

50100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI.5

ORIGINAL APPLICATION NO. 16/2001

.... Sri. R. K. Karmakar Applicant.
versus

Union of India & Ors Respondents.

For the Applicant(s) Mr. M. Chanda,

Mrs. N. D. Goswami.

Mr. G. N. Chakrabarty

For the Respondents.

. *Adv. S. Sengupta*
Mr. S. Sengupta

NOTES OF THE REGISTRY

DATE

ORDER

This application is in form
but no written application
filed vide
Petitioner C.R.
M. Chanda
for the respondents
for the respondents
IPCL. Dated 22/12/2000
Dated 22/12/2000

Dy. Registrar

10.1.01 Present: Hon'ble Mr. Justice D.N. Choudhury, Vice-Chairman and Hon'ble Mr. K.K. Sharma, Administrative Member.
Heard Mr. M. Chanda learned counsel for the applicant and Mr. J.L. Sarkar learned counsel for the respondents.
Application is admitted. Call for records. Returnable by 4 weeks.
List on 12.2.01 for orders.

I C Usha

Member

Vice-Chairman

Steps are taken
in the envelope.

1m

12.2.01 List on 15.3.2001 to enable the respondents to file written statement.

*Recd 10/1/01
Secty
10/1/01*

NS

11/1/01

pg

Vice-Chairman

Notice prepared and sent to
S/See for being the respondent
No 1 to 3 by Post. vide Memo
16/1/2001 dated 17/1/2001

12/1/01

15.3.01

No written statement so far filed. List on 6.4.01 to enable the respondents to file written statement.

I C Usha

Member

Vice-Chairman

① Notice served by hand
on R.No-1, other respondent
are still awaited.

1m

List on 1.5.01 for orders.

② No written statement
has been filed.

1m

Vice-Chairman

*20
20.4.2001*

(2)

① Notice duly served
on R. No. 1, other
respondent are
still awaited.

② No written statement
has been filed.

26/6/01

1.5.2001 List on 31.5.2001 to enable the
respondents to file written statement

I C Usha

Member

Vice-Chairman

bb

31.5.2001 No written statement so far filed
the Railway. List

List on 27-6-2001 for order.

Vice-Chairman

16.8.2001

w/s has been
filed by the
respondents.

NS
16/8/2001

27.6.01 Mr. S. Sengupta, learned Rly. counsel
for the respondents prays for and granted four weeks
and no more time to file written statement.
Applicant will have one week thereafter to file
rejoinder.

List for hearing on 13-8-2001.

I C Usha

Member

Vice-Chairman

bb

13.8.01 Mr. S. Sengupta, learned Rly. counsel for
respondents stated that the written statement
is being filed in the course of the day.
List it again on 5/9/01 for hearing.
The applicant may file rejoinder if any, within
10 days from today.

I C Usha

Member

Vice-Chairman

26.8.2001

Rejoinder has
been submitted by the
applicant ~~to~~ against the
w/s submitted by the respondents.

BB

3.9. There is no division bench today.
The case is adjourned to 9.10.2001.

M/s
A.K.Jay
5.9.

MA
8/10/01

6A 16/2001

(3)

3

Notes of the Registry	Date	Order of the Tribunal
8.10.2001 Reply to the Rejoinder filed by the applicant No 1 in of.	9.10.01 mb	It has been stated that Sri M. Chanda, learned counsel for the applicant is out of station and accordingly prayed for adjournment. Prayer is allowed. List on 27/11/01 for hearing. 16/10/01 Member
The case is ready for hearing. 26.11.01	27.11.01	Heard learned counsel for the parties. Hearing concluded. Judgment delivered in the open court, kept in separate sheets. The application is allowed to the extent indicated in the order. No order as to costs. 16/11/01 Member
26.12.2001 Copy of the Judg has been sent to the Office for issuing the same to the parties as well as to the Counsel for the standby parties 16/12/01	trd	Vice-Chairman

Notes of the Registry	Date	Order of the Tribunal

6

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. NO. 16 of 2001 of

DATE OF DECISION 27.11.2001

Sri R.K.Kampti

APPLICANT(S)

Mr. M.Chanda

ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

Union of India & Ors.

RESPONDENT(S)

Mr. S.Sengupta.

ADVOCATE FOR THE
RESPONDENTS.

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

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

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



X
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 16 of 2001.

Date of decision This the 27th day of November, 2001.

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

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

Sri R.K.Kampti
Microwave Attendant
Laopani
District-Nagaon,
Assam

...Applicant

By Advocate Mr. M.Chanda.

-versus-

1. Union of India
(Through the General Manager,
N.F.Railway,
Maligaon,
Guwahati-781011).
2. Chief Signal and Telecommunication
Engineer, N.F.Railway,
Maligaon, Guwahati.
3. District Signal and Telecommunication
Engineer, Microwave,
N.F.Railway, Maligaon,
Guwahati-781011.

...Respondents

By Advocate Mr. S.Sengupta, Railway Standing Counsel.

O R D E R (ORAL)

CHODWHURY J.(V.C.).

The legality of the order of imposition of major penalty vide communication dated 12.3.1990 is the subject matter of adjudication in this proceeding. The disciplinary proceeding was initiated against the applicant for the alleged misconduct. By communication dated 28.4.1989 the applicant was informed about the appointment of an Inquiry Officer to enquiry about the charges

brought against him. The applicant by communication dated 29.5.1989 informed the authority that he did not receive memorandum of article of charge either in original or copy and the connected documents. The applicant stated that on receipt of the documents mentioned at paragraphs 1,2 and 3 he would be in a position to defend himself. By Memorandum No. N/PF/R.K.Kampti/MW dated 28.4.1989 the applicant was informed that he had refused to receive the Memorandum two times and his demand for copy of memorandum and additional documents was rejected. He however, was informed that the enquiry officer was permitted at his discretion to examine the desired documents but the applicant would not be allowed to detain to hold up of the enquiry proceeding. The applicant by communication dated 28.7.1989 objected to the aforesaid decision. The enquiry proceeding continued. The applicant participated. According to the applicant the prosecution examined three witnesses on behalf of the applicant. By the impugned order dated 12.3.1990 the applicant was imposed a major penalty by permanently reverting him to the initial stage of the scale of Rs.750-940 (RSRP) at the bottom most seniority. The above penalty was imposed in item 1(a), 1 (c) 2 (a) and 2 (B) of the article of charges and 1 (b) of the article of charge was since kept pending since the matter was subjudiced. The applicant preferred an appeal which was finally rejected. Hence this applicant assailing the legitimacy of the order of penalty.

2. The respondents submitted its written statement. In the written statement it was stated that the Memorandum of charge was issued against the applicant on 13.3.1989 but the applicant refused to accept the memorandum of charges twice. It was only when the Inquiry Officer was appointed to enquiry into the charges, the applicant submitted application for supplying him the copies of the Memorandum of charges. It is also stated in the written statement that since the applicant refused to accept the memorandum of charges twice and therefore his request for supplying the documents/copies could not be accepted. He was

however, advised him to examine the same at the time enquiry, if the Inquiry Officer permits him at his discretion. The respondents also stated that after completion enquiry proceeding the disciplinary authority by its communication dated 12.3.1990 informed the applicant regarding imposition of major penalty awarded to him by issuing the notice of imposition of major penalty under D & A Rules, 1968 along with the statement of article of charges and reasons for findings and conclusions drawn by the disciplinary authority along with a copy of enquiry report dated 15.7.1996. The respondents in its written statement also stated and contended that the applicant was given due opportunity to defend his case but he refused to avail the opportunity provided to him. According to the respondents the disciplinary authority did not agree with the findings of the Inquiry Officer with the reasons for recording his own findings on the basis of the available materials on record. The respondents stated that they had acted bona fide. On completion of the enquiry and on the basis of the report of the Inquiry Officer the applicant was imposed punishment. The appeal of the applicant was fairly considered and thereafter rejected.

3. Mr. M. Chanda learned counsel appearing on behalf of the applicant amongst others assailed the imposition of penalty as arbitrary and discriminatory and also on the ground of infringement of the principles of natural justice. Mr. Chanda, learned counsel for the applicant stated and contended that since the respondent authority refused to serve the copy of the Memorandum of charges necessarily he could not effectively defend his case. The alleged refusal of Memorandum of charge did not absolve the respondents from their duty to hold a fair enquiry by furnishing the materials sought to be relied upon against him. Mr. Chanda, learned counsel for the applicant also submitted that on own showing of the respondents the enquiry officer exonerated the

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applicant. Mr. Chanda, learned counsel for the applicant further submitted that the disciplinary authority may disagree with the finding of the enquiry officer by recording its reasons for such dis-agreement, if the evidence on record is sufficient for the purpose but that does not absolve the disciplinary authority from giving him an opportunity to know the mind of the disciplinary authority in disagreeing with the reasons given by the enquiry officer. Mr. S. Sengupta, learned counsel for the Railways strenuously opposed the submission of Mr. M. Chanda, learned counsel for the applicant and stated that the respondents took all efforts to furnish the copy of the memorandum of charges to the applicant but the applicant on his own refused to accept the same. Therefore there was no further duty on the respondents to serve the copy of the Memorandum of Article of charge. In reply to the other contention Mr. S. Sengupta, learned counsel for the Railways pointed out sub rule (3) of Rule 10 of the Railway Servants (Discipline and Appeal) Rules, 1968 and submitted that the disciplinary authority acted within the parameter of law by recording its reasons for disagreement. Mr. Chanda, learned counsel for the applicant also raised an issue as to the legitimacy of the disposal of the appeal but we are not inclined to go to other issue when there is no dispute to the fact that the applicant was not served with the Memorandum of charges. There is also no dispute to the fact that before imposition of penalty by the impugned order dated 12.3.1990 the applicant was not communicated with the reasons for its finding. Procedure for imposition of penalties are prescribed by the Railway Servants (Disciplinary and Appeal Rules), 1968 in consonance with the policy laid down in Article 311 of the Constitution of India. Under the scheme an enquiry is to be conducted justly and fairly by providing opportunity to the delinquent officer to defend his case. Communicating the allegation is one of the essential aspects for conducting fair enquiry. In the instant case the

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applicant might have refused to accept Memorandum of charges, that by itself did not absolve the disciplinary authority to serve him the copy in the manner indicated in the Railway Servants (Disciplinary and Appeal) Rules 1968. When the applicant at least mentioned about the fact by his communication dated 29.5.1989 that the authority at least was required to furnish him the copy of the charge memo and provide him to submit his written statement. The other apparent flaw in this proceeding is in not furnishing the reasons of the disciplinary authority when it disagreed with the finding with the enquiry officer before imposition of penalty vide order dated 12.3.1990. Under sub Rule (3) of Rule 10 of the Railway Servants (Disciplinary & Appeal) Rules 1968 the disciplinary authority is empowered to disagree with the finding of the enquiry officer to any article of charge by recording its reasons for such disagreement and record its findings on such charge when the evidences on record is sufficient for the purpose. Rule 10 (3) is made to conform to the principles of natural justice. The authority is empowered under Rule 10 (3) of the Raiway Servants (Disciplinary and Appeal) Rules to differ from the findings of the enquiry officer by recording its reasons and come to his own conclusion. Principles of natural justice and fairness however requires for communicating the reasons for disagreement else it would amount to denial of justice to the delinquent officer. The issue is no longer res integra in view of the pronouncement made by the Hon'ble Supreme Court in the case of Punjab National Bank and Other Vs. Kunj Behari Mishra reported in 1998 (7) SCC 84. A delinquent officer under law is entitled to represent to the disciplinary authority when the finding of the enquiry officer is against him. It would be absurd in not providing any opportunity to a delinquent officer before over turning the findings of the enquiry officer. Upon considering the case of State of Assam Vs. Bimal Kumar Pandit, AIR 1963 SC 162 as well as the case of Managing Director, ECIL V.

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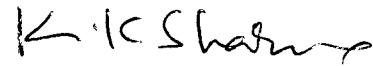
B. Karunakar (1993) 4 SCC 727 the Hon'ble Supreme court observed as follows :

"17. These observations are clearly in tune with the observations in Bimal Kumar Pandit case quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record a adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding as per Karunakar case the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.

18. Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Were the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer and they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar case."

Fair procedure and for that matter fairness in action i.e. before taking a final decision of imposing penalty upon the delinquent officer is required to provide an opportunity to submit his say by way of representation before disciplinary authority records its finding against the charge. In the instant case since the respondents fell into error in providing reasonable opportunity to the applicant. In the circumstances, the impugned order of penalty dated 12.3.1990 as well as the Appealate Order dated 5.11.1997 are not sustainable and accordingly the same are set aside.

The application is allowed to the extent indicated above. There shall however, no order as to costs.



(K.K.SHARMA)
Member (A)


(D.N.CHOWDHURY)
Vice-Chairman

trd

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An Application under Section 19 of the Administrative
Tribunals Act, 1985).

Title of the Case

② O.A. No. 16 / 2001

Shri R.K.Kampti

: Applicant

-versus-

Union of India & Ors.

: Respondents

I N D E X

Sl.No.	Annexure	Particulars	Page No.
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3	A	Representation dt. 29.5.89	15
4	B	Letter dt. 30.6.89	16
5	C	Representation dt. 28.7.89	17
6	D	Letter dt. 12.3.90	18-29
7	E	Appeal dt. 30.3.90	21 23
8	F	Order of the Judicial Magistrate dt. 5.6.92	25 24
9	G	Letter dt. 5.11.97	26 25
10	H	Appeal dt. 15.9.99	27 26
11	I	Letter dt. 18.8.99	28 27
12	J	Letter dt. 31.3.2000	29 28

Date : 8/1/2009

Filed by :

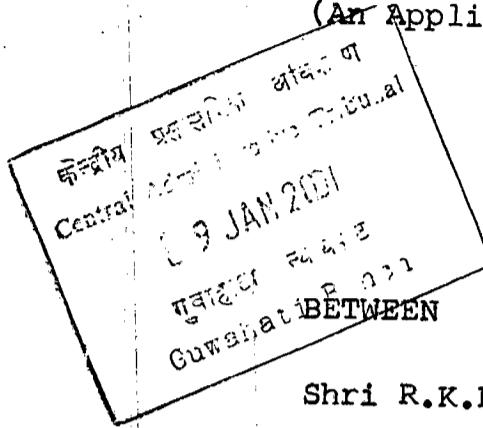
Advocate

21/07/2011
21/07/2011

15
Filed by the applicant
through Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An Application under Section 19 of the Administrative
Tribunals Act, 1985).



Shri R.K.Kampti

Microwave Attendant

Laopani

P.O. Laopani

District-Nagaon,

Assam

...Applicant

-AND-

1. Union of India

(Through the General Manager,
N.F.Railway, Maligaon,
Guwahati-781011)

2. Chief Signal and Telecommunication
Engineer, N.F.Railway,
Maligaon, Guwahati.

3. District Signal and Telecommunication
Engineer, Microwave,
N.F.Railway, Maligaon,
Guwahati-781011

.... Respondents

Contd.....

DETAILS OF APPLICATION

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

This application is made against the order of penalty imposed by the disciplinary authority vide order bearing No. N/PF/R.K. Kampti/MW dated 12.3.1990 and also against the Appellate Order issued under letter No. N/PF/R.K.Kampti/MW (174) dated 5.11.97 confirming the penalty imposed by the disciplinary authority and also rejection of appeal dated 30.3.90 preferred by the applicant and also against the order passed by the Divisional Signal and Telecom E & GG, MW, N.F. Railway, Maligaon, Guwahati-11 for and on behalf of Deputy CSTE, MW, Maligaon, rejecting the subsequent appeal preferred by the present applicant.

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of this application is within the jurisdiction of the Hon'ble Tribunal.

3. Limitation

The applicant further declares that the application is filed within the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the case

4.1 That the applicant is a citizen of India as such he is entitled to all the rights protections and privileges as guaranteed under the Constitution of India.

Contd...

21/07/2011

9 JAN 2001

गुवाहाटी बांध
Guwahati Branch

-3-

4.2 That on 30.12.1988 there was an altercation between the applicant and Shri T.K. Das, TCM, Laopani, in front of the residential Railway Quarters of the applicant and Shri T. C. Das. It is stated that their residential quarters are adjacent.

4.3 That the applicant was placed under suspension w.e.f. 6.1.1990. As a result of suspension he was waiting for revocation of the suspension order or enquiry under the Discipline and Appeal Rules. However he was not issued any chargesheet. Most surprisingly, under DSTE/MW, N.F.Railway, Maligaon's letter No. N/P.F/RK Kampty/ MW dated 28.4.89 Shri A. Goswami, ASTE was appointed as Enquiry Officer to enquire some charges brought against the applicant. Immediately the applicant submitted an application dated 29.5.89 to the DSTE/MW, Maligaon requesting that he may be supplied with the Memorandum of charges with the statement and also copies of the reports of ASTE or any other officials. He requested for reasonable opportunity to defend his case. The DSTE/MW, Maligaon, however, under his letter dated 30.6.1989 rejected the prayer to supply the memorandum of charges and additional documents, alleging that the applicant had refused to receive the memorandum ^{two} ~~to~~ times. The applicant categorically denies that he had ever refused to receive any memorandum as alleged.

Copies of application dated 29.5.1989 and DSTE's letter dated 30.6.89 are enclosed as Annexures A & B respectively.

4.4 That the applicant submitted another representation dated 28.7.89 explaining that he is entitled to have a copy of the memorandum and the additional documents. But nothing was supplied to him.

Contd...

21 March 2001

Copy of the representation dated 28.7.89 is annexed as Annexure-C.

4.5 That the applicant was informed by the Enquiry Officer fixing the enquiry on 21.12.89 and 22.12.89. The applicant participated in the enquiry which was held on fixed dates and also on 23.12.89. The prosecution side produced ~~xxxx~~ 4 witnesses and from the applicant's side there were three witnesses.

4.6 That on 19.3.1990 the applicant received a notice of imposition of major penalty issued by the DSTE/MW, N.F.Railway, Maligaon under his letter No. N/PF/R.K.Kampty/MW dated 12.3.90 imposing the penalty as under :

"You are permanently reverted to the initial stage of the scale of Rs.750-950 (RSRP) at the bottommost seniority with immediate effect."

By the same order, the order of suspension has been revoked.

From this notice dated 12.3.1990 it is evident that the enquiry did not find any guilt of the applicant. However, the DSTE/MW has disagreed with the findings of the enquiry report and has rejected the same as unacceptable. The DSTE/MW has not given any show cause notice or hearing to the applicant before imposing the penalty.

It is stated that the copy of the enquiry report, assessment of evidence etc. have not been supplied to the applicant. The DSTE/MW has been guided and influenced by extraneous and irrelevant considerations while

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31/10/2011 10:41 AM

imposing the punishment. The applicant is now under suspension and is sick and receiving treatment under registered medical practitioner.

Copy of the letter dated 12.3.1990 is annexed as Annexure-D.

4.7 That the applicant is bound by the D.A. Rules. ~~had prepared on~~
He is preparing his appeal with the assistance of his defence counsel. Under the D. A. Rules ~~there is no~~ specific provision empowering the appellate authority ~~or reviewing authority to stay the order of punishment.~~ The order dated 12.3.1990 has arbitrarily ~~curtailed~~ curtailed the period of 45 days for appeal to 15 days only which is illegal. He has submitted his appeal dated 30.3.1990.

Copy of the appeal dated 30.3.1990 is annexed as Annexure-E.

4.8 That your applicant in the said appeal inter alia stated that he was not supplied with the copy of the report of the enquiry officer, which is mandatory under DAR Rules and as per Railway Boards letter No. E(D&A)78 RG 6-54 dated 12.4.1980 and also stated that the incidence of assault which alleged to have been took place on 30.12.1988 was casual family dispute between Shri T.K.Das and the applicant which was at the relevant time was subjudice before the Criminal Court at Nagaon as because Shri T.K.Das lodge an FIR in his private capacity against the said incidence relating to family dispute which are completely private matters and cannot be termed within the meaning of Railway Service Conduct

Rules and also stated that it would not be fair to proceed with any departmental proceeding against the same incident when the matter is subjudiced before the Criminal Court. It is stated in the said appeal that it is purely private affairs, it occurred beyond office ours in the Railway Colony, not in the office campus and the matter is subjudiced in a competent court of law as such disciplinary authority should not interfere and also should not proceed further with the proceeding. The applicant also raised the grounds in his appeal that he was not supplied with the enquiry report and there was no reason adduced by the disciplinary authority while imposing the major penalty and also prayed for exoneration from the charges levelled against him. It was also prayed before the Appellate Authority to stay the order of penalty dated 12.3.1990.

4.9 However the said Criminal Proceeding was ended on 5.6.1992 following the order passed by the learned Judicial Magistrate 1st Class, Nagaon whereby the Prosecution case is closed on the ground that although accused person is present but no witnesses is present in spite of a last chance given to the prosecution side to bring their witnesses but the prosecution has failed to adduce any evidence as such the learned Judicial Magistrate 1st Class ~~was~~ ^{has} closed the criminal proceeding and the present applicant is ~~ac~~quitted and set at liberty. This fact of his acquittal is brought to the notice of the authority by the applicant through his representation dated 15.9.199 and also furnished a copy

of the order passed by the Learned Judicial Magistrate Ist Class, Nagaon in G. R. Case No. 2108/88 and further requested to consider his appeal taking into consideration the fact that the applicant is not found guilty in the criminal proceeding instituted under G.R. Case No. 2108/88.

A copy of the order dated 5.6.1992 and copy of the representations dt. 5.11.97, 15.9.99 and 18.8.1999 are annexed as Annexures-F, G, H, & I respectively.

4.10 That your applicant further begs to state that the Dy. CSTE/MW, Maligaon informed the applicant vide his letter bearing No. N/PF/R.K.Mampti/MW dated 18.8.1999 wherein it is stated that he has already been informed vide office letter dated 5.11.1997 that the competent authority has rejected his appeal dated 30.3.1990 but no representation has been received by the office of the Deputy CSTE/MW, Maligaon against the decision given by the competent authority and accordingly he is advised to intimate the office of the Deputy CSTE/MW, Maligaon within 15 days on receipt of the letter dated 18.8.1999 otherwise the penalty decided would be imposed on him. The said letter was received by the applicant on 3.9.1999 and only thereafter he had submitted the appeal dated 15.9.1999 against the letter dated 18.8.1999. In the said appeal dated 15.9.1999 the applicant brought it to the notice of the authority that as he was acquitted from criminal proceeding instituted in G.R. Case No. 2108/88 as such he has requested the authority to exonerate him from

disciplinary proceeding initiated against him. It is pertinent to mention here that this is for the first time applicant came to know from the letter dated 18.8.1999 that the appeal of the applicant dated 30.3.1990 has been disposed of by the authority only on 5.11.1997 rejecting the contention of the applicant. However after receipt of his appeal dated 15.9.99 the authority did not take any further action on the basis of his appeal. However the Deputy CSTE/MW Maligaon vide his letter bearing No. ~~NWXXXX~~ N/PF/ R.K.Kampti/MW dated 31.3.2000 it is informed to the applicant that the competent authority has regretted his appeal and the penalty imposed on him will stand with immediate effect. It is pertinent to mention here that the appeal has been rejected in a very cryptic manner and arbitrary manner without assigning any reason. As such the order of the Appellate Authority has been passed in contrary to the relevant disciplinary and appeal rules 1968 and on that score alone the impugned order dated 12.3.1990 as well as Appellate Order dated 5.11.97 and 31.3.2000 are liable to be set aside and quashed.

Copy of the impugned letter dated 31.3.2000
is annexed as Annexure-J.

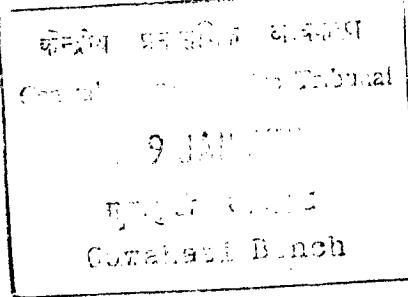
4.11 That it is stated that the disciplinary authority in total violation of the Disciplinary and Appeal Rules 1968 imposed the penalty upon the applicant ignoring the report of the Enquiry Officer while imposing the punishment, the disciplinary authority did not

even record the reasoning for his disagreement with the report of the Enquiry Officer but in a most arbitrary and mechanical manner imposing the penalty upon the applicant. Therefore it appears that the disciplinary authority was pre-determined to impose penalty in total violation of the relevant D & A Rules 1968. Similarly the Appellate Authority also in a very arbitrary manner confirmed the order of penalty imposed by the Disciplinary Authority without even rebutting the points raised by the applicant in the appeal dated 30.3.1990 that too after a lapse of 7 years and the impugned Appellate Order served on the applicant on 18.8.1999, and the respondents are now making an attempt to give effect to the impugned order of penalty which is evident from their letter dated 31.3.2000. Therefore the impugned order of penalty dated 12.3.90 and the impugned Appellate order dated 5.11.97 which was communicated to the applicant on 18.8.99 are liable to be set aside and quashed.

4.12 That your applicant further begs to state that the impugned order of penalty as well as Appellate Order confirming the penalty imposed upon the applicant by the Disciplinary Authority cannot be sustained on the ground alone that the prosecution has been failed to adduce any evidence in respect of the same allegation which was pending before the learned Judicial Magistrate 1st Class, Nagaon in GR Case No. 2108/88 (State Vs. R.K.Kampti) under Section 341/323/506 and it is also relevant to mention here that the applicant was acquitted from the criminal charges by the Learned Judicial Magistrate, 1st Class vide order dated 5.6.1992 passed in GR Case No. 2108/88. Therefore

Contd...

21/08/2007



the respondents have no jurisdiction to proceed with the departmental proceeding in view of the categorical finding of the learned Judicial Magistrate, Nagaon. On that score alone the impugned order of penalty and appellate order are liable to be set aside and quashed. It is also relevant to mention here that enquiry officer did not find any fault with the applicant regarding the charges brought against him and in fact as per the opinion of the enquiry officer the applicant was not responsible in any of the charges brought against him under memorandum dated 12.3.89 therefore the impugned order of penalty dated 12.3.90 and the Appellate Order dated 5.11.97 are liable to be set aside and quashed.

4.13 It is stated that although the applicant submitted representation in terms of the letter dated 18.8.99 on 15.9.1999 wherein he has stated that he was acquitted by the learned Judicial Magistrate from the Criminal charges, the subject matter of which is similar to that in the departmental proceeding. Therefore there was no reason or justification for the respondents further confirming penalty vide impugned order dated 31.3.2000. This arbitrary decision of the respondents which is taken while reviewing the Appellate Order by the Competent Authority is contrary to the rule and specially when there was disagreement with the findings of the enquiry officer and the disciplinary authority. On that score alone the impugned order of penalty dated 12.3.90 and appellate order dated 5.11.97 and the impugned order dated 31.3.2000 are liable to be set aside and quashed. In this connection it is also stated that no ^{reason} for disagreement is assigned in the Appellate order which is mandatory

9 JAN 2011

গুৱাহাটী বাটৰী
Guwahati Bench

as per the existing Discipline and Appeal Rules of the Railways. On that score alone the impugned orders are liable to be set aside and quashed.

4.14 That this application is made bona fide and for the cause of justice.

5. Grounds for relief(s) with legal provisions

5.1 For that no opportunity was given to the applicant before imposition of penalty by the Disciplinary Authority even when the enquiry officer could not establish charges levelled against the applicant therefore it was mandatory on the part of the disciplinary authority to provide an opportunity to the applicant before imposition of penalty but surprisingly after imposition of the penalty applicant was directed to submit representation if any against the order or penalty as well as the impugned order passed by the Appellate Authority which is contrary to the Discipline and Appeal Rules, 1968.

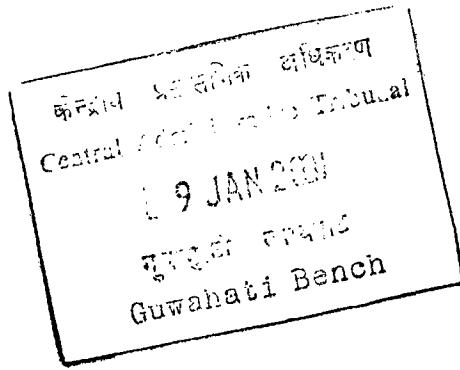
5.2 For that no reason was assigned for disagreement with the findings of the Enquiry Officer by the Disciplinary authority in the order of penalty passed by the Disciplinary Authority.

5.3 For that the appellate order is cryptic, non speaking and the same is mechanically passed without application of mind and also without rebutting the points raised by the application in his appeal.

5.4 For that the respondents proceeded with the departmental proceeding with the same charges which were

Contd...

21 NOV 2011 10:10 AM 2011



the charges before the learned Judicial Magistrate and the Learned Judicial Magistrate acquitted the applicant from the charges brought against him in the criminal proceeding.

5.5. For that the impugned Appellate Order dated 5.11.97 has been served upon the applicant on 18.8.1999.

5.6 For that representation of the applicant dated 15.9.1999 has been rejected mechanically without assigning any reason and also passed the revision order dated 31.3.2000 is in a cryptic manner and non-speaking.

6. Details of remedies exhausted

That the applicant states that he has no other alternative and other efficacious remedy than to file this application.

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

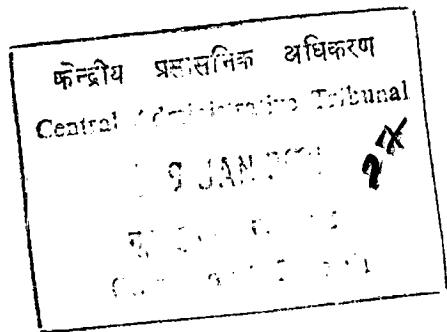
The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any Court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is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

8. Reliefs sought for :

In view of the facts and circumstances stated in paragraph 4 of the application, the applicant prays for the following reliefs :

Contd...

21 March 2001 AD



x8xx

8.1 That the Hon'ble Tribunal be pleased to set aside the order of penalty dated 12.3.1990 (Annexure-7) and the Appellate Order dated 5.11.1997 (Annexure-6) which was served on the applicant on 18.8.1999 and the revision order dated 31.3.2000 (Annexure-7) and further be pleased to direct the respondents to restore the scale of pay of the applicant with all consequential service and monetary benefits.

8.2 Costs of the application.

8.3 Any other relief or reliefs to which the applicants are entitled to, as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for

Pending disposal of this application, an observation be made that pendency of this application shall not be a bar for the respondents to grant the relief to the applicant, more so in view of the Section 19(4) of the Administrative Tribunals Act. The applicant also pray that the instant application be disposed of expeditiously.

10.

This application is filed through advocate.

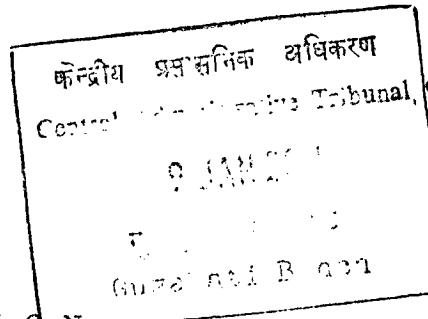
11. Particulars of the I.P.O.

- i. I.P.O. No. : 66 771221
- ii. Date of Issue : 22/12/2000
- iii. Payable at : G.P.O., Guwahati.
- iv. Issued from : G.P.O, Guwahati.

12. List of enclosures :

As stated in the Index.

21 March 2001
N.M.



VERIFICATION

I, Shri R.K.Kampty, resident of Laopani, under District Nawgaon, Assam working as Microwave Attendant under DSTE/MW, N. F. Railway, Maligaon, do hereby verify that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 22nd day of Dec' 2000

21 May 2001

Signature

Annexure-A

To
The Divisional Signal & Telecom. Engineer/M.W.
N.F.Railway,
Maligaon.

(Through Proper Channel.

Subject : Holding of Disciplinary enquiry.

Sir,

With reference to your No. N/PF/PK/Mampti/M W dated 28.4.89 appointing Shri A. Goswami, ASTE as Enquiry Officer to inquire into the charges framed against me I have to submit the following for favour of your kind consideration and judicious orders please.

1. That I have not received the major memorandum issued against me. Either the original or a copy there of may be supplied to me and
2. That along with the original or copy of the memorandum the copies of the documents if any mentioned in Annexure-III of the said memorandum and copies of the statement or reports of any persons mentioned as witness in the Annexure IV of the said memorandum may kindly be supplied to me to extend me the reasonable opportunity to defend myself.
3. That the copy of the report submitted by ASTE or any other official mentioning therein that I did not give any statement to ASTE in spite of extending reasonable opportunity to me may also be supplied to me at the earliest.

On receipt of the above mentioned papers if the date of inquiry is fixed I shall be in position to defend myself as the allegations levelled against me are not at all factual.

For the prupose of getting assistance in the dicsiplinary inquiry proposed I hereby nominate Shri Md. Samsul Haque, Law Asstt. N.F.Rly., Maligaon working under CCO/N.F.Rly and enclose herewith the letter of consent issued by him to this effect. In case of holding Enquiry or inspection of documents (for verification or taking extract to etc.) Shri Haque may be got spared of for extending me the reasonable opportunity in the process of holding disciplinary enquiry as in absence of the Defence Counsel, I am afraid, I shall not be able to defend myself (for not knowing the rules/procedure etc. of the disciplinary enquiry).

DA/ on consent letter
Dated 29.5.89

Yours faithfully,

Sd/-

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Annexure-B

Office of the DSTE/MW/Maligaon
No. N/PF/R.K.Kampti/MW

To

Shri R.K.Kampti, MW Attendant/LPN

Through RTCI/MW/LMG

Sub : Holding of disciplinary inquiry.

Ref : Your letter No. Nil dt. Nil and the same forwarded by RTCI/MW/LMG on 21.6.89.

In response to your above quoted letter, it is seen that you have refused to receive the memorandum two times. Hence your demand for copy of memorandum and additional documents as mentioned, in your letter is rejected.

However, at the time of DAR inquiry, if the inquiry officer permits at his discretion, he may allow you to examine the desired documents, but you will not be allowed to detain or hold up the inquiry proceedings.

Sd/- Illegible

DSTE/MQ-II/Maligaon

Copy to :

1. Shri A.Goswami, ASTE/LMG, Inquiry Officer, for his information and necessary action please. The desired documents may be permitted to be examined by the defendant at your discretion at the time of inquiry.
2. RTCI/MW/LMG for information to his letter No. nil dated 21.6.89.

Sd/-

DSTE/MW-III/Maligaon

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Annexure-C

To

The DSTE/MW-11
N.F. Railway,
Maligaon

(Through proper channel)

Sub : Your No. N/PF/R.K.Kampti/MW dt. 30.6.89
served on 18.7.89.

Sir,

I am shocked to receive your letter mentioned above rejecting my demand for copy of memorandum and additional documents.

The demand was made to understand the charges levelled against me and also to prepare myself to defend against the ~~maxx~~ ~~xx~~ ~~xx~~ ~~xx~~ ~~xx~~ ~~xx~~ ~~xx~~ charges alleged. By rejection of my demand to supply me the copy of the memorandum and additional documents mentioned above you have simply & exhibited your pre-determination to penalise me without affording me the reasonable opportunity to defend myself.

The sole basis for conducting and deciding the disciplinary chases is based upon the principles of natural justice and by your action it appears you are not willing to extend me the opportunity to defend myself.

In the circumstances the position now created by your orders are compelling me to submit that there is no justification for my participation in such an inquiry in which disciplinary authority appears to have pre-judged the matter and made up his mind to award punishment by depriving the delinquent from reasonable opportunity.

I have consulted some persons at Maligaon who are supposed to know the rules of DAR and according to them your order of rejection is not supported by any provision of RS (D&A) Rules 1968 and other administrative instruction issued by the administration on the subject.

I shall be grateful to you if you kindly extend me an acoortunity to know the rules/administrative instructions under which you have rejected my demand of supplying me the documents required for my defence and oblige me.

Dated, Maligaon,
the 28/7/89.

Yours faithfully,

Northeast Frontier Railway

Office of the DSTE (MW) / Maligaon

NO. N/PF/R.K.Kampti/MW

Office of the DSTE (MW) / Maligaon

12th March, 1990

To

ACW

Shri R.K.Kampti,
Microwave Attendant,
(under Suspension),
LAOPANI

(Through RTCI/MW/Lumding)

Sub : Notice for imposition of major penalty under D & A Rules, 1968.

Ref : This office memorandum for major penalty of even number dated 13.3.1989.

With reference to the subject mentioned above, you are hereby informed that the disciplinary authority i.e., the undersigned, does not agree with the assessment of evidence, reasons for findings, and the findings of the DAR Enquiry conducted by the Enquiry Officer on 21.12.89, 22.12.89 and 23.12.89 at Laopani Microwave station in respect of Article of charges enclosed in the memorandum referred to above.

Therefore, the disciplinary authority i.e., the undersigned, hereby rejects the findings of the Enquiry Officer, as unacceptable.

However, the disciplinary authority does not find any fault or irregularity in respect of conducting of enquiry mentioned above. Therefore, the disciplinary authority accepts as correct the record of proceedings as submitted by the Enquiry Officer.

However, based in the enquiry proceedings mentioned above, the disciplinary authority has drawn its own findings alongwith reason for findings which are enclosed in Annexure-I for your information.

Therefore, after enquiring that :

- (a) Only the material which the delinquent had opportunity to rebut, is considered.
- (b) Reasonable opportunity as per rules has been given.
- (c) Natural justice fully enquired.
- (d) Extenuating circumstances, if any, taken into consideration.
- (e) Objections of delinquent are also considered.
- (f) Orders passed are fair to both administration and the delinquent.
- (g) Decision is based on merits and not on ~~policy~~ or expediency.

*Deles And
Sister*
the disciplinary authority has come to the conclusion that the ~~delinquent~~ defendant has been found guilty of all the

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Annexure-D (Contd.)

charges brought against him except item No. 1(b) of Articles of charges, which is subjudice.

It is further noted that you have a previous record of serious misconduct in respect of which memorandum in Form No.5 was issued to you on 2.12.1988. In the said case mentioned above you were found guilty and punishment was imposed on you on 13.1.1989.

Thus, it is seen that this is a case of repeated and recurring misconduct on your part.

No benefit of doubt can be extended to you in view of all facts mentioned in the Enquiry proceedings, since there is no doubt in any of the findings made by the disciplinary authority.

Hence, considering all facts the disciplinary authority hereby decides to impose a major penalty on you as follows :-

"You are permanently reverted to the initial stage of the scale Rs. 750-940 (RSRP) at the bottom-most seniority with immediate effect.

It is further to note that the above penalty is being imposed on you only in respect of item No.1(a), 1(c) and No. 2(a) and 2(b) of Articles of charges, which have been found to be sustained. Decision regarding item No. 1(b) of Articles of charges is kept pending since the matter is subjueice.

Your suspension order is hereby revoked with effect from the date of receipt of notice of imposition of major penalty by you as mentioned herein.

You are hereby permitted to join duty on your current posting on revocation of suspension order on conditions mentioned above.

You are hereby granted a time of 15 days within which you may submit an appeal in respect of penalty imposed above, to the Appellate Authority.

Enclo :

Statement of Article of charges and reasons for findings, Findings & Conclusion drawn by the Disciplinary Authority.

Copy to : R.T. C.I/Microwave/Lumding.

He is advised to serve the above letter alongwith enclosures mentioned above to Shri R.K.Kampti, Microwave Attendant (under suspension), Laopani Microwave Station. He is further advised to send the acknowledgement of receipt of this letter from Sri R.K.Kampti. Shri R.K. of suspension order with effect from the date of receipt of this letter by him.

Sd/- Illegible

12.3.90

(A.V. BHATT)

DSTE/MW/Maligeon,
Disciplinary Authority

Sd/- A. V. Bhatt
DSTE/W/Malitaon

Reasons for Findings on Article of Charges.

Article of Charges

1. (a) Gross and serious misbehaviour.
- (b) Assaulting a Central Govt. employee who was on duty.
- (c) Obstructing and preventing the said Govt. employee from attending and discharging official duty by inflicting injury on his person, resulting in the said Central Govt. employee becoming injured and unable to perform his official duty for a period of 60 minutes on 30.10.88 as a result of said injury.

2. (a) Refusal of orders of his superior official by refusing to give any statement.
- (b) Non-cooperation with Rly. Administration in course of official departmental inquiry, this being repeated incident of refusal of orders of his superior officials.

Thus he has violated service conduct Rules, 1968, Rule 3(i) Clause-I, II, & III, thereby unbecoming of a Rly. servant.

Reasons for Findings.

Check 11 fm
and Document 11 fm

It is seen from the DA R inquiry proceedings held on 21/12/89 & 22/12/89, at LPN MW Station, that Shri T.K.Das, was returning from his office to his residence at about 17.10 hours on 30.12.88. He was asked to stop in front of the residence of Shri Kampti, by Shri Kampti himself. It is further seen that Shri R.K.Kampti as per his own statement, came out of his residence, and directly charged Shri T.K.Das about why Shri T.K.Das had sent an adverse report against him to the authorities at MLG. It is also confirmed from statement of defendant and witnesses, that there was an altercation between Shri T.K.Das and Shri R.K.Kampti on this matter. This has been admitted by Shri Kampti the defendant, during his cross examination. This confirms allegation No. 1(a), i.e. gross and serious misbehaviour on the part of the defendant.

Regarding allegation under item No. 1(b) i.e. assaulting a Central Govt. employee, who was on duty, it is seen that from the statement of witnesses and the defendant, the time of occurrence of the incident of this case occurred at about 17.10 hrs. Although normal duty hours of Shri T.K.Das are upto 17.00 hrs. but the time taken by the Govt. employee in going from residence to office (i.e. work spot) and back to residence, is considered as "On Course of

Duty", as per extant orders, Moreover, Shri T.K. Das, was working as Station incharge of LPN MW station at the time of occurrence, with 24 hrs. responsibility of the MW Station. Hence, it is a fact that Shri T.K. Das, was considered to be on duty at the time of occurrence of incident. However, since this portion of the allegation is subjudice, no remarks are furnished at present.

Regarding item No. 1(c) of allegations, it is seen that, as a result of altercation etc., Shri T.K. Das had to go to Police station at Kampur, to lodge FIR. The distance of the above Police Station from LPN MW Station is more than 8 K.M. To go 8 KMs and return by a person would take about one hour. For follow-up action on FIR, as required by the Police, Shri T.K. Das had to go to Kampur State Dispensary, for Medical check up and obtaining medical certificate, to observe the formalities in connection with the FIR.

Thus Shri Kampti had obstructed and prevented Shri T.K. Das a Central Govt. employee, from attending and discharging official duties, because Shri T.K. Das had to be away from his working place for considerable period i.e. about 60 minutes, or may be more, for attending to above works at Kampur, leaving his MW Station unattended.

Regarding allegations under item No. (2), it is seen from inquiry proceedings, as well as reports of RTCI/MW/LMG, and ASTE/MW/LMG, as well statements of all witnesses that Shri R.K. Kampti was asked by RTCI/MW/LMG in presence of ASTE/MW/LMG, to give a statement in his own defence regarding the incident. This is accepted by the defendant himself, in his cross examination. But it is seen that the defendant refused to give any statement, on the plea that he was illiterate person and so he could not give a statement in writing. But as per his nature of duty, the defendant is required to maintain official records and log-book.

Moreover, he has signed in Hindi on the inquiry proceedings. Therefore, his reply in the cross-examination, is proved to be false. Thus, it is clear that the defendant refused the orders of his Sr. Subordinate-In-Charge, by refusing to give statement, on a plea of a false statement.

Regarding item No. (b) of allegation No. (2), i.e. non-cooperation with Rly. Administration in course of official Departmental inquiry, it is seen that the defendant has refused to give statement at the time of fact finding inquiry, although he was advised to do so repeatedly by RTCI/MW/LMG and ASTE/MW/LMG, which also admitted by the defendant. Thus this is a case of repeated refusal of orders.

Thus it is clear that the defendant had non-cooperated with Rly Administration in course of official departmental inquiry as above.

Findings on the above

Hence based on above reasons, following findings are drawn :

Item No. 1(a)	-	Sustained.
Item No. 1(b)	-	Decision and remarks kept pending, since the case is sub-judice.
Item No. 1(c)	-	Sustained.
Item No. 2(a)	-	Sustained
Item No. 2(b)	-	Sustained.

Conclusion

The defendant, Shri R.K.Kampti is found guilty of charges brough against him in the article of charges, except item No. 1(b) which is sub-judice.

*Shri R.K.Kampti
P.S. Dyer*

To

The DSTE/N.F.Railway, Maligaon.

Sub : Appeal against imposition of major penalty under D&A Rules 1968 by the DSTE (MW) MLG vide his letter No. N/PF/R.K.Kampti/MW dated 12.3.90.

Sir,

Most respectfully I beg to lay before you the following few lines for favour of your kind consideration and judicious decision.

That Sir, DAR enquiry was instituted against me to inquire into the alleged charges framed under memorandum No. N/PF/R.K. Kampti/MW dtd. 12.3.89. It is to be mentioned here that before the enquiry was held, the Disciplinary authority not only did not serve the memorandum of charges, it also rejected my demand for supply of those documents vide DSTE/MW/MLG's letter No. N/PF/R.K.Kampti dtd. 30.6.89.

However after the inquiry proceedings are over the Disciplinary authority disagreed with the findings of the Inquiry office and decided to impose a major penalty by "Permanently reverting me to the initial stage of the scale Rs. 750-940 (RSRP) at the bottommost seniority with immediate effect."

In this connection I beg to state that before imposing the aforesaid major penalty, the Disciplinary authority neither supplied me the copy of findings of the Inquiry officer nor did it give an opportunity to show cause against the penalty. On the other hand the Disciplinary authority restricted the scope of appeal by allowing only 15 (fifteen) days time to approach the higher authority against the penalty.

I therefore request you the kind withdrawal the aforesaid major penalty and allow me to resume in the class III post I am holding in the meantime.

I, however keep it open to place of before you further points in this regard.

Dated 30.3.90

Yours faithfully,

Sd/-

(R. K. Kampti
MW Attendant
MW Station/LPN

*Amritpal
R. K. Kampti
MW Attendant
MW Station/LPN*

- 25!

Annexure-E

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Date of application for copy	Date of which the copy was ready for delivery	Date of making ever the copy to the applicant
4.3.1993	17.3.93	17.3.93

Copy of order dated 5.6.92 passed by
Shri I. Shah, Judicial Magistrate
Ist Class, Nagaon in G.R. No. 2108/88

State Vs. Accd : - Sri Ram Kishan Kampti
u/s 341/323/506

ORDER

Dated 5.6.92

Accused person is present No witness is present.
Prosecution was given last chance to bring their witness.
But the prosecution has failed to adduce any evidence.
No step is taken by the prosecution. Hence the prosecution
case is closed hereby.

There is no evidence against the accused persons.
Hence the accused person is acquitted and set at the liberty
forthwith.

Sd/- I. Shah,
Judicial Magistrate
Ist Class, Nagaon

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Annexure-G

N. F. Railway

Office of the
Dy. CSTE/MW/Maligaon
Guwahati-11

NO. N/PF/R.K.Kampti/MW (174)

Dt. 05.11.97

To

Shri R.K.Kampti
MW/Attendent/MW/LPN

Thro : SSE/R/MW/Lumding

Sub : Sppeal against imposition of major penalty
under DAR Rules 1968 by the DSTE/MW/MLG vide
his letter No. N/PF/R.K.Kampti/MW dt. 12.03.90

Ref : Your appeal dt. 30.03.90

Rej P 27
The competent authority has rejected your appeal
dt. 30.03.

This is for your information.

Sd/- Illegible 6.11.97

Divisional Signal & Telecomm.
Engg (MW), N.F.Rly/MLG/GHY-11

Copy to : CSTE/MLG for information please.

Divl. Signal & Telecomm : Engg (MW)
N.F.Rly/MLG/GHY-11

*Attestation
D. D. S.
A. C.*

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Annexure-H

To

The Chief Signal & Telecom. Engineer,
N.F.Railway/Maligaon,
Guwahati-11.

(Thro : proper channel).

Sir,

Sub : Appeal against imposition of Major Penalty
under DAR Rules 1968 by the D.S.T.E./MW/MLG.

Ref : Dy. CSTE/MW/MLG's L/No.N/PF/RK Kampti/MW
dated 18.08.99

Most respectfully I beg to state the following for
your kind consideration and favourable order please.

That Sir, against the imposition of disproportionate
punishment by the DSTE/MW/MLG, I approached Hon'ble
Central Administrative Tribunal to interfere in the matter,
as I was absolved by the Inquiry Officer from the charges
of misconduct mentioned in the Articles of charges for
which the inquiry was instituted. The Hon'ble Tribunal was
pleased to stay the imposition of punishment and directed
the Railway Administration to decide my appeal dated 3.3.99
strictly on merit and in accordance with law without taking
adversely the circumstance under which the Hon'ble Tribunal
was approached.

That Sir, it will be appreciated that I have been
found not guilty and acquitted by the 1st class Judicial
Magistrate, Nagaon in G.R. No. 2108/88, which was pending
in the Court on complaint lodged by the same Shri T.K.Das
for the same incident of assault for which the DAR inquiry
was conducted wherein also I was not found guilty (a copy
of the order of the Court is enclosed).

Under the circumstances, I beg to submit that my
appeal dated 30.03.99, was not disposed of judiciously
and the punishment sought to be imposed will be of a vindic-
tive nature and without any basis.

I, therefore, fervently request your honour to kindly
exercise your good offices to call for all relevant records
and further be pleased to consider the judiciously and
sympathetically and exonerate me from the charges, that I,
a poor employee is not victimised by the disproportionate
punishment for no fault of mine.

I shall be grateful for your kindness.

Enclo :

1. Finding of Inquiry Officer (A)
2. Order of Hon'ble CAT (B)
3. Order of Nagaon Court (C)

Yours faithfully,

Sd/- R.K.Kampti

MW Attendant, Laopani

Dt. 15.9.99

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Annexure- I

NORTHEAST FRONTIER RAILWAY

Office of the Dy. CSTE/MW/Maligaon
Guwahati-11

No. N/PF/R.K.Kampti/MW

Dt. 18.08.99

To

Shri R.K.Kampti
MW/ Attd/LPN

Through SSE/R/MW/LMG

Sub : Appeal against imposition of Major Penalty under
DAR Rules 1968 by the DSTE/MW.

Ref : This office letter No. N/PF/R.K.Kampti (MW)
dt. 5.11.97

You have been already informed vide this office
letter at reference above that the Competent Authority
has rejected your appeal dated 30.3.90. No representation
has been received by this office till now against the
decision given by the competent Authority.

Hence, you are advised to intimate this office within
15 days of received of this letter. Otherwise the penalty
decided will be imposed on you.

Sd/- Illegible 18.8.99
DSTE/MW/Maligaon
for Dy. CSTE/MW/Maligaon

NORTHEAST FRONTIER RAILWAY

Office of the Dy. CSTE/MW/Malitaon
Guwahati-11

No. N/PF/R.K.Kampti/MW

Dt. 31.03.2000

To

Shri R.K.Kampti
MW/Attd/LPN

Through SSE/R/MW/LMG

Sub : Imposition of penalty.

Ref : This office letter No. even of
dated 5.11.97.

As the competent authority has regretted your
appeal the penalty imposed on you will stands with
immediate effect.

Sd/. Illegible 31.3.2000/

Divl. Signal & Telecomm: Engg/MW
Guwahati-11

for Dy. CSTE/MW/Maligaon

Copy to : SSE/F/MW/MLG - His payment should be charged
at Rs. 2550/- (initial) in scale Rs. 2550-3200/-
on date as khalasi.

2. SSE/R/MW/LMG for information.

Divl. Signal & Telecomm. Engg/MW
N.F.Railway/Malitaon

Guwahati-11
for Dy CSTE/MW/Maligaon

Field Day:
Sundown Camp
Rainbow Lodge
July 16, 1966

O.A. NO. 16 /2001

IN THE MATTER OF :

Sri R.K. Kampti

..... Applicant

- Vs -

Union of India & Ors.

..... Respondents.

- And -

In the matter of :

Written Statement for and on behalf
of the respondents.

The answering respondents most respectfully
beg to sheweth as under :

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

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

3. That, the applicant has got no valid cause of action or right for filing this application.

4. That, for the sake of ~~xxix~~ brevity, the respondents have been advised to confine this reply only to those averments of the applicant which are relevant and material for a proper decision in the case. All other allegations to the contrary in the application are denied herewith.

5. That, the case suffers for non-joinder of necessary parties, mis-representation of fact and mis-interpretation of rules on the subject.

6. That, the case suffers infirmities on ground of limitation. The application has been filed in 2001.

7. That, the case is fit one to be dismissed in limine.

8. That, with regard to averments at paragraph 4.2 of the application it is submitted that it is quite incorrect statement that an altercation only took place on 30.12.88 at 17.00 as alleged. Rather, Sri Kampti assaulted his superior controlling official Shri Tushar Kanti Das TCM/I/MW/Laoapani, near Lao pani Micro-wave station ~~with a stick~~ and thereby caused injury to Shri Das.

9. That, with regard to paragraph 4.3 and 4.4 of the application it is to state that the respondents deny all the allegation/averments made in this paragraph except those which are borne on records or are specifically admitted hereunder. It is a fact that, as his conduct in assaulting his superior official was under investigation and a ~~was~~ disciplinary action against him was contemplated etc. the applicant had to be placed under suspension with effect from 6.1.1989 by the District Signal and Telecommunication Engineer i.e. DSTE/Micro-wave/Maligaon, N.F. Railway and there after memorandum of charges were also issued against him on 13.3.89. But the applicant refused to accept the major penalty ~~suspension~~

Charge sheet tendered before him twice and refused to offer any remarks also. It was only after Sri A. Goswami ASTE/M.W. was appointed as Enquiry officer to enquire into the charges that the applicant submitted application for supplying him the copies of the memorandum of charges. The applicant (Sri Kampti) was informed vide letter No. N/PF/R.K. Kampti/MW dated 30.6.89 that he refused to receive the memorandum two times and hence his request for same at this stage cannot be accepted and he may examine the desired documents, rate at the time of D.A.R. inquiry if the Inquiry Officer permits him at his discretion, etc. It is emphatically denied that the applicant did not refuse to receive any memorandum of charges etc. as alleged ~~or that the applicant was not offered reasonable opportunity to defend his case etc.~~

In this connection, the photo copies of suspension order No. N/PF/R.K. Kampti/MW dated 6.1.89, Memorandum of charges No. N/PF/R.K. Kampti/MW dated 13.3.89, the documents showing refusal of the applicant to receive the memorandum of charges and letter No. F/PF/R.K. Kampti/MW dated 30.6.89 by which the applicant was advised to obtain the copies of the ~~desire~~ desired documents are annexed hereto as Annexure-A, B, C Series and D respectively for ready perusal.

10. That, with regard to the averments at paragraphs 4.5, 4.6 and 4.7 of the application it is submitted that the applicant participated in the said departmental enquiry held under Railway servants (Discipline and Appeal) Rules 1968 and all necessary facilities including assistance of the defence counsel were extended to him. After conclusion of the enquiry, proceedings etc. the Disciplinary Authority vide his letter No. N/PF/R.K. Kampti/M.W. dated 12.3.90 informed the applicant (Sri Kampti) regarding the major penalty awarded to him by

issuing the Notice of imposition of major penalty under D & A Rules, 1968, along with the statement of article of charges and reasons for findings and conclusions drawn by the disciplinary authority. A Copy of the enquiry report ~~was also supplied to him on 15.7.96.~~ In the aforesaid letter dated 12.3.90, the disciplinary authority has also clearly elaborated his reasons for disagreement to accept the findings of the Enquiry Officer and for recording his own findings in the case against the charges on the ^{basis of} evidences etc. adduced before the departmental enquiry and on records, as provided under Rule 10(3) of the Railway Servants (Discipline and Appeal) Rules 1968.

Photo copy of the Disciplinary Authority (DSTE/M.W/Maligaon)'s order as communicated under letter No. N/PF/R.K. Kampti/M.W dated 12.3.90 is annexed hereto as Annexure for ready perusal.

11. That, with regard to averments at paragraphs 4.7, 4.8, 4.9 and 4.10 of the application it is state that all the allegations as made in these paragraphs are denied except those which are either borne on record or are specifically admitted hereunder. As was submitted before this Hon'ble Tribunal, no such appeal dated 30.3.90 as contended by the applicant appeared to have been received by the respondents. However, keeping in view the Hon'ble Tribunal's order at paragraph 6 of the order dated 24.7.95 in the previous O.A. No. 51/90, the applicant was asked vide letter No. N/PF/R.K. Kampti. M.W dated 22.08.95 to submit a copy of the said appeal dated 30.3.90, to which he complied with. As per modified order of the Hon'ble Tribunal dated 20.11.95 in

in O.A. No. 51/90, this appeal is to be placed to the Appellate Authority i.e. the Chief Signal and Telecommunication Engineer (CSTE) and personal hearing was to be given by the C.S.T.E. In obedience to the Hon'ble Tribunal's order, the said appeal dated 30.3.90 was also placed before the Chief Engr Signal and Telecommunication Engineer. The C.S.T.E./N.F. Railway, Maligaon while considering his appeal granted a personal hearing to the applicant (Sri Kampti).

After del-ving into the case and on careful consideration and applying mind, the CSTE(the Appellate Authority) has disposed of the applicant's appeal/Case giving reasons and detailed parawise remarks as to why he rejected the applicant's appeal dated 30.3.90 and also up-hold the penalty imposed by the disciplinary authority. The Appellate Authority's order has also been communicated to the applicant (Sri Kampti) vide office letter dated 5.11.97. It is also submitted herein that all the aspects including the Court cases etc. were also taken into consideration. It is emphatically denied that his appeal has been rejected in a very cryptic and arbitrary manner without assigning any reason or in contrary to the relevant disciplinary and appeal rules 1968 , or that , the impugned order dated 12.3.1990 as well as Appellate order dated 5.11.97 and 31.3.2000, as alleged, are liable to be set aside and quashed.

Copies of this Hon'ble Tribunal's order dated 24.7.95 in O.A. No. 51(G)/90 and dated 20.11.95 in M.P. No. 98/95 (arisen out of O.A. No. 51/90) and letter No. N/PP/ R.K. Kampti/M.W. dated 22.8.95 , and , the order passed by the Chief Signal & Telecommunication Engineer, N.F. Railway,

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Maligaon, Guwahati-11 on the appeal dated 30.3.1990 filed by the applicant, are annexed hereto as Annexures — F, G, and I respectively.

12. That, with regard to allegations made in paragraph No. 4.11 of the application it is submitted that these are not admitted and hence all allegations are denied. It is also to submit herein that after the Hon'ble Tribunals orders dated 24.7.95 and 20.11.95 in his earlier original Application (O.A. No. 51 / 90) filed on same matter, the applicant is debarred under law to agitate same matter again, as has been raised by him now.

cont
The actions as directed by the Hon'ble Tribunal vide order dated 24.7.95 in O.A. No. 51/90 have been taken by the Respondents in this case and the appellate authority (CSTE) has already disposed of his appeal in dated 30.3.90 in pursuance to the order of the Hon'ble Tribunal in O.A. No. 51/90.

It is emphatically denied that the impugned order dated 12.3.1990 and the impugned appellate order dated 5.11.97 are liable to be set aside.

It is also to mention here in that from the order dated 12.3.1990 itself it will quite reveal that the disciplinary authority after going through the case passed the speaking order based on enquiry proceedings which is also well apparent from some of the extracts of the order which are furnished herein below :

Extracts

"..... the disciplinary authority does not find any fault or irregularity in respect of conducting of enquiry"

" However, based on enquiry proceedings mentioned

above, the disciplinary authority has drawn its own findings alongwith reasons for findings

" the disciplinary authority has come to the ~~conclusion~~ conclusion that the defendant has been found guilty of all the charges brought against him except item No.1(b) of Article of charges, which is sub-judice.

It is further noted that you have a previous record of serious misconduct in respect of which memorandum in Form No.5 was issued to you on 2.12.88. In the said case mentioned above, you were found guilty and punishment was imposed on you on 13.1.89.

No benefit of doubt can be extended to you in view of all facts mentioned in the Enquiry proceedings, since there is no doubt in any of the findings made by the disciplinary authority.

Hence, considering all facts the disciplinary authority hereby decides to impose a major penalty on you as follows :

" You are permanently reverted to the initial stage of the scale Rs. 750-940 (RSRP) at the bottom most seniority with immediate effect ".

It is further to note that the above penalty is being imposed on you only in respect of item No. 1(a), 1(c) and No.2(a) and 2(b) of Article of charges which have been found to be sustained"

13. It is also a wrong statement of the applicant that no cause for disagreement is assigned by the Appellate Authority. In this connection it is to mention herein that in his finding, the CSTE/N.F. Railway has also clearly observed inter alia as under, which will quite reveal that allegations of the applicant are incorrect Extract of some of the observations of the Appellate Authority are furnished herein below:

Extracts:

" I would like to put on record that I also do not agree with the conclusions arrived at by the Enquiry Officer . As such, I agree with the contents and evidence tendered during the course of enquiry . The Enquiry Officer has not interpreted the evidence tendered in the correct manner and perspective "

" I agree with the conclusions arrived at by the Disciplinary Authority based on the same evidence but interpreted in its proper perspective . Each of the findings arrived at by the Disciplinary Authority is endorsed by me as an appellate Authority ".

" I totally reject Sri Kampti's comments that there was any vindictive attitude or an attempt by Disciplinary Authority to 'conceal the truth' , Based on the evidence tendered, it is convincingly established that none of the charges are false, concocted and fabricated charges "

.....

5
Order
of the
Court
of
Appeal
of
Assam
and
Meghalaya
dated
the
21st
March
1990

"I have gone through the Enquiry Proceedings, findings of the Enquiry Officer, findings of the Defence Counsel and have come to the conclusion that there is sufficient evidence to the fact that Sri Kanpti has assaulted Sri T.K. Das."

.....
Shri Kanpti's appeal
dated 30th March, 1990 is rejected."

Sd/-

(Ravindra Nath)
Chief Signal & Telecom. Engineer
N.F.Railway, Maligaon, Guwahati-11.

It is also to add herein that the Disciplinary Authority (DSTE) in passing his orders rigidly observed the provision of Rule 10(3) of the Railway Servants Discipline and Appeal Rules) 1968, which reads as under :

Rule 10(3).

"The disciplinary authority shall, if it disagrees with the findings of the enquiring authority on any article of charge, record its reasons for such dis-agreement and records its findings on such charge, if the evidence on record is sufficient for the purpose."

Photo copy of the above said Rule 10(3) (i.e. Action taken on the inquiry report) is annexed hereto as Annexure-J for ready perusal.

14. That, with regard to averments/allegations of the applicant as made at paragraph 4.12 and 4.13 of the application it is submitted that the applicant has misconstrued and misinterpreted the extant rules and orders and the present application has been filed only to mis-lead the Hon'ble Tribunal in order to derive undue benefit. It is submitted that all such allegations are unsustainable and hence denied. There is no bar in holding the departmental

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Quesada
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enquiry after observing the statutory rules as laid down in the Railway Servants (Disciplinary and Appeal) Rules 1968 and applicants contention to the contrary are emphatically denied. It is denied that the respondents have no jurisdiction to proceed with the departmental proceeding as alleged. In view of what have been stated in the foregoing paragraphs of the written statement it is reiterated that no further comments are called for regarding the rest of the allegations of the applicant, and the impugned order dated 12.3.90, 5.11.97 and 31.3.2000 are quite self explanatory, valid, legal and proper. It is emphatically denied that these are liable to be set aside and quashed.

15. That, as regards the grounds for relief as stated at paragraph 5 of the application, it is submitted that these are not valid, legal and proper under laws, rules and fact of the case and hence are not admitted. All the points raised by the applicant have been elaborately dealt with and answered in the foregoing paragraphs of the written statement and calls for no further repetition. It is also submitted that the respondents have faithfully and diligently complied with the orders and directions as given vide their (Hon'ble Tribunals) order dated 24.7.95 and 25.11.95 in O.A. No. 51(G) of 1990 and M.P. No. 98/95 respectively, (as has also been mentioned by the applicant at paragraph No.7 of the application), and the applicant is debarred to agitate same again and again.

(a)

Copies of the above said orders dated 24th July 1995 and 20.11.95 are annexed hereto as Annexures F and G respectively for ready perusal.

16. That, with regard to the relief sought and prayed through paragraph 8.1 of the application, it is submitted that the merit of the case does not deserve for grant of any such relief as prayed for by the applicant and hence his endeavour to nullify the reversion order etc. cannot be admitted under the fact and the circumstances of the case. Further, his present application is also not tenable as he did not approach the Hon'ble Tribunal within time (as fixed by the Hon'ble Tribunal under paragraph 7 of the order dated 24.7.95) after communication of the appellate authorities decision dated 5.11.97 ~~xxxx~~ and finally dated 30.3.2000.

17. That, it is submitted that all the actions taken in the case are quite in consonance to the extant rules and orders on the subject and are quite valid ^{legal} and proper.

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

19. That, under the fact and circumstances of the case as stated in foregoing paragraphs, the instant application is not maintainable either on fact or on law ~~is not maintainable~~ and it is liable to be dismissed.

Verification.....

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VERIFICATION

I, Sri Narneet Kaushik, son of
Sh. S. L. Sharma aged about 38 years, by occupation, Railway
service, now working as Dy. CSTE / MW as
N.F. Railway, do hereby solemnly affirm and state that
the statements made at paragraphs 1 and 2 are true to my
knowledge and those made at paragraphs 8, 9, 10, 11 and 12
are matters of records of the case which I believe to be
true and the rest are my humble submissions before the
Hon'ble Tribunal and I sign this verification on this
13 th day of August, 2001.

Mr. Col. Sirajul Islam
S. P. & railway Minister
for and on behalf of
Union of India.

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

dt. 6-1-89

No. N/PF/R.K.Kamph/MW.

(Name of Railway Administration) D.S.T.E./MW/MLG.....

(Place of issue) Maligon..... Dated 6-1-89.....

ORDER

Whereas a disciplinary proceeding against Shri Ram Kishan Kamph/MW Attendant/LPN (name and designation of the Railway servant) is contemplated/pending (name and designation of the Railway servant) in respect of a criminal offence is under investigation/inquiry/trial

Now, therefore, the President/the Railway Board/the undersigned (the authority competent to place the Railway Servant under suspension in terms of the Schedules I, II and III appended to Railway Servants (Discipline and Appeal) Rules, 1968/an authority mentioned in proviso to Rule 5 (I) of the Railway Servants (Discipline and Appeal) Rules, 1968) in exercise of the powers conferred by Rule 4/proviso to Rule 5(I) of the Railway Servants (Discipline and Appeal) Rules, 1968, hereby places the said Shri Ram Kishan Kamph/MW Attendant/LPN under suspension with immediate effect/with effect from 6/1/89 (F/N) *for further enquiry*.

It is further ordered that during the period this order shall remain in force, the said Shri Ram Kishan Kamph/MW Attendant/LPN shall not leave the headquarters without obtaining the previous permission of the competent authority.

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

Chhat
D.S.T.E. / MICROWAVE
N.F. RAILWAY/MLG

(Signature)
(Name)

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

Copy to-

Shri Ram Kishan Kamph/MW Attendant/LPN at station through R.T.C./MW/MLG suspended Railway servant). Orders regarding subsistence allowance admissible to him during the period of suspension will issue separately. Where the order is expressed to be made in the name of the President.

Chhat
D.S.T.E. / MICROWAVE
N.F. RAILWAY/MLG

Received
Kamal Seal Form
3/1/89

cc-
6/1/89

STANDARD FORM NO. 5

STANDARD FORM OF CHARGESHEET

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

No. NT/F/R.K.Kampti/MW

DSTF/MW/MLG (Name of Railway Administration).

(Place of issue) Malgam Dated 13-3-89

MEMORANDUM

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

2. *Shri Ram Kishan Kampti is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure-III) at any time during office hours within ten days of receipt of this Memorandum. For this purpose, he should contact DSTF/MW/MLG immediately on receipt of this memorandum.

3. Shri Ram Kishan Kampti is further informed that he may, if so desires, take the assistance of any other railway servant or official of Railway Trade Union (who satisfies the requirements of Rule 9(13) of the Railway Servants (Discipline and Appeal) Rules, 1968 and Note 1 and/or Note 2 thereunder as the case may be) for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons (in order of preference). Before nominating the assisting railway servant(s) or official(s) of the Union(s), Shri Ram Kishan Kampti should obtain an undertaking from the nominee(s) that he (they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case (s) if any, in which the nominee(s) had already undertaken to assist and the undertaking should be furnished to the undersigned/General Manager (DSTF/MW/MLG) of Railway alongwith the nomination.

4. Shri Ram Kishan Kampti is hereby directed to submit to the undersigned (through General Manager RK/MW/MLG of Railway) a written statement of his defence (which should reach the said General Manager) within ten days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of his defence and within ten days after completion of inspection of documents if he desires to inspect documents, and also

- (a) to state whether he wishes to be heard in person;
- (b) to furnish the names and addresses of the witnesses if any, whom he wishes to call in support of his defence;

to furnish such -----

Reason(s) not furnishing such impreatory report may however be cited when adduced in this appeal.

Contd.

5. Shri Ramkishan Kamph is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

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

7. The attention of Shri R. K. Kamph is invited to Rule 20 of the Railway Servants (Conduct) Rules, 1966, under which no railway servant shall bring or attempt to bring any additional 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 R. K. Kamph is aware of such a representation and that it has been made at his instance and action will be taken against him in accordance with Rule 20 of the Railway Servants (Conduct) Rules, 1966.

8. The receipt of this Memorandum may be acknowledged.

By order and in the President 13/3/393
Enclosed one statement of OSTM / MICROWAVE
D-Imputation & Misconduct (S. No. RAILWAY/MLG)
& Misbehaviour. Name and designation of competent authority.

To Shri Ramkishan Kamph

in Allround / I-PIN MAI (Designation)

through RICEMAT/MLG (Place)

9. Copy to Shri _____ (name & designation of the lending authority) for information.

10. Strike out whichever is not applicable.

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

12. Name of the authority ~~to whom this memorandum~~ ~~is referred to~~ that whenever ~~the~~ ~~is referred to~~ the disciplinary authority by the investigating authority or any authority who are in the custody of the listed documents of who would be arranging for inspection of the documents to enable that authority being mentioned in the trust memorandum.

13. Whether the President is the disciplinary authority.

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

15. To be used wherever applicable - See Rule 16(1) of the RS(DA) Rules, 1968. Not to be inserted in the copy sent

STATEMENT OF IMPUTATIONS OF MIS-CONDUCT OR MISBEHAVIOUR

1) On 30.12.88, at about 17.00 hrs, Shri Ram Kishan Kampti, MW/Attendant/Laopani MW Station, assaulted his superior controlling official, Shri Tushar Kanti Das, 197/1/MW/Laopani, while on duty, near Laopani MW Station, with a stick, thereby causing injury to above Shri Das. Hence, he is charged with (a) gross and serious mis-behaviour (b) assaulting a central government employee, who was on duty (c) obstructing and preventing the said central govt. employee from attending and discharging official by inflicting injury on his person, resulting the said central govt. employee becoming injured and unable to perform his official duty for a period of 60 minutes on 30.12.88, as a result of said injury.

2) On 11.1.89, while above Shri Ram Kishan Kampti was advised by ASTE/MW/LMG and RTGI/MW/LMG, to submit his statement during departmental fact-finding inquiry, he refused to give any statement, even after and being given reasonable opportunity, to defend himself, in connection with the incident mentioned in item (a) above. Hence, he is charged with (a) Refusal of orders of his superior official by refusing to give any statement, (b) Non-cooperation with Rly. Administration in course of official deptl. inquiry, this being a repeated incident of refusal of orders of his superior officials. Thus he has violated service conduct Rules, 1968, Rule No. 3(1), Clauses No. I, II, III, thereby unbecoming of a Rly. servant.

P. H.
P. H.

1/1/89
7/1/89

DATE/mw/mti:
Shri R. K. Kampti, 197/1/MW
Laopani MW Station, for his mis-behaviour
at your disposal.
10/4/89
Rly. Admin. Inspector (M.W.)
Rly. Admin. Inspector (M.W.)
Rly. Admin. Inspector (M.W.)

DSTE/MH
N.F.R.L.
MALIGOAN.

Dt 7.4.89.

Sir,

As per your order Sui I.B. Maxwell
RTE/MW/LMG offered home of Kaopari
Microwave set on 7.4.89 at 13.30 hrs. And
offered to receive one (1) Memorandum
no N/PF/R.K.Kompti/MW Sui Maligoan 13.3.89
and one change sheet and penalty imposition
notice of Sui R.K.Kompti MW/ATD & ATO NIL
at 13.3.89 & one letter dt 19/01/89 to Sui
Ram Kishan Kompti MW/ATD in presence of
himself and Tilakdewa Hiria, attendant/MW/ATD
Nakeswam Bona 7EM/III/MW/ATD of Sui Sandan
Chakrabarty SCA/MW/ATD & PPA. But Sui
Ram Kishan Kompti refused to receive the
some offers requesting him several times also.
This is for your information pl.

8th

7.4.89
at 14.00 hrs.
Sui - 1st Change
MW/Lepponi

b/45-
1/20

149

To

DSTE/Microwave

N. F. RY

M. Maligon.

Dt 7.4.89

Sir

With due respect I beg to
say that as per your order,
Staff/RTCL/MW/LMG attended at LPN
Microwave Stn on 7.4.89 at 13.30 hours
and offered to Sri Ram Kishan Kauli
MW/ attendant, one memorandum No.
N/PA/R. K. Kauli/MW Dt. Maligon 13.3.89
and one charge sheet and Penalty imposition
notice NRS NIL/Dt 13.3.89 at 13.40 hrs.

But Sri Ram Kishan Kauli, attendant/MW/
LPN refused to receive the above latter.

RTCL/MW/LMG at LPN requested them several
times in presence of Sri Tushar Kauli Das
Stn-1, Charge, MW/DPN & Sri Naraswar Bora /TcM/LPN
and Sri Sankar Chatterborey, Kha/MW/LMG at LPN.
But he refused to receive the same.

P/t

Narender Singh Bora

TcM/MW/LPN

DSTE / MW
N.F RLY
MALIGAON.

Dt 7.4.89

STN

150

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- 46 -

With due respect I beg to say that
as per your order RTCI / Microwave /
LMG altered at LPN microwave stn on
7.4.89 at 13.30 hrs and offered to Sri
Ram Kishan Kompti MW / Attendent one
memorandum no N / PF / R. K. Kompti / MW
Dt MLA 13.3.89 and one chargesheet
and penalty imposition notices.
No NIL date 13.3.89 but he refused to
receive the same. This was done in
presence of T.K. Das TCM / MW / LPN and Sri
N. Bora TCM / MW / LPN and Sri Samkar Chakraborty.

f. t.

Tileswar Bhira.
Attendent / MW / LPN
Dt 7.4.89 at 14.00 hrs

- 19 -

S.O.-161

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NORTHEAST FRONTIER RAILWAYOffice of the
DSTB/MICROWAVE/LMG.

No. N/PP/R.K. Kemptt/NN.

Dt. 30-06-89

To: Shri R.K. Kemptt/NN AL /LPM.
(Through RTCI/NN/LMG)

Sub:- Holding of disciplinary inquiry

Reft:- Your letter No. N/11 dt. N/11 and the
same forwarded by RTCI/NN/LMG on
21-06-89.

.....

In response to your above quoted letter, it
is seen that you have refused to receive the memorandum
two times. Hence your demand for copy of memorandum and
additional documents as mentioned, in your letter is
rejected.

However, at the time of DAR inquiry, if the
inquiry officer permits at his discretion, he may allow
you to examine the desired documents, but you will not
be allowed to detain or hold up the inquiry proceedings.

D.S.T.B/NN-21/MALIGAON
N.E. Railways

Copy to:-

- 1) Shri A. Deswani, ASTB/LMG, Inquiry Office, for his information and necessary action please. The desired documents may be permitted to be examined by the defendant at your discretion at the time of inquiry.
- 2) RTCI/NN/LMG for information to his letter No. N/11 dt. 21-06-89.

D.S.T.B/NN-21/MALIGAON
N.E. RailwaysS/EP
Date
30/6/89

S/ C/ 20/6/89

20
E/1/1 Annexure - E
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Northeast Frontier Railway

Office of the
DSTB(PW)/Maligaon

12th March, 1990

Re. N/PP/R.K.Kaspti/MW.

To

Shri R. K. Kaspti,
Microwave Attendant, (under suspension),
LAUT MW

(Through LTOI/MW/Isaude)

Sub: Notice for imposition of major penalty under
D & A Rules, 1968.

Ref: This office memorandum for major penalty of
even number dated 13.3.1989.

With reference to the subject mentioned above, you are hereby informed that the disciplinary authority i.e., the undersigned, does not agree with the assessment of evidence, reasons for findings, and the findings of the D&A Enquiry conducted by the Enquiry Officer on 21.12.89, 22.12.89 and 23.12.89 at Lopam Microwave station in respect of Article of charges enclosed in the memorandum referred to above.

Therefore, the disciplinary authority i.e., the undersigned hereby rejects the findings of the Enquiry Officer, as unacceptable.

However, the disciplinary authority does not find any fault or irregularity in respect of conducting of enquiry mentioned above. Therefore, the disciplinary authority accepts as correct the record of proceedings as submitted by the Enquiry Officer.

However, based on the enquiry proceedings mentioned above, the disciplinary authority has drawn its own findings along with reasons for findings which are enclosed in Annexure-I for your information.

Therefore, after ensuring that:-

- (a) Only the material which the delinquent had opportunity to rebut, is considered.
- (b) Reasonable opportunity as per rules has been given.
- (c) Natural justice fully ensured.
- (d) Extraneous circumstances, if any, taken into consideration.
- (e) Objections of delinquent are also considered.
- (f) Orders passed are fair to both administration and to the delinquent.
- (g) Decision ~~should~~ is based on merits and not on policy or expediency.

the disciplinary authority has come to the conclusion that the defendant has been found guilty of all the charges brought against him except item no. 1(b) of Articles of charges, which is subjudice.

Cont'd.....Page-2
✓

Warkhedi
12/3/90

Continued from Page-1

It is further noted that you have a previous record of serious misconduct in respect of which memorandum in Form No.5 was issued to you on 2.12.1988. In the said case mentioned above you were found guilty and punishment was imposed on you on 13.1.1989.

Thus, it is seen that this is a case of repeated and recurring misconduct on your part.

No benefit of doubt can be extended to you in view of all facts mentioned in the Enquiry proceedings, since there is no doubt in any of the findings made by the disciplinary authority.

Hence, considering all facts the disciplinary authority hereby decides to impose a major penalty on you as follows :-

" You are permanently reverted to the initial stage of the scale Rs.750-940 (RSRP) at the bottom-most seniority with immediate effect."

It is further to note that the above penalty is being imposed on you only in respect of item No.1(a), 1(c) and No.2(a) and 2(b) of Articles of charges, which have been found to be sustained. Decision regarding item No.1(b) of Articles of charges is kept pending since the matter is subjudice.

Your suspension order is hereby revoked with effect from the date of receipt of notice of imposition of major penalty by you as mentioned herein.

You are hereby permitted to join duty on your ~~subsequent~~ ^{next} meeting on revocation of suspension order on conditions mentioned above.

You are hereby granted a time of 15 days within which you may submit an appeal in respect of penalty imposed above, to the Appellate Authority.

(A. V. BHATT)
DSTB/NS/Maligaon,
Disciplinary Authority.

Enclos: Statement of Article of charges
and reasons for findings,
Findings & Conclusion drawn
by the Disciplinary Authority.

Copy to:- R.T.O.I/Microwave/Lauding.

He is advised to serve the above letter along with enclosures mentioned above to Shri R.K.Kampti, Microwave Attendant (under suspension), Laapsi Microwave Station. He is further advised to send the acknowledgement of receipt of this letter from Shri R.K.Kampti. Shri R.K.Kampti may be permitted to join duty on revocation of suspension order with effect from the date of receipt of this letter by him.

Copy to:- O.T.O.I/Microwave/Field/Maligaon for information & necessary actions.

Copy to:- DSTB/Microwave/Lauding for information.

Sub
10/3/90

Ansle
10/3/90
(A. V. BHATT)
DSTB/NS/Maligaon

Article of Charges.

Annexure

-50-

1. (a) Gross and serious misbehaviour.

(b) Assaulting a Central Govt. employee who was on duty.

(c) Obstructing and preventing the said Govt. employee from attending and discharging official duty by inflicting injury on his person, resulting in the said Central Govt. employee becoming injured and unable to perform his official duty for a period of 60 minutes 10/12/88 as a result of said injury.

2. (a) Refusal of orders of his superior official by refusing to give any statement.

(b) Non-cooperation with Rly. Administration in course of official departmental inquiry, this being repeated incident of refusal of orders of his superior officials.

Thus he has violated Service Conduct Rules, 1968, Rule No.3(i) Clause-I, II & III, thereby unbecoming of a Rly. Servant.

Reasons for Findings.

It is seen from the DAR inquiry proceedings held on 21/12/89 & 22/12/89, at LPN MW Station, that Shri T.K.Das was returning from his office to his residence at about 17.10 hrs on 30/12/88. He was asked to stop in front of the residence of Shri Kampti, by Shri Kampti himself. It is further seen that Shri T.K.Das about why Shri T.K.Das had sent an adverse report against him to the authorities at M.G. It is also confirmed from statement of defendant and witnesses, that there was an altercation between Shri T.K.Das and Shri R.K. Kampti on this matter. This has been admitted by Shri Kampti, the defendant, during his cross-examination. This confirms allegation No.1(a), i.e. gross and serious misbehaviour on the part of the defendant.

Regarding allegation under item No.1(b) i.e. assaulting a Central Govt. employee, who was on duty, it is seen that, from the statement of witnesses and the defendant, the time of occurrence of the incident of this case, occurred at about 17.10 hrs. Although normal duty hours of Shri T.K.Das are upto 17.00 hrs. but the time taken by the Govt. employee in going from residence to office (i.e. work-spot) and back to residence is considered as "On Course of Duty", as per extant orders. Moreover, Shri T.K.Das, was

8/3/00

working as Station Incharge of LPN MW Station at the time of occurrence, with 24 hrs. responsibility of the MW Station. Hence, it is a fact that Shri T.K.Das, was considered to be on duty at the time of occurrence of incident. However, since this portion of the allegation is sub-judice, no remarks are furnished at present.

Regarding item No. (1)(c) of allegations, it is seen that, as a result of altercation etc. Shri T.K.Das had to go to Police Station at Kampur, to lodge FIR. The distance of the above Police Station from LPN MW Station is more than 8 K.M. To go 8 KMs and return, by a person would take about one hour. For follow-up action on FIR, as required by the Police, Shri T.K.Das had to go to Kampur State Dispensary, for Medical check up and obtaining medical certificate, to observe the formalities in connection with the FIR.

Thus Shri Kampti had obstructed and prevented Shri T.K.Das a Central Govt. employee, from attending and discharging official duties, because Shri T.K.Das had to be away from his working place for considerable period i.e. about 60 minutes, or may be more, for attending to above works at Kampur, leaving his MW Station un-attended.

Regarding allegations under item No.(2), it is seen from inquiry proceedings, as well as reports of RTCI/MW/LMG, and ASTE/M^W/LMG, as well statements of all witnesses, that Shri R.K. Kampti was asked by RTCI/MW/LMG in presence of ASTE/MW/LMG, to give a statement in his own defence regarding the incident. This is accepted by the defendant himself, in his cross-examination. But it is seen that the defendant refused to give any statement, on the plea that he was illiterate person and so he could not give a statement in writing. But, as per his nature of duty, the defendant is required to maintain official records and log-book.

Moreover, he has signed in Hindi on the inquiry proceedings. Therefore, his reply in the cross-examination, is proved to be false. Thus, it is clear that the defendant refused the orders of his Sr. Subordinate-In Charge, by refusing to give statement, on a plea of a false statement.

Regarding item No. (b) of allegation No.(2), i.e. non-cooperation with Rly. Administration in course of official Departmental Inquiry, it is seen that the defendant has refused to give statement at the time of fact finding inquiry, although he was advised to do so repeatedly by RTCI/MW/LMG and ASTE/MW/LMG, which also admitted by the defendant. Thus this is a case of repeated refusal of orders.

1/23/90
8/3/90

Thus it is clear that the defendant had non-co-operated with Rly. Administration in course of official Departmental inquiry as above.

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Findings on the above

Hence based on above reasons, following findings are drawn:-

Item No. 1(a) :- Sustained.

Item No. 1(b) :- Decision and remarks kept pending, since the case is sub-judico. ✓

Item No. 1(c) :- Sustained.

Item No. 2(a) :- Sustained.

Item No. 2(b) :- Sustained.

Conclusion

The defendant, Shri R.K.Kampti is found guilty of charges brought against him in the article of charges, except item No. 1(b) which is sub-judico.

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.51(G)/90

Date of Order: This the 24th July 1995.

JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN
SHRI G.L.SANGLYINE, MEMBER(ADMN)

1. R.K.Kampti
Microwave Attendant, Leopeni
P.O.Leopeni, Dist.Nowgong, Assam. ... Applicant.

By Advocate Mr.J.L.Sarker and Mr.M.Chanda.

-Vs-

1. Union of India (Through G.M., N.F.Railway, Guwahati-II
2. Chief Signal & Telecommunication Engineer,
N.F.Railway, Maligaon, Guwahati.II
3. District Signal & Telecommunication Engineer, MW
N.F.Railway, Maligaon, Guwahati-II .. Respondents.

By Advocate Mr.B.K.Sharma.

O R D E R .

CHAUDHARI J(VC):

1. We are pained to notice that neither party had shown any keenness to have the matter heard early though it was required to be heard early.
2. The applicant has filed the instant O.A. on 19-4-90 challenging the order dated 12-3-90 whereby a major penalty of permanent reversion and bottommost seniority was awarded to the applicant in the Disciplinary enquiry by the Disciplinary authority that is DSTE/MW/MLG. The proceeding sheet shows that the then Bench was keen to hear the matter early and had fixed it on 2-7-90. It has however dragged on till to-day. Admittedly against the impugned order an appeal lay under the relevant rules and the applicant has stated that he had filed the appeal to the DSTE/MW/Maligaon dated 30-3-90.

contd/-

Copy of that appeal memo is at Annexure E. Respondents admit in the written statement that the appeal has been filed by the applicant.

3. It appears to us that the date on which the O.A. was filed it was not maintainable as the applicant had not exhausted the remedy of appeal as required under Section 20 of the Administrative Tribunals Act. The application however was admitted but even so the Tribunal has not got the benefit of the decision of the appellate authority.

4. Mr. B.K. Sharma learned counsel for the respondents states that presumably because the O.A. was pending the appellate authority has not proceeded with the appeal in view of the bar under Section 19 (4) of the AT Act. In our view as the disciplinary authority did not agree with the findings of the Enquiry officer but on the appreciation of evidence at the enquiry has recorded his own findings it would be appropriate that the appellate authority examines the correctness of those findings which involves appreciation of evidence and deciding questions of fact. It would not be correct for us to embark upon that exercise even though the O.A. has been admitted ignoring the bar arising under Section 20 of the Act.

5. The applicant however has not suffered due to the impugned order as it was stayed by this Tribunal vide order dated 22-5-90. Prima facie the respondents have thus been constrained to continue him despite the impugned order although it was not set aside by the appellate authority and under which the applicant was found guilty of mis-conduct inviting major penalty.

6. Having regard to the above noted circumstances we direct the appellate authority of the respondents, that is respondent No.3, to dispose of the appeal of the applicant

contd/-

dated 30-3-90 (Annexure E) within a period of two months from the date of receipt of certified copy of this order. The appellate authority will decide the appeal strictly on merits and in accordance with the law. The circumstance that the applicant had approached the Tribunal shall not be taken adversely against him. The decision on appeal shall be conveyed to the applicant. Applicant will be at liberty to approach the Tribunal for relief if he is aggrieved by the decision in the appeal.

7. O.A. is partly allowed in terms of the aforesaid order and is disposed of. No order as to costs. Order be issued expeditiously. The interim order of stay however shall continue to operate till a period of two weeks expires after the order on appeal is conveyed to the applicant and shall stand vacated thereafter subject to any orders passed by the Tribunal.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMIN)

TRUE COPY

Amritpal

Amritpal

8th Feb 1990

Amritpal

Union of India & Ors. ... Petitioners

-vs-

SRI R. K. KAMALI ... Respondent

P R E S E N T

THE HON'BLE DISTRICT CHIEF P.G. CHAUCHHAI, VICE CHAIRMAN
THE HON'BLE SMT G. L. SANGYAL, MEMBER (ADMN).

For the Petitioners ... Mr. B.K. Sharma.

For the Respondent ... Mr. D.L. Sarangi Mr. M. Dhang.

Annexure
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By this petition the original respondents seek permission for hearing the appeal by the appellate authority who is respondent No.2 i.e. Chief Signal Telecommunications Engineer because by reason of reference to the appellate authority as respondent No.3 in paragraph 6 of the judgment they are in doubt as to whether respondent No.2 or respondent No.3 is to hear the appeal. The observations in our judgment clearly indicate that we intended the appeal to be heard by the appellate authority and not by the disciplinary authority himself. It was necessary for the petitioners to have drawn our attention to the fact that although the appeal filed by the applicant on 30.3.90 was addressed to the disciplinary authority i.e. respondent No.3 it will have to be heard by the appellate authority i.e. respondent No.2. They have stated in the petition that there was an inadvertent mistake on their part in failing to do so and they have expressed apology for the same. Notice was issued to the respondent (original applicant) but no show cause reply has been filed. We are satisfied that consistently with our view as it was intended that the appeal should be heard by the appellate authority we should pass the following order :

(1) It is hereby clarified that the appellate authority who is directed to hear the appeal of the applicant dated 30.3.90 is the Chief Signal Telecommunications Engineer, original respondent No.2. The words 'respondent No.3' occurring in para 6 of the judgment are corrected and substituted by the words 'respondent No.2'. The correction accordingly is made today in the original order. The appellate authority to comply with the directions contained in the original order expeditiously.

M.P. is disposed of in terms of the aforesaid order.

A copy of this order be sent to the original applicant for his information.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

Name No. : 46

Date : 3/1/96

Copy for information to :

(1) Shri R.K. Kampli, Microwave Attendant, Leapani, P.O. Leapani, Dist. Nowrang, Assam.

(2) Mr. D.K. Sharma, M.A. Advocate, C.A.T., Gauhati Bench, Gauhati.

SECTION OFFICER (S)

2/1/12

N.F.Railways

Office of the
DSTE/MW/Maligaon.

NO. N/PF/R.K.Kampti/MW.

Dated 22/08/95.

To
Shri R. K. Kampti,
MW/Attd./LPN
under RTCI/MW/IMG
in office.

Sub:- Order of Hon'ble CAT/GM
dt. 24/7/95 against OA
No. 51/90.

In terms of the above this office has
been instructed to dispose of your appeal dt. 30.3.90
to the appellate authority against the NIP of DSTE/MW/MLG
dt. 12.3.90.

It is found from the records that no
appeal of yours as referred to above has been ever received
in this office, which fact has been put on record
also by the then DSTE/MW while submitting remarks against
the petition. SIS 210, 211 & 212A

You are, therefore, advised to submit
a copy of your appeal dt. 30.3.90 as referred to by the
Hon'ble CAT, in order that further action in this regard
can be taken by this office.

f, th

22/8/95
Dist. Signal & Telecom. Engg. (MW)
N. F. Rly./MLG/GHY-11.

Copy to:

1. GM/LAW/MLG
2. APO/LC/MLG
for information please.

22/8/95
Dist. Signal & Telecom. Engg. (MW)
N. F. Rly./MLG/GHY-11.

Despatched
on 22/8/95

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Annexure - I

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S.10

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Re: Shri R.K.Kompti's appeal dated
30.3.1990.

1.0 Shri R.K.Kompti's "Appeal" dated 30-3-90(Annexure-I) was received in this office only in Aug'95 in response to OSIE/MW/Maligoan's letter No. N/PR/ R.K.Kompti/MW dated 22.8.95.(Annexure-II)

2.0 It is to record that no "Appeal" had been received from Shri R.K.Kompti earlier. Apparently, he had enclosed his appeal to CAT/GHY only and had not submitted the same to the Appellant Authority in OSIE's office for consideration and further necessary action. It is not confirmed whether the copy of the "Appeal" which he has submitted vide his letter Nil dated 22.8.95 is the same "Appeal" as had been submitted to CAT/GHY as claimed by him.

3.0 The line by line comments on his "Appeal" are given below:

I. "Most respectfully I beg to lay before you the following few lines for favour of your kind consideration and judicious decision."

3.1 Comments : No comments.

II."That Sir, a DAR enquiry was instituted against me to inquire into the alleged charges framed under memorandum No.N/PR/ R.K.Kompti/MW dated 13.3.89."

3.2 Comments : Major penalty chargesheet in standard Form No.5 was issued to him by OSIE/MW/ N.F.Railway. The statement of imputation of misconduct or misbehaviour has been communicated to him as it formed a part of the chargesheet. These are enclosed as Annexure-III.

Shri R.K.Kompti refused to accept the chargesheet as has been recorded by his superior on the body of the chargesheet.

III. "It is to be mentioned here that before the enquiry was held, the Disciplinary Authority not only did not serve the memorandum of charges, it also rejected my demand for supply of those documents vide OSIE/MW/MLG's letter No.N/PR/R.K.Kompti dated 30.6.89."

3.3 Comments : The memorandum of charges was served to him. His comment is therefore not correct. However, he refused to accept the same. It is, therefore, incorrect to say that the "Disciplinary Authority" did not serve the "Memorandum of charges".

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3.31 Attention is also invited to letters of Station Incharge Microwave Station, Laopani dated 7.4.89 and of Sri Tilkeswar Hiro, Attendant/MW Station/Laopani dated 7.4.89 (Annex-N) addressed to DSTE/MW/NF Railway/MLG. In these references it has been clearly mentioned that Sri R.K.Kompti "refused" to accept the "Memorandum". It is being seen that this refusal on the part of Sri Kompti was witnessed by persons mentioned in the letter of those employees and included here as Annexure-V.

3.32 And Sri Nareswar Bora TCM/III/MW Station/ Laopani's letter dated 7.4.89 Sri R.K.Kompti had been informed that if he so desires he can inspect and take extracts from the documents mentioned in Annexure-III of the Standard Form of chargesheet at any time during office hours within 10 days of receipt of this "Memorandum". For this purpose he had been directed to contact DSTE/MW/MLG immediately on receipt of this "Memorandum". Sri R.K.Kompti neither received the Memorandum on account of his refusal nor contacted DSTE/MW/MLG as was expected of him. However, at no stage he had been denied to inspect the documents within the stipulated time of 10 days. It will thus be seen that Sri Kompti wilfully refused to inspect the documents, even though he had been offered a reasonable opportunity to do the same which he failed to avail. Therefore he is himself responsible for denying himself access to the documents.

3.33 Further, it will be seen that DSTE/MW/MLG had vide his letter No. N/PF/R.K.Kompti/MW dated 30.6.89 mentioned that in case "if the Enquiry Officer permits at his discretion he may allow you to examine the desired documents."

3.34 It will not be out of place to mention that in the memorandum dated 13.3.89 no list of documents had been included and therefore, Sri Kompti's allegation that he was denied to see them is totally incorrect. This itself shows that Sri Kompti is neither aware of the contents of the memorandum nor was he in any way interested in pursuing his case.

IV. "However after the inquiry proceedings were over the Disciplinary Authority has decided to impose a major penalty as follows:-

"You are permanently reverted to the initial stage of the scale Rs.750-940/- (RSRP) at the bottom most seniority with immediate effect."

3.4 Comments: Punishment imposed by the Disciplinary Authority is as per the rules in vogue.

V. " Being aggrieved at the aforesaid decision of the DSTE/MW/MLG be I beg to submit you for the following".

3.5 Comments: No comments.

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VI. "For that the Disciplinary Authority failed to apply his judicial mind in coming to a conclusion on the basis of the report of the Enquiry Officer and Defence submitted by my Defence Counsel."

3.6 Comments: The basis on which Sri Kompti has inferred that the Disciplinary Authority failed to apply his judicial mind in coming to a conclusion" has not been submitted by him. It is a comment which is not substantiated by him. I have gone through the Enquiry Report and have come to the conclusion that Disciplinary Authority has applied his mind before formulating his judgement and it is only on the basis of his judgement that he has imposed the penalty on Sri RK Kompti.

3.6.1 The Disciplinary Authority has even given reasons for the findings and has recorded the evidence against each of the charges against Sri Kompti. Thus, it is totally incorrect on Sri Kompti's part to say that the Disciplinary Authority "failed" to apply his mind before imposing the penalty. This allegation of Sri Kompti is not accepted.

VII. "Disciplinary Authority did not supply a copy of the report of the Enquiry Officer to me (the delinquent) which is mandatory under the DAR rules and as per Railway Board's letter No. E(D&A)78 RG6-54 dated 12.4.80." ✓

3.7. Comments: It is totally incorrect to say that Sri Kompti was not informed of the reasons for findings and conclusion as drawn by the Disciplinary Authority. This had been given to Sri RK Kompti vide letter No. N/PF/R.K.Kompti/MW dated 12.3.90 (Annexure-VI) through RTCI/MW/Lumding. Sri Kompti has acknowledged the same on 19.3.90. Letter addressed to Sri R.K. Kompti by RTCI/MW/Lumding vide letter No. E/1 dated 19.3.90 in which the acknowledgement of Sri Kompti is recorded is at Annexure-VII.

VIII. "For that the Disciplinary Authority exhibited his pre-conceived vindictive attitude and predetermined to punish me by rejecting the findings of the Enquiry Officer. By such rejection to accept the findings of the Enquiry Officer the Disciplinary Authority tries to conceal the truth and thus materialised his predetermined to punish me on the basis of some false, concocted and fabricated charges".

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3.8 Comments: I have gone through the reports of the Enquiry Officer as well as of Disciplinary Authority. I do not find any evidence to agree with Sri Kempti's observation "that the "Disciplinary Authority invited his pre-conceived vindictive attitude and predetermined to punish me by rejecting the findings of the Enquiry Officer."

3.8.1 Further Sri Kempti has also not mentioned in his "Appeal" or evidence the basis in terms to substantiate these comments in his "Appeal". His comments therefore remain unsubstantiated.

3.82 I would like to put on record that I also do not agree with the conclusions arrived at by the Enquiry Officer. As such, I agree with the contents and evidence tendered during the course of enquiry. The Enquiry Officer has not interpreted the evidence tendered in the correct manner and perspective. He has not been able to get a grasp of the truth as to what actually happened.

3.83 I agree with the conclusions arrived at by the Disciplinary Authority based on the same evidence but interpreted in the proper perspective. Each of the findings arrived at by the Disciplinary Authority is endorsed by me as an Appellate Authority.

3.84 I totally reject Sri Kempti's comments that there was any vindictive attitude or an attempt by Disciplinary Authority to "conceal the truth". Based on the evidence tendered, it is convincingly established that none of the charges are "false, concocted and fabricated charges".

IX "For that the findings of Enquiry Officer alongwith reasonings and assessment of evidence were not communicated to me but defence submitted by my Defence Counsel made it amply clear on the basis of the statements of the said witnesses that there occurred no such incident of assault and others on 30.12.00 during duty nor during the course of duty."

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3.9 Comments: The documents which are to be communicated to the delinquent have never been denied to him. It is totally incorrect to say that no "incident of assault" occurred on 30.12.88. During the course of enquiry several of the witnesses examined collaborated and confirmed that Sri Kampti made an attempt to assault Sri T.K.Das, TCM/Gr.I/MW/Laopeni.

X "It can be easily come to the conclusion from the evidence that what was the incident was actually a family dispute between Sri T.K.Das and myself which is now subjudice in the Nowrang Court on a complain of the complainant Sri T.K. Das ledged in his private capacity. Such incidents of family dispute which are completely private matters, do not constitute a misconduct within the meaning of Railway service conduct rules as per decision of Kerala High Court in the case of Krishnan Kutty V.S.S. post office".

3.10 Comments: Shri R.K. Kampti's attempt to give an impression that the whole episode was merely a family dispute between Sri T.K. Das and Sri R.K. Kampti is not agreed to. It was a wilful attempt on the part of Sri Kampti to avenge the humiliation he preceived to have suffered while performing his official duties. He had been reprimanded by his superior for not performing his duties to the satisfaction of his superiors. In fact Sri Kampti had been chargesheeted vide Memorandum No. N/PF/R.K.Kampti/MW dated 2.12.88 (Annexure-VIII). This chargesheet has been issued based on the complaint made by the staff working at the Microwavr station, Laopeni in August, 1988 and S. 1988 (Annexure-IX & X). Sri Kampti had, therefore, been nourishing a grievance against Station Incharge Sri T.K. Das for having complained to the higher authority about his misconduct. Apparently he was waiting for an opportunity to intimidate Sri T.K. Das for making such a complaint about him to higher authorities. It will be noted that this complaint is a reflection on his performance of his official duties. It will thus be seen that this is not a family dispute but has its genesis on the fact that Sri Kampti resented the action taken by Sri Das to inform the higher authority about his unsatisfactory behaviour and performances in

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the course of his official duties.

3.10.1 Considering a scenario that such a complaint had not been made by the Station Incharge (Sri T.K. Das) on the working of Sri Kampti in performance of his official duties, there would not have been any reason for Sri Kampti to assault the Station Incharge. Since Sri Kampti has deliberately and wilfully made an attempt to intimidate his superior and assaulted him only after this complaint was made, it is reasonable to infer that it is not a family dispute which prompted Sri Kampti to assault Sri Das but finds its basis in the conduct of official duties.

3.10.2 It will not be out of place to mention that the administration had taken a lenient view and had let off Shri Kampti by imposing only a minor penalty by converting the major penalty and treating the same as a minor penalty. It is also to be inferred that Sri Kampti's performance in the conduct of his day to day official duties has not been satisfactory.

XI. "As per Railway Board's letter No. E(D&A)65 RG 6-25 dated 4.8.65, in such cases it would not be right for the departmental authorities to proceed with any fact find enquiry when any incident of criminal misconduct is involved on the basis of police report. Otherwise it is an infringement of right against double jeopardy under Art 20(2) of the constitution of India. The M.P. High Court has held in AIR 1959 M.P. 46 that if a Govt. servant without any tentative conclusion of guilty in the pending criminal trial were called upon to show cause against the action proposed to be taken by the disciplinary authority in a departmental enquiry on the same facts that will reduce the constitutional guarantee under Art. 311 to a nullity."

3.11 Comments: The disciplinary authority has not given any decision on the charge which involved criminal misconduct on the part of Sri Kampti. The disciplinary authority has commented as under:-

P.U.K.

"Decision and remarks kept pending, since the case is subjudice."

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XII "In view of the above, the charges under article 1 of the Memorandum of charges are not to be determined and decided by the Disciplinary authority as the alleged incident was a purely private affair which occurred beyond office hours in the Railway Colony & not within the office campus. The matter is subjudice in a court of law and as such the Disciplinary Authority should not interfere".

3.12 Comments: As mentioned above, Sri Kampti's opinion that it is to be treated as "private affair" is not agreed to. Further the Disciplinary Authority has conceded that one of the charges is subjudice and, therefore, has not given any decision.

XIII "As regards the charges under articles of the Memorandum of charges it is clear from the evidence recorded during the enquiry that I was not officially asked to give any statement. When I was verbally asked by the RTCI/MU/LAN to give a statement on the assaulting incident I verbally denied before him the fact of assaulting. This was my verbal statement. As such the question of refusal to give statement and non-co-operation is a mere distortion of facts to punish me as per the pre-termination exhibited by the Disciplinary Authority from time to time during the course of inquiry the latest one being his non supplying the findings of enquiry officer with reasonings."

3.13 Comments: Shri R.K. Kampti has given his statement on 23.12.89 to the Enquiry Officer. He has denied having assaulted Sri T.K.Das. It is understandable that Sri Kampti has denied the fact that he has assaulted Sri T.K.Das. Had he conceded this fact, matter would not have been pursued further. The evidence tendered by others present including those who had witnessed the incident conclusively proved the fact that Sri Kampti did assault Sri Das.

3.13,1 It is also a fact that Sri Kampti has not been co-operating at all with the administration. He had refused even to accept the Memorandum of charges. Further he had refused to conduct the DSTE and had also refused to listen to the orders and instructions of his superiors. I am convinced of the fact that Sri Kampti's attitude is not to co-operate in the investigations and enquiry.

3.13,2 Shri Kampti has not given any evidence or has substantiated his comments that attempt has been made to distort the facts.

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XIV

"Under the circumstances stated above I fervently request you to kindly call for the enquiry proceedings, findings of the Enquiry Officer with reasonings findings of Defence Counsel and apply your judicious mind and exonerate me from the alleged charges by allowing me to resume duty in Class III grade I am holding."

3.14 Comments: I have gone through the Enquiry proceedings, findings of the Enquiry Officer, findings of the Defence Counsel and have come to the conclusion that there is sufficient evidence to the fact that Sri Kompti has assaulted Sri T.K. Das.

3.14.1

It is a serious matter that an employee decided to intimidate, assault and harass his superior. An employee has means to ventilate his grievances, if any, and Sri Kompti failed to avail of this. Instead, he decided to take a course of action most unbecoming of a disciplined railway servant. His behaviour and conduct in this specific case has been most unworthy of a railway servant. Such indiscipline on the part of the railway servant should not be tolerated.

3.14.2

disciplinary
Appropriate action should necessarily be taken against such an employee within the framework of existing rules and procedures. In case the evidence is rejected then it will open an avenue for all employees to take action to assault their superiors in case they do not agree with the decision of their superiors. Further they will ~~consequently~~ feel encouraged to take recourse to methods of intimidation, assault and harassment to further their own personal interests.

Shri R.K. Kompti's "Appeal" dated 30th March, 1990 is rejected.

R.N.

(Ravindra Nath)

Chief Signal & Telecom Engineer
N.F. Railway : Maligaon : Guwahati-11

Govt. Staff 65-
BROCHURE ON
RAILWAY SERVANTS
(DISCIPLINE & APPEAL)
RULES, 1968

GOVERNMENT OF INDIA
(BHARAT SARKAR)
MINISTRY OF RAILWAYS
(RAIL MANTRALAYA)
(Railway Board)

New Delhi, August, 1976

10. Action on the inquiry report.—(1) If the disciplinary authority, having regard to its own findings where it is itself the inquiring authority, or having regard to its decision on all or any of the findings of the inquiring authority, is of the opinion that the penalty warranted is such as is within its competence, that authority may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses, is necessary in the interests of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the Railway servant such penalty as is within its competence, in accordance with these rules. Where such disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, that authority shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as hereinafter provided.

(2) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of Rule 9 as far as may be.

(3) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record, is sufficient for the purpose.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (iv) of Rule 6

should be imposed on the Railway servant, it shall, notwithstanding anything contained in Rule 11, make an order imposing such penalty—

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Railway servant.

(5) (i) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 6 should be imposed on the Railway servant, it shall—

(a) furnish to the Railway servant a copy of the report of the Inquiry held by it and its findings on each article of charge, or, where the inquiry has been held by an inquiring authority, appointed by it, a copy of the report of such authority and a statement of its findings on each article of charge together with brief reasons for its disagreement, if any, with the findings of the inquiring authority;

(b) give the Railway servant a notice stating the penalty proposed to be imposed on him and calling upon him to submit within a specified time, ordinarily not exceeding fifteen days from the date of the receipt of the notice subject to a minimum of seven days, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under Rule 9.

(ii) (a) In every case in which it is necessary to consult the Commission, the record of the inquiry together with a copy of the notice given under clause (i) and the

representation made in pursuance of such notice, if any, shall be forwarded by the disciplinary authority to the Commission for its advice;

(b) The disciplinary authority shall, after considering the representation, if any, made by the Railway servant, and the advice given by the Commission, determine what penalty, if any, should be imposed on the Railway servant and make such order as it may deem fit.

(iii) Where it is not necessary to consult the Commission, the disciplinary authority shall consider the representation, if any, made by the Railway servant in pursuance of the notice given to him under clause (i) and determine what penalty, if any, should be imposed on him and make such order as it may deem fit.

Clarification and Railway Board's decisions

If further examination of any of the witnesses is considered necessary after submission of the enquiry report, the delinquent employee will have the same rights of cross-examination, re-examination etc.—At the time of further examination of witnesses by the disciplinary authority, it is desirable that the delinquent employee is present because if, as a result of such examination of the witnesses by the disciplinary authority in the absence of the delinquent employee, the disciplinary authority makes up its mind on the enquiry report by the enquiring authority and imposes any punishment, it may be held that there has been a denial of reasonable opportunity to the delinquent to that extent. The delinquent employee may also take the help of his defence helper during such examination of witnesses if he so desires. The disciplinary authority may, if considered necessary, arrange the presence of the presenting officer, if any, at such examination to ensure the interest of the prosecution. As regards the rights of cross-examination, re-examination, etc., the rule 10(1) itself provides for these facilities. (Railway Board's letter No. E(D & A)70RG6-59 dated 21st April, 1971)

11. Procedure for imposing minor penalties.

(1) Subject to the provisions of sub-clause (iv) of clause (a) of sub-rule (7) of rule 9 and of sub-rule (4) of rule 10, no order imposing on a Railway servant any of the penalties specified in clauses (i) to (iv) of rule 6 shall be made except after—

(a) informing the Railway servant in writing of the proposal to take action against him and of the imputations

of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (3) to (19) of rule 9, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Railway servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

(2) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case, it is proposed, after considering the representation, if any, made by the Railway servant under clause (a) of that sub-rule to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension or special contribution to Provident Fund payable to the Railway servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (19) of rule 9, before making any order imposing on the Railway servant any such penalty.

(3) Deleted.

(4) The record of the proceedings in cases specified in sub-rule (1) and (2) shall include—

(i) a copy of the intimation to the Railway servant of the proposal to take action against him;

(ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;

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केन्द्रीय अधिकारी अधिकारी
Central Administrative Tribunal
20 AUG 2001
गुवाहाटी बैच
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH

O.A.16/2001

IN THE MATTER OF:

Shri R.K.Kampti

Vs.

Union of India & Others

IN THE MATTER OF:

Rejoinder submitted by the applicant against
the written statement submitted by the
respondents.

The above named applicant-

Most Respectfully beg to stated as under:

1. That your applicant categorically denies the statements made in paragraphs 3,4 and 5 of the written statement and begs to state that the applicant has got valid and bona fide cause of action and right for filing this application and has not misrepresented or misinterpreted any where.
2. That your applicant categorically denies the statements made in paragraphs 6 and 7 of the written statement and begs to state to assert that the application deserves to be allowed with costs.
3. That your applicant emphatically denies the statements made in paragraph 8 of the written statement and states that on 30.12.1998, there was an

Filed by the applicant
through advocate in
G. R. Chakravarty on
20-8-2001.

alteration only between the applicant and Sri T.K. Das T.C.M., Leopani in front of the residential quarters of the applicant and that of Sri T.C. Das who reside in adjacent quarters.

4. That your applicant categorically denies the statements made in paragraphs 9 and 10 of the written statement and further begs to state that at no point of time the Memorandum of Charges etc. were supplied to the applicant nor he was issued any Charge Sheet. The applicant categorically denies that he had ever refused to receive any Memorandum of Charges as alleged. Rather the applicant submitted an application dated 29.5.89 to the DSTE/MW, Maligaon requesting that he may be supplied with the Memorandum of Charges with the statement and copies of the reports of ASTE or any other officials, which he was denied by the DSTE/MW under his letter dated 30.6.1989 on a false allegation that the applicant had refused to receive the Memorandum of charges earlier. In the enquiry, the applicant was not given any reasonable opportunity to defend his case and the inquiry was conducted in the concocted and tutored manner.

Similarly, on completion of enquiry also, no copy of enquiry report was supplied to the applicant which is total to all procedures established by law for any disciplinary proceeding. It was only one letter bearing No. N/PF/R.K. Kampty/ MW dated 12.3.1990 issued by DSTE/MW, N.F.Railway, Maligaon which was received by the applicant on 19.3.1990 whereby major penalty was imposed on the applicant.

It was evident from the letter dated 12.3.1990 that the Disciplinary Authority rejected the findings of the enquiry and disagreed with the enquiry office's report which presumably could not establish any guilt against the applicant. But the Disciplinary Authority, most arbitrarily,

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illegally and with a pre-determined bias, imposed major penalty on the applicant. Thus the Disciplinary Authority acted under malice and prejudice and while doing so, he neither recorded the reasons of his disagreement with the enquiry officer nor he gave the applicant any opportunity of being heard of, which are the cardinal principles of Natural Justice under the settled law and the violation of the same in the instant case is apparent and crystal clear from the letter dated 12.3.1990.

5. That your applicant categorically denies the statements made in paragraph 11 and 12 of the written statement that the appeal dated 30.3.1990 submitted by the applicant was not received by the Appellate Authority. However, later on, by a letter bearing No. N/PP/R.K.Kampti/MW dated 18.8.1999, the Deputy CSTE/MW, Maligaon, the applicant was for the first time informed that his appeal dated 30.3.1990 was rejected by the competent authority which was stated to have been intimated by one letter dated 5.11.1997. As desired, the applicant on receipt of the letter dated 18.8.1997 submitted an appeal dated 15.9.1999 wherein he brought to the notice of the authority that the instant case of alleged assault was already dealt in by the competent court of law in G.R. Case No. 2108/88 and he was acquitted from the criminal proceeding and as such requested the authority to exonerate him from the disciplinary proceeding initiated against him. The said appeal dated 15.9.1999 was not at all delved into by the authority who took the appeal very casually and stood on his irrational stand taken earlier and eventually the Dy. CSTE/MW, Maligaon just completed the formality by informing the applicant vide letter No. N/PF/R.K.Kampti/MW dated 31.3.2000 that the Competent Authority has regretted his appeal and that the Penalty imposed on him would stand with

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immediate effect. The Appellate Authority rejected the appeal in a very cryptic and arbitrary manner without assigning any reason for his rejection which is contrary to the settled laws, and on this score alone, the impugned order dated 12.3.1990, as well as Appellate Orders dated 5.11.1997 and 31.3.2000 are liable to be set aside and quashed. It is pertinent to mention here that the Appellate Authority, at no stage, applied his mind but simply echoed the arbitrary action of Disciplinary Authority, ignoring all factual positions i.e. finding of the enquiry, order of acquittal of the court of law etc. but stood on his decision as pre-planned.

6. That in reply to the statements made in paragraph 13 of the written statement, the applicant denies the contentions of the respondents. The Appellate Authority has merely stated about his disagreement only but has neither recorded any sustainable reason for his disagreement nor has given the factual positions to substantiate his disagreement.
7. That your applicant categorically denies the statements made in paragraphs 14 and 15 of the written statement and further begs to submit that the entire actions of the Disciplinary Authority and Appellate Authority are not in conformity with either the findings of enquiry or the order of the court passed in the criminal proceeding in the instant case and are arbitrary, pre-planned, malafide and unjust and the orders dated 12.3.1990, 5.11.1990 and 31.3.2000 are invalid, illegal and improper.
Further, the grounds for relief as made out by the applicant is valid, legal and proper under laws, rules and fact of the case as dealt within the preceding paragraphs
8. That your applicant categorically denies the statements made in paragraph 16 of the written statement and affirms that the reliefs sought for in the

application have all merits and deserve to be granted for the ends of justice as prayed for. The respondents misconceived/misconstrued the contents of paragraph 7 of the order dated 24.7.95 of the Hon'ble Tribunal.

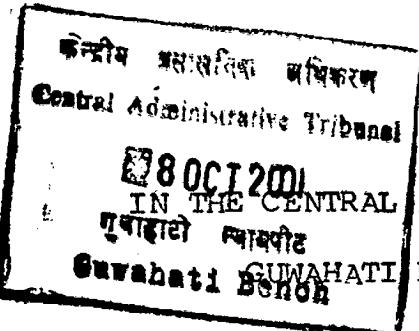
9. That your applicant emphatically denies the statements made in paragraphs 17 and 19 of the written statement and further submits that all the actions taken in the case are inconsistent with and contrary to the extant rules and orders on the subject and are invalid, illegal and improper and the instant application is fully maintainable under the law.
10. That in the facts and circumstances of the case, the applicant humbly submits that he is entitled to the reliefs prayed for, and the O.A. deserves to be allowed with cost.

VERIFICATION

I, Sri R.K.Kampti, resident of Laopani, under Nagaon District, Assam, working as Microwave Attendant under DSTE/MW, N.F.Railway, Maligaon do hereby verify that the statements made in Paragraphs 1 to 9 are true to my knowledge and the rest my humble submission.

And I sign this verification on this the 20th Day of August, 2001 at Guwahati.

R.K.Kampti



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Central Administrative Tribunal
Guwahati Bench
8 OCT 2001
ADMINISTRATIVE TRIBUNAL
BENCH :::: GUWAHATI

O.A. NO. 16/2001.

Sri R.K.Kampti..... Applicant

- VS -

Union of India, & Others

... Respondents.

-AND-

IN THE MATTER OF :

Reply to the rejoinder filed by the
applicant to the respondent's
written statement dated 12.8.2001
filed on 13.8.2001.

The respondents most respectfully beg to
state as under :

1. That, the answering respondents have gone
through the copy of the aforesaid rejoinder filed
by the applicant and have understood the contents
thereof.
2. That, save and except those averments
made in the rejoinder which are admitted hereunder
or are borne on records, all other averments made
in the rejoinder are to be regarded as not being
admitted by the respondents and the applicant is
put to strictest proof thereof.
3. That, for the sake of brevity, the
respondents have refrained from repeating all
those averments made in the written statement
already filed in the case, which also contains the
answer to the allegations as put forward through

Filed by Railways
Guwahati
2001
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the present rejoinder. The respondents prays to the Hon'ble Tribunal to permit them to refer to those whenever required during the course of hearing of the application.

4. That, with regard averments at paragraph 1 of the rejoinder, the respondents would like to re-state and re-affirm their previous submissions at paragraphs 3, 4 and 5 of their written statement submitted in the case.

5. That, with regard to statements at paragraph 2 of the rejoinder filed by the applicant, the respondents would like to re-affirm their previous submissions made in paragraphs 6 and 7 of their written statement.

6. That, the contents of the paragraph 3 of the rejoinder are not correct representation and the respondents beg to re-state and re-affirm their submissions made at paragraph 8 of their written statement. It is a fact that the superior official of the applicant was assaulted by the applicant on 30.12.98, and, contrary to same is denied.

7. That, with regard to averments at paragraph 4 of the rejoinder, it is submitted that the contention of the applicant are not correct and hence denied. The clear position has been elaborated at paragraphs 9 and 10 of the written statement submitted in the case. The refusal to receive the memorandum of charges etc.

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was an established fact and based on records submitted and it is submitted that a copy of the enquiry report was supplied to him even on 15.7.96. All those allegations were also raised by the applicant in his previous O.A. No. 51/90 before the Hon'ble Tribunal and respondents have already acted and complied with the order passed by the Hon'ble Tribunal and the applicant is debarred from raising one after another issue now. The respondents re-affirm and re-state their previous submissions at paragraphs 9 and 10 of the written statement submitted in the case. It is also emphatically denied that the Disciplinary Authority acted most arbitrarily, illegally and with a pre-determined bias, with malice and prejudice etc. or the applicant was not given the opportunity of hearing in the case, as alleged. As regards, the letter dated 12.3.90 as mentioned by the applicant, it is submitted that the contents of the letter will speak the truth and, conduct of the applicant and the circumstances under which such letter had to be issued and these all are matters of record.

8. That, the allegations as made at paragraph 5 of the rejoinder are not correct and hence denied. The respondents re-affirm and re-state their statements made at paragraphs 11 and 12 of the written statement filed in the case. It is to submit herein that this matter regarding submission

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of appeal was also raised by the applicant in his previous O.A. No. 51/90 and the Hon'ble Tribunals, after hearing the case, already ordered that the appeal is to be placed before the Appellate Authority (i.e. CSTE/N.F.Railway, Maligaon) who, while disposing of the appeal, should also grant a personal hearing to the applicant. Keeping in view the Hon'ble Tribunal's order/direction dated 24.7.95 in O.A. No. 51/90 the applicant was asked vide letter dt. 22.8.95 to submit a copy of the said appeal dt. 30.3.90. In obedience to the Hon'ble Tribunal's order dt. 24.7.95 and modified order dated 20.11.95 in O.A. No. 51/90, all the actions as directed by the Hon'ble Tribunal have been taken by the respondents. The speaking orders passed in the case either by the Disciplinary Authority or by the Appellate Authority i.e. CSTE, N.F.Railway, Maligaon will clearly reveal that the applicant's case was delved into thoroughly after the application of mind and taking into consideration the factual and legal aspects of the case and that the allegations of cryptic or arbitrariness or pre-planned aspects, as imputed by the applicant, are quite incorrect and hence emphatically denied. Further, as was already submitted at paragraph 14 of the written statement, there is no bar under law and rules in holding departmental enquiry after observing the statutory

Abulwaz

rules as laid down in the Railway Servants (Discipline and Appeal) Rules 1968 and the contentions of the applicant to the contrary are denied herewith.

9. That, with regard to allegations at paragraph 6 of the rejoinder, it is submitted that the allegations are not correct and hence denied. The order passed by the Appellate Authority will clearly exhibit that it was a speaking order passed after careful consideration and application mind and dealt with all aspects of the case and it can under no circumstances be branded as an echo of the Disciplinary Authority's order as contended by the applicant.

10. That, with regard to allegations/averments at paragraph 7 of the rejoinder it is submitted that the allegations are completely incorrect and hence denied. It is submitted that all the actions taken in the case are quite in conformity with the rules and laws on the subject and are also in consonance/conformity with the proceedings of the enquiry and it is denied that such actions are pre-planned, malafide and unjust and the orders dated 12.3.1990, 5.11.90 and 31.3.00 are invalid, illegal and improper, as alleged. None of the grounds as forwarded by the applicant are sustainable under the fact and circumstances of the case and law/rules involved.

Abdul

It is submitted that the respondents have faithfully and diligently complied with the orders and directions of the Hon'ble Tribunal. The submissions made at paragraphs 14 and 15 of the written statement are hereby re-stated and re-affirmed. There is no bar in holding the departmental enquiry.

11. That, with regard to averments at paragraph 8 of the rejoinder, it is submitted that the reversion order was passed after thorough examination and due consideration of the case and the grave aspect of the offence/misbehaviour etc. done by the applicant against his superior official which is quite subversive to Government servant's moral code and service discipline. The submissions made at paragraph 16 of the written statement is hereby re-stated and re-affirmed. It is submitted that the Appellate Authority before, passing the reversion order took into consideration all the factual and legal aspects of the case, with open mind and sympathetic consideration ^{as} well.

As regards the allegation that the respondents have misconceived/misconstrued the contents of paragraph 7 of the order dated 24.7.95 of the Hon'ble Tribunal, it is submitted that such allegations are completely unwarranted and unsustainable.

Ans In this connection it is also submitted that from the copy of the order of the Hon'ble Tribunal dated 24th July 1995 (in O.A.

No. 51(g)90), the following would be evident at para 7 of the Judgement.

".....

The interim order of stay however shall continue to operate till a period of two weeks expires after the order on appeal is conveyed to the applicant and shall stand vacated thereafter subject to any orders passed by the Tribunal."

In the instant case after the decision/order passed by the Appellate Authority, after thorough examination of the case and after due consideration and application of mind, the CSTE/N.F.Railway (the Appellate Authority) rejected the appeal of the applicant dated 30th March 1990 and same was communicated by the Administration under their letter No. N/PE/R.K.Kampti/MW dt. 5.11.97 issued by the Divisional Signal and Telecommunication Engineer(Microwave), N.F.Railway, Maligaon. As nothing further was heard from the applicant's side after communication of the aforesaid order and no further order of the Hon'ble Tribunal was also received and two weeks time from the date of communication of the order(as stipulated in the Hon'ble Tribunal vide order dated 24.7.1995), already expired, the applicant was also further intimated under DSTE(MW), N.F.Railway, Maligaon's letter No. N/PE/R.K.Kampti/MW, dated 31.3.2000

Abdul

that the penalty imposed, on him would stand with immediate effect.

The copies of the aforesaid letter dt. 5.11.97 and 31.3.2000 are annexed hereto as annexured K and L respectively for ready perusal.

It is emphatically denied that the respondents have misconceived/misconstrued the contents of paragraph 7 of the Hon'ble Tribunal's order dated 24.7.95 as alleged. It is submitted that these are matters of records and requires no further elaboration.

12. That, with regard to averments at paragraphs 17 and 19 of the applicant it is submitted that the contentions of the applicant are not admitted and the respondents re-state and re-affirm their submissions made at paragraphs 17 and 19 of the written statement.

13. That, as the rejoinder contains no new points other than those which have already been dealt with in the written statement filed by the respondents, it is liable to rejection.

Abdul ✓ It is submitted that the application is fit one to be dismissed.

VERIFICATION

I, Sri Navneet Kaushik, son of Sri S.L. Sharma, aged about 38 years, by occupation, Railway service, now working as Deputy Chief Signal & Telecommunication Engineer/Microwave, N.F.Railway, Maligaon do hereby solemnly affirm and state that the statements made in paragraph 1 are true to my knowledge and those made in paragraphs 4 to 12 are matters of records of the case which I believe to be true and the rest are my humble submissions before the Hon'ble Tribunal, and, I sign this verification on this ~~9th~~ day of October, 2001.



Deputy Chief Signal & Telecomm. Engineer (Microwave)
N.F. Railway, Maligaon.

Deputy Chief Signal & Tele-
communication Engineer (Microwave),
N.F. Railway, Maligaon,
Guwahati - 781 011.

for and on behalf of
Union of India.

N. F. Railway.

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N.F.

Office of the
Dy. CSTE/MW/Maligaon
Guwahati-11.

NO. N/PP/R. K. Kampti/MW

Dt. 05-11-97

TO

WIFI R. K. Kampti
MW/Attendant/MW/BNR

TARE:- SSB/R/MW/Bunding.

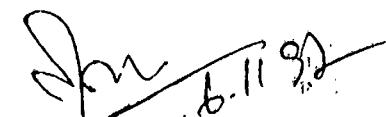
Sub:- Appeal against imposition of major
penalty under BAR Rules 1968 by the
DSTE/MW/MLG vide his letter NO. N/PP/R. K. Kampti/MW dt. 12-03-90.

REZ:- Your appeal dt. 30-03-90.

....

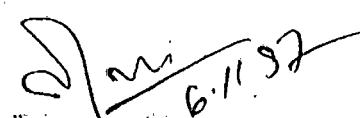
The competent authority has rejected your
appeal dt. 30-03-90.

This is for your information.



Divl. Signal & Telecom (Engg) (MW)
N. F. Rly/MLG/CHX-11

Copy to:- CSTE/MLG for information please.



Divl. Signal & Telecom (Engg) (MW)
N. F. Rly/MLG/CHX-11

1C
S/II
Despatch on
05.7-11-97

(true copy)

NORTHEAST FRONTIER RAILWAY

Office of the
 Dy. CSTE/MW/Maligaon
 Guwahati-11

No. N/PF/R.K.Kampti/MW

Dt. 31-03-2000

To
 Sri R.K. Kampti
 MW/Attd/LPN
 Through : SSE/R/MW/LMG

Sub:- Imposition of penalty.

Ref:- This office letter No. even of
 dt. 5-11-97.

.....

As the competent authority has regretted your
 appeal the penalty imposed on you will stands with
 immediate effect.

Sd/-31-03-2000
 Divl.Signal & Telecomm: Engg/MW
 N.F.Railway/Maligaon
 Guwahati-11
 for Dy.CSTE/MW/Maligaon

Copy to:- 1. SSE/F/MW/MLG - His payment should be charged
 at Rs.2550/- (initial) in scale Rs.2550-3200/-
 on date as Khalasi.
 2. SSE/R/MW/LMG for information.

Sd/-31-03-2000
 Divl.Signal & Telecomm: Engg/MW
 N.F.Railway/Maligaon
 Guwahati-11
 for Dy.CSTE/MW/Maligaon