP (up) Act and committed accordingly.

Punishment :

(ii) Before passing sentence, heard the accused persons on point of sentence. Both accused persons have pleaded necessary.

contd...

-9-

I have also considered the facts and circumstances of the case. Accused Ghanashyan Das is a FPF Constable on the verge of retirement which accused Paritosh Sutradhar is a petty businessman. The stolen property of the case record was recovered and seized immediately after the incident and the value of which is not very high. Moreover this is an eight years old pending case and no process connection is proved against the accused persons. So considering the age, character and antecedent of the offenders. I am of the opinion that it is expedient to release the offenders Paritosh Sutradhar and Ghanashyan Das on probation of good conduct by applying probation of offenders Act 1958 instead of sentencing them at once to any punishment.

O R D E R

12) It is hereby ordered that the accused persons (1) Paritosh Sutradhar and (2) Ghanashyan Das be released on probation of good conduct on entering into a bond of Rs.5000/- each with one local surety to appear and receive sentence when called upon during a period of one year as the court may direct and in true mention to keep the peace and be of good behaviour.

Seized materials be returned to Railway. Judgment dated seized and pronounced in the open court to day.

7th day of August, 2000.

Sd/- P. Seikla

7-8-2000

Special Judicial Magistrate
N.F. Railway, Guwahati.

ORDER.

-30-

ANNEXURE-6

Shri Ghanashyam Das, Nk/NBQ-WS now at NMZ while working under the establishment of IPF/NBQ-WS was charge sheeted under Rule-15C of RPF Rules-1967 vide charge sheet No. AP/Pro-26/193/ dated 2-10-91 for the following charges :-

While functioning as Nk/RPF/NBQ/WS during the period 25-9-91, while he was on duty in ES beat No. 1-6+8 of NBQ-WS from 18.00 hrs. of 25-9-91 to 06.00 hrs. of 26-9-91 he committed the theft of Rly. materials 251 Nos. of welding Electrodes containing in 3 pkgs or unlawfully obtained the same from the workshop ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ and disposed at the outside of the workshop leaving his duty beat unauthorisedly which ultimately tantamount a gross misconduct, negligence and poor integrity on the part of the Nk.

Shri B. Brahma, the then IPF/FKM was nominated as E.O. to conduct DAR enquiry and on completion of the DAR enquiry the D.O. had submitted his findings on 28-7-92 proving the charge levelled against the party charged. The proceeding case could not be finalised departmentally due to M(P) Act case was subjudice in Court of law against the party charged on the same offence. Now the Hon'ble court of S.M./G.V. has finalised the case by holding the party charged guilty and convicted under M(P) Act Case.

In view of the above circumstances, Shri Ghanashyam Das, Hd. Const./IPF/NBQ is not a worthy member of the force to retain in Railway service. In this case the end of the justice will not meet unless the party charged is removed from service.

As such I awarded him the punishment of REMOVAL FROM SERVICE with immediate effect and the suspension period be treated as on suspension.

Div. Security Commissioner,
N.F. Railway Station,
E.F. Ry./ Katihar

No. AP/Pro-26/153/91 (Major).

Dated :

Copy of the above is forwarded for information and necessary action to :-

1. Shri Ghanashyam Das, Hd. Const./IPF/NBQ through : IPF/NBQ.
2. IPF/NBQ. He is advised to handover the order to the party charged with proper acknowledgement and send the same to this office for record.
3. DSC/KIR, 4. PI/APDJ, 5. P/Case, 6. R/Bill Section, 7. D.O. Book.

Div. Security Commissioner,
N.F. Railway Station,
E.F. Ry./ Katihar

Certified to be true copy
AdV

1
ANNEXURE-7
34

70 C.S. No. 101/2001
N.2. R.1.1

Through - Proper Channel.

Sub : - Appeal against removal from service order of DSC/KIR.

Ref : - AP/PRO-26/153/91 (major).

Hon'ble Sir,

Most respectfully I beg to lay a few lines under your kind consideration and sympathetic order please.

I) That Sir, after a long period of my service I was to retire from my service on superannuation on FEB/2001 (AN).

II) That Sir, the removal order has been passed by the disciplinary authority on 31/1/2001 which has been received by me on 15/2/2001.

III) That Sir, the Hon'ble Court has found me guilty of charge U/s 3(a) RP(Up) Act but considering my character antecedents old age and innocentness released me on probation for an year on taking a Bond of Rs. 5000/- with one surety.

IV) The offence was proved against me but the point of sentence the Hon'ble Court has taken a lenient view considering the old case which was registered in the month of Sep./91.

V) That Sir, Sri B. Brahma, Inspector was one of the P.Ws of RP (Up) Act. Also he was nominated as E.O. of the departmental proceeding enquiry for the same charge in this connection which he deposed against in the Hon'ble court which is itself contradictory and hence made the case questionable in the eyes of law.

VI) That Sir, the disciplinary authority has passed the removal order passing an enquiry report of Inspector B. Brahma who was one of the P.Ws in RP (Up) Act case.

VII) That Sir, the same man cannot be the Judge of the same case & same charge in DAR Case and a witness of the RP (Up) Act case and the impugned order is miscarriage of Justice.

Certified to be true copy
Adv.

contd...p/2.

VIII) That Sir, the disciplinary authority has passed in opinion in his order, " I am not worthy member to be retained in Rly. Service". That is why, passed removal order without considering the fact that I was to retire from service on 28/2/2001.

IX) That Sir, I was appointed in the department in year - 1962 and during whole of my service I was never charge-sheeted for involvement in any criminal activity.

X) That Sir, after rendering long service to the department I have been removed from service in the last month of my superannuation without considering for my children and remaining life in the old age.

XI) That Sir, I have got little literacy. I had been most humble, obedient and innocent by nature to all of my officers IY/ B. Brahma prior recording my confessional statement, he consoled me saying this, that nothing would be recorded against me. On good faith, I did not disbelieve in him and whatever he wrote in my statement I put my signature believing in him.

XII) That Sir, after having the Judgement from Hon'ble Court and DAR enquiry caused by IY/B. Brahma, that is, after my removal, I could understand everything which was caused to make my life spoiled.

XIII) That Sir, what happened with me, only due to innocentness, obediency, illiteracy and humble nature, unless, I would not have to face such evil days in my last remaining life.

XIV) That Sir, if Sri B. Brahma IY would have even a little corner of mercy in his heart, he must not push me in such troublesome life.

From the circumstances as described above, in the end I notice a pray of hope in your honour to have justice for me and my family and children. I think my life worthless to remain alive and to go back to my native with this life-time punishment.

Therefore I hope, your honour would be enough kind to ^{ex} exempt
me from removal from service by awarding any other punishment so
that I must have a hope to live my last life with my family and
children.

Ghanashyam Das.

Date :-

Yours faithfully,

Copy to DSC/Arms
N.F. Rly.

2.1

ANNEXURE 8

Appellate Orders passed by Addl. CMC/M.F. Rly.
against appeal preferred by Head Constable/
Mr. Chenchayam Das of IMA.

37

I have perused the appeal of Head Constable Chenchayam Das who was charge-sheeted for gross misconduct, negligence and poor integrity. All the charges were proved against him as early as 30-7-92 but could not be disposed off since the case was subjudice in the court of law. Ultimately, the Hon'ble Court convicted him but released on probation for a year with a bond of Rs. Five Thousand on the ground of old age.

Since the Departmental Enquiry as well as the Court of law found him guilty, I am of the opinion that there is no ground for the undersigned to intervene into the matter. Hence I agree uphold with the decision of the Disciplinary Authority. Inconform to the appellant accordingly.

Sd/-
Addl. Chief Security Commissioner
BY Railway Mailroom

Not P/213/Pre-183/2001

27th March 2001.

Copy forwarded for information and
necessary action to :-

1/ BSC/RPT/ADJ.

2/ Staff concerned through BSC/RPT/ADJ.

3/ For P/Case File.

Yr sincerely
for Addl. Chief Security Commissioner
BY Railway Mailroom

27/2/2001

Copy
Certified to be true
ADN