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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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✓ O.A/T.A No. 290/2002

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SECTION OFFICER (Judl.)

6/11/17
29.11.17

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 290/02 OF 199

Applicant(s) Biswanath Benarjee

Respondent(s) H.O.I. Jom

Advocate for Applicant(s) G.P. Bhowmik, Alok Varma, S. Roy

Advocate for Respondent(s) C G Se.

Notes of the Registry	Date	Order of the Tribunal
<p>79576894</p> <p>2.9.02</p> <p>Steps along with envelops taken.</p> <p>mb</p> <p>Notice prepared and sent to D. Section by issuing of the same to the respondents through Regal. post with A.D. Vice D.O. D.O.</p> <p>18.9.02</p>	<p>9.9.02</p>	<p>Heard Mr. G.P. Bhowmik, learned counsel for the applicant.</p> <p>The application is admitted. Call for the records.</p> <p>Pendency of this application shall not be bar on the Respondents to take initiative to resolve the matter.</p> <p>List again on 8.10.2002 for orders.</p> <p>Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal
<p>γ</p>	8.10.02	<p>Mr. S.Sarma, learned counsel for the respondents prayed for some time for filing written statement. Prayer is allowed.</p> <p>List on 18.11.2002 for orders.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>mb</p>
	18.11.02	<p>Mr. S.Sarma, learned counsel appearing on behalf of the respondents stated that he has received the parawise comments to prepare the written statement. In the circumstances, respondents are allowed further four weeks time to file written statement.</p> <p>List on 16.12.2002 for orders.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>mb</p>
<p>No. written statement has been filed.</p> <p><i>[Signature]</i> 21.1.03</p>	16.12.02	<p>The respondents are yet to file written statement though time granted. List on 22.1.2003 to enable the respondents to file written statement as last chance.</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>mb</p>
<p>2.2.03</p> <p>W/S Submitted by the Respondents.</p> <p><i>[Signature]</i></p>	22.1.03	<p>Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.</p> <p>The Hon'ble Mr. S.K. Hajra, Administrative Member.</p> <p>The respondents are yet to file written statement though last chance was granted to file written statement. Put up the matter for hearing on 20.2.2003. The respondents may, however, file written statement within three weeks from today. In the meantime, the parties may exchange their pleading.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>mb</p>

20.2.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. S. Biswas, Administrative Member.

Prayer has been made by Mr. G.P. Bhowmick, learned counsel for the applicant for adjournment of the case on the ground that he has received written statement recently. The case is accordingly adjourned. List the matter on 3.4.2003 for hearing.

Wks has been filed.

24
2.4.03.

S. Biswas
Member


Vice-Chairman

mb

3.4.2003 Division Bench did not sit today. The case is adjourned to 19.5.2003.

19.5.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. S.K. Hajra, Administrative Member.

Mr. R. Hazarika, learned counsel for the applicant sought for adjournment of the case to file rejoinder. Prayer is allowed: List again on 3.6.2003 for hearing.

No. rejoinder has been filed.

24
2.6.03


Member


Vice-Chairman

mb

3.6.2003 Division Bench did not sit today. The case is adjourned to 1.7.2003.

No. rejoinder has been filed.

24
3.6.03

No. rejoinder has been filed.

24
4.8.03

1.7.2003 Division Bench did not sit today. The case is adjourned to 5.8.2003.

Rejoinder filed on
behalf of the
Applicant.

By
5.9.03.

5.8.2003

On the prayer of Mr. G.P. Bhowmick, learned counsel for the applicant the case is adjourned to obtain instruction on the matter. Put up again on 8.9.2003 for hearing.

Member

Vice-Chairman

mb

8.9.2003

Present : The Hon'ble Mr. K.V. Prahaladan, Member(A).

List again on 20.10.2003 for hearing.

KN Prahaladan
Member

mb

20.10.2003

Adjourned and again listed on 30.10.2003 for hearing.

bb

Vice-Chairman

30.10.2003

No Division Bench was available today. Put up the matter again on 2.12.2003 for hearing.

Vice-Chairman

bb

23.12.03

Mr G.P. Bhowmick, learned counsel for the applicant is on accommodation and therefore his learned junior has prayed for adjournment. Accordingly matter may appear before the next available Bench.

Member

Vice-Chairman

pg


20.1.2004 Present : The Hon'ble Mr. Bharat Bhusan,
Judicial Member.

The Hon'ble Mr. K.V. Prahladan
Administrative Member.

None for the applicant. Mr. S. Sarma,
learned counsel for the respondents.


List on 21.1.2004.

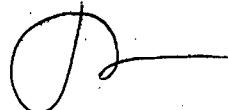

Member (A)


Member (J)

pg

21.1.2004 Mr G.P. Bhowmick, learned
counsel for the applicant and Mr S.
Sarma, learned counsel for the
respondents are present. Let the case
be listed for hearing before the next
available Division Bench.


Member (A)


Member (J)

nkm

23.2.2004 Present: The Hon'ble Shri Shanker Raju
Judicial Member.

The Hon'ble Shri K.V. Prahladan
Administrative Member.

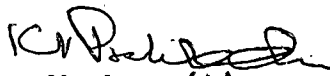
At the request of Ms.U.Das, learned
proxy counsel for the respondents, the case
is adjourned and listed on 26.2.2004 for
hearing.


Member(A)


Member (J)

bb

26.2.2004 Heard learned counsel for the parties.
The O.A. is disposed of for the reasons
recorded in separate sheets.


Member (A)


Member (J)

Received copy
Usha Das
For
S. Sarma
S.C. Rukhmay
4/3/04

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./EXA.No. 1111 290/2002.

DATE OF DECISION 27.2.2004.

.....Shri.Biswanath Banerjee.....APPLICANT(S).

.....Mr.G.P.Bhowmick, Alok Verma & Sanjay Roy.....ADVOCATE FOR THE
APPLICANT(S).

-VERSUS-

.....Union.of.India.&.Others.....RESPONDENT(S)

.....Mr.S.Sarma, Mr.AU.K.Nair & Ms.U.Das.....ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. SHANKER RAJU, JUDICIAL MEMBER.

THE HON'BLE MR. K.V.PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ? A
 2. To be referred to the Reporter or not? A
 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 ?
- Judgment delivered by Hon'ble Member (J). A

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.290 of 2002.

Date of Order: This, the 27th Day of February, 2004.

THE HON'BLE SHRI SHANKER RAJU, JUDICIAL MEMBER.

THE HON'BLE SHRI K.V.PRAHLADAN, ADMINISTRATIVE MEMBER.

Shri Biswanath Benerjee
S/o Late Sudhir Chandra Banerjee
Makum Junction, Digboi Road
(Near Assam Sahitya Sabha Bhawan)
P.O: Makum Junction
Dist: Tinsukia, (Assam)
Pin - 786170.

. . . . Applicant.

By Advocates Mr.G.P.Bhowmick, Alok Verma & Sanjay Roy.

- Versus -

1. Union of India
Represented by the General Manager
N.F.Railway, Maligaon
Guwahati-781 011.
2. The Divisional Railway Manager
N.F.Railway, Tinsukia
P.O: Tinsukia - 786125.
3. The Divisional Mechanical Engineer
N.F.Railway, Tinsukia
P.O: Tinsukia, Pin - 786 125.
4. The Divisional Railway Manager (Personal)
N.F.Railway, Tinsukia, P.O: Tinsukia. . . . Respondents

By Advocates Mr.S.Sarma, Mr.U.K.Nair & Ms.U.Das.

O R D E R (ORAL)

SHANKER RAJU, MEMBER(J):


We have heard Mr.G.P.Bhowmick, learned counsel for the applicant and also Mr.U.K.Nair, learned counsel for the Railways.

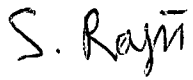
1. Against the removal order dated 12.6.2000, the applicant preferred an appeal. On appeal the appellate authority modified the punishment reducing him to the lowest stage. His resumption of duty has been subject to his being found fit by the Medical Authorities.
2. Earlier the applicant, in O.A.99/1994 approached this Tribunal where his plea of direction to the respondents to provide his adequate and effective

homeopathy treatment was cancelled. It is not disputed ~~and~~ and admitted that the applicant was sick from 1988 till the filing of O.A.99/1994. But his sickness from 1988 till the filing of O.A.99/1994 is to be authenticated by relevant medical certificates. Applicant has already completed 18 years of qualifying service. A compassionate view as to his qualifying service is required to be taken in a view to his right to terminal benefits.

3. The respondents have already taken a compassionate view in the matter and modified the punishment reducing his pay scale to the lowest stage.

4. Having regard to the rival contentions, in the circumstances, the O.A. is disposed of with a direction to the applicant to produce all his relevant medical certificates from 1988 to till the filing of O.A.99/1994. The same shall be considered by the respondents and a decision would be taken by them within one month from the filing of the certificates. Thereafter the applicant would be allowed to resume duties and the intervening period would be decided as per our observations made above. No costs.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER.


(SHANKER RAJU)
JUDICIAL MEMBER.

[Handwritten signature]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH

GUWAHATI:

(An application under section 19 of the Administrative
Tribunal Act, 1985)

O.A. No. 290 of 2002

Shri Biswanath Banerjee

.....Applicant.

- Versus -

The Union of India & Ors.

.....Respondents.

I N D E X

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Filed By
Sanjay Roy
Advocate

Biswanath Banerjee

Filed by :-
The Applicant
Shri Biswanath Banerjee
through :-
Sanjay Roy
Advocate
S. 9. 2002.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
GUWAHATI:

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

O.A. No. 290 of/2002.

IN THE MATTER OF :

Shri Biswanath Banerjee,
S/O Late Sudhir Chandra Banerjee,
Makum Junction, Digboi Road,
(Near Assam Sahitya Sabha Bhawan)
P.O. Makum Junction,
Dist: Tinsukia, (Assam),
Pin - 786170.

.....APPLICANT.

- Versus -

1. Union of India,
Represented by the General Manager,
N.F. Railway, Maligaon,
Guwahati - 781011.
2. The Divisional Railway Manager,
N.F. Railway, Tinsukia,
P.O. Tinsukia- 786125.
3. The Divisional Mechanical Engineer,
N.F. Railway, Tinsukia,
P.O. Tinsukia, Pin-786125.
4. The Divisional Railway Manager (personal)
N.F. Railway, Tinsukia, P.O. Tinsukia.

.....RESPONDENTS.

Contd.....P/2.

Biswanath Banerjee.

DETAILS OF APPLICATION.

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

The application is directed against the following orders :

(a) Order issued under No. ES-B/334 dated 12.6.2000 passed by the Divisional mechanical Engineer, N.F. Railway, Tinsukia. Whereby, the applicant was punished with the punishment of Removal from service with effect from 12.6.2000.

(b) Orders NO.ES-B/334 dated 7.12.2000 and NO.ES-B/334 dated 22.1.2001 issued by the Divisional Railway Manager,(P), N.F.Railway, Tinsukia at the instance of the Divisional Railway Manager, N.F.Railway, Tinsukia, modifying the order of removal as reduction to the lowest stage in applicants present pay scale with adverse future effect.

2. JURISDICTION :

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

3. LIMITATION :

The applicant declares that the application is not time barred and well within the period of Limitation.

contd.....p/3

Biswanath Banerjee

4. FACT OF THE CASE :

4.(1) That the applicant is a citizen of India and permanent resident of Makum Junction Town, district of Tinsukia in state of Assam and as such he is entitled to all the rights and privileges guaranteed under the constitution of India and the laws framed there under.

4.(2) That the applicant is an employee of the N.F. Railway, appointed on 22.7.72 as Stenographer and posted under the works Manager, Dibrugarh. The applicant in the same capacity was transferred to Tinsukia. He got promotion as confidential Stenographer and was posted in the office of the DRM (Mechanical) N.F.Railway, Tinsukia with effect from 8.8.80 vide order dated 7.8.80. The applicant was confirmed in service with effect from 1.1.82.

4.(3) That, the applicant while functioning as confidential Stenographer had to work under DME (Carriage and Wagon) and also under DME (Power) and other officers including DRM Tinsukia, as and when assigned; consequent to which your humble applicant had to discharge heavy work load continuously for hours together even after scheduled office hours. In spite of all physical and mental strain the applicant was discharging his duties very diligently and sincerely without consideration for his comfort and health for which he got admiration of the officers under whom he was working. The applicant for his dutious, hardworking and sincerity received certificate of appreciation from the then DRM, N.F. Railway, Tinsukia dated 29.7.85.

contd ...p/4

Biswanath Banerjee

A copy of the Certificate dated 29.7.85 is filed hereto and marked as Annexure -I.

4.4. That the heavy works load as confidential steno continuously ~~for~~ for many years casted bad effect on the health of the applicant, as a result of which various complicacies and diseases raised their heads viz- Hypertension, vertigo inflammation, burning pain in abdomen, backaches etc. Since July 1986. The applicant also had to undergo appendix operation at Dibrugarh Railway Hospital on 14.5.86.

4.5. That when the cumulative effects of various ailments brought down the applicant into bed-ridden condition then under compelling circumstance he remained absent from duty after 30.5.88 on Medical ground and submitted LAP from 31.5.88 to 2.6.88 and there after also he had been applying for leave in peace meal to DRM (Mechanical) Tinsukia in the following manner.

(a) Applied for LHAP on or about 6.6.88 for leave from 3.6.88 to 17.6.88.

(b) Application dated 23.6.88 for leave from 18.6.88. Tto 24.6.88.

(c) Application dated 6.7.88 for leave from 25.6.88.

The applicant being in a bedridden condition submitted all the applications through messenger and so after 2/3 days of sending the last leave application he could learn that his prayer for leave was not sanctioned.

contd ...p/5

Biswanath Banerjee.

4.6. That, as the applicant is of dutious nature and was aware of his responsibilities he requested the authority to send some body to whom he can explain the nature of work which he was performing while he was able to go to the office. On such request of the applicant the authority deputed one Mr. Thapa who was working as Stenographer. He along with an office peon visited the applicant at his residence on 2/3 occasions for the aforesaid purpose. Which conduct of the applicant also clarifies the intent of the applicant that he was always willing to resume his duty but, he failed to do so because of his serious ailment which was beyond his control.

4.7. That on 20.12.88 the applicant had received the letter dated 18.11.88 from the DRM (P), Tinsukia under the subject : 'Unauthorised absence and contended inter-alia as follows :- "it is seen you have been absenting wef. 18.6.88 on the ground of illness without producing any medical certificate, so you are advised to report to ADMO/MJN or DMO/TSK for medical examination".

A copy of the letter dated 18.11.88 is filed here to and marked as Annexure-II.

4.8. That, your humble applicant on receipt of the aforesaid letter requested the ADMO/MJN to attend the applicant at his residence. The ADMO/MJN attended him on 28.12.88 and performed chekup. After medical examination a prescription was given by the ADMO/MJN mentioning the disease as 'Vertigo' and

contd ... p/6

Biswanath Banerjee

advised B.P. checkup regularly. But, unfortunately the Railway administration did not take any ^{remedial} measure with respect to the ailment of the applicant which caused deterioration of the health of the applicant day by day. It is note ~~worthy~~ that the applicant when asked for a medical certificate from ADMO /MJN the said ADMO declined to give the same and ~~showed~~ his unwillingness towards the request of the applicant.

4.9. That, it is note worthy that the salary of the applicant was withheld any rhyme and reason by the Railway Administration since August/ 1988 and thus placed the applicant in penury and so he could not make proper arrangement for his medical treatment adequately; and he was passing the days in disfreessful condition with the hope that the Respondent authority will come forward for his resque. It is pertinent to mention that without a medical Fitness Certificate issued by the appropriate medical Officer of N.F.Railway the applicant was also not entitled to resume duty.

4.10. that unfortunately the Respondent authority instead of providing proper Medical treatment to the ailing applicant opted to add salt to his wounds and issued a Charge-Cheet dated 6.10.89 on the purported charge of unauthorised absence from 18.6.88. It is pertinent to mention here that the charge sheet was issued without any statement of imputition with respect to the article of charge. However, the applicant on receipt of the charge

contdp/7

Biswanath Banerjee

Sheet submitted his defence statement vide letter dated 3.11.89 denying the charges.

A copy of the charge sheet dated 6.10.89 and defence statement dated 3.11.89 are filed here with as Annexure-III & IV respectively.

4.11. That, it is worthy to mention here that the applicant was neither suspended from his service nor was allowed to resume his duty by the railway authority by issuing a Medical Fitness Certificate; on the other hand after issuance of the charges Sheet the railway administration kept silent for a long time without holding and disciplinary proceeding and only after a gap of about 2 years applicant had received two letters on 6.9.91 from the railway administration. viz-

(a Order under Memo No. ES-B/334 dated 29.8.91 issued by the Divisional Mechanical Engineer (C&W) Tinsukia appointing Sri P.G.Keshavan, APO/I/Tinsukia as enquiry officer to enquire into the charge framed against the applicant.

(b Memo.NO.ES-B/334 dated 29.8.91 issued by the same officer i.e. the Divisional Mechanical Engineer (C & W) N.F.Railway Tinsukia purportedly given the applicant another chance to resume duty within one month from the date of issue of the letter.

contd ..p/8

Biswanath Banerjee

Copy of the aforesaid two letters dated 29.8.91 are filed herewith and marked as Annexur-V & Vi respectively.

4.12. That, the applicant most respectfully begs to state that after receipt of the aforesaid letters the applicant has given his reply vide letter dated 9.9.91 with a prayer for holding an inspection by DME (C & W) himself along with a doctor to assess the Physical condition of the applicant before holding the proposed Disciplinary proceeding and also to allow resumption of duty after such inspections. But, unfortunately no action has been taken. Which in action on the part of the DME (C & W) is in contravention to Rule- 3(2) (i) of the Railway Services conduct Rules 1966, which is quote below for reference:-

"Every railway servant holding on suspensory post shall take all possible steps to ~~ensure~~ the integrity and devotion to duty of all railway servants for the time ^{under} being _{his} control and authority."

4.13. That, after a long gap, by letter dated 4.9.92 the enquiry officer informed the applicant that the DAR enquiry would be held on 28.9.92 in his chamber at 10 hours and the applicant personally appeared before the enquiry officer, when the enquiry was held in summary manner, without following procedure as required under the Rules and not the even following the principles of Natural

contdp/9

Biswanath Banerjee

Justice. The enquiry officer conducted the said enquiry in a very perfunctory manner and put some incriminating questions to the applicant, although no statement of imputation of misconduct was disclosed in support of the Article of charge in the Charge-Sheet. The incrimination questions put to the applicant are mainly the Question No. 4, 5, 6 & 7 etc. Which were made in absence of any evidence produced by the Diciplienary Authority and there by violated the procedure for imposition of Major panalty ennumerated in Rule 9 (21) of the Railway Servants (Discipline & Appeal) Rules, 1968; which is quote under for reference:-

"The enquiry authority may, after the Railway servant closes his case, and shall if the Railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Railway servant to explain any circumstances appearing in the evidence against him"

It is note worthy that the enquiry report was not supplied to the applicant prejudicing him to represent against the enquiry report 29.9.92. Moreover, no documents, and no oral evidence was produced before the enquiry officers showing that how and in what manner your applicant is guilty of chagres nor any opportunity was given to the applicant to peruse the documents on the basis of which enquiry was held. Hence, it can be said that there is gross violation of the principles of Natural Justice; and the Rules of

procedure for imposing major penalties to a Railway servant.

After conclusion of the aforesaid purported DAR enquiry no further action was taken and position of the applicant remained uncertain.

4.14. That, under the aforesaid circumstances the applicant had professed the O.A. NO.99/94 before the Central Administrative Tribunal Guwahati Bench, Guwahati on 20.5.94 contending inter-alia that he has been suffering from various ailment since the month of May 1988 and getting no result in allopathic treatment, the applicant resorted to Homeopathic treatment where by he got some good result but, the railway authority did not sanction leave on the ground that Homeopathic treatment was not recognised under the Railway Rules and circulars.

Thus, the matter become complicated by passing of time and the purported Charge-Sheet and result of the DAR enquiry held against the applicant ^{had} been kept under carpet putting the whole matters in abeyance and resultantly the applicant was without any work, without proper treatment and without any salary since long time and passing his days in a very distressful condition. The applicant in OA /99/94 sought reliefs namely (i) to provide adequate and affective medical treatment etc. (ii) to regularise the period of absence from 3.6.1988 till his resumption to duty treating the period on leave.

contdp/11

Biswanath Banerjee

4.15. That, the honourable Tribunal while disposing of the O.A. 99/94 vide order dated 8.8.95 was please to observe that the applicant was not terminated from service at any point of time nor the Disciplinary Enquiry resulted in any order adverse to the applicant and while holding so, the Tribunal came to the conclusion as follows:-

"In the peculiar situation where he is neither on duty nor his services are terminated what the respondents should do or the applicant should do is a matter for those parties to consider."

4.16. That, your humble applicant on receipt of the certified copy of the Judgement and order dated 8.8.95 on 26.10.95 submitted the following applications to the ^{Respondent Authority} for allowing him to resume duty -

(i) Application dated 30.10.95 to DRM(Machanical)
N.F. Railway, Tinsukia.

(ii) Application dated 28.12.95 to CME,
N.F. Railway, Maligaon.

(iii) Application dated 30.1.96 to G.M.,
N.F. Railway, Maligaon.

(iv) Application dated 21.11.96 to G.M.
N.F. Railway, Maligaon.

contd.....p/12

Biswanath Barman

4.17. That, thereafter surprisingly the DME, N.F.Railway, Tinsukia (i.e Disciplinary authority) vide order dated 2.12.96 appointed a Board of Enquiry to hold fresh DAR Enquiry against the applicant and it was also clarified by him by his subsequent letter dated 10.12.96 that the DAR Enquiry would be held in reference to the Charge-Sheet dated 6.10.89 which meant second time enquiry *denovo* on the same charge,

Copies of the order dated 2.12.96 and letter dated 10.12.96 are filed hereto and marked as Annexure- VII & VIII respectively.

4.18. That, the applicant begs to state that the aforesaid order and letter were issued in violation of the Rule so the applicant made a representation dated 30.12.96 urging to drop the Annexure-VII & VIII letters and prayed to allow him to resume his duty but, it yeilded no result.

Copy of the representation dated 30.12.96 is filed here to and marked as Annexure- IX.

4.19. That, finding no other alternative your humble applicant again approach this Hon'ble Tribunal and filed the O.A. No. 60/97 on 19.3.1997 seeking relief for quashing the Annexure X & XI letters and further to allow him to resume duty, to treat the period from 18.6.88 as on duty and other consequential benefits.

contd ...p/13

Biswanath Banerjee.

4.20. That while the O.A. 60/97 was pending adjudication the DRM(P) Tinsukia, vide letter dated 1.7.97 communicated cancellation of the Board of enquiry dated 2.12.96 DRM(P) in his letter dated 1.7.97 made the following observations.

"(i) Major penalty chargesheet was not framed in proper way as can be seen from the office copy of the chargesheet at SN -101 and 102 that (a) No definite charge of Article-1 of Annexure-1 was mentioned. It simply mentioned as under "that said Sri B.N. Banerjee while functioning as Steno/TSK during the period is charged as under."

(b) Statement of imputation of misconduct/ misbehaviour was not completely brought out in Article-I of Annexure - II and that also without any relevant reference of service conduct Rules.

(ii) On being through the enquiry report and notings and counter notings available in the file, I am in the conclusion that though Sri B.N. Banerjee, confidential Steno/Tsk cannot be held responsible for being unauthorised absence from duty w.e.f. 18.6.88 to 8.7.88 as he applied for leave and denied by sanctioning authority, but he can be charged for being unauthorised absence from duty after the expiry of the period of leave applied for.

Thus, before finalising the case an opportunity should be given to Shri B.N. Banerjee, confidential Steno to represent within 15(fifteen days as to why he could not be taken up for misconduct remaining unauthorised

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absence from duty w.e.f. 9.7.88 with violation of Rule 3(i),(ii) & (iii) of Railway Service conduct Rule."

4.21 That the OA NO.60/97 was finally disposed of on 4.2.2002 upon hearing both sides, and while disposing of the O.A. the Hon'ble Tribunal held that from the letter dated 1.7.97 it appears that the Disciplinary Authority came to the conclusion that the Disciplinary proceeding initiated against the applicant was defective. However, the authority contemplated a fresh proceeding and for the purpose the applicant was given an opportunity to prefer a written brief within 15 days for consideration before finalising the Disciplinary proceedings. It appears that the question before the Disciplinary Authority was whether the applicant could be charged for unauthorised absence from duty after expiry of the period of leave applied for. And, ultimately directed the applicant to submit representation to the competent authority of the respondents within a period of 1 month from the date of receipt of the order and the respondent shall communicate a speaking order within a period of 3 months.

A copy of the Judgement and order dated 4.2.2000 passed in O.A.NO.60/97 is filed hereto and marked as Annexure-X.

4.22 That, thereafter the applicant preferred W.P.(C).NO.1166/2000 before the Hon'ble High Court assailing the aforesaid order of the Hon'ble Tribunal

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passed in O.A. 60/97. The Hon'ble High Court vide order dated 15.3.2000 upheld the findings of the Hon'ble Tribunal and directed the applicant to make representation before the Railway Authority within a period of 3 weeks and further directed the Authorities to finalise the proceedings within 6 weeks of submission of the representation by the applicant.

A copy of the order dated 15.3.2000 is filed hereto and marked as Annexure-XI.

4.23 That applicant begs to state that the Disciplinary Authority by their pleadings before the Hon'ble Tribunal as well as before the Hon'ble High Court tried to show that after cancelling the Constitution of the Board of Enquiry vide letter dated 1.7.97, the applicant was given an opportunity to prefer a representation within 15 days for consideration before finalising the disciplinary proceeding, which the applicant did not avail.

In this context the applicant begs to state that the case no.O.A. 60/97 was filed inter alia challenging the Constitution of the Board of Enquiry and the letter dated 1.7.97 issued by the DRM(P)/Tsk during pendency of the O.A.60/97 and there was no occasion to submit a second explanation on the basis of the order given by the disciplinary authority position becomes crystal clear that there is no charge as such pending against the applicant and whatever was contemplated to be done was baseless and can be said to be like a castle built in air.

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4.24 That as per direction of the Hon'ble High Court your humble applicant submitted his representation dated 17.4.2000 before the respondent authority on such representation being made the authority did not take into consideration the various contentions made in the representation and passed a non-speaking order dated 12.6.2000 holding that the applicant was not at all willing to abide by Railway Rules and lawful instructions of the authority thereby, violating the Railway service conduct Rules 3(i) (ii) and (iii) of 1966 and hence came to the conclusion in terms of Rule 301 (6) R.I. and 5 (10) R.I. and imposed the penalty of Removal from service with effect from 12.6.2000 (A.N.)

A copy of the order dated 12.6.2000 is filed hereto and marked as Annexure-XII.

4.25 That, the applicant begs to state that the respondent authorities have passed the aforesaid order in violation of the Hon'ble High Courts order and manner of removal from service is illegal, arbitrary, whimsical and is not in consonance as per requirement of Rule 9 (6) of Railway Servants (Discipline and Appeal) Rules 1968.

4.26 That the applicant being aggrieved by the removal order preferred an appeal dated 1.8.2000 to the DRM, NE Railway, Tinsukia who is the Appellate Authority. The applicant in the Memo of Appeal prayed for setting aside the order of Removal and to allow the applicant to resume

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duty. The appellate authority by Order dated 7.12.2000 modified the order of punishment by 'reduction to the lowest stage in applicants present pay scale with adverse future effect." Further, the DRM(P)/Tsk who communicated Appellate authorities order in his letter No. ESB/334 dt. 7.12.2000, and in its said letter advised the applicant to report to the Office within 15 days from the date of the receipt of the letter with proper Medical Certificate covering the period.

A copy of the Order dated 7.12.2000 is filed hereto and marked as Annexure - XIII.

4.27. That the applicant begs to state that the Order of the appellate authority does not contain the period for which the applicant has been asked to produce the Medical Certificate, which shows that how whimsically and with a preconceived mind the appellate authority gave its finding. Moreover, the appellate authority failed to appreciate that the applicant was very much willing to resume his duty but the appellate Order being a non-speaking order he could not ascertain that in what manner he will have to resume duty.

4.28. That, under such circumstances applicant moved a representation on 16.1.2001 before the appellate authority seeking clarification on the Order. After receipt of the representation the DRM(P) communicated the Order dated 22.1.2001 directing the applicant to report to the office within 15 days with proper medical certificate covering the period etc, and it was added that the applicant if will not resume duty as per direction it will be presumed that the applicant is not willing to report for duty and the order of penalty as passed by the Disciplinary Authority

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will hold good.

A copy of the order dated 22.1.2001 is filed hereto and marked as Annexure-XIV.

4.29 That the applicant in this contest, begs to state that DRM(P) not himself being the Appellate Authority the direction made in his letter dated 22.1.2001 to the effect, "failing which it will be presumed that you are not willing to report for duty and order of penalty as passed by the Disciplinary authority will hold good" has exceeded his power as it amounts to modification of the appellate order passed by the appellate authority, namely ; the Divisional Railway Manager, such a modification of the appellate order has seriously prejudiced the applicant.

4.30 That, the applicant humbly begs to state that the contention of the appellate authority in order dated 22.1.2001 to the effect that the findings of the Disciplinary Authority are warranted by the evidence of records is not correct. The Applicant states that the whole Disciplinary Proceeding was based on no evidence and the service of the applicant was terminated on such a charge-sheet which does not contain the statement of imputation of misconduct and it is a fit case where this Hon'ble Tribunal would be pleased to lift the veil and scrutinize the clear picture resting upon which the applicant was subjected to penalty. Moreover, the entire proceeding was conducted in violation of Rule 9 (6) of DAR Rules.

4.31 That, the applicant remaining aggrieved preferred a Revision application dated 8.3.2001 before the General Manager, N.F.Railway, Maligaon, Guwahati -11. In the meantime a period of 18 months after the last date of the statutory period of 45 days of filing the Revision Application is going to be elapsed shortly, but till date the applicant did not receive any order from the Revisional Authority. So under the aforesaid position the applicant has approached this Hon'ble Tribunal to redress his grievances.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS

i. For that, the DRM/TSK as appellate authority modified the punishment by reduction to lowest stage in applicants pay scale with adverse future effect and simultaneously imposed some absurd conditions and thereby rendered the appellate order in operative.

ii. For that, the appellate order passed by DRM/Tsk amounts to double punishment as because in one hand punishment imposed by the disciplinary authority has been modified and on the other hand direction for removal from service on non-fulfilment of some absurd and vague conditions and thus the appellate authority has blown hot and cold in the same breathe.

iii. For that, the major penalty charge sheet No.ES-B/334 dated 6.10.1989 issued to the applicant was not

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framed as per requirement of Rule 9 (6) of the Railway Servants (Discipline & Appeal) Rules 1968 , which is evident No. ESB/334 dated 1.7.97 of the DRM(P)/Tsk, who inter alia observed that no definite charge was framed and statement of imputation of misconduct was not brought out etc.

So DAR Enquiry proceedings held by the Enquiry Officer on 28.9.92 in reference to the invalid charge sheet is illegal, arbitrary and in violation of the D & A Rules.

iv. For that, the Enquiry Officer during the enquiry proceedings held on 28.9.92 asked some incriminating questions to the applicant in spite of non-disclosure of specific charges by the Disciplinary Authority against the applicant and in absence of any evidence produced by the authority in the enquiry proceeding ; the enquiry officer having acted as a Judge as well as a prosecutor violated the provisions of Sub-Rule (21) of Rule-9 of D & A Rules.

v. For that, the DAR enquiry having done on the basis of an invalid and void charge-sheet and no adequate and reasonable opportunity was afforded to the applicant and the whole proceeding was done in violation of D & A Rules and as such there is violation of the principles of natural justice rendering the DAR enquiry illegal, malafide, biased, arbitrary and any action based thereon is liable to be set aside and quashed.

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vi. For that, both the Disciplinary Authority as well as the Appellate Authority failed to consider that the Applicant although was absent from duty till December 1988 for which absention period he submitted leave application but subsequently all his applications prior, during and subsequent to the long pending DAR enquiry with a prayer to allow him to resume duty were not considered by the authority ; particularly the application dated 9.9.91 too the applicant's controlling officer namely DME (C & W)/Tinsukia, who is also the Disciplinary Authority to visit his residence along with doctor to assess the physical condition of the applicant and to take appropriate remedial action enabling him to resume duty but, nothing has been done and as such there is violation of Clause (i) Sub-Rule (2) of Rule-3 of D & A Rules.

vii. For that, the respondent authority ought to have considered that the only charge brought against the applicant was for unauthorised absence and not for any misconduct in the nature of moral turpitude, misappropriation causing loss to Railway or in subordination and that the long period since after the period of absence by leave application was spent due to pendency of the DAR enquiry/Disciplinary proceeding and delatory tactics resorted by the concerned officer in different stages so, the applicant cannot be held responsible in any way for long pendency of the matter.

viii. For that, the Railway Authority since the inception of the present tangle instead of providing proper

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medical treatment to the applicant for the ailment suffered by him he resorted to punitive action viz issuance of charge sheet, non-payment of salary, non-sanction of medical and other leaves and keeping the whole matter in abeyance indefinitely and lastly the appellate authority also failed to resolve the issue in finality.

ix. For that, the impugned order passed by the respondents has effected life and livelihood of the applicant and he has been put to a very distressful condition without any means of livelihood.

x. For that, the impugned order caused great hardship and injustice to the applicant.

xi. For that, the entire proceeding is in violation of the principles of Natural Justice and Administrative fair play in as much as violative of Article 14,19,21,23 and 311 of the Constitution of India.

xii. For that, in any view of the matter the orders impugned are liable to be set aside and quashed.

6. DETAILS OF REMEDY EXHAUSTED :

That there is no other alternative and efficacious remedy available to the applicant except invoking the jurisdiction of this Hon'ble Court under Section 19 of the Administration Tribunal Act, 1985.

7

MATTERS NOT PREVIOUSLY FILED OR PENDING
BEFORE ANY OTHER COURT

The applicant further declare that they have not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, authority or any other bench of this Hon'ble Tribunal nor any such, application, writ petition or suit is pending before any of them.

8. RELIEF PRAYED FOR :

Under the facts and circumstances stated above in this application the applicant prays for the following reliefs :

8.1 Setting aside the order of the Respondent no.2 the Appellate Authority issued under No.ES-B/334 dated 7.12.2000 and the order No.ES-B/334 dated 22.1.2001 ; and the order of removal from service dated 12.6.2000 passed by the Respondent No.3

8.2 To set aside and quash the major penalty charge sheet ES-B/334 dated 6.10.89 as invalid and void ab-initio.

8.3 To direct the respondent to allow the applicant to resume duty without imposing any condition.

8.4 Directing the respondent to treat the period from 18.6.88 till resumption of duty as on duty and to give

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Biswanath Banerjee.

him all consequential benefit the applicant is entitled on the law and equity.

8.5 To pass any other order or orders as deem fit and proper by the Tribunal.

8.6 Costs of the case/

9. INTERIM ORDER

Pending final decision of this application the applicant seeks issue of the interim order directing the respondents to allow him to resume duty in the post of confidential Stenographer in the present scale of pay.

10. APPLICATION IS FILED THROUGH ADVOCATE :

!! PARTICULARS OF I.P.O. :

I.P.O. NO. : 74576894
Date of issue : 3.9.2002
Issued from : Guwahati
Payable at : CAT, Guwahati

12. LIST OF ENCLOSERS :

As stated in Index.

.....Verification

Biswanath Banerjee.

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

I, Shri Biswanath Banerjee, son of Late, Sudhir Chandra Banerjee, aged about 51 years, working as Confidential Stenographer, N.F.Railway, Tinsukia, do hereby verify that the statement made in paragraphs 4.1, 4.3, 4.4, 4.5, 4.6, 4.8, 4.9, 4.12, 4.13, 4.23, 4.25, 4.27 are true to my knowledge and those made in paragraphs 4.2, 4.7, 4.10, 4.11, 4.14, 4.15 to 4.22, 4.24, 4.26, 4.28 are true to my information derieved from records and the rest are my humble submissions before this Hon'ble Tribunal.

Date : 5-9-2002

Biswanath Banerjee,

Place : GUWAHATI

S I G N A T U R E

Raj Kumar

. B.E.(Hons.)

Indian Rly. Service of Engineers.

TO WHOM EVER IT MAY CONCERN

During my tenure of one year as Divisional Railway Manager, Shri Biswa Nath Banerjee worked and assisted me as an very able, sincere and devoted stenographer. He was always available in office even when office hours had expired . He is professionally very competent and totally dedicated to his work without consideration for his comforts and health.

I wish him a prosperous & healthy future in official as well as personal life.

Sd/- Illegable.

29.7.85.

Divisional Railway Manager,

NF. Railway/Tinsukia.

Certified to be true copy

Sanjay Roy
Advocate

4-9-2002

ANNEXURE—

II

- 27 -

37

Recd. with A/K

N. F. Railway.

No. ES/B/334

Office of the
Divl. Rly. Manager (P)/TSK
Dated. 18-11-88.

To

Shri Biswanath Banerjee,
C/O Shri Sudhir ch. Banerjee,
Near Old Railway Health Unit,
Digboi Road, P.O. Makua Jn.
Dist. Dibrugarh, 786125.

Sub: Unauthorized absence.

It is seen that you have been absenting w.e.f.
18.6.88 on grounds of illness without authority or
without producing any medical certificate.

So, you are advised to report to ADMO/MDN or
DMO/TSK for medical examination.

[Signature]
for Divl. Railway Manager (P),
N.F. Railway, Tinsukia.

Copy to: 1) ADMO/MDN *MDN*
2) DMO/TSK.

[Signature]
for Divl. Railway Manager (P),
N.F. Railway, Tinsukia.

723
Certified to be true copy

Sangay Roy
Advocate

4-9-2002

(Rule 9 of the Rly. servants (Discipline and appeal Rules, 1968).

No. E.S.-B/334.

DAME/TSK

(Place of issue).

(Name of Rly. Administration)-

Date 6.10.1989

MEMORANDUM

The President, Rly. Board / Undersigned proposes(s) to hold an inquiry against Sri B.N. Bawrya CS/TSU under rule 9 of the Rly. servants (discipline and appeal) rules, 1968. The substance of the imputations of misconduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement or articles of charge (Annexure - I). A statement of the imputations of misconduct or mis-behaviour in support of each 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 (Annex-III & IV). Further, copies of documents mentioned in the list of documents, as per Annex-III are enclosed.

2. * Sri B.N. Bawrya C. Slew/TSU is hereby informed that if he so desires, he can inspect and take extracts, from the documents mentioned in the enclosed list of documents (Annex-III & IV) at any time during office hours within ten days of receipt of this Memorandum. For this purpose he should contact ** DRM(D)/TSU immediately on receipt of this memorandum.

3. Sri B.N. Bawrya C. Slew/TSU is further informed that he may, if he so desires, take the assistance of any other Rly. Servant or an official of Rly. Trade Union (who satisfies the requirements of rule 9(1F) of the Rly. servants (discipline and appeal) rule, 1968 and Note 1 and / or Note 2 there under as the case may be) for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Rly. Servant(s) or Rly. Trade union official(s), Sri B.N. Bawrya C. Slew/TSU 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 of Railway along with the nomination.

4. Sri B.N. Bawrya C. Slew/TSU is thereby directed to submit to the undersigned (through General Manager Railway & a written statement of his defence (which should reach the said General Manager) within ten days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of his defence and within ten days after completion of inspection of documents if he desires to inspect documents, and also-

Cont/2

P.T.22.12.86

Dist. Tirukla Arum

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

5. Shri B.N. Bawrya if informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit / deny each article of charges.

6. Shri B.N. Bawrya is further informed that if he does not submit his written statement of defence within the period specified in para 2 or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 9 of the Rly. servants (Discipline and Appeal) Rules, 1960, 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 B.N. Bawrya is invited to rule 20 of the Rly. servant (Conduct) Rules, 1966, under which no Rly. servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri B.N. Bawrya is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the Rly. services (conduct) Rule, 1966.

8. The receipt of this memorandum may be acknowledged.

Enc/ow

by order and in the name of the president.

Name & Designation of competent authority.

Signature: [Signature] 6.10.77
 Divisional Mech. Engineer (C&W)

Div. Railway/Insula

(Designation)

Dist. Dibrugarh (Assam).

(Name & Design. of the pending

Copy of Shri DMR (C&W) / TSU (Name & Design. of the pending authority) for information.

Strike out whichever is not applicable.

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

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

22 Where the President is the disciplinary authority.

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

ADDENDUM TO STANDARD FORM NO. 5.
MEMORANDUM OF C/SHEET UNDER RULE 9 OF THE RS(DGA) RULES, 1968.

ANNEXURE-1.
Statement of articles of charge frames against Sri B. N. Dey
Control Store/TLN (Name and Designation of the Railway
Servant).

ARTICLE-1.
That said Shri B. N. Bhatnagar while functioning as Control Store
T.S.W. during the period _____ is charged
for _____ as under _____

ARTICLE 11.
That during the aforesaid period while functioning in the aforesaid
Office, the said Shri _____ (here enter de-
fine and distinct article of charge).

ARTICLE III.
That during the aforesaid period while functioning in the aforesaid office, the said Shri _____ (here enter definite and distinct article of charge)

ANNEXURE-11.
Statement of imputation of mis-conduct or misbehaviour in support
of the articles of charge frames against Shri B.N. Bawer
Subot Store/TSK (name & designation of the Rly. Servant).

ARTICLE (1) Unauthorised absence W.C. 18.11.88

ARTICLE 111
ARTICLE 111
ARTICLE 111
List of Documents by which the articles of charges framed against
Shri D. N. Bhowmik (name & designation of the Rly. Servant
to that process to be sustained. *Due Date & Remarks kept*

ANNEXURE IV
List of witness by which the articles of charges framed against
Sri [Signature] (Name & designation of P.W. servant)
to be submitted.

6-10-88
 ५०. ०५ मा. ०५
 ५०. ०५ मा. ०५
 Divisional Mech. Engineer, (G&W)
 P.W. Railway/Insulin

Near old Ry. Hq. Health unit; Dighe Road
PO - Makur Junction. Pin - 421001
Dist - Thane. Arun.

Certified to be true copy

Sangay Roy
Advocate
4-7-2002

ANNEXURE-

IV

(COPY)

-31-41

(CONFIDENTIAL).

To:
The Divisional Mech. Engineer (C&W),
N.F. Rly./Tinsukia.

Sir,

Ref:- Major Penalty chargesheet
No. ES-B/334, dt. 6.10.89
issued to me by you.

1. With profound respect and humble submission, I beg to state that I have received the above chargesheet on 27.10.89 at about 14 hours, and it is noted that I have been charged with unauthorised absence from 18/6/88. It will not be wise to term my absence as unauthorised, ~~because~~ because I applied for leave as follows:-

- (i) Applied for LHAP from 18/6/88 to 24/6/88 - Sent thro: Sri C.L. Bardhan, Peon of our office who came to my house on 23/6/88.
- (ii) Applied from 25/6/88 to 8/7/88 on 6/7/88 in ref. to your letter No. ES/B-334, dt. 30/6/88 - Sent thro: my brother.

2; Thereafter I could not apply for any further leave, and the reasons which led me to remain absent from duty are indicated below :-

- 2.1. From previous prescriptions of Rly. medical, it will be seen I had been given treatment of chronic amoebiasis from 1979 to 1981.
- 2.2. I attended AMO/MJN on 11/12/81 for pain on left hypochondrium.
- 2.3. Being unsatisfied with treatment, I got private X-Rayed on 28/11/82 and pathology as abdomen Koch.
- 2.4. I was referred to DMO/DBRT on 6/12/82 alongwith AMO/MJN's report. I attended DBRT Hospital on 7/12/82 where I have been examined by DMO Laskar, Dr. Newar, et etc. and they saw my X-Ray report and examined my stool and urine on 8/12/82. Dr. Newar reported that clinically I do not seem to be a patient of Koch's abdomen, and as they found RWO ovum, so, I was prescribed the treatment of helminthiasis, and returned me to AMO/MJN with the instruction to come after one month for X-Ray examination. Accordingly I took treatment of helminthiasis, but no RWO was evacuated. I was X-rayed on 10/1/83 of my U.G.I.T. and reported as NAD (whereas in the X-Ray it is seen stomach contraction and duodenum cap cannot be visualised), appendix portion was not X-Rayed. (In the meantime on 17/12/82 I got stool examined privately and nothing abnormal found about amoebiasis).
- 2.5. On 13/8/83 severe pain in sacro-joint felt. So, private Dr. was consulted (as Rly. Dr. was not available) who advised me to do X-Ray. However, on availability of AMO/MJN, he examined me on 15/8/83, prescribed and allowed bed rest. On 22/10/83 I attended AMO/MJN for the same trouble, who examined me and prescribed medicines.

(Contd. to... P/2).

Certified to be true copy

Sangay Roy
Advocate

4-9-2002

- 2.6. On 15/3/84, I reported to AMO/MJN for the same trouble, and referred to DMO/DBRT, and remained in the hospital from 16/3/84 to 26/3/84. Stool and urine were examined on 17/3/84. In urine calox was found and stool NAD, but no amoeba. As no fruitful result was forthcoming, as per advice of Dr. Newar my stool was examined on 22, 23 and 24/3/84 and veg. cell & RWO(+) was seen.
- 2.7. After examination also in DBRT hospital blood was coming with stool. So, on 28/3/84 I attended AMO/MJN for abdomen pain who examined and prescribed and advised me to take much water.
- 2.8. On 8/9/84 I reported to ADMO/MJN for the same trouble who examined me and prescribed medicines.
- NB:- So far B/P had been checked by all the Doctors at every time and found normal, and as such no mention made in prescriptions.
- 2.9. On 20/2/85, I attended AMO/MJN for the same trouble and I was referred to DMO/DBRT on 21/2/85. DMO/Dr. Bordoloi examined me, who recorded B/P as 160/100. I told him that B/P may be for original trouble. But he prescribed B/P medicines. My nose was checked by the specialist, my anus was checked by the surgeon and found fissure with piles and prescribed medicines. I was under sick from 18/2/85 to 24/3/85. (Original records seized by AMO/MJN).
- 2.10. I reported to ADMO/MJN on 15/2/86 for the same trouble who diagnosed me as chronic amobiasis and prescribed medicines. ADMO/MJN on 18/2/86 investigated me in details and prescribed medicines for the same troubles. As prescribed by ADMO, I purchased one of the medicines Polyzyme from market.

As I was not satisfied with the treatment, so, I examined my stool and urine privately in the Presidential Clinic and Assam Laboratory on 8/3/86 and no trace of amoeba was found. I showed both the reports to ADMO/MJN to Dr. A. Chakraborty who told me he does not believe these reports. That is why, ADMO/MJN referred me with his letter dt. 13/3/86 to DMO/DBRT. DMO Dr. Bordoloi examined me on 14/3/86, and as per his advice I went to Prof. A.M. Rahaman (fees paid by me) who examined me after seeing the X-ray and stool and urine reports, and prescribed medicines for me. The prescription was shown to DMO/DBRT Dr. Bordoloi who approved to take the medicines as prescribed and advised ADMO/TSK to send me to DBRT Hospital after one week for fresh X-Ray. Accordingly I took the medicines of the Prof. (On my request to DRM/TSK Sri C.D. Srinivasan, it has been confirmed by DMO/DBRT Dr. Bordoloi to DRM that it is gastric ulcer medicines; whereas Rly. X-Ray done on 10/1/83 did not show any gastric ulcer. As ADMO/TSK was busy with CMO's inspection programme and for other official works and perhaps he went on leave and as the case was being delayed, I got X-rayed of stomach and appendix privately at Modern X-Ray clinic on 30/3/86 on the prescription of private doctor and it has been diagnosed as elongation of appendix and duodenum cap deformed. I was referred to DMO/DBRT and my appendix was operated upon on 14/5/86, and discharged from hospital on 2/6/86. During stay at DBRT Hospital after operation for a few days blood oozed out with stool with ~~ext~~ obstinate constipation and anus

swelled and difficulty experienced in evacuating. ----
P.K.Choudhury examined the anus and told that anus was fissured and by the by said that Class-IV staff are not good enough to give enema. However, he prescribed acriflavin with hot water heat in anus and to apply fucidin ointment locally. Accordingly, I did so. Surgeon P.K.Choudhury advised me to get the B/P checked up from time to time at MJN/TSK Rly. Hospital and I used to do this. Excision of the appendix could have been avoided had diagnosis made properly well in time. Not a single RWO could have been ~~made~~ evacuated even after taking helmentiasis treatment by Rly.

3. On the other hand, in working side I have been put in additional burden of CA-to-DRM's work over and above work of Steno of DMEs, as the post of R CA-to-DRM was vacant perhaps from 17/2/83 to end of 1986. As the post of Steno-to-DSO was lying vacant since long, therefore, I have been sometimes ordered to attend Accident enquiries (by the order of DRM or on request of DSO to DMEs where DMEs were not members, or by DMEs where they are members) in office and sometimes it happened when I was attending accident enquiries or taking dictation of DMEs or DSO (with the permission of DMEs on his request), DRM called me for urgent dictation which I took and typed instantaneously or later on. My nature of work in those period run into so minute details that I cannot remember each and every event at this distant date. However, a brief account is given below:-

- 3.1. DRM or DMEs marked papers as CA/Steno for connection and put up, which I took to Sections and got put up in files and take to them for dictations to avoid delay, took dictations, typed and give dealing Sections of all Branches directly by me. Putting up is done during office working hours, dictation taken sometimes after office hours and typed thereafter (~~where~~ when officers not present) for sign and despatch on next days.
- 3.2. Custody of cash imorest of DMEs (details a/c kept by Stores Deptt.). It was perhaps Rs.3000/- later raised to Rs.10,000/-. Moreover, separate cash is kept for supply of gas cylinders to Running Room.
- 3.3. With the newly created post of DME/C&W paper work increased for me, especially Inspection notes of various types over and above that of DME(P) which I took dictations.
- 3.4. Huge DRM's inspection notes.
- 3.5. Joint Inspection notes of DMEs with other Branch officers (especially safety drives).
- 3.6. Typed hand-written Inspection Notes/letters of DME(P), DSO, DME/C&W when they could not give me dictations, as I was busy with DRM during office working hours.
- 3.7. When DRM was not available in TSK, I used to type his dictations taken in previous days and took dictations of DMEs/DSO.
- 3.8. When DMEs, DRM were not available in TSK, I worked in connection with sorting out and ~~pan~~ placing of CRs for E.B./Selection/Review of service. Filing of confidential papers in DMEs and DRM's confal. Sections. Issuing reminders to letters from DME and DRM's Confal.

(Contd.to...P/4)

Section. Follow up of Vigilance preventive check reports of Mech. Deptt. (viz. issuing letters to Sheds/Depots for obtaining remarks therefrom, replying to MLG HQ, issuing of charge sheet & follow up),

Maintenance of Confdl. reports of Mech. Deptt., which includes getting the CRs initiated by Sr. Subordinates, AME, DMEs/Review/acceptance, Despatch to HQ CRs and in case of CRs of FIs remarks from Dy. CME(F) and that of AWTI from CMT were to be obtained.

CRs of all Branches were to be got reviewed/accepted by DRM and to be sent to respective Branches. CRs of all Branch officers after initiation by DRM sent to HQ.

Reply to confdl. letters, where possible, had to be prepared by me after collecting information from Sections or put up to DRM/DMEs for dictation.

3.9. Dictation and typing of PCDOs and remarks to HODMs and other meetings by DRM.

3.10. Suppose DRM's forwarding letters were of few lines, but enclosures run into few pages, so, I had to type the enclosures, because there was no photostat machine in DRM's Office at that time. So, I had no alternative. It was procured perhaps in 1985-86 (actual date I cannot remember).

3.11. As others officers like DEE, DSTE had no steno, therefore, their manuscript drafts after approval by DRM had to be typed by me (when their typists were not available) for despatch to HQ under DRM's signature on urgent basis.

4. My CRs from 1982-83 to 1986-87 will speak for myself for hard work rendered to the Administration. DRM also commended that I had worked without consideration of my comforts and health during his tenure. It is learnt that DRMs had awarded Rly. Week awards which I did not like to take.

The quantum of work rendered to the Administration by me during that period was abnormally beyond my capacity and it has certainly had bad effect on health and mind gradually thereafter, and I do not know what will be termed in medical terminology of such a state of affairs.

5. However, I have been feeling a kind of vertigo, etc. So, in order to overcome this I took homoeopathy treatment sometimes from Sept./87. The Homoeopathist told that homoeopathy is based on symptoms; so, it would take time to work their system and each of their medicine has a reasonable period of working upto which they will wait and according to symptoms medicines will be changed and antidotes, etc. While I have been waiting for feeling total symptoms for selecting homoeopathy remedy, I have received DRM(P)/TSK's letter No. ES/B-334, dt. 18/11/88 advising me to report to ADMO/MJN or DMO/TSK for medical examination. ADMO/MJN has been requested to attend me at home, who attended me on 28/12/88 and gave prescription on 1/1/89 and I took his medicines. On 11/1/89 I sent him information to check up me at home. He told the messenger to get me checked up by private doctor and returned the fees of Rs. 10/- & sent to him as Doctor's fees. If you like, you can ask him about me.

(Contd. to... P/5)

6. Considering my above facts, you are requested to look into the matter sympathetically and exonerate me from the charge and allow me to wait at least one month as fluctuation of giddiness is ~~xxx~~ there. A letter may please be issued by you addressed to DMO/TSK, ADMO/MJN with copy to me for medical check-up if I desire to do so, or as you deem fit.

With regards;

Yours faithfully;

Sd/-

Dated, Makum Jn.
3/11/89.

(Biswanath Banerjee)
Confdl. Steno to
DME/TSK,
N.F.Rly.

---000---

Certified to be true copy

Sanjay Roy
Advocate

4-9-2002

Registered with A/D

-36-46

ANNEXURE- V

N.F. Railway.

STANDARD FORM NO. 7 : STANDARD FORM OF ORDER RELATING TO A POINTMENT OF INQUIRY OFFICER/BOARD OF INQUIRY (RULE 9(2) OF R3(DSA) RULE 3, 1960.

N.F.RLY: (Name of Adm.) - DM/DP's Office/TSK (Place of Issue).

No. EB-B/334

Date: 29/8/91

ORDER

There is an inquiry under Rule 9 of the Rly. Servant (Discipline and Appeal Rules, 1960) is being held against Shri Biswanath Banerjee ~~Confidential Memo to DM/DP's Office/TSK~~ (Name & Design. of Rly. Servant) and whereas the undersigned consider(s) that a Board of Inquiry and Inquiry Officer should be appointed to inquire into the charges framed against him. Now, therefore, the undersigned, in exercise of the powers conferred by Rule (2) of the said rules, hereby appoint(s) -

A Board of Inquiry consisting of -

1. Sri
2. Sri
3. Sri

(Here enter Names & Design. of Members of the Board of Inquiry.)

Shri P.G. Kesvan APO-1/TSK OR (Name & Design. of Inquiry Officer) an Inquiry Officer to inquire into the charges framed against the said

Shri Biswanath Banerjee.

Signature (Name): [Signature]
Designation of the go to the [Signature]
Disciplinary authority Principal Mech Engineer (C&D)
N.F. Railway/Tinsukia

✓ C/- Shri Biswanath Banerjee (thru: [Signature]) (Name & Design. of the Rly. Servant). He will please refer the Memorandum No. EB-B/334 dt: 6.10.89 & send the names of persons Counsels (at least 3 in order & preference with their consent letters within 7 days from the date of receipt of this, if he so desires to assist him in the inquiry and to enable this office to fix up the date of Inquiry. He should intimate the names of his witness, if any, to arrange their attendance accordingly.

C/- Sri P.G. Kesvan APO-1/TSK (Name/Design. of the Member of Board of Inquiry/Inquiry Officer).

C/- [Signature] (Name/Design. of Landing Authority).

NOTE: To be used wherever applicable, not to be inserted in the copy sent to the Rly. Servant.

19.9.90

* Confidential Memo to DM/DP's Office
c/o Sri Brother of Banerjee
Near old Rly. Health Club, Tinsukia Road
PO - Mahamandir, Tinsukia
Dist - Tinsukia, Assam

Certified to be true copy

Sanjay Roy
Advocate

4-9-2002

ANNEXURE-

VI

- 37 - 47

(REGISTERED WITH A/D.)

N.F. Railway.

~~XXXXXX/B/334~~

No. ES-B/334.

DRM(P)/TSK's Office
Dt: 29-8-1991.

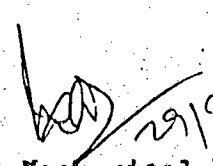
To
Shri- Biswanath Banerjee,
Confdt. Steno to DME/TSK.
C/o Shri- Sudhir Ch. Banerjee
Near old Rly. Health Unit, Digboi Road.
P.O. - Makum Junction
Dist.- Tinsukia, (Assam).

Sub:- Resumption for duty.

You are absenting from duty unauthorisely w.o.f 3-6-88 and you were requested earlier also to report for duty vide this office letter No. ES-B/334 dt. 30-6-88, but you have not joined.

You are hereby given another chance to resume duty within one month from the date of issue this letter, otherwise action as per rules will be taken against you.

Please acknowledge receipt.


Divnl. Mechanical Engineer (C&W)
N.F. Railway/ Tinsukia.

Certified to be true copy

Sanjay Roy
Advocate

4-9-2002

N. F. RAILWAY

Standard Form NO. VII

STANDARD FORM OF ORDER RELATION TO APPOINTMENT OF ENQUIRY OFFICER/BOARD OF INQUIRY (RULE 2(2) OF RS (D. A) RULES, 1960.

NO. ES-B/334

N. F. RAILWAY:-NAME OF ADRI.

(DRM(P)'S Office -Place of issue -TSK

dated: 02.12.1996.

ORDER

There are in inquiry under rule 9 of the Rly. Servant (Discipline and Appeal) Rules 1960 is being held against Sri Biswanath Banerjee (Name & Designation of Rly. servant) and whereas the undersigned consider(s) that a Board of inquiry and Inquiry Officer should be appointed to inquire in to the charges framed against him.

Now, therefore, the undersigned in exercise of the powers conferred by Rule (2) of the said rules, hereby appoint(s).

A board of inquiry consisting of:

1. Sri S. Lakshmi, AME/cw/TSK

2. B. C. Roy, APO-1/TSK.

3.

Here enter names and designation /
Members of the Board of inquiry.

Shri

OR

Divisional Mechanical Engineer,

(Name & Designation of
N.F. Railway, Tinsukia.

Inquiry Officer) and inquiry officer to inquire into the charges framed against the said shri Biswanath Banerjee

(Signature)
Designation of the
Disciplinary Authority.

Name

Copy to:- Shri Biswanath Banerjee (.) (Name & Designation of the Rly. Servant) He will please refer para of the Memorandum

NO. EB-S/334 date 02.12.96 and send the names of Defence counsels (at least three) in order of preference with their consent letters if he so desires to assist him in the inquiry and to enable this office to fix up the date of inquiry. He should intimate the names of his witnesses if any to arrange their attendance accordingly.

Copy to: S. Lakshmi, AME(cw)/TSK & B. C. Roy, APO-1/TSK. (Name & Designation of the Members of the Board of Inquiry/ Inquiry officer)

Copy to: the local authority (Name & Designation of the local authority)

Note: To be used wherever applicable.

Note to be inserted in the copy sent to the Rly. servant.

(Confidential) Memo to DME/TSK

C/O - Sri Sudan Ch. Banerjee -
Near old Rly. colony house Unit.
Digboi Road, P.O. Mukunjin.

Pin - 786170. Dist: TINSUKIA

(Assessm)

Verified to be true copy

Sangay Roy
Advocate

4-9-2002

No. ES-B/334

ANNEXURE—

VIII

OFFICE OF
DIVISIONAL RAILWAY MANAGER(M),
N.F. RAILWAY: TINSUKIA Dt: 10.12.96. -39-
4

TO:
Sri Biswanath Banerjee,
Confidential Steno to DME/TSK,
N.F.Rly, Tinsukia.

Sub:- Issuance of S.F.VII under No.
ES-B/334 dt: 02.12.96./

In reference to your letter No. NIL dated:
09.12.1996, it is to inform you that no fresh Memorandum
of Charge was issued vide No. ES-B/334 dt: 02.12.1996 which
was wrongly written in the above S.F.VII.

Please read the Original Memorandum No.
ES-B/334 dt: 6.10.89 in place of Memorandum No. ES-B/334
dt: 02.12.96 which was issued from this Office.

This is for your information and necessary
please.

[Signature]
Divisional Mechanical Engineer(P),
N.F. Railway, Tinsukia.

Copy to:-

- a) AME(C&W)/TSK, N.F.Rly. for information please.
- b) APO-B/TSK(SrIB.C.Roy) -do- -do-

[Signature]
Divisional Mechanical Engineer,
N.F. Railway, Tinsukia.

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Certified to be true copy.

Sanjay Roy
Advocate

4-9-2002

The Divisional Mechanical Engineer (Power),
N.F. Railway, Tinsukia.

Ref:- 1) Your order No. ES-B/334, dt. 2.12.1996, and
11) your letter No. ES-B/334, dt. 10.12.1996.

Sir,

With reference to the above order and subsequent clarification, I beg to state that under the Railway Servants (Discipline and Appeal) Rules, 1968 no fresh or de-novo enquiry can be held once an enquiry in respect of an alleged omission and ~~xxxxx~~ commission has been done. In present case the article of charge framed under Memo. No. EX ES-B/334, dt. 6.10.1989 was enquired into by Sri P.G. Kesavan, the then APO/I/N.F.Rly./Tinsukia who was appointed as Enquiry Officer under No. ES-B/334, dt. 29/8/1991. Sri Kesavan held the DAR enquiry on 28/9/1992 and his enquiry report alongwith findings was submitted and which was acted upon and even the same was sent to GM (Personnel)/N.F.Rly./MLG. ~~Tinsukia~~ It may also be mentioned here that the Hon'ble Central Administrative Tribunal/Guwahati in its judgement dt. 8.8.1995 have also observed that a DAR ~~enquiry~~ enquiry in my case was already held, ~~and~~ thereafter you took a decision to drop the proceedings and ~~referred~~ referred me for DFC. As such under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 and Rule-10 of the same Rule no. ~~xx~~ fresh DAR Enquiry can be held in the matter.

2. It may also be pointed out that the Hon'ble Supreme Court of India in K.R. Deb V/s. Collector of Central Excise reported in AIR 1971 SC/1447 have held that the Government has no power to set aside an enquiry and order another enquiry in its place. The Government may differ from the findings and reach a different conclusion on the same facts. It cannot hold another enquiry and reach another conclusion. This judgement of the apex Court have been followed in a plethora of judgements by the various High Courts and the different Branches of the Central Administrative Tribunal.

3. Under the above circumstances I hope you would be convinced that the holding of fresh DAR enquiry is completely against the Railway Servants (Discipline & Appeal) Rules, 1968 as well as law laid down by the Supreme Court and various branches of the Central Administrative Tribunal, and I request you for allow me to resume duty, for which act of your kindness I shall remain evergrateful to you.

With regards;

Enclosed: photocopy of
AIR 1971 SC/1447.
(4 pages).

Yours faithfully;

Bishanath Banerjee

Dated: 30th December, 1996.

(X Bishanath Banerjee)
Confidential Steno,
DM (Mechanical)'s Office,
N.F. Railway, Tinsukia.

Certified to be true copy

Sangay Roy
Advocate

4-9-2002

- 41 - 51

(75)

(Page-2).

Copy to:- Sri S. Lahiri, AME(C&W)/N.F.Rly.,) for kind
Tinsukia.) information
" " Sri B.C. Roy, APO/I/N.F.Rly./) please. This
Tinsukia.) has reference to
DME(Power)/TSK's
order and letter
quoted above. It

may be mentioned the DME(Power)/TSK vide his
above order No.ES-B/334, dt.2.12.1996 has appointed
a Board of Inquiry consisting of yourselves to hold
enquiry against me in ref. to the major
chargesheet No.ES-B/334, dt.6.10.1989 which has
been clarified in his above letter dt.10.12.1996.

" " DMM(Personnel)/N.F.Railway/Tinsukia for kind
information-please.

Enclosure: Photocopy of SC/1447.
AIR 147.1
(4 pages)

Biswanath Banerjee

Dated: 20th December, 1996.

(Biswanath Banerjee),
Confidential Steno.,
D.R.M. (Mechanical)'s Office,
N.F. Railway, Tinsukia.

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8/2/97

Original Application No. 60 of 97

Date of Order : This the 4th Day of February 2000

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

HON'BLE MR. G.L. SANGLYINE, ADMINISTRATIVE MEMBER

Shri Biswanath Banerjee,

S/O late Sudhir Chandra Banerjee,
Makum Junction, Digboi Road,
(Near Assam Sahitya Sabha Bhawan),
P.O. Makum Junction,
Dist. Tinsukia (Assam) PIN-786170.

By Advocate Mr. G. Sarma, Ms. B. Rajkhowa

-Vs-

1. Union of India represented by the Chairman,
Railway Board, Rail Bhawan, New Delhi.
2. The General Manager,
N.F. Railway, Maligaon,
Guwahati-781011.
3. The Chief Mechanical Engineer,
N.F. Railway, Maligaon,
Guwahati-781011.
4. The Chief Personnel Officer,
N.F. Railway, Maligaon,
Guwahati-781011.
5. The Divisional Railway Manager,
N.F. Railway,
Tinsukia.
6. The Divisional Mechanical Engineer,
N.F. Railway,
Tinsukia.
7. The Divisional Railway Manager (Mechanical)
N.F. Railway,
Tinsukia.
8. The Divisional Railway Manager (Personnel)
N.F. Railway,
Tinsukia. ... Respondents.

By Advocate Mr. S. Sengupta,

O R D E R.

G.L. SANGLYINE, MEMBER (A):

This application was submitted by the applicant
seeking the following reliefs :-

contd/-2

- " a) To set aside and quash the order of appointment of Board of Inquiry issued under order No.ES-B/334 dated.2.12.96(Annexure A-1) in reference to the charge sheet of 6.10.89 as clarified vide letter No.ES-B/334 dated 10.12.96(Annexure A-2).
- b). To direct the respondents to pay the applicant the arrears of pay and allowances with effect from 29.9.92(i.e. subsequent to 28.9.92 when the DAR enquiry ended in favour of the applicant) and treat the period as on duty for all purposes. And to allow the applicant to resume duty.
- c) To treat the period from 18.6.88(i.e. the date from which the alleged unauthorised absence was shown in the charge sheet Ni.ES-B/334 dated. 6.10.89) to 28.9.92(i.e.. the date when the DAR enquiry was held) as due 'leave-on-average pay' (in short LAP) and rest as extra-ordinary leave on the principles of justice, equity and good conscience for the following purposes :-
- 1) For counting the period for qualifying service for pensionary and incremental benefits and other consequential benefits as per existing rules.
- d) To pass any other order/orders as deemed fit and proper under the facts and circumstances stated in this application as per law and on the principles of justice, equity and good conscience.
- e) Cost of the case.
- f) To set aside - 'but he can be charged for being unauthorised absence from duty after the expiry of the period of leave applied for', as appearing in para (11) of Annexure A.24."

The respondents have contested the application.

2. We have heard learned counsel of both sides. "e are of the view that this application has no merit. Prayer No.(a) has become infructuous in view of the letter dated.1.7.1997 issue by the Divisional Railway Manager(P) Tinsukia to the effect that constitution of Board of Enquiry by Annexure (A-1) was cancelled. Annexure (A-2) is a corrigendum issued by the respondents to read memorandum EB-S/334 dated.2.12.96 as original memorandum No.ESB/334 dated.6.10.89. In view of the aforesaid letter dated. 1-7-1997 this corrigendum has lost significance. Prayer No.(f) above is premature in view of the contents of the letter dated.1.7.1997. After cancelling the constitution of the Board of Enquiry dated.2.12.1996 the disciplinary authority made the following observations in the aforesaid letter :

"(i) Major Penalty Chargesheet was not framed in proper way as can be seen from the office copy of the chargesheet at SN-101 and 102 that

(a) No definite charge of Article-1 of Annexure-1 was mentioned. It simply mentioned as under "That said Sri E.N.Banerjee while functioning as Confidential Steno/TSK during the period- is charged as under"

(b) Statement of Imputation of misconduct/ misbehaviour was not completely brought out in Article-I of Annexure II and that also without any relevant reference of Service Conduct Rule.

(ii) On going through the enquiry report and notings and counter notings available in the file, I am in the conclusion that though Sri B.N.Banerjee, Confidential Steno/TSK cannot be held responsible for being unauthorised absence from duty w.e.f. 18.6.88 to 8.7.88 as he applied for leave and denied by sanctioning
contd/4.

45-55

authority, but he can be charged for being unauthorised absence from duty after the expiry of the period of leave applied for. Thus, before finalising the case an opportunity should be given to Shri B.N.Banerjee, Confidential Steno to represent within 15(fifteen) days as to why he could not be taken up for misconduct remaining unauthorised absence from duty w.e.f. 9.7.88 with violation of Rule 3(1) (ii) & (iii) of Railway Service Conduct Rule."

It appears that according to this letter the disciplinary authority came to the conclusion that the proceeding started was defective. However he contemplated a fresh proceeding and for the purpose the applicant was given an opportunity to prefer a written brief within 15 days for consideration before finalising the disciplinary proceedings. It appears that the question before the disciplinary authority was whether the applicant could be charged for unauthorised absence from duty after expiry of the period of leave applied for. The applicant did not avail of the opportunity provided to him and did not allow the disciplinary authority an opportunity to come to a conclusion after hearing him whether such charge could be taken against him. Thus this prayer is premature. The applicant may submit a written brief as called for by the respondents authority within 1 month from the date of receipt of this order and, if action of the disciplinary authority is against him, the applicant is at liberty to agitate afresh without prejudice to the contention in this present application. Prayer No.(b) and (c) are of consequential nature. Moreover, we have

contd/-5.

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-5-

no records to show that the disciplinary proceeding had ended on 29.9.1992. The applicant may submit representation to the competent authority of the respondents in these regards within 1 month from the date of receipt of copy of this order and the respondents shall communicate speaking order in these regard to the applicant. If the applicant is still aggrieved, he may agitate before the appropriate authority.

The respondents shall communicate to the applicant speaking order on the matters mentioned above within 3 months from the date of receipt of this order.

Application is disposed as above. No costs.

Sd/-VICECHAIRMAN
Sd/MEMBER (A)

Certified to be true Copy

CHIEF CLERK

Section Officer (A)

WEST BENGAL STATE TRIBUNAL
LAW OFFICE

GOVERNMENT OF WEST BENGAL
CHIEF SECRETARY, GOVERNMENT

LN.

Certified to be true copy

Sangay Roy
Advocate

4-9-2002

प्रतिवेदन के लिए आवेदन की तारीख Date of application for copy.	स्टाम्प और फॉलोअप की अपेक्षित संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फॉलोअप देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिवेदन तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिवेदन देने की तारीख Date of making over the copy to the applicant.
23-3-2000	28-3-2000	28-3-2000	28-3-2000	28-3-2000

IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA,
MIZORAM AND ARUNACHAL PRADESH)

WRIT PETITION (C) NO. 1166 OF 2000.

Shri Biswanath Banerjee,
s/o late Sudhir Ch. Banerjee,
Makum Junction,
district Tinsukia, Assam.

... Petitioner.

-Versus-

The Union of India and 6 others.

.... Respondents.

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR. BRIJESH KUMAR

THE HON'BLE MR. JUSTICE A.K. PATNAIK.

For the petitioner : Mr. G. Sarma, Ms.M.Deka, Advocates.

For the respondents : Standing Counsel for NF Rly.

Date of Hearing and Judgment : 15th March, 2000.

JUDGMENT AND ORDER

BRIJESH KUMAR, C.J. :-

This petition is preferred against the order dated February 4, 2000, passed by the Central Administrative Tribunal, Guwahati Bench in OA No. 60 of 1997.

We have heard Shri G. Sarma, learned counsel for the petitioner. Shri B.K. Sharma, learned counsel has accepted notice on behalf of the respondents.

It appears that disciplinary proceedings were initiated against the petitioner on the purported charge of unauthorised absence from duty. It further transpires that enquiry was completed; but while still the matter was under consideration of the disciplinary

authority, the said authority thought it appropriate that 15 (fifteen) days' time should further be allowed to the petitioner to represent as to why he could not be taken up for misconduct remaining unauthorisedly absent from duty with effect from 2.7.88 in violation of Rule 3(i), (ii) and (iii) of Railway Service Conduct Rule.

The Tribunal ~~took~~^{had} the view that it would be appropriate for the petitioner to make a representation in response to the notice, instead of agitating the matter before the Tribunal.

Learned counsel for the petitioner has vehemently urged that second enquiry for the same alleged misconduct is not permissible. Therefore, there is no occasion to submit any second explanation on the basis of the order given by the disciplinary authority. In connection with this point as raised, suffice it to say that the earlier proceedings do not seem to be finalised. What transpires is that after the enquiry was over by the Enquiry Officer, the matter was still pending ^{for consideration} before the Disciplinary Authority. The Disciplinary Authority at that stage thought it feasible to provide 15 days' time to represent against the alleged unauthorised absence for a specified period. Therefore, it is difficult to find that any second enquiry was initiated. As found by the Tribunal, we feel, it would be appropriate for the petitioner to make representation to the authority concerned taking any point in defence, as the petitioner may feel are open to him to take in that reply, including the points which have been raised by the petitioner in this petition.

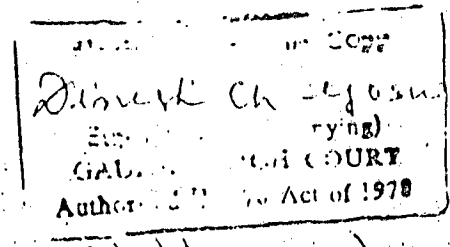
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Needless to emphasise that in case petitioner makes such representation, the authority concerned would obviously consider the same while passing any order in the disciplinary proceedings. Since the time granted to the petitioner is already over, we provide that the petitioner may make such representation within a period of three weeks. Since the matter is quite old, the authority concerned is directed to expedite the finalisation of the proceedings, say, the proceedings would be finalised within six weeks of submission of the representation^{by} by the petitioner.

The petition stands disposed of in the manner indicated above.

S/- AK Pathaik
Judge

S/- Brijesh Kumar
Chief Justice



28/3/2000

2/4/2000

Certified to be true copy

Sangay Roy
Advocate

4-9-2002

ANNEXURE-

XII

No. ES-B/334.

Office of the
Divl. Railway Manager (M),
Tinsukia, Dated. 12.6.2000

To,
✓ Shri Biswanath Banerjee,
(Confidential Steno to DM/TSK)
C/O. Late S. C. Banerjee,
Makum Jn. Digboi Road,
Near Assam Sahitya Sabha Bhawan,
P.O. Makum Junction, Dist. Tinsukia
(Assam) Pin - 786170.

Sub: DAR, Major Memorandum No. ES-B/334 dt. 6.10.89.

Ref: Your representation dated 17.4.2000.

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On going through your appeal date 17.4.2000, as preferred by you in terms of CAT/Guwahati's Order date 16.2.2000 and High Court/Guwahati's Order date 28.3.2000, the undersigned being the Disciplinary Authority has passed the following orders :-

"I have pursued the DAR case of Shri Biswa Nath Banerjee, Confidential steno arising due to his unauthorised absence w.o.f. 09.07.88.

I have gone through the reports and findings of the Enquiry Officer and my observation was communicated to you vide DM(P)/TSK's L/No. ES-B/334 dated 1/7.7.97 with the advice to submit representation if any within 15 (fifteen) days as a matter of natural justice and good conscience on the part of the Disciplinary Authority but you did not respond to it.

1) Shri Banerjee was advised to report ADMD/MJN for medical examination vide DM(P)/TSK's letter No. ES/B/334 dated 20.12.88 but he did not respond.

11) Shri Banerjee was advised to resume duty vide DM(P)/TSK's L/No. ES/B/334 dated 30.6.88 and 29.8.91, but he did not respond.

III) After long gap of more than 4 (four) years he reported to Sr.DMD/IC/TSK on 24.2.83. Sr.DMD/TSK asked him to bring a fresh letter from DM(P)/TSK. A fresh letter No. ES/B/334 dated 8.11.86 was issued directing him to obtain DFC from Sr.DMD/TSK. Sr.DMD/TSK immediately vide his letter No.N/219/1 dated 9.11.86 advised him to bring a PMC in support of his sickness, but he did not respond.

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IV) Again vide DM(P)/TSK's letter No. ES/B/334 dated 16.11.95 he was advised to medical authority to obtain DFC for his resumption, but he did not respond.


From the above it is established that Shri Banerjee was not at all willing to abide by Railway Rules and lawful instruction of the Authority and violated the Railway Service Conduct Rule 3 (1) (11) & (III) of 1966.

(Contd.....P/2)

The charge levelled against him regarding deliberate and intentional absence from duty w.o.f. 9.7.88 was thus proved beyond doubt.

I therefore come into conclusion in terms of Rule 301 (6) II and 5(a) II and pass speaking order that Shri B. N. Banerjee, Conf. steno can not be allowed to resume duty as he was absenting from duty unauthorisedly w.o.f. 9.7.88 which is beyond 5 (five) years and order for removal from service with effect from 12.5.2000 (A.N.).

Appeal if any, lies with the higher Authority (Appellate Authority) within 45 days.


12/6/00 (N.K. DAS)
Divisional Mechanical Engineer,
N. F. Railway, Tinsukia.

Copy forwarded for information and necy. action to:-

1. COS(G) to DME/TSK.
2. COS(P) EM Cadre and COS(P) bill/EM.

Divisional Mechanical Engineer,
N. F. Railway, Tinsukia.

Certified to be true copy

Sangay Roy
Advocate

4-9-2002

N. F. RAILWAY

NO. ES-B/334

OFFICE OF THE
DIVISIONAL RAILWAY MANAGER(P),
TINSUKIA : DATED : 07.12.2000.

TO :
Shri Biswanath Banerjee,
EX- Confidential Steno to DME/TSK
S/O : Late Sudhir Ch. Baherjee,
P.O. MAKUM JUNCTION, DIGBOI ROAD,
NEAR ASSAM SAHITYA BHAVAN,
DIST : TINSUKIA (ASSAM).
PIN : 786170.

Sub :- Interview with DRM/TSK on 02.11.2000

Ref :- Your appeal addressed to DRM/TSK against
this Office NIP of ~~WAM~~ even no. dated:
12.6.2000.

After personal hearing on 02.11.2000, DRM/TSK, ^{the appellate authority} has
passed the following Orders :-

" However, on ground of mercy I modified the punishment as reduction to the lowest stage in his present pay scale with adverse future effect. His resumption of duty is subject to his being found fit by the Medical authority of the appropriate level and also the employee furnishing relevant records/Certificates about his alleged illness/outside treatment to the satisfaction of the appropriate authority. After this requirement is complied with the regularisation of the entire period of absence (from 1988 to till date of resumption of duty) as due leave can be considered."

As such, you are hereby advised to report to this Office immediately with proper medical Certificates covering the period so as to consider you to direct to the Rly. Medical authority for obtaining D.F.C. for resumption to duty.

Rb
for Divnl. Rly. Manager (P),
N.F. Railway, Tinsukia.

Certified to be true copy

Sangay Roy
Advocate

4-9-2002

N . F. RAILWAY

No. ES-B-334

OFFICE OF THE
DIVISIONAL RLY. MANAGER(P),
TINSUKIA:: DATED: 22.01.2001

TO:

Shri Biswanath Banerjee, EX-Confidential Steno to DME/TSK
S/O: Late Sudhir Ch. Banerjee, P.O. MAKUM JUNCTION,
P.O. MAKUM JUNCTION, DIGBOI ROAD, NEAR ASSAM SAHITYA BHAVAN.
DIST: TINSUKIA (ASSAM) PIN: 786170.

Sub:- Your appeal dated: 16.01.2001.

Ref:- Your Previous appeal dated: 12.6.2000 addressed to DRM/TSK
against this Office NIP No. ES-B/334 dated: 12.6.2000.Having ~~been~~ personal hearing on 02.11.2000, the Appellate
Authority, i.e., DRM/TSK has passed the following Orders:

" I have gone through the appeal submitted by Shri
Banerjee against the punishment of re-moval from service
imposed by the Disciplinary Authority for continous
unauthorised absence from 09.7.88 and observe that:

1. The procedure prescribed in the relevant D & A Rules
applicable to Railway servants, have been correctly followed.

2. The findings of the Disciplinary Authority are warranted
by the evidence of records.

A persual of the DAR case including the available documents
report of the E.O. the representation of Shri Banerjee
against the enquiry report indicate that ample time and
opportunity (in Writing) was provided to him to either report for
duty or seek treatment of railway doctor Shri Banerjee did
neither and wanted to resume duty after a long gap of nearly
5 years that too without complying with relevant rules regarding
treatment ~~elsewhere~~, ~~he should have~~ ~~gone~~ by non-railway given by
doctors. If he was not satisfied with the treatment of railway
doctors and wanted to take treatment elsewhere, he should have
got his leave sanctioned by the Competent authority, which he
failed to comply with. Hence I am satisfied that the charge of
long unauthorised absence is substantiated. The various points
raised by him about the role and responsibility of the
Supervisor/Officer alleged discrepancies between the Article of
Charges and in the Wordings of the DA's orders, are trivial in
nature and do not alter the basic facts of the case namely,
long absence without following the prescribed procedure/approved
of the competent authority, as required under extant rules.

However, on ground of mercy I modify the punishment as
reduction to the lowest stage in his present pay scale, with
adverse future effect. His resumption of duty is subject to
his being found fit by the Medical Authorities of the appropriate
level and also the employee furnishing relevant records/
certificates about his alleged illness/outside treatment to the
satisfaction of the appropriate railway medical authority.
After this requirement is complied with, the regularisation of the
entire period of absence (from 1988 to till date of resumption of
duty) as leave due, can be considered."

As such, you are hereby advised to report to this Office
within 15 (fifteen) days from the date of receipt of this letter
with proper medical Certificates covering the period so as to
consider you to direct to the Railway Medical authority for
obtaining D.F.C. for resumption to duty, failing which it will be
presumed that you ^{are} not willing to report for duty and order of
Penalty as passed by the Disciplinary Authority will hold good.

Certified to be true copy

Sanjay Roy
Advocate

Rh... 22.1.01
for Divisional Rly. Manager(P),
N.F. Railway, Tinsukia.

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गुवाहाटी न्यायपीठ
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

OA No. 200/2002

Biswanath Benerjee
-----Applicant

-VS-

Union of India & Ors.
-----Respondents

WRITTEN STATEMENT ON BEHALF OF THE RESPONDENTS

1. That the Respondents have received a copy of the OA and have gone through the same. Same and except the statement which are specifically admitted herein below and rests may be treated as total denial. The statements which are borne on record the applicant is put to the strictest proof thereof.

2. That the answering Respondents before dealing with the contentious made by the applicant in the OA beg to place the back ground history of the case as follows.

The applicant while working as a confidential Steno under Divisional Mechanical Engineer/ Tinsukia applied for three days LAP w.e.f. 31.5.88 to 2.6.88 in continuation of one day CCL on 30.5.88 in lieu of 29.5.88 which was sanctioned by the competent authority on 31.5.88. After availing the leave the applicant did not resume his duty on 3.6.88 without any intimation. The applicant for his absence from duty w.e.f. 3.6.88 stating that he was suffering from swelling of abdomen etc. but he did not obtained the sick memo and never approached the Railway Doctor for his such treatment.

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The applicant vide his letter dated 23.6.88 addressed to DRM(M), Tinsukia requested the said authority from his residence to grant L.H.A.P. from 18.6.88 to 24.6.88. However, the applicant never submitted any application for his absence from the period from 3.6.88 to 17.6.88 and no such application is available in his Personal file (P.file).

The applicant even after 24.6.88 never resume his duty and the DRM(P), Tinsukia vide his letter no. ES/B/334 dated 30.6.88 advised him to report duty immediately to avoid disciplinary action. The applicant even after receipt of the said order dated 30.6.88 never reported to his duty nor he made any intimation to the authority instead he prayed for sanction of L.H.A.P. w.e.f. 25.6.88 to 8.7.88.

The applicant kept on remaining absent from his duty without any intimation and the DRM(P), Tinsukia issued a letter No. ES-B/334 dated 20.12.88 advised the applicant to report ADMO/MJN and DMO/Tinsukia. The Divisional Medical Officer, Makum vide his letter No.PAT/7/89 dated 28.1.89 informed DRM(P)/Tinsukia that his examined the applicant at his residence, Makum on 28.12.88 and found him suffering from Hypertension but he was not willing to take any allopathic medicine from Railways. Therefore, the name of the applicant did not enlist in the sick-list.

Thereafter a major penalty Chargesheet was issued to the applicant for his unauthorise absence w.e.f. 18.6.88 vide DRM(P)/Tinsukia's letter No. ES-B/334 dated 6.10.89. The applicant submitted his defence on 3.11.89. The Disciplinary Authority considering his request gave him another chance to

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Chief Personnel Officer
S. S. Rly. / Maligaon
Assam 781 001

resume his duty within one month from the issue of the said letter No.ES-B/334 dated 29.8.91. Even after the receipt of the said letter the applicant did not join his duty.

On production of Enquiry Report dated 29.9.92 by the IO in which the Article of Charge framed against the applicant was partially sustained without any element of motive but the Disciplinary Authority did not take any action stating that the enquiry was incomplete.

After a period of 5 years, the applicant approached the Administration for filing applications dated 10.2.93, 12.3.93 and 2.4.93 praying for issuance of sick-memo for obtaining Duty-fit certificate from Railway Doctor as he was willing to resume duty. The applicant without waiting for the reply from the Railway Administration preferred OA No.99/94 praying for regulation of the period of absence from 3.9.98 onwards treating the said period to be on leave. The Hon'ble Tribunal vide its judgment and order dated 8.8.95 dismissed the OA holding that both on the count of limitation as well as on merit no relief can be granted to the applicant. The Hon'ble Tribunal also gave liberty to the Railways to finalise the proceeding pending against the applicant.

In response to the application dated 30.10.95 submitted by the applicant praying for resumption of his duty, the DRM(P)/Tinsukia vide his letter No.ES-B/334 dated 16.10.95 directed him to attempt MS/IC, Dibrugarh Town to obtain Duty-Fit certificate in order to resume his duty. But for want of PPMC, Duty Fit certificate could not be issued by the MS/IC, Dibrugarh Town in favour of the applicant. However, the applicant was given

an opportunity to make representation within 15 days as to why he should not be taken up for unauthorise absence beyond, sanctioned leave w.e.f. 9.7.88 and also for violation of Rule 3(i) II and III of service conduct Rule but the applicant did not make any representation. On the other hand he preferred OA No.60/97 on the same issue. The Hon'ble Tribunal vide it's judgment and order dated 4.2.88 directed the applicant to make representation with a further direction to the Railways to pass a speaking order in this connection. The applicant pursuant to the Hon'ble Tribunal's order dated 4.2.2000 passed in OA No.60/97 submitted an appeal dated 14.4.2000 to the Disciplinary Authority. The said authority on going through the said appeal the Disciplinary Authority passed a speaking order imposing the punishment of removal from service w.e.f. 12.6.2000. The aforesaid order was communicated to the applicant vide Letter No ES-B/334 dated 12.6.2000. The applicant against the order of removal preferred an appeal dated 11.8.2000 to the appellate authority and the said authority considering the facts and circumstances of the case modified the removal order and imposed punishment of reduction to the lower stage in his present pay scale with an observation that his resumption of duty would be subject to his being found fit by the medical authority and also his period of absence can be considered as leave due on compassionat ground. Before passing the appellate order the appellate authority also gave a personal hearing on 2.11.2000.

The applicant against the said judgment and order dated 4.2.2000 passed by the Hon'ble Tribunal in OA No.60/99 preferred writ petition before the Hon'ble High Court and the Hon'ble High Court was pleased to dispose of the said writ petition vide judgment and order dated 28.3.2000 directing the applicant to

make a representation with a further direction to the answering respondents to finalise the proceeding within 6 weeks.

The applicant preferred an appeal dated 12.6.2000 and the appellate authority vide order dated 22.1.2001 advised the applicant to report his duty within 15 days with proper medical certificate for obtaining Duty Fit certificate to resume duty failing which presumption would be drawn that he is not willing to report duty and the order of penalty passed by the DA would hold good. Challenging the said order the applicant has filed this OA.

3. That with regard to the statement made in para 1, 2, 3, 4.1 & 4.2 of the OA answering respondents while denying the contentious made therein beg to state that in view of the statement made above the contention of the applicant denied.

4. That with regard to the statement made in para 4.3 of the OA the answering Respondents beg to state that the applicant while posted under Divisional Mechanical Engineer (C&W) Tinsukia in the capacity of Steno grapher has worked as Steno and no such record of discharging heavy work beyond scheduled time under DME(C&W) DRM/TSK and also the application letter stated in Annexure-I is available in this office record. He was posted to work as confidential Assistant to DRM/TSK vice Shri U.K, Dhekial, CA who was absenting unauthorisedly from duty. This was a stop-Gap arrangement giving ad-hoc promotion in scale Rs.550-750/- with the approval of DRM vide Office Order No.E/210/254/1/Con(V) dt. 15.2.83.

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Chief Personnel Officer
S. S. Rly. / Malabar
Bikaner. 12

5. That with regard to the statement made in para 4.4 of the OA answering Respondents beg to state that the statement made in this para by the applicant is not convincing that (as he had effected very complicity and) disease caused to him was due to discharging heavy work load to the Railway. In fact the work performed by the applicant was under the terms and condition and also under the course of employment. Hence, the allegation of the applicant is straight is way denied.

4. That with regard to the statement made in para 4.5 of the OA the answering Respondents beg to state that the applicant had applied for 03 days L.A.P. from 31.5.88 to 2.6.88 in continuation of one day DCL on 30.5.88 in lieu of 29.5.88 vide application dated 31.5.88 from his residence at Makum without forwarding it with recommendation of his immediate office in charge and also without producing any Medical certificate. The same was sanctioned by the competent authority ever the application without observing the formalities.

After availing the said leave, the applicant should have resume his duty on 3.6.88 but neither he has resumed duty on due date nor extended his leave further as per extend rule. His statement that he applied for leave on Half average pay in short (LHAP) on or about 6.6.88 from 3.6.88 to 17.6.88 is therefore false. In fact there is no such application available in the office record.

In view of the above, it is mentioned here that, in accordance with the leave rule laid down by the Railway Board states, after available the sanctioned leave the staff should

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Joint Personnel Office (A)
: : PIV, / Maligaon,
Guwahati-78

report to duty on due date. As stated in the application he applied for LHAP through messenger while he was going under bed ridden condition. But he did not approached immediately to the respondent for issuing sick memo for obtaining treatment from Railway Medical authority. Though this was not first instance from the applicant. In the same way he absented himself from duty w.e.f. 17.1.88 to 12.2.88 in continuation of 30 days LHAL from 18.12.87 to 16.1.88 sanctioned earlier, which was considered by the respondent.

Application dated 17.2.88 and 6.7.88 of the applicant are enclosed as Annex.

7. That with regard to the statement made in para 4.6 of the OA the answering Respondents while denying the contentious made therein beg to state that on being regretted the leave application of the applicant for the period 18.6.88 to 24.6.88 and 25.6.88 to 8.7.88 as LHAP, DRM(P)/Tinsukia vide letter No. ES/B/334 dated 30.6.88 advised the applicant to report for duty immediately but he did not respond to this preferred to remain absent without producing any medical certificate in connection with so called ailment responsible for his so long unauthorised absence.

Copy of DR(P)/TSK dated 30.6.88 enclosed as Annexure No.B

8. That with regard to the statement made in para 4.7 & 4.8 of the OA the answering Respondents while denying the contentions made therein beg to state that, the Respondent Railway again advised the applicant vide letter dated 18.11.88 to attend the ADMO/MJN or DMO/TSK for medical examination, but he did not take

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Chief Personnel Officer
M. P. Rly. / Maligaon
Buwahat. 99

initiative in that regard. On 28.12.88, DMO/MJN examined the applicant at his residence in Makum and found that he was suffering from hypertension and he was not willing to take any allopathic medicine from Railway hospital. For that reason above, he was not enlisted in sick list by the DMO/MJN.

Copy of DMO/MJN letter dated 18.1.89
enclosed as Annexure 'C'.

9. That with regard to the statement made in para 4.9 of the OA the answering Respondents beg to state under the extent rules laid down by the Railway Board each and every employee of the Organisation is abide by the rules and norms. But the applicant did not ready to follow the rules and lawful orders of the Railway authority by not applying for issue of sick memo to obtaining remedial medical assistance and recommendations for grant of Medical leave etc. He also did not inform his controlling Officer. In the above situation respondent was compelled to withheld his salary on such un-certain absence from duty for which he himself was responsible. So the allegation of withholding the payment of the applicant is to take him under DAR is not correct and cannot be accepted.

10. That with regard to the statement made in para 4.10 of the OA the answering Respondents while denying the contentious made therein beg to state that in pursuance of the DMO/MJN letter dated 28.1.89, he was not ready to go with allopathic treatment and Homeopathic treatment was not available over the Railway. If the employee choose a treatment of his choice inspite of Railway doctors advise by going to the applicants residence and thereby do not report for duty for along time without producing any documents, the any alternative left for the respondent to issued

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Chief Personnel Officer
G. F. RIV. / Maligaer
Guzahat 10

a major chargesheet on 6.10.89 under DAR for unauthorised absent from 18.6.88 after passing about one year six month time. However, his absence from duty should be taken from 3.6.88.

Further on 3.11.89 the applicant had submitted his defence against chargesheet of 6.10.89 on going through the defence of the applicant Disciplinary authority took a lenient view and give him another chance to resume duty within one month from the date of issue of the letter No.ES_B/334 dated 29.8.1991 in response to the above letter applicant requested the respondent vide his letter dated 9.9.1991 (enclosed) to see him alongwith a Doctor at his residence at Makum to form independent opinion about his sickness instead of asking him to report resume duty. This way he did not avail the second chance given to him. From the above, it may be seen that the Administration was very considerate but the applicant was adamant and not cooperating.

Letter of applicant dated 9.9.1991
enclosed as Annexure-'D'

11. That with regard to the statement made in para 4.11 of the OA the answering Respondents while denying the contentious made therein, beg to state that, as stated by the applicant, suspension was not required in the extent case as he was absenting himself for duty since long. Generally suspension requires where the administration observe that the delinquent staff can create problem in DAR action by tempering the records. Secondly, as per rules he should have attend the Railway Medical authority at the earliest for obtaining for obtaining proper medical care and sick memo etc. In which case he could have been considered to resume duty on production of Fit certificate. But the applicant did not do so. Wherever Railway treat the Homoeo

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Shri. P. S. Rly. / Maligaon
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certificate as Private Medical certificate as well as unauthorised absence for the time of treatment.

Dar proceeding as alleged by the applicant delayed was only due to the applicant by submission of different requests in different applications. Though treating the cause of unauthorised absence to the bed ridden condition, applicant produced the PPMC for issuing DFO which was not covered the entire period of absence. The said certificate was issued on 17.9.92 to cover the period from 10.10.1991 (enclosed). Hence it transpires that he was not under treatment before 10.10.1991 and absented willfully from duty. If the PPMC produced by the applicant covers the whole period of his sickness, there could have been no problem in issuing him the DFO and thereby joining to his duties.

PPMC certificate of the applicant issued by Homoeo Physician dated 17.9.92 is enclosed as Annexure 'E'.

12. That with regard to the statement made in para 4.12 of the OA the answering Respondents while denying the contentions made therein beg to state that, under the statement made by the applicant bearing the responsibility of the Division it may be stated that there are no provision to see patient along with Doctor at the residence of the staff to ascertain whether he is fit to resume or not and such request cannot also be entertained in official way. Mean while enquiry under DAR in his case had also been fixed up by the E.O. on 28.9.92 vide DRM(P)/TSK's letter ES/B/334 dated 4.9.92 under intimation to the applicant. Resumption of the applicant was possible subject to physical fitness only declared by the Railway Medical authority. In spite

of several opportunities for resumption to duty, applicant did not avail it forced the Administration to take DAR action against him.

Further it is mention here that the applicant was directed to attend ADMO/MJN or DMO/TSK for treatment and to obtain duty fit certificate on being found fit for duty vide DRM(P)/Tinsukia letter NO.ES/V/334 dated 18.11.1988, but the applicant attended DMO/TSK only on 24.2.93 with respondent letter dated 18.11.88. For want of fresh forwarding letter medical examination could not be made by the Medical authority and this was only due to the negligence on the part of the applicant vide DMO/TSK's letter dated 24.2.93 enclosed. Hence allegation that not taken action for issue of resumption to duty is baseless unreasonable and cannot be accepted.

Letter dated 24.2.93 issued by DMO/TSK is
enclosed as Annexure 'F'.

13. That with regard to the statement made in para 4.13 of the OA the answering Respondents while denying the Contentious made therein beg to state that DAR enquiry into the case of the applicant had been started after providing charge sheet and nomination of defence counselor by the E.O. to take help in pleading his case. No principal of natural justice was denied at all by the respondent. Under this provision he heard by the E.O. and after completion of enquiry applicant himself put his signature accepting the entire procedure of DAR. Hence such allegation over the respondent is irrelevant and baseless.

Though during the enquiry in question No.3 he replied that he did not agree with the charge brought out against him.

Beside this to Question No. 19 as to why did you fail to intimate your controlling Officer regarding your absence after 8.7.88 and the reply was that "Due to sever badly problem I am at a less to understand what is wrong or right. I was fully concentrated my bodily problem therefore I could not inform DME (C&W)/TSK."

From this statement it is proved that he was fully aware about the charges and misconduct for which the major charge sheet was issued. However, Enquiry report could not be supplied to the applicant immediately as DAR proceeding had kept in abeyance, and the matter was before the subjuridice of Hon'ble CAT/GHY as OA No.99/94.

Enquiry report held on 29.9.92 enclosed as Annexure G.

14. That with regard to the statement made in para 4.14 of the OA the answering Respondents while denying the contention made therein beg to state that the applicant filed a petition as OA No.99/94 before the Hon'ble CAT/GHY, seeking the reliefs namely (I) to provide adequate and effective medical treatment (II) to regularise the period of absence from 3.6.88 to till his resumption to duty treating the period as on leave. On this issue Hon'ble Tribunal vide their order dated 8.8.85 of para-3 observed as "The applicant has not pointed out any rule entitling him to compel the respondent to give him Homoeopathic treatment even after having stated in the application and that the respondent did not sanction medical leave on the plea that Homoeopathic treatment was not recognised under the rules and circulars. The relief sought is thus without any legal basis and cannot be granted.

On the other hand Hon'ble Tribunal vide their order of

Para-4 upheld as "We therefore, held that neither in limitation nor on merit any relief can be granted on the frame of this application which does not disclose any cause of action or a grievance which can be redressed under the Law and dismissed."

15. That with regard to the statement made in para 4.15 of the OA the answering respondent while denying the contentious made therein beg to state that before the decision of Hon'ble CAT/GHY dated 8.8.95 DAR action against the applicant continued and it is a fact that the applicant was not on duty (being unauthorised absent from duty) under the observation of the Court, it is also come out that the applicant did not make any written statement/application expressing his desire to resume duty leaving the question of back wages and leave to be decided earlier. It is proved from the observation that he wants to resume duty without following to extent Railway Rule.

16. That with regard to the statement made in para 4.16 of the OA the answering respondents while denying the contentious made therein beg to state that the applicant had submitted an application dated 30.10.95 along with CAT/GHY's Order dated 8.8.95 requesting to allow him to resume duty. In response to this application, respondent had directed the applicant to attend MS/IC/DBRT along with necessary medical certificate/Document for obtaining Duty Fit Certificate in order to resume his duty vide DRM(P)/Tinsukia's L.No. ES-B/334 dated 16.11.95.

Thereafter applicant vide his letter dated 20.11.95 (enclosed) approached Respondent to issue a letter for special Medical Examination to make him enable to resume his duty. Applicant further stated in that letters quoting by virtue of

Hon'ble CAT/GHY order dated 8.8.95 for resuming duty, question of PPMC does not arise. Since the applicant stated in his defence that he has absented from duty because he was suffering from different type of ailments w.e.f. 3.6.88 medical certificate is necessary to support such statements.

Letter of the applicant dated 20.11.95 enclosed as Annexure 'H'.

17. That with regard to the statement made in para 4.17 of the OA the answering respondents while denying the contentious made therein beg to state that the disciplinary authority vide letter dated 2.12.96, had taken as decision to institute a board of enquiry afresh to enquire into case but the same was canceled vide the DRM(P)/TSK's L.No.ES-B/334 dated 10.12.96 under intimation to the applicant. Hence fresh DAR enquiry does not arise.

18. That with regard to the statement made in para 4.18 of the OA the answering Respondents while denying the contentious made therein beg to state that the applicant vide his representation dated 30.12.96, requested the respondent to allow him to resume duty. But he did not say any rule to compel the respondent to allow him to resume duty based on private Medical certificate without physical Fitness certificate by the Medical authority. Which means the applicants wants the respondent to allow him resumption of duty without observing the laid down rules.

19. That with regard to the statement made in para 4.19 of the OA the answering respondents while denying the contentious

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Chief Personnel Officer (A)
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made therein beg to state that inspite of offering several opportunities to the applicant to resume duty, he did not avail the same and filed petition again before Hon'ble CAT/GHY(DA No.60/97). Seeking reliefs as in previous application DA No.99/94 which had already been dismissed by the same court.

Thereafter Hon'ble CAT/GHY vide their order dated 4.2.2000, disposed of the issue observing as respondent shall communicate speaking order within 3 months and applicant may submit representation within 01 month from the receipt of this order.

20. That with regard to the statement made in para 4.20 of the DA the answering respondents while denying the contentious made therein beg to state that the respondent had treated the formation of fresh Board of enquiry as canceled vide letter dated 10.12.96 under intimation to the applicant. And vide order dated 1.7.97 sent the enquiry report with some observation of D.A. to the applicant. By that letter also given a chance to produce his written brief on the enquiry report as to why he could not be taken up for misconduct by remaining unauthorised absence from duty w.e.f. 9.7.88.

The statement in para b(ii) is not true. In fact applicant applied for 3 days LAP w.e.f. 31.5.88 to 2.6.88 from his house and resumption to duty was on 3.6.88 on due date. He was responsible for violation of service conduct Rule3 (I) (II) (III) 1966 for unauthorised absence. But inadvertently it was mentioned from 18.6.88 to onward. The decision of the respondent regretting the leave was a course of Justice.

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As per extent rule after availing one kind of sanctioned leave, another kind of leave a fresh cannot granted to a person before joining the duty. Further extension can be made any if it is the same kind of leave except CL.

Hence charges brought out against the applicant for unauthorised absence under violation of service conduct Rule 1966 Rule 3 (I) (II) (III) was correct but the applicant was not willing to abide by the Railway Rules and Lawful instructions of the authority.

DRM(P)/Tinsukia's letter No. dated 1.7.97 enclosed as Annexure 'I'.

21. That with regard to the statement made in para 4.21 & 4.22 of the OA the answering respondents while denying the contentious made therein beg to state that the Hon'ble CAT/GHY vide their order dated 4.2.2000 of para 2. in OA No.60/97, observed that "We are of the view that this application has no merit. Prayer No.(a) has become infructuous in view of the letter dated 1.7.97 issued by the respondent and come to the decision to disposed of the case directing the applicant to submit representation to the respondent within one month from the receipt of this order.

Thereafter, the applicant submitted his representation dated 13.3.2000 under direction of CAT/GHY's Order dated 4.2.2000. While the matter was under consideration of the Respondent, applicant being aggrieved by the CAT/GHY's order dated 4.2.2000. While the matter was under consideration of the Respondent, applicant being aggrieved by the CAT/GHY's order above preferred an appeal before Hon'ble High Court, Guwahati as WP(C) No. 1166/2000. The Hon'ble HC/GHY's vide their Order dated

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28.3.2000 disposed of the petition providing that the applicant may make representation within a period of three weeks and directed the respondent to expedite the finalisation of DAR proceeding within 6 weeks of submission of representation by the applicant.

Under the direction of Hon'ble HC/GHY respondent has concluded the DAR proceeding by passing speaking order dated 12.6.2000 with conclusion in terms of Rule 501 (6) RI and 510 RI that the applicant can not be allowed to resume duty as he absentee unauthorisedly from duty w.e.f. 9.7.88 which is beyond 05 years and ordered for his removal from service w.e.f. 12.6.2000 A/AN. enclosed.

Copy of letter dated 12.6.2000 of DA enclosed as Annexure 'J'.

22. That with regard to the statement made in para 4.23 of the OA the answering respondents while denying the contentious made therein beg to state that, the constitution of Board of enquiry as pointed out by the applicant had already been canceled vide DRM(M) letter ES-B/334 dated 10.12.96. And vide letter dated 1.7.97, being canceled the formation of enquiry, DRM(P)/TSK had sent the Enquiry report held on 29.9.92 to the applicant which was pending due to Court Case. Further in connection with the letter dated 1.7.97 of the respondent, applicant was never asked for 2nd explanation. He was asked to submit written brief on the enquiry report which was not sent to him previously and that was also a vital stop of DAR procedure. Hence the allegation for calling said second explanation is absolutely baseless and not true.

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23. That with regard to the statement made in para 4.24 of the DA the answering respondents while denying the contentious made therein beg to state that, on going through the appeal dated 17.4.2000 of the applicant and also under direction of HC/GHY dated 28.3.2000, Disciplinary authority has passed speaking Order over the DAR action in proper manner on 12.06.2000 which was communicated to the applicant, vide L.No. ES-B/334 dated 12.6.2000. Inspite of giving several chances to the applicant, to resume duty, he did not do so and by submission of irrelevant representations always tried to harass the administration.

24. That with regard to the statement made in para 4.25 of the DA the answering respondents while denying the contentious made therein beg to state that, in order to implement the Order of HC/GHY dated 28.3.2000 Disciplinary authority has concluded the DAR proceeding by passing his reasoned speaking order followed by step by step DAR procedure on 12.6.2000. and the applicant was removed from service from 12.6.2000 A/N in pursuance of Rule 501 (6) and 510 RI as he absented unauthorisely from duty beyond 05 years. Hence the allegation of the applicant has no merit.

Copy of Rule 501(6) enclosed as Annexure 'K'

25. That with regard to the statement made in para 4.26 of the DA the answering respondents while denying the contentious made therein beg to state that, the appeal dated 1.8.2000 of the applicant against the order of removal dated 12.6.2000 was received by this office on 8.3.2000 and put up to the Appellate authority who observed as (1) the procedure prescribed in the relevant D & A rules applicable to Railway servants have been correctly followed (II) The findings of the disciplinary

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authority are narrated by evidence and records.

Thereafter appellate authority has passed order as "However on grounds of Mercy I modify the punishment as reduction to the lowest stage in this present pay scale with adverse future effect. His resumption to duty is subject to his being found fit by the medical authorities at the appropriate level and also the employee furnishing relevant records/certificates about his alleged illness/out side treatment to the satisfaction of appropriate Medical authority. After this requirement is completed, the regularisation of the entire period of absence from 1988 till date as resumption of duty can be considered as leave due.

In view of the above, it is mentioned that the appellate authority has passed his order after personal hearing and interview with the applicant and communicated the same to the applicant vide DRM(P)/TSK L.No. dated 22.1.2001 and advised him to report duty within 15 days on receipt of this letter for obtaining Duty Fit Certificate to resume his duty, but the applicant did not response.

DRM(P)/TSK L.No. ES_B/334 dated 22.1.2001 as Annexure 'L'.

26. That with regard to the statement made in para 4.27 & 4.28 of the OA the answering respondents while denying the contentious made therein beg to state that on receipt of the letter dated 22.1.2001 of the respondent, applicant should have came to report for duty to this office for resumption but he asked the appellate authority vide application dated 29.1.2001 to clarify the punishment as reduced by the appellate authority as

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Chief Personnel Officer
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Guwahati-78

well as reduction to the lowest stage in present pay scale with future with future adverse effect. From such attitude of the applicant it transpires that he is not willing to abide by the Lawful instructions and Rules of Railway.

Copy of letter dated 29.1.2001 enclosed as Annexure M.

27. That with regard to the statement made in para 4.29 of the OA the answering Respondents while denying the contentious made therein beg to state that in response to the letter dated 29.1.2001 of the applicant, DRM(P)/Tinsukia vide letter dated 16.6.2001 clarified the matter stating that the punishment imposed upon him was as per rule 6 (VI) of D & A rules, 1968 i.e. his pay will be fixed at the minimum/ initial in the present scale of pay which he was enjoying, with future effect. Contention of DRM(P)/Tinsukia in letter dated 22.1.2001 has been made in accordance with the order of appellate authority. "Failing which it will be presumed that you are not willing to report for duty and order of penalty as passed by the DA will held good" was also in the order of appellate authority. Hence the objection of the applicant is baseless and cannot be taken cognizance of his negative attitude speaks that he was not willing resume to duty and not in need of Railway service.

28. That with regard to the statement made in para 4.30 & 4.31 of the OA the answering respondents while denying the contentious made therein beg to state that DAR proceeding initiated in the extent case is within the DAR rules 1968 providing more opportunities to resume his duty on the ground of natural Justice, but the applicant did not avail the same. By such unwanted activities, he had harass the Administration and also has lost the valuable time of the Hon'ble Courts.

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Guwahati-21

He rather found to the more interested for a legal battle to establish his wrong stand in this Case knowing fully well that he had willfully disregarded all the Railway rules.

In the light of the case discussed in detail vide paras above your Lordship may be satisfied to note that the administrative intentions was only to take him back to service, of Course after observing and following the laid down rules but the applicants did not Co-operate due to which he had to loose his job for which he him self is responsible. The applicants appeal therefore has no merit and liable to be dismissed by your Lordships.

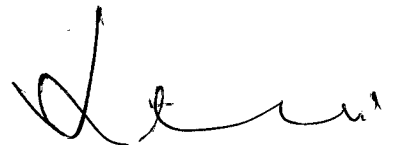
29. That in view of the statement made above the answering Respondents beg to state that there is no Ground in the OA and as such he is not entitled to any relief as sought for in the OA and same is liable to set aside and quashed.

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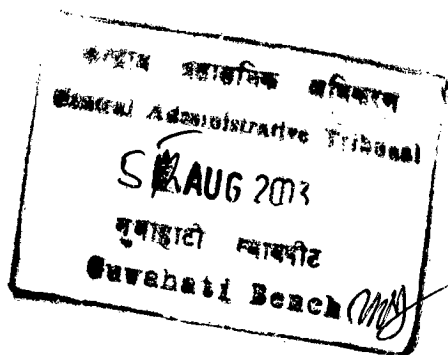
VERIFICATION.

I, Shri. A. K. NIGAM....., son of H. S. P. GAUHA...
aged about, 47... at present working as Chief Personnel Officer (Admin). N.F.
Railway, Maligaon, Guwahati, do hereby solemnly affirm and state
that the statements made in the paragraphs 1, 28 & 29..... are
true to my knowledge and those made in para ... 2 to 27..... are
matters of records which I believed to be true and rests are my
humble submission before the Hon'ble Tribunal.

And I sign this verification on this the 2nd day of
Feb. 2003.



Deponent
Chief Personnel Officer (A)
N. F. Rly, / Maligaon
Guwahati-28



Filed by :-
The Applicant,
Through :-
Joyati Purkayastha
Advocate.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :

GUWAHATI BENCH ::: GUWAHATI.

O.A. No.290/2002.

Shri Biswanath Banerjee.

... Applicant.

-Versus-

The Union of India and ors.

... Respondents.

REJOINDER OF THE PETITIONERS AGAINST THE
W/S FILED BY THE RESPONDENTS.

THE APPLICANT MOST RESPECTFULLY SHEWETH:-

1. The applicant while denying the adverse contentions of the respondents in their written statement filed in the above noted O.A.290/02 begs to state that the respondents in their written Statement contended those aspects of the matter which were dealt with and settled by the pronouncements of this Hon'ble Tribunal on 20.5.94 in O.A. No.99/94 and on 19.3.97 in O.A. No 60/97, so preferred, by your humble applicant.

In the present context, the applicant states that he was inflicted with a major penalty for

Biswanath Banerjee

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his alleged absence from duty/ unauthorised absence w.e.f. 18.6.88 without proper Departmental proceeding which is called on before entailing a person with such a major penalty. The punishment, originally ,inflicted upon the applicant was by the Disciplinary authority on 12.6.2000 culminating the applicant with removal from service. The order of removal from service was modified by the appellate authority as "reduction to the lowest stage in applicant's present pay scale with adverse future effect". The said order was communicated to the applicant by D.R.M.(Personal)Tinsukia , vide letter dated 7.12.2001 with the direction to submit Medical papers for his unauthorised absence within 15 days failing which the earlier order of removal shall hold the field.

The respondents in their written statement highlighted without any basis the allegations of unauthorised absence etc. and without taking into account that those contentions had already been set at rest by this Hon'ble Tribunal (Supra).The Crux of the issues involved in the present application is that whether the order of the appellate authority as well as the Disciplinary authority is full of absurdity and obscurity making the penalty imposed on the applicant's in operative in the eye of law. Moreover, the applicant has preferred a Revision Application before the revisional authority i.e. the General Manager, N.F. Rly, Maligaon, Guwahati-11 which has yielded no result.

The applicant begs to state that in service jurisprudence the absurdities and obscurities has no

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Biswanath Banerjee

place . An order becomes in operative at the same time when by the common prudence it can not be given effect. Although, the applicant was called back in service by the appellate authority but a rider was put by the communicating authority that he will have to produce Medical certificate for the period of his absence , without specifying the period actually for which period Medical certificate is required . Hence , it can be said that it is the Departmental authorities who after long tale of Disciplinary proceedings concluded the matter in such a manner so that the applicant would not be able to resume his duty.

Now, the applicant begs to give his reply with respect to the contentions of the respondents in the written statement which are adverse to his case as under.

1) That save and except what has specifically been admitted hereinbelow with respect to the statements made in the written statement, the rest, are deemed to have been denied by the applicant.

2) That with regard to the statements made in para 1 of the written statement the applicant, begs to offer no comment.

3) That with regard to the statements made in para 2 of the written statement the applicant reiterates his submissions made in the original

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application in pursuant to the illegal disciplinary proceeding and penalty inflicted thereof. The applicant further contends that in this para the respondents have raised those issues which were already settled by this Hon'ble Tribunal while disposing of the O.A. No.99/94 and 60/97. The moot question of controversy in this original application is whether on the basis of the clog put on by the appellate authority while modifying the penalty imposed by the disciplinary authority, on that basis resumption on duty by the present applicant is possible.

4) That with regard to the statements made in para 3 of the written statement the applicant reiterates his averments made in para 1,2,3 , 4.1 & 4.2. of the O.A. He further contends that the respondents sought to deny the statements only in order to prevent the applicant from pursuing his case in this Hon'ble Tribunal and thereby tried to keep the applicant away from the doors of justice.

5. That statements made in para 4 of the written statement to the effect that no such record of discharging heavy work beyond scheduled time under DME (C&W) DRM/TSK, is denied by the applicant. The applicant begs to state that at the relevant time the DRM/TSK, DPO/TSK had written letters to the CPO Maligaon communicating shortage of stenographers in Tinsukia division and that post of Stenographer had not been sanctioned to so many officers in Tinsukia Division . The DRM(P) Tinsukia,

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Biswanath Banerjee

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vide letter dated 16.12.83 communicated the CPO, Maligaon, that the applicant was working with flur officers including DRM, Tinsukia.

A copy of letter dated 16.12.83 is
filed hereto and marked as Annexure-P.

6) That the contentions of the respondents in para 5 of the written Statement are denied in toto and your humble applicant reiterates his statements made in para 4.4 of the original application.

7) That the statements made in para 6 of the Written statement are denied by the applicant. The applicant states the respondents contention have got no significance and hence question of resumption of duty on 3.6.88 did not arise. Moreover, the reiterates his statements made in para 4.6. of the original application.

8) That with regard to the statements made in para 7 of the Written Statement the applicant begs to state that the subject matter, to be decided by this Hon'ble Tribunal has got no nexus with such statements. Moreover, the applicant asserts that he was always wilfull to resume his duty but, on every occassion he was not allowed by the respondents by putting one after another rider upon the applicant.

9) That regarding contentions of the respondents in para 8 of the Written Statement the applicant

Biswanath Banerjee

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begs to state that after receipt of the letter dated 18.11.88 he was examined by the ADMO/MJN, Medically at his residence and the applicant was found sick. Moreover, the applicant never told the ADMO/MJN, that he did not want to take allopathy medicines. So, the question of not taking medicines from Railway Hospital has got no significance here and the statement so made is categorically denied by the applicant.

10) That the statements made in para 9 & 10 of the written Statement is categorically denied by the applicant and he reiterates his submissions made in para 4.9 & 4.10 of the Original Application.

11) That with regard to the statements made in para 11 of the written Statement the applicant begs to state that the applicant was always willful to resume his duties, but he was forced to remain absent by the administrative authority as they had never tried to resolve the matter making room for resumption of duty by the applicant. It is categorically denied by the applicant that DAR proceeding was delayed only due to him. Whereas the applicant on and on requested the Railway administration to make suitable arrangement for his treatment but at last when they failed to do so he shifted his mode of treatment from alopathy to homeopathy. In order to resolve the administration complexcities accrued due to the lapses on the part of the respondents your humble applicant furnished the Homoco

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Biswanath Banerjee

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Physician certificate .The respondents in their written statement pleaded that since the applicant has filed the Homoeo pathic Medical Certificate on 7.9.92 to cover the period from 10.10.91 so, the applicant was not sick prior to 10.10.95 is not tenable in the present facts and circumstances of the case, as that has already been set at rest in the original Applications previously filed by the applicant.

12) That with regard to the statements made in para 12 of the Written Statement the applicant begs to state that the provision of 3(2) (i) of the Railway Services conduct Rule is a beneficial legislation which lays down provisions / legal duty on the part of the supervisory officer to take all possible steps towards an employee for his maintenance of devotion towards his duty . In that light the contention of the respondents are devoid of value and no reliance can be put on those statements as they negate the aims and objects of the aforesaid rule .The rest of the contention regarding attendance of the applicant before the ADMO/ MJN or DMO/TSK , for treatment and to obtain duty fit certificate your applicant begs to state that at the relevant time he was sick and in order to obey the orders of the superior he went to ADMO/MJN for obtaining duty fit certificate and treatment , but, the ADMO/MJN declined to treat him as there was no fresh forwarding . It is humbly submitted that the applicant in his ill- health went to ADMO/

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Biswanath Banerjee

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MJN who refused to treat him. It is noteworthy that these allegations raised by the respondents can said to be a futile exercise on their part to reflect the present applicant , negligent one.

13) That the statements made in para 13 of the Written Statement to the effect that the DAR enquiry was started after giving chargesheet and nomination of defence counsellor is boldly a vague statement .Your humble applicant asserts that the DAR enquiry was not done in accordance with the rule prescribed in the discipline and appeal rules . by which the applicant is guided. The DAR enquiry was conducted in a cursory and in the most perfunctory manner .Hence,the contention of the respondents are denied in toto and your humble applicant reiterates his statements made in para 4.13 of the original application. Moreover, it is an admitted position that the enquiry report was not supplied to the applicant which ipso- facto makes the disciplinary proceeding void and in operative in the eye of law.

14) That with regard to the statements made in para 14,15 & 16 of the Written Statement the applicant begs to state that regarding mode of

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Biswanath Banerjee

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Medical treatment there is no rule in the Railway Establishment code. It only lays down that Railway employees are entitled to free medical attendance and treatment but the rule does not distinguish about particular mode of treatment to which Railway employees are entitled to .So, the contention of the respondents are liable to be struck down at the threshold. The other issued raised in the above -noted paragraphs of the written statement are without any basis and has got no relevance with the subject matter in issue .Hence, the applicant denies the averments which are not relevant to reach into a just conclusion by this Hon'ble Tribunal .

15) That with regard to the statements made in para 17 your humble applicant reiterates his statements made in para 4.17 of the original application.

16) That with regard to the statements made in para 18 of the written statement the applicant begs to state that he prayed to the respondents for allowing him to resume duty vide representation dated 30.12.96 but at the same time he never intended to violate any departmental rule. Hence, the contentions of the respondents are liable to be turned down on its face value.

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Jayati Purkayastha
Advocate
for Bishwanath Samyukta

17) That while admitting the statements made in para 19 of the Written Statement regarding the filing of O.A. No.60/97 before the Hon'ble Tribunal the applicant denies that he was given any opportunity which is adequate enough for his resumption in duty. Rather, the authorities went on lengthening the Departmental proceeding without any valid reason and after the order dated 4.2.2000 of this Hon'ble Tribunal the respondents concluded the Departmental proceeding. Hence, the allegations raised by the respondents in this paragraph is only to save their skin from their negligence towards the applicants.

18) That with regard to the statements made in para 20, 21, 22 of the written statement your humble applicant reiterates his statements made in para 4.20, 4.21, 4.22 of the original application.

19) That with regard to the statements made in para 23 the applicant begs to state that he was not given chance in an adequate fashion for resumption of his duty. Rather, the communicating authority communicated the order of the appellate authority vide letter dated 12.6.2000 casting a

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Jayanti Prakashtha
Advocate
for Shriwasthi Banerjee

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rider upon the applicant in such a manner , so that, he cannot resume duty .The respondents version to the effect that the applicant has always filed irrelevant representations highlights the callous attitude of them in considering the case of the applicant.

20) That with regard to the statements made in para 24 of the Written Statement your humble applicant reiterates his statements made in para 4.25 of the Original Application . Moreover , Rule 501 of Indian Railway Establishment Code volume -I has got no application in case of the applicant.

21) That with regard to the statements made in para 25 of the written statement the applicant reiterates his statements made in para 4.26 of the Original Application .Moreover, the applicant asserts that no personal hearing/ interview was taken by the appellate authority, of the applicant, while passing the appellate order. In that light of the matter it can be said that the appellate authority has passed the order of reduction to the lowest stage in present scale with future adverse effect in a cryptic manner which is liable to be set aside and quashed.

22) That with regard to the statements made in para 27 & 28 of the Written statement the

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Jayati Purkayastha
Advocate
Pr Bimwanshi Banerji

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applicant reiterates his statements made in para 4.29 and 4.30 of the original application. None the less the respondents have filed their written statement with the motto to frustrate the ends of justice to which the applicant is entitled to.

23.) That with regard to the statements made in para 29 of the Written statement your humble applicant begs to state that the original application is the last re- course available to the applicant and he prays before this Hon'ble Tribunal to dispose of the same on merits.

VERIFICATION

I, Sri Biswanath Banerjee, son of late Sudhir Chandra Banerjee, aged about 51 years, working as confidential Steno, N.F. Rly, Tinsukis do hereby verify that the statements made in paragraph 1 to 4, 6 to 10 are true to my knowledge and those made in paragraphs 5, 11 to 21 are being matters of record true to my belief and information and, the rest are my humble submissions before this Hon'ble Tribunal.

Date :- 5/14 Sept. 03

Biswanath Banerjee.
Signature.

Place :- Gauhati

ANNEXURE—

NORTHEAST FRONTIER RAILWAY.

OFFICE OF THE
DIVISIONAL RAILWAY MANAGER (P)/TSK.

No. D/40 (Steno-Typist),

Tinsukia, dated : 16-12-83.

To : C.P.O./Intligon.

Sub : An appeal dated 6-12-83 submitted by
Shri B. N. Banerjee, C.S. to D.M.E./TSK.

—000—

The above appeal submitted by Shri B. N. Banerjee, C.S. to D.M.E./TSK is sent herewith for your necessary action please.

Previously he was considered for ad-hoc promotion locally also, but he had not agreed to it at that time. At present he is looking after the work of 4 (four) Officers including D.R.M. and is attending office beyond duty hours and on Sunday/Holiday also. You are requested to post an approved hard work as C.A. to D.M.E./TSK, at the earliest.
DA : 1 (Om).

for DIVISIONAL RAILWAY MANAGER (P),
N. F. RAILWAY, TINSUKIA.

Copy to : Shri B. N. Banerjee, Confidential Stenographer
to D.M.E./TSK -- for information please.

S. S. Banerjee
for DIVISIONAL RAILWAY MANAGER (P),
N. F. RAILWAY, TINSUKIA.

sh.

Certified to be true copy

Jayati Purkayastha
Advocate