

50/100

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 31/2003

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SECTION OFFICER (Judl.)

( SEE RULE -4 )

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI  
....

ORDER SHEET

Original Application No : 31/03  
Misc. Petition No.                       
Contempt Petition No.                       
Review Application No.                     

Applicant (s) Narayan Ch. Borman

-Vs-

Respondent (s) H.O.I Gans

Advocate for the Applicant (s) Bipul Sarma, D.K. Kalita  
H.K. Suta

Advocate for the Respondent(s) CASE.

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form but not in time.</p> <p><u>76605722</u></p> <p>Dated <u>18.2.03</u></p> <p><u>[Signature]</u> Sp. Registrar</p> <p>Steps taken along with envelops.</p> <p><u>Ann.</u></p> <p>Notices prepared and sent to all for filing the Respondent No. 1 to 4 by Regd. A/D.</p> <p><u>27/2/03</u></p> <p><u>28/2/03</u></p> <p><u>234/237</u></p>	<p>25.2.2003</p> <p>mb</p> <p>26.3.2003</p> <p>mb</p>	<p>Heard Mr. B. Sarma, learned counsel for the applic- ant.</p> <p>The application is admitted. Call for the records. List on 26.3.2003 for orders.</p> <p><u>[Signature]</u> Vice-Chairman</p> <p>Mr. S. Sarma, learned counse- l for the respondents prayed for time to file written statement. Prayer is allowed. List again on 30.4.2003 for order.</p> <p><u>[Signature]</u> Member</p> <p><u>[Signature]</u> Vice-Chairman</p>

No written statement  
has been filed.

30  
29.4.03.

30.4.2003

No written statement so far  
filed by the respondents. Put up  
again on 29.5.2003 for orders.



Vice-Chairman

mb

29.5.2003

Present : The Hon'ble Mr. Justice D.  
N. Chowdhury, Vice-Chairman.  
The Hon'ble Mr. S.K. Hajra,  
Member (A).

30  
28.5.03.

Put up again on 27.6.2003

to enable the respondents to file  
written statement.

No written statement  
has been filed.

30  
26.6.03.

  
Member



Vice-Chairman

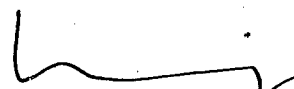
mb

27.6.2003

Heard learned counsel for the  
parties. Dr. M.C. Sarma, learned standing  
counsel for the railways prays for time  
for filing reply. Prayer is allowed.  
List again on 1.8.2003 for orders.

No written statement  
has been filed.

30  
31.7.03.



Vice-Chairman

mb

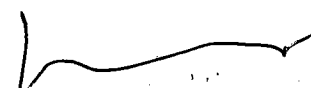
1.8.2003

On the prayer of Dr. M.C. Sarma,  
learned counsel for the respondents  
further three weeks time is allowed to  
file written statement. No further time  
shall be granted in this regard. Put up  
again on 20.8.2003 for fixing a date of  
hearing.

No. Wks has been  
filed.

30  
19.8.03.

  
Member



Vice-Chairman

mb


20.8.2003 Present: The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.  
The Hon'ble Mr. K.V. Prahaladan Administrative Member.

None appears for the applicant. Dr. M.G. Sarma, learned Standing counsel appearing for the Railways has filed written statement today. Office to accept the same.

List the case for hearing on 5.9.2003. The applicant may file rejoinder, if any, within two weeks from today.

21.8.03

W/S submitted  
by the Respondents.

  
Member

  
Vice-Chairman

bb

  
5.9.03

Mr M-Chanda, learned counsel has prayed for adjournment on behalf of Mr Bipul Sarma, learned counsel for the applicant. Prayer allowed.

List again on 27.10.03 for hearing.

No rejoinder has  
been filed.

20  
4.9.03.

  
Member

  
Vice-Chairman

pg

27.10.2003 List the matter on 3.11.2003 for hearing.

  
Member

mb

3.11.03 No Bench today,  
Adj'd to 1.12.03.

19/10  
1a.

19.12.03

W/S filed,  
no rejoinder  
by.

1.12.03

No Bench today. Adj'd  
to 22.12.03.

B/C  
1a.

O.A.31/2003

22.12.2003

Present: The Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman.

The Hon'ble Mr. K. V. Prahladan, Member (A).

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

The application succeeds in terms of the order. No costs.

*Pl. comply  
21/11/04*

*K. V. Prahladan*  
Member

*B. Panigrahi*  
Vice-Chairman

bb

20.2.04

*Copy of the order  
has been sent to the  
Officer for issuing the  
same to the applicant  
as well as to the  
Rely. Standby counsel.*

*KS*

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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A./RXX.No. 1111 31 of 2003.

DATE OF DECISION 22.12.2003.

.....Shri.Narayan.Ch.Barman.....APPLICANT(S).

.....Mr.Bipul Sarma, D.K.Kalita & H.K.Sut.....ADVOCATE FOR THE  
APPLICANT(S).

-VERSUS-

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

.....Dr.M.C.Sharma, Railway Standing Counsel.....ADVOCATE FOR THE  
RESPONDENT(S).

THE HON'BLE MR. JUSTICE B. PANIGRAHI, VICE CHAIRMAN.

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

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble ~~Member~~ Vice-Chairman.

X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 31 of 2003.

Date of Order : This, the 22nd Day of December, 2003.

THE HON'BLE MR. JUSTICE B. PANIGRAHI, VICE CHAIRMAN.

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

Shri Narayan Ch. Barman  
Ex-Gateman, Nalbari  
Vill: Parakuchi  
P.O: Sandha  
Dist: Nalbari (Assam).

. . . . Applicant.

By Advocates Mr.Bipul Sarma, D.K.Kalita & H.K.Sut.

- Versus -

1. Union of India  
Through the General Manager  
N.F.Railway, Maligaon  
Guwahati-11.

2. Divisional Railway Manager  
N.F.Railway, Alipurduar J.Division  
P.O: Alipurduar Jn.  
Dist: Jalpaiguri (West Bengal).

3. Sr.Divisional Railway Manager (Operation)  
Alipurduar Jn. Division  
P.O: Alipurduar Jn.  
Dist: Jalpaiguri (West Bengal).

4. Divisional Railway Manager (Personnel)  
Alipurduar Jn. Division  
P.O: Alipurduar Jn.  
Dist: Jalpaiguri  
West Bengal.

. . . . . Respondents.

By Dr.M.C.Sharma, Railway Standing Counsel.

ORDER ( ORAL )

PANIGRAHI, J.(V.C):

In this case the order of punishment imposed by the disciplinary authority and also the punishment by the appellate authority which has reduced the punishment from dismissal to removal from service with two-third pensionary benefits and also grant of two-third amount of gratuity have been challenged. The skeletal picture of the present case is as follows:-

1. The applicant joined in service as a casual worker sometimes in 1973. Subsequently his service was regularised in the year 1978 and was appointed as Gateman in Nalbari on

  
Contd./2

and from 9.1.1978. He was continuing as a Gateman till an unfortunate accident occurred in the midnight of 23/24th July, 2001 at Level Crossing resulting in the death of six police constables and one civilian photographer. It is claimed by the applicant that the said incident was after all an accident without deliberate act of the delinquent applicant. The Maruti Gypsy No.As 30/0928 belonging to Assam Police came hurriedly in order to combat with the extremist while they were on the way to the spot. But by the time the police team reached near the Level Crossing Gate the same was closed due to approach of Down Security Pilot engine. The occupants of Maruti Gypsy proceeded heedlessly despite warning by the delinquent and they lifted the barrier to make their entry forcibly into the railway track. Unfortunately the Down Security Pilot engine collided with the Maruti Gypsy resulting in tragic accident whereby all the occupants of the Maruti Gypsy died on the spot.

2. Immediately after the occurrence of such accident the entire area was cordoned by the police and para-military forces. The applicant claimed to have reported the matter to the Station Master, Nalbari and other authorities without wasting any time. The applicant was allowed to continue his service at Alipurduar Jn. from 7.8.2001 to 22.1.2002. But unfortunately an FIR was lodged accusing the applicant that due to his deliberate negligence the Maruti Gypsy met with such horrendous accident resulting the death of seven people. On the basis of the said report Rangia GRPS Case No.19/2001 u/s 279/304(A)/335/427 IPC read with Section 175 of the Indian Railways Act was registered against the delinquent and it is presently sub judice awaiting trial.

3. After initiation of such police case, the delinquent was placed under suspension from 28.7.2001 and a regular departmental proceeding under D.A.R. 1968 was initiated. Article of charges vide Memo



No.T2/AP/T/4/2001-2002 dated 17.10.2001 was issued against the applicant. The delinquent applicant on receipt of the said article of charges submitted his defence statement and after an elaborate enquiry the Enquiry Officer passed an order exonerating the delinquent from the aforesaid charges and submitted his report to the disciplinary authority. The disciplinary authority was, however, inclined to differ from the observations of the Enquiry Officer and passed an order of dismissal against the delinquent. The applicant thereafter preferred a statutory appeal before the appellate authority, who was pleased to modify the dismissal order into an order of removal with sanctioning of two-third amount of pension consequently also deducting one-third amount of gratuity. Being aggrieved by the aforesaid punishment the delinquent has therefore filed this case.

4. The respondents filed their written statement whereby they justified their order of removal with payment of two-third amount of pension and also the payment of two-third amount of gratuity. According to them due to irresponsible and negligent act of the applicant, the accident caused the death of seven lives of innocent persons who were on duty. It has been stated that the Commissioner of Railway Safety has also observed that due to such negligent act of the applicant, such unfortunate accident had taken place. The appellate authority taking a compassionate view has modified the punishment of dismissal into an order of removal from service with the direction for payment of two-third amount of pension and two-third amount of gratuity.

5. Learned counsel appearing for the applicant Mr Bipul Sarma has vehemently contended that in this case

*B.P.*

although the applicant was innocent, he was unnecessarily victimised by the authority. The Enquiry Officer who conducted an elaborate and exhaustive enquiry and exonerated the applicant expressing his innocence.

6. From the facts situation it has so emerged that despite the warning exercised by the applicant not to open the gate which was closed then, the Maruti Gypsy forcibly intruded which resulted in such tragic accident. Had they observed the traffic rules by not crossing the gate which was closed then, such accident could have been averted. Therefore, the Enquiry Officer held the applicant innocent which ought to have been accepted by the disciplinary authority. The learned counsel for the applicant submitted that the report of the disciplinary authority is per se illegal and does not stand to reasons. It is true that it is open to the disciplinary authority to disagree with the findings of the enquiry officer, but, then, it would have been appropriate for him to offer a further opportunity of hearing and provide sufficient chance to the applicant to place his case. From the observation it has so transpired that the disciplinary authority in a most drastic manner and with closed mind imposed the punishment upon the delinquent only because such accident cost the lives of seven persons sitting in Maruti Gypsy.

7. Dr M.C.Sharma, learned Railway Standing counsel for the respondents while supporting the respondents, has submitted that although the opportunity was not given to the applicant by the disciplinary authority but the order of punishment was ratified in appeal filed by the applicant. In the appeal the points raised by the applicant were taken care of and accordingly order of dismissal was reduced into an order of removal with sanction of two-third amount of pension and proportionate one-third reduction of the

proportionate one-third reduction of the gratuity. Dr.Sharma has further contended that from the report of the Commissioner of Railway Safety it is clear that the gate was open, thereafter, such unfortunate accident had occurred.

8. While hearing the submissions and counter submissions advanced by the learned counsel for both the parties and after going through the averments made in the application as well as in the written statement it is clear that in the night of 23/24th July, 2001 the tragic incident had taken place in which seven occupants of Maruti Gypsy had to pay their lives. The question arises that the unfortunate accident took place was whether due to negligence of the applicant or due to forcible entry of occupants in the Maruti Gypsy. The applicant had taken a stand that he forbade the occupants of Maruti Gypsy to enter into the premises by opening the gate which the police personnels failed to obey and made a forcible entry into the prohibited area by lifting the closed gate. It appears that the applicant has been held guilty for such accident only because it claimed the life of seven people without looking into the actual delinquency alleged to have been caused by the applicant. The disciplinary authority in its penultimate para of the impugned order dated 21.2.2002 has no doubt expressed its view that the accident took place due to failure of the applicant to close the gate and as a result seven persons had been killed on account of collision between the Maruti Gypsy and Down Security pilot engine. The Commissioner of Railways Safety has expressed his opinion which is quoted herein below:-

" In inspected the site of Non-interlocked 'C' class Manned Level Crossing gate No.SK-21. The condition of gate was unsatisfactory. Though TVUs of the gate as per census taken during December 1996 was 71520 and gate was in the heart of the city, however no gate lamps had been provided for road users. Further, no lever locking arrangement for lifting barriers

were there. Even the manual arrangements were not there and the same had been provided after the accident. No electricity was there in the gate lodge. Full complement of equipments and Gate Working instructions were not available in the gate. Further wall clock was not a part of gate equipment and therefore not provided. There were encroachments on both sides of Level crossing about 6 to 7m away from centre line of the BG track. However lifting barriers were found to be in working order."

Therefore, it cannot be ruled out that the gate was not properly functioning. In this background, it is to be decided as to whether the delinquent was responsible on account of his negligence or due to the faulty system of the gate for which accident has occurred.

9. It is not in dispute that the disciplinary authority has differed with the Enquiry Officer's report and had come to independent findings. Be it noted that the Enquiry Officer held the applicant innocent and referred the matter to the disciplinary authority to consider his report. Had the disciplinary authority agreed with the observations of the Enquiry Officer the matter would not have come to this stage. It is true that he has right to arrive at his own conclusion. In that background it is to be considered whether the delinquent is further required to be given a chance of hearing before punishment was actually imposed against him. Mr. Bipur Sarma, learned counsel for the applicant, in support of his submission, referred to a judgment of the Hon'ble Supreme Court reported in (1998) 7 SCC 84 in the case of Punjab National Bank and Others - vs -Kunj Behari Misra. The Hon'ble Apex Court held in the following manner:-

"17. These observations are clearly in tune with the observations in Bimal Kumar Pandit case quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per Karunakar case the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It

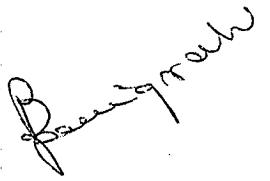
will stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority."

From the rationale of the above judgment if it is examined in the present case, it is lucidly clear that the applicant was not given a chance of hearing after the article of charges was communicated and the report of the Commissioner of Railway Safety was put into use. Had the copy of the report or atleast a portion, the disciplinary authority wanted to rely upon, been supplied to the applicant, he would not have suffered any prejudice. As a result, there has been clear violation of natural justice. Considering the applicant's case in that angle we find that the action of the disciplinary authority does not satisfy the requirement of law. The applicant has not been provided with an opportunity of hearing before the impugned action was taken against the delinquent. As a result, the order of the disciplinary authority dated 21.2.2002 as well as the order passed by the appellate authority dated 11.4.2002 are set aside and quashed. It is open to the disciplinary authority either to accept the report of the Enquiry Officer or to initiate a denovo enquiry against the applicant in

accordance with law.

With the above observations the application succeeds. No costs.

  
( K.V. PRAHLADAN )  
ADMINISTRATIVE MEMBER

  
( B. PANIGRAHI )  
VICE CHAIRMAN

bb

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:GUWAHATI BENCH  
GUWAHATI

P.A. No. 31/2003

Shri Narayan Chl Barman

... Applicant.

-VS-

Union of India & others

... Respondents.

SYNOPSIS OF CASE AND LIST OF DATES.

Sl No.	Date	Particulars	Annexure	Page No.
1.	21-2-2002	Punishment of dis- missal order issued to the applicant though the enquiry was incomplete as recorded by the Disciplinary Authority The Disciplinary Authority has arbi- trarily concluded for detail (See p.22) Annexure (1)	I	22
2.	15-3-2002	Corrigendum issued by disciplinary autho- rity stating inconclusive in place of incomplete.	I	24

contd...2.

Sl No.	Date	Particulars	Annexure	Page No.
3.	27/3/2002	Appeal of the applicant	I	25
4.	11/4/2002	Order passed by Appellate authority in details stating "charge sheet revised" and substituted the punishment from dismissal to removal (relevant page 36)	II	34
5.	31/7/2001	Suspension order was issued suspending the petitioner.	III	37
6.	12/10/01	Charge sheet was issued and articles of charges.	IV	38
7.	2/11/2001	Enquiry Officer J.L. Borgoyari was appointed.	V	41
8.	5/1/2002	Departmental enquiry proceeding started Page No.54 Q.No. <del>xxxxxx</del> 5(five) is to be noted. (Written statement of defence submitted by the applicant)	VI	42 to 59
			VII	60 -61
9.	21/1/03	Application for supply of Enquiry officer's report.	VIII	62

contd...3.



Sl No.	Date	Particulars	Annexure	Page No.
10.	11/4/2002	Disposal of appeal by Divisional Railway Manager(O).	IX	63
11.	22/7/2002	Disposal of mercy petition by the Divisional Railway Manager(O).	X	66

The basic question of law <sup>are involved</sup> ~~is~~ in the instant case - are -

(a) Whether a person can be dismissed by the Authority without supplying the copy of enquiry report or without showing cause to explain before imposing any punishment ?

(b) Whether a person can be dismissed while disciplinary authority came into conclusion that enquiry is incomplete and enquiry was superficially conducted by the Enquiry officer. On such consideration whether the Disciplinary authority can impose punishment arbitrarily upon the delinquent person ?

(c) Whether action of the respondent i.e. Appellate authority is justified on deciding the appeal when charge sheet was revised in the light of Commissioner of Railway Safety's enquiry report ~~when charge sheet was revised~~ without providing any opportunity to defend the delinquent on the revised charge sheet and without issuing any notice on the revised charge sheet as detailed in the order dated 11/4/2002 passed by Divisional Railway

contd....4.

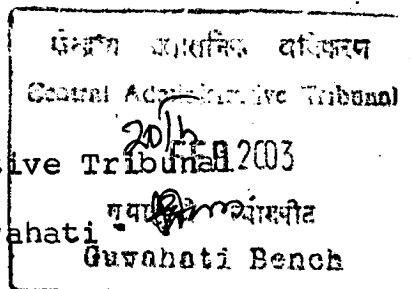
Manager(Operation) substituting the punishment from dismissal to removal ?

(d) Whether enquiry conducted by the Commissioner of Railway Safety can be taken into consideration in deciding the issue of departmental proceeding wherein in the aforesaid Commissioner of Railway Safety's enquiry your applicant was not participated nor he was asked to submit any defence or statement?

(e) Whether the Commissioner of Railway Safety's report can be read alongwith enquiry report wherein both <sup>are</sup> complete and different proceeding in deciding the issue of the instant case.

FILED BY -

*Bipul Samal*  
*Advocate*  
*21/2/2003.*



In the Central Administrative Tribunal

Guwahati Bench; Guwahati

(In application U/S 19 of the Administration Tribunal Act 1985)

O.A. No. 31 /2003

Shri Narayan Ch. Barman

-Vs-

Union of India & ors.

SYNOPSIS - LIST OF DATE

I N D E X

Sl No.	Annexure	Particulars	Page No.
1.	I	Copy of the order dt. 21/2/2002. 8 Appeal -	22-24 25-33
2.	II	Copy of the order dt. 11/4/2002	34-36
3.	III	Copy of the Suspension order dt. 28/7/2001	37
4.	IV	Copy of charge sheet issued under Memorandum No.T2/AP/T/4/2001-2002 dt. 17-10-01	38-40
5.	V	Copy of the appointment of Enquiry officer. dt. 02/11/2001.	41
6.	VI	Copy of the Enquiry proceeding.	42-59
7.	VII	Copy of the written statement submitted by the Defence counsel on behalf of the applicant.	60-61
8.	VIII	Copy of letter dt.20/1/2003.	62
9.	IX	Copy of the order dated 11/4/2002.	63-65
10.	X	Copy of letter dated dt. 22/7/2002.	66.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AT GUWAHATI

Original Application No. 31 /2003

Shri Narayan Ch. Barman,  
Ex. Gateman, Nalbari,  
Vill-Parakuchi,  
P.O. Sandha,  
Dist. Nalbari (Assam)

... Applicant

-VS-

1. Union of India  
through the General Manager,  
N.F. Railway, Maligaon,  
Guwahati - 11.
2. Divisional Railway Manager,  
N.F. Railway,  
Alipurduar Jn. Division,  
P.O. Alipurduar Jn.  
Dist. Jalpaiguri (West Bengal)
3. Sr. Divisional Railway  
Manager (Operation),  
Alipurduar Jn. Division,  
P.O. Alipurduar Jn.  
Dist. Jalpaiguri (West Bengal)

Contd...2.

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Advocate  
20/2/03

Narayan Ch. Barman

4. Divisional Railway Manager  
(Personnel)  
Alipurduar Jn.Division,  
P.O. Alipurduar Jn.  
Dist. Jalpaiguri  
West Bengal.

... Respondents.

DETAILS IN APPLICATION.

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

The present application has been made against the arbitrary dismissal from service of the applicant by the respondent without furnishing the copy of the Enquiry report vide order dt. 21/2/2002 as well as subsequent alteration of the punishment from dismissal to removal issued by the Divisional Railway Manager (Operation), Alipurduar Jn.Division, N.F. Railway on 11/4/2002 whereby your applicant is removed from service by the authority without supplying copy of the enquiry report.

Copy of the impugned order  
is enclosed herewith as  
Annexure-I & II (at page 22 & 31)

contd...3.

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2. JURISDICTION OF THE TRIBUNAL.

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

3. LIMITATION.

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

4. FACTS OF THE CASE.

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

4.2 That your applicant joined in N.F. Railway service in the year 1973 as a Casual worker and subsequently he was regularised in the year 1978 and appointed as Gateman in Nalbari on 9/1/78. That while he was working as gateman in Nalbari unfortunate accident that occurred in the midnight of 24/7/2000 at Level Crossing gate wherein 7 people died which was purely an accident and the cause of which could not be in any manner attributed to him. The fact is that Maruti Gypsy No. AS 30/0928 belonging to Assam Police came hurriedly in order to combat with the extremist while they were on the way to the spot as well as extremist

contd...4.

22  
Necessary copy of fact sheet

- 4 -

site despite found that the level crossing gate was closed due to approach of Down Security pilot engine and the occupants of the Maturi Gypsy ignoring repeated warning of the gateman lifted the barrier forcefully in order to pass through the level crossing gate and as a result of such forceful lifting of the barrier of the bussy site devastating and tragic accident took place wherein all the Police men who were the occupants of the Maturi Gypsy died on the spot due to collision with the Down Security pilot engine at the level crossing gate.

*Very much clear*

4.3 That immediately after the occurrence the entire area was cordoned by the police and paramilitary force and your applicant left the place and reported the matter to the Station Master, Nalbari and other authorities and subsequently your applicant was allowed to continue his service at Alipurduar Jn. from 7/8/2001 to 22/1/2002. An FIR was lodged at Rangiya GRPS stating inter alia that the accident took place due to negligent of your applicant as well as the driver of the Down Security pilot which registered as Rangiya GRPS case No. 19/2001 u/s 279/304(A)/335/427 IPC read with Section 175 of the Indian Railways Act and the aforesaid case is pending for trial.

4.4 That subsequently your applicant was placed under suspension from 28/7/2001 and regular departmental proceeding under the D.A.R. 1969 proceeded

contd....5

against your applicant by appointing an Enquiry officer vide order dt. 02/11/2001 and accordingly charge sheet vide Memorandum No. T2/AP/T/4/2001-2002 dt. 17-10-01 was issued to the applicant containing the charges etc.

Copy of the suspension order as well as charge sheet along with appointment of Enquiry Officer is enclosed herewith as Annexure-III, IV & V.

(at page 37 - 41 ).

- 4.5. That the departmental enquiry of the aforesaid charge sheet has been proceeded against your applicant and Enquiry officer has conducted the enquiry and your applicant also took part in the aforesaid enquiry alongwith his Defence Counsel at Bongaigaon. The Enquiry officer has recorded ~~xxx~~ ~~xxxxxx~~ proceedings in the manner of questionnaires and recorded all the statements, evidences in the Enquiry proceeding. Charged official i.e. your applicant also filed written statement of defence in the aforesaid enquiry..

Copy of the Enquiry proceeding along with written statement submitted by the Defence Counsel on behalf of the applicant is enclosed herewith as Annexure-VI & VII. (at page - 42 - 51)

contd...6

24  
Necessary on ch. 12 on an an



4.6 That subsequently prior to the proceeding of the departmental enquiry against your applicant a general enquiry regarding the safety measure has been conducted as per the standing order of the Railway to make an overall assessment and the enquiry has been conducted by one Mr. R.P. Agarwal, Commissioner of Railway Safety, South Central Circle, Secunderabad and he has submitted his enquiry report regarding safety to the Railway authority on 4/10/2001. For the sake of brevity of safety report is not enclosed with the petition and your applicant reserved the right to rely the same as and when required.

4.7 That your applicant begs to state that Enquiry officer after completion of enquiry has submitted the enquiry report to the Disciplinary authority and the Disciplinary authority on consideration and on perusal of the report disagreed with the findings of the enquiry report and arbitrarily imposed punishment of dismissal to the applicant holding inter alia the view as follows:-

"I have carefully considered all the facts of the case. I have also carefully read the report of CRS, relevant rules SR.16.03/04 regarding exchange of private No. SR.16.02/(a) SR 16.03/11 and also the relevant statement given on page No. 208, 207 pertinent question No. 12, 13 & 14 on page No. 207. Q. No. 16. After scrutiny all the statement made above, I have come to the conclusions:-

contd....7

25  
New enquiry of 17/10/2001

- (a) Enquiry done by TI/Sri J.L. Bargayari is incomplete and also has not taken full facts as detailed in CRS enquiry into the accident.
- (b) The enquiry is superficial and has been conducted in non-detailed manner discounting the important evidence of police constable (SN-215).
- (c) This is a serious case of negligence as a result of which 7(seven) persons loss their life and sustain grievous injuries.
- (d) After the incidence record of private no. and also four pages of L.C. register pertaining to train movement were deliberately distorted by the Gateman or any other staff conniving with him.

I, therefore, reject the DAR enquiry conducted by Sri J.L. Bargayari (incidentally he has also been implicated in the above case and issued with SF-11) for the reason cited above.

After a careful consideration of all the facts of the case I have come to the conclusion that the above accident took place due to failure of Gateman to close the gate, resulting in loss of life and

contd....8

26  
NCR enq. on Ch. Bargayari

and therefore, impose punishment of dismissal from service. The above punishment is in keeping with Rly. Board Guideline and norms."

Sd/-S.C.Kumar, 21-2-02  
Signature & designation of the  
Disciplinary Authority

4.8 That your applicant begs to state that before imposing the aforesaid punishment your applicant has requested to furnish a copy of the enquiry report which has been denied by the disciplinary authority and in spite of his repeated requests the authority did not pass out the copy of the enquiry report to the applicant. Even your applicant on last occasion i.e. on ~~20/12/~~ 20/1/2003 has requested to furnish a copy of the enquiry report to Assistant Operations Manager/ N.F.Railway/Alipurduar Jn.division, Alipurduar Jn. who is the disciplinary authority but the authority refused to furnish copy marking in the application as "Regretted."

Copy of the aforesaid application made by the applicant is enclosed herewith as Annexure-VIII(at page 12 ).

4.9 That your applicant subsequently made an appeal before the authority on 27/3/2002 against the punishment order dtd. 21/2/2002 passed by the disciplinary

contd....9

*Noted by Mr. Ch. B. G. M. C.*

authority. The said appeal has been made to the Sr. Divisional Operations Manager, the appellate authority at Alipurduar Jn. The appellate authority on consideration of his appeal has passed detailed order wherein the appellate authority has recorded that the appeal is not acceptable to him and it was also recorded that the charge sheet was revised in the light of Commissioner of Railway Safety's report but the appellate authority considering the family aspect of the delinquent and <sup>substituted</sup> the punishment from dismissal to removal from service holding the view of compassionate ground.

Copy of the aforesaid order dated 11/4/2002 is enclosed herewith as Annexure-IX (at page 63-65).

4.10 That your applicant has made a mercy appeal to the Divisional Railway Manager/N.F. Railway, Alipurduar Jn. Division to review the punishment passed by the D.R.M./Alipurduar Jn. Divn. on 11/04/02 and the Divisional Railway Manager (O), N.F. Railway, while disposing the ~~xxxxxx~~ mercy appeal on 22/7/2002 has categorically stated as follows:-

"I have considered the Mercy appeal of the employee very sympathetically. A small percentage chance of the policemen lifting the level crossing barrier and rush to the place of firing

contd...10

28  
N. F. Railway Manager

(acute emergency) between ULFA extremists and police personnel cannot be ruled out.

In view of the above reasons the punishment of dismissal is reduced to removal with maximum pensionary + gratuity benefits as admissible under rules."

A copy of the aforesaid letter dated 22/7/2002 issued by the Divisional Railway Manager is enclosed herewith as Annexure-X(at page (b) ).

4.11 That your applicant begs to state that he came to know from the aforesaid facts and circumstances of the case that he was not found guilty by the Enquiry officer but the authority ~~revised~~ ~~the punishment~~ refused to furnish copy of the Enquiry report ~~conducted~~ by Mr. J.L.Bargayari who was appointed as Enquiry officer under D.A.R Rules under which the service of your applicant is covered. Moreover the Disciplinary authority has not categorically stated any ground for not accepting the Enquiry officers report nor any denovo proceeding was conducted against your applicant. Moreover it is pertinent from the records of the appellate authority that while considering the appeal of the applicant

contd...10

29  
N. Chatterjee

*Noted by Mr. J. K. M. M.*

the Divisional Railway Manager(Operations) has categorically stated in his report that the charge sheet was revised in the light of "Commissioner of Railway Safety's enquiry and not on the representation of the employee " and considering the aforesaid aspect the appellate authority i.e. Divisional Rly. Manager(Operations) has reviewed the earlier punishment dated. 21/2/2002 to the extent of removal with a view to allow 2/3rd of pension admissible to the applicant. More so it is evident from the record that while your applicant made a mercy appeal to the Divisional Railway Manager(Operations) to review the punishment of removal wherein the Divisional Railway Manager(Operations) in his letter dt. 22/7/2002 had categorically stated as follows:-

" I have considered the ~~Mercy~~ appeal of the employee very sympathetically. A small percentage chance of the Policemen lifting the level crossing barrier and rush to the place of firing (acute emergency) between ULFA extremists and police personnel cannot be ruled out."

4.12 That your applicant begs to state that the authority failed to furnish copy of the enquiry report nor the authority has considered the enquiry report in order to victimise your applicant solely relies upon the report submitted by the Commissioner of Railway Safety which was general enquiry report wherein your

.contd....12



categorically stated that the enquiry conducted by the Enquiry officer is incomplete and also stated that Enquiry officer has not taken full fact as detailed by the Commissioner of Railway Safety's enquiry report for the accident.

5.5 For that the Disciplinary authority while issuing the impugned dismissal order has committed manifest error of law and by-passed the provision contained in DAR Rules, 1966. The Disciplinary authority has considered the Commissioner of Railway Safety's report than the DAR Enquiry report conducted by the Enquiry ~~report~~ officer against the applicant. It is stated that the Commissioner of Safety's report is not relevant to the aspect of Departmental proceeding as because the Commissioner of Railway safety has made the overall assessment in respect of safety measure and other relevant features in order to make strengthened the safety procedure followed by the Railway. In the aforesaid enquiry your applicant was not asked to explain his position nor he was participated. Commissioner of Railway Safety's enquiry is different from the DAR enquiry conducted under DAR rules followed by the respondent. Hence the impugned dismissal order is illegal, perverse and non-application of mind by the Disciplinary authority

contd...14

32  
Hear only on 13/10/2011



which is liable to be set aside and quashed.

5.6 For that the Appellate authority while considering the appeal of the applicant has recorded detailed reasons wherein it was also stated that the Appellate authority that the charge sheet was revised in the light of Commissioner of Railway Safety's enquiry whereas no revised charge sheet which was alleged to have been received by the applicant. The application of of your applicant was not considered and no reasonable opportunity was afforded to defend his case on the basis of aforesaid revised charge sheet which was recorded in reviewing of the punishment imposed upon the applicant. Hence the impugned penalty of removal order passed by the appellate authority is also bad in law and liable to be set aside on the count of non-providing of reasonable opportunity of violation of Principle of Natural Justice.

5.7 For that the respondent while considering the mercy petition dated 11/7/2002 filed by the applicant against the ~~removed~~ reviewed punishment of removal the authority while disposing of the aforesaid mercy appeal on 22/7/2002 has recorded that lifting of level crossing barrier forcefully by the Police personnel cannot be ruled out which substantiate that the applicant was not at all

contd...15

33  
Necy on Ch. 2/2/2002

guilty of the offence. Therefore, the impugned punishment of removal is nothing but the victimisation of the applicant in order to save the skin of other superior officers of the department.

5.8 For that it is submitted that level crossing barrier which was managed by the Railway authority prior to the accident was not at all proper structured with proper equipment as well as facilities and upto the mark which required to be maintained for the Railway safety and managed by the Railway Safety unit and concerned officers which has been reflected in the Commissioner of Railway Safety's report ~~the~~ and the respondent in order to save <sup>victimised</sup> their skin has ~~victimised~~ your applicant by suomoto revision of charge sheet and imposed the punishment upon the applicant without affording any reasonable opportunity which is itself against the law followed by the department.

5.9 For that it has been conclusively held by the Enquiry officer who conducted the departmental enquiry your applicant was not found guilty in respect of <sup>discernible</sup> incident which can be easily / from the factual matrix of the case as well as relevant record, statement, letter issued by the concerning authority. It is nothing but just to victimise your applicant.

contd....16

34  
N. C. Choudhary

5.10 For that the respondent has acted in whimsical manner without going through the Enquiry report as they have come into conclusion to dismiss your applicant on the basis of Commissioner of Railway Safety's report which is not all the Enquiry report about the incident and they have disowned the creditability of the Enquiry ~~report~~ officer as well as Enquiry report which is evident from the impugned dismissal order as well as reviewed dismissal order issued by the authority simultaneously. Hence the dismissal/removal order passed by the authority is illegal, bad in law and liable to be set aside.

5.11 For that the order of removal passed by the authority on Reviewing the punishment of dismissal is total violation of principle of Natural justice and the same has been passed in whimsical and capricious manner without following the due procedure of law and non-supplying of enquiry report to the applicant also a total violation of principle of Natural justice. Hence the impugned removal order is liable to be set aside and quashed.

5.12 For that in any view of the matter the action of respondent is not sustainable in eye of law.

contd....17

25  
N. C. Choudhary, C. S. J.

The applicant craves the leave to this Hon'ble Tribunal to advance further grounds at the time of hearing of this instant application.

6. DETAILS OF REMEDIES EXHAUSTED.

The applicant declares that there is no other alternative and efficacious remedy of the applicant except invoking the jurisdiction of the Hon'ble Tribunal under section 19 of the Administrative Tribunal Act, 1985.

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

The applicant further declares that he has not filed any application, writ petition or any suit in respect of the subject matter. of the instant application before any other court, authority nor any such application, writ petition, suit is pending before any of the authority.

8. RELIEFS SOUGHT FOR:

Under the facts and circumstances stated above the applicant most respectfully prays that your Lordship may be pleased to admit this petition and direct the respondent to give the following relief:-

8.1 The Hon'ble Tribunal may be pleased to direct that the applicant is entitled to get

contd...18

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*Noting on Ch. 36*



8.6 For that the impugned dismissal/removal order is liable to be set aside on the count that in rejecting the mercy appeal the authority conclusively held that lifting of level crossing barrier by the Police forcefully cannot be ruled out.

8.7 For that the impugned dismissal/removal order is liable to be set aside on the count of Principles of Natural justice as well as non-providing of reasonable opportunity to the applicant for fair hearing as well as for non-supplying the Enquiry report ~~xxxxxx~~ conducted by the Enquiry Officer.

8.8 That to pass any other order or orders as deem fit and proper by this Hon'ble Tribunal on perusing the factual matrix of the case as stated above alongwith all other service benefits had the applicant been in service.

9. INTERIM ORDER PRAYED FOR.

pending decision of this application the applicant seeks to issue of the following interim order:-

That the Hon'ble Tribunal may be pleased to set aside and quash the order of dismissal/removal order passed on 11/4/2002 by the respondent and also allow the applicant to continue his service along with all service benefits had he been in the service and

contd...20.

Never any one of B. C. or more

11. PARTICULARS OF THE I.P.O.

ii) Date : 18/02/2003

12. LIST OF ENCLOSURES:

contd... Verification.

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

I, Shri Narayan Chandra Barman, son of  
late ~~Shri~~ Ningsh Barman aged about 45 years at  
present residing at Parakuchi, P.O. Sandha, Dist.  
Nalbari(Assam) do hereby solemnly affirm and verify  
that the statements made in paragraphs 4.1, 4.2, 4.3, 4.6, 4.7,  
4.11-4.12, 5, are true to my knowledge; those made in  
paragraphs 1, 4.4, 4.5, 4.8, 4.9, 4.10, are true to my  
information derieved from records and the rests are  
my humble submission before this Hon'ble Tribunal.  
I am duly authorised to swear this verification.

And I sign this verification on this 10th  
day of February, 2003 at Guwahati.

*Narayan Chandra Barman*

SIGNATURE



-22- Annexure - 1

Northeast Frontier Railway

N.F.G. 174/M

Notice of imposition of penalties under items (I), (ii) & (iii) of Rule 1707 (1) and items (I) and (ii) of Rule 1707 (2) RI

(Ref : SR-9 under Rule 1716-R)

No. T2/AP/T/4/2002-2002

Dated : 21.02.2002

From : DRM(O)/N. F. Rly./APDJ

To,

Shri Narayan Chandra Barman, Gateman/NLV  
Now at Sr.DOM's Office/APDJ

With reference to your explanation to the charge sheet No. T2/AP/T/4/2001-2002 dated 04.09.2001 you are hereby informed that your explanation is not considered satisfactory and that the AOM(C)/APDJ has passed the following orders :

"I have carefully considered all the facts of the case. I have also carefully read the report of CRS, relevant rules SR 16.03/4 regarding exchange of private no., SR 16.02/(a) SR 16.03/11 and also the relevant statement given on page no. 208, 207, pertinent question no. 12, 13 & 14 on page no. 207, Q.No. 16. After scrutiny all the statement made above I have come to the conclusions -

- (a) Enquiry done by TI/Sri J. L. Bargayari is incomplete and also has not taken full facts as detailed in CRS enquiry in to the accident.
- (b) The enquiry is superficial and has been conducted in non-detailed manner discounting the important evidence of police constable (SN - 215).
- (c) This is a serious case of negligence as a result of which 7 (seven) persons loss their life and sustain grievous injuries.
- (d) After the incidence record of private no. and also four pages of L.C. register pertaining to train movement were deliberately distorted by the Gateman or any other staff conniving with him.

I therefore reject the DAR enquiry conducted by Sri J. L. Bargayari (incidentally he has also been implicated in the above case and issued with SF-11) for the reason cited above.

After a careful consideration of all the facts of the case I have come to the conclusion that the above accident took place due to failure of Gateman to close the gate, resulting in loss of life and therefore impose punishment of dismissal from service. The above punishment is in keeping with Rly. Board Guidelines and norms."

*Shandha*  
21.2.02  
S. C. Kumar  
Signature & Designation of the  
Disciplinary Authority

N. B : Please see instructions on the next page.

Copy : E.T/Cadre, E.T/Bill, SS/NLV for information & necessary action please.

*certified to be true copy  
of K. Karle  
Advocate*

21/2/2002

- 23 -

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(The portion must be signed and returned to the office of issue.)

Acknowledgement

To, \_\_\_\_\_

I hereby acknowledgement receipt of your Notice No. \_\_\_\_\_ dated \_\_\_\_\_  
the charge sheet No. \_\_\_\_\_ dated \_\_\_\_\_.

Dated : \_\_\_\_\_

Signature or Thumb Impression

Station : \_\_\_\_\_

Designation \_\_\_\_\_

- When the notice is signed by an authority other than the Disciplinary authority here quote the authority passing the order.
- Here quote the acceptance or rejection of explanation and the penalty imposed.

INSTRUCTIONS

An appeal against those orders lies to \_\_\_\_\_  
next immediate superior to the Authority passing the orders.

Sr. DOM/APDJ

Office of the  
Divl Rly. Manager (Optns.)  
Alipurduar Junction

No. T2/AP/T/4/2001-2002

Date : 15-03-2002

To  
Shri N.C. Barman,  
Ex. Gateman/Nalbari,  
Village: Parakuchi,  
P.O. Sandha  
Dist: Nalbari (Assam)

Sub :- NIP.

Ref :- T2/AP/T/4/2001-2002 dated 21-02-2002.

In the above referred order the few typographical errors have crept in.  
Please read -

- a) Date 04-09-2001 in line No.2 as 17-10-2001,
- b) In tem 'a' of conclusion in line No. 9 read 'inconclusive' in place of incomplete.

The above does not change the basic nature of order.

Copy to :-

- 1. ET/Bill/APDJ,
- 2. ET/Cadre/APDJ.

*Signature*  
15.3.02  
Signature and designation  
of Disciplinary Authority

Asst. Operations Manager  
N.E. Railway, Alipurduar

AOM(C)/APDJ

Asst. Operations Manager  
N.E. Railway, Alipurduar

To,

The Senior Divisional Operations Manager,

The Appellate Authority

N.F. Railway, Alipurduar Junction.

Sub: Appeal against the imposition of punishment of dismissal from service vide Notice No. T2/AP/1/4/2002-2002 DATED 21.2.2002 by the ADM (C)/APDJ.

Sir,

With reference to the subject captioned above, I Shri Narayan Chandra Garman, Gateman/III, beg to lay before you the following two lines by way of an appeal for your kind consideration and for passing appropriate order for quashing the order of the disciplinary authority passed on 21.2.2002 in the interest of justice.

1. That Sir, I was on duty from 22.00 hrs. of 23.7.2001 to 6.00 hrs. of 24.7.2001 at the L.C. Gate. At around midnight, a Maruti Gypsy No. AS-50-0728 was approaching the L.C. Gate and although it ought to have stopped at the crossing as the L.C. Gate was closed due to the approaching of the BN Security Pilot, it did not and for reasons best known to the occupants of the Maruti Gypsy, they attempted to cross the L.C. Gate by forcibly lifting the barrier on BG side. The barrier, as usual was not properly housed and there was also not locking arrangement. Unfortunately such action of the occupants of the Maruti Gypsy resulted in a devastating and tragic accident which took away many a seven lives.

-25-

Annexure - 1

44

Curry P. F. S.  
Shankar  
A. K. Khatu  
Adm. Secy

2. That Sir, since I was the Gateman on duty, a charge-sheet, vide notice No. T2/AP/1/4/2001-2002 dated 4-09-2001 was issued under the provision of Rule 9 of the Rly. Servants (Discipline & Appeal Rule 1968) by the AOM, N.F. Rly, Alipurduar Jn. In the said charge-sheet, three charges were framed against me respectfully state that in the said charges were vague factually inaccurate, and were aimed at making me a scapegoat.

A copy of the charge-sheet as aforesaid dt. 4.9.2001 is annexed hereto and marked as Annexure-1.

3. That the appellant was not in a position to prepare his defence statements to controvert the alleged charges as they were vague, unclear, not precise and inaccurate. Therefore, he sought certain clarifications from the AOM, N.F. Rly, Alipurduar Jn with regard to the vagueness of the charges and further requested for the copies of the documents on the basis of which the article of charges had been framed against him, vide his representation dt. 12.9.2001.

A copy of the said representation dated 12.9.2001 is annexed hereto and marked as Annexure-2.

4. That on receipt of the aforesaid representation of the AOM, N.F. Rly, Alipurduar Jn and upon being satisfied that the article of charges were in contravention of the provisions of D&A Rules and were inaccurate cancelled the charge sheet dated 4.9.2001 and issued a fresh Charge Sheet NO. T2/AP/1/4/2001-2002 dated 17.10.2001.

A copy of the aforesaid representation dated 4.9.2001 is annexed hereto and marked as Annexure-3.

5. That as against the Charge sheet No. 12/AP/T/4/2001-2002 dated 17.10.2001 the appellant submitted his statement of defence before the AOM, N.F. Rly, Alipurduar Jn, on 28.10.2001 wherein he specifically denied the charges brought against him and stated that he wished to be heard in person. Moreover, in his statement of defence dated 28.10.2001, he requested for and productions of defence witnesses and relevant documents. It was further informed by the appellant that he has nominated Sri P.K. Mitra Rtd. TI/Safety/APDJ to act as his defence counsel during the course of the enquiry proceedings.

A copy of such statement of defence dt. 28.10.2001 is annexed hereto and marked as Annexure-4.

6. That thereafter on 5.12.2001, preliminary hearing of DAR inquiry was conducted. The appellant while denying the alleged charges, prayed for production of the documents, list of which was given vide his statement of defence dated 28.10.2001 and further requested for summoning the witnesses, named in his defence statement dt. 28.10.2001 whom he desired to examine to prove his innocence. The appellant submits that the proceeding was conducted thereafter in a hasty manner and even though the report of the CRS, and copies of the proceedings of the day's hearing were supplied to him the same were not complete for which the appellant while preparing his explanation had to face great prejudices

and hindrances.

A copy of each of the report or the CRS and the proceedings of hearing are annexed hereto and marked as Annexures-5 and 6.

7. That thereafter vide Notice No. 12/AP/1/4/2002-2002 DATED 21.2.2002, the DRM(O)/N.E. Rly./APDJ informed the appellant that his explanation to the charge sheet No. 12/AP/1/4/2001-2002 dated 4.09.2001 has not been considered satisfactory and therefore punishment of dismissal from service was imposed upon the appellant.

A copy of the said notice or impositions penalties dtd. 21.2.2002 is annexed hereto and marked as Annexure-7.

8. That the appellant states that the AOM, N.E. Rly. Alipurduar Jn. on being satisfied, that the article of charges contained in the Notice No. 12/AP/1/4/2001-2002 dated 4.9.2001 were in contravention of the provisions of D&A Rules, had were also not in conformity with the factual matrix of the case cancelled the charge sheet dated 4.9.2001 and issued a fresh Charge Sheet No. 12/AP/1/4/2001-2002 dated 17.10.2001. In view of the aforesaid, it defies all logic as to how the AOM, N.E. Rly. Alipurduar Jn. considered the appellant's explanation to the Notice No. 12/AP/1/4/2001-2002 dated 4.9.2001 when the same was never submitted by the appellant and as such it is apparent and evident that the order passed by the AOM, N.E. Rly. Alipurduar Jn. imposing punishment of dismissal from service upon the appellant is passed without any basis whatsoever and in a most arbitrary and capricious manner. The said order sub-

fers form the vice of total non-application of mind and as such the order dated 21.2.2002 is bad in the eye of law and the same is liable to be set aside and quashed.

9. That the appellant states that the order dated 21.2.2002 has been passed without giving him reasonable opportunity of making representation and as such the order dated 21.2.2002 has been passed in violation of the principles of natural justice.

10. That it is stated that the questions and the statements that have been purportedly relied upon by the AOM, N.F. Rly. Alipurduar Jn. in coming to the conclusion that the accident took place due to the failure of the Gate-man to close the L.C. Gate have not been supplied to the appellant so as to enable him to submit his reply in defence and such action is contrary to the most fundamental principles of law and therefore the impugned order dated 21.2.2002 is liable to be interfered with and set aside and quashed.

11. That the appellant states that an enquiry is a legal proceeding in which facts are found, on the basis of which liability or accountability of a person is judged. It connotes acts of seeking truth, information or knowledge about something. In the instant case, it is noted by the AOM, N.F. Rly. Alipurduar Jn. that the enquiry conducted by the Traffic Inspector Sri J.L. Bargayari was incomplete and also further stated that the inquiry was conducted superficially and non-detailed manner. In view of such observation of the disciplinary authority that the enquiry was not complete and not conducted in a detailed manner, the course



of action open for the disciplinary authority was to have a De-novo enquiry. But in stead of doing that the disciplinary authority has whimsically passed the order of imposition of the major punishment of dismissal of the appellant from service. Such action defies all canons of law and procedure established by law and as such the impugned order dated 21.2.2002 is liable to be interfered with and set aside and quashed.

12. That the applicant states that it is settled principles of law with regard to service jurisprudence that when there is disagreement between the inquiry officer and the disciplinary authority and the enquiry officer has exonerated the charged employee, the disciplinary authority is not only bound to furnish a copy of the report, but also inform the employee about the tentative conclusion about his guilt and give reasonable opportunity to the charged employee to file his reply in defence. Now, upon failing to adhere to such procedure, the notice of dismissing the charged employee from service is liable to be set aside. In the instant case, the AOM, N.F. Rly., Alipurduar Jn. having differed from the findings of the enquiry officer, he ought to have issued a notice informing the appellant about the reasons of his not agreeing to the findings of the Inquiry Officer, but it was not done, and such action resulted in depriving the appellant the opportunity of removing the misgivings of the Disciplinary Authorities, but the appellant was not afforded the same.

13. That the appellant submits that as per provisions of the Railway Servants (D&A) Rule, 1968, if the Disciplinary authority is of the opinion for imposing major punishment

ment, it shall give a further opportunity to the Railway Servant in the form of 'show cause notice' mentioning therein the penalty proposed to be imposed with the direction to make representation if the Railway Servant wants to make. Further, the authority shall also furnish to the Railway Servant a copy of the report of the enquiry and the findings of the Disciplinary Authority on each charge. If the enquiry has been held by an authority other than the Disciplinary authority, brief reasons of the authority for its disagreement, if any, with the findings of the Inquiring authority should also be furnished. The aforesaid procedure has been totally given a go bye by the AOM, N.F. Rly, Alipurduar Jn. causing grave injustice to the appellant and as such the impugned order dated 21.2.2002 is liable to be interfered with.

14. That the appellant submits that the order dated 21.2.2002 issued by AOM, N.F. Rly, Alipurduar Jn. is devoid of any sound reasons and as such the same is liable to be set aside and quashed.

15. That the appellant states that the AOM, N.F. Rly., Alipurduar Jn. failed to take note the recommendation of Commissioner of Railway Safety, South Central Circle/Secunderabad in connection with the accident on 24.7.2001 and more particularly the observation of the unsatisfactory condition of the level crossing gate and as such the allegation of negligence attributed to the appellant is not justifiable and as such the impugned order dated 21.2.2002 is liable to be interfered with.

16. That the appellant states that in the CRS report in para 1.2.3, the aforesaid facts has been highlighted with further observation that the defects, efficiencies have been made good after the accident prior to his inspection.

17. That with regard to the observation made by the AOM, N.F. Rly., Alipurduar Jn. in respect of the private and the four pages of L.C. register pertaining to train movement, the appellant states that the AOM, N.F. Rly., Alipurduar Jn. failed to consider the evidences on records and the statement of the witnesses in this regard. Had he inspected the records, the conclusion he would have arrived at would have been contrary to the one he has arrived at and as such the impugned order dated 21.2.2002 is liable to be set aside and quashed.

18. That the appellant submits that the penalty that has been imposed on the appellant is totally disproportionate to the misconduct, if any and the same is unduly harsh and further violative of Article 14 of the Constitution of India and as such the order dated 21.2.2002 is liable to be interfered with.

19. That the appellant states that there have been no evidences showing that he is liable for the unfortunate accident and therefore the imposition of the punishment is not justifiable and the same is liable to be set aside and quashed.

20. That it is submitted that in any view of the matter the impugned order dated 21.2.2002 is liable to be set aside and quashed.

In view of the premises aforesaid, the appellant prays that Your Honour may be pleased to set aside the Notice No. T2/AP/1/4/2002-2002 dated 21.2.2002 and further be pleased to pass an order of reinstatement in service forthwith and/or pass such further or other order(s) as Your Honour may deem fit and proper in the facts and circumstances of the case.

- 34 -  
N.F. Railway

Amru - II  
Office of the  
Divl. Railway Manager (Optns.)  
Alipurduar Junction

No. T2/AP/T/4/2001-2002

Date :- 11-04-2002

To,  
Shri N.C. Barman,  
Ex-Gateman/Nalbari,  
Village - Parakuchi,  
P.O. - Sandha,  
Dist - Nalbari (Assam).

**Sub :-** Appeal dated 27-03-2002 against Notice of Imposition of Punishment.  
**Ref :-** Major Memorandum No. T2/AP/T/4/2001-2002 dated 04-09-2001 & NIP  
No. T2/AP/T/4/2001-2002 dated 21-02-2002 issued to Shri N.C. Barman,  
Gateman/NLV.

Please note that on your subject mentioned appeal, Sr. Divisional Operations Manager, Alipurduar Junction, the Appellate Authority, has passed the following orders :-

I have carefully considered all the facts relating to the case. Having carefully undergone the appeal of charged official Shri N.C. Barman, Gateman/NLV, the following conclusion have been drawn -

- 1) As per CRS's enquiry, while Shri N.C. Barman was on duty from 22-00 hrs. of 23-07-2001 to 06-00 hrs. of 24-07-2001 at Tfc. L.C. Gate No. SK-21 near NLV station, a Maruti Gypsy (No. AS-30-0928) collided with Security Engine and as many as seven lives were lost. Shri Barman was held primary responsible for violating the provisions of Station Working Rules / Gate Working Instructions, General Rules and Subsidiary Rules as per para 8.2.1 to CRS's enquiry on page No. 22. The relevant extracts of Rules violated were given in Annexure - II of CRS's enquiry which reads -

S.R. 16.03/4 (iii) : Exchange of Private No. between Station Master and Gateman :-

- (a) Private Number shall be exchanged between the Station Masters and Gatemen at all non-interlocked Traffic and Engineering Level Crossing Gates provided with telephonic communication so as to ensure that the Station Master and Gateman have duly communicated and received the instruction / information about the movement of the trains and other shunt movements across the level crossing. For this purpose, the Station Master on duty, before granting Line Clear for a train or before permitting a train to start from his station or before any shunt movements necessitating closure of the level crossing gate(s) shall inform the Gateman on duty about the number and description of the approaching / outgoing trains or brief particulars in case of shunt movements with expected time to pass over the Level Crossing. The Station Master shall give a Private Number in confirmation of the instruction / information communicated to the Gateman and the Gateman shall as an assurance of having closed and locked the gate for safe passage of trains give a Private Number to the Station Master.

Contd. to ..... P/2

*certified true copy*  
*N. K. Kavitha*  
*Advocate*

23/4/2002

The number and description of trains / brief particulars of shunt movements necessitating closure of the Level Crossing Gate and Private Number exchanged thereof, shall be recorded in a register to be maintained for this purpose both at the station and level crossing gate lodge.

- 2) To establish the responsibility further and giving opportunity to charged official as per canons of natural justice, a DAR enquiry was ordered for which Shri J.L.Bargayari, TI/BNGN was nominated as Enquiry Officer. The enquiry came to conclusion that location of Traffic 'C' class manned interlocked L.C.Gate SK-21 of NLV station and the local arrangements made by the NLV station staff to avoid closure of L.C.Gate for a longer period were in violation of instructions contained in S.R. 16.3/4 (iii). The deficiencies of the Gate pointed out in the CRS's enquiry were made good later on after the accident.

The enquiry further held that evidences of two Police Constables of 4 APBN traveling on back side of the Gypsy in seeing the Gate in open condition could not be considered as true. Further, enquiry also concluded that negligence of Shri N.C.Barman cannot be proved for want of evidence as people are generally not coming out due to harassment by Security Agency and based on the above reasons the enquiry came to the conclusion that the Gateman Shri Barman cannot be held directly responsible for violation of S.R. 16.3/4 (iii) due to non provision of lever locking system or manual locking system of L.C. Gate. However, enquiry held Shri Barman responsible for violating the Railway Service ( Conduct ) Rules 3.1.(i), (ii) & (iii) for tearing off concerned pages of Gate Lodge Register and Private No. sheets.

The Disciplinary Authority after considering issued his speaking orders as per SN 219, over-turned the enquiry findings for being inconclusive and not taking into of full facts as detailed in CRS's enquiry. Also the records of Private Number and four pages of L.C.Gate Lodge Register being torn off by the Gateman were also held against him and a punishment of dismissal from service as required by Railway Board Guidelines circulated under No. 99/Safety(A&R)6/1 dated 23-04-99 was imposed. After receipt of this Notice of Imposition of Punishment issued vide No. T2/AP/T/4/2001-2002 dated 21-02-2002, an appeal dated 27-03-2002, received on 01-04-2002, was submitted by Shri Barman to Sr.DOM.

In this appeal the parawise statement was made against imposition of punishment by AOM(C)/APDJ (Disciplinary Authority) as placed on SN-226.

Para 1 of the appeal says that the occupants of the Maruti Gypsy No. AS-30-0928 attempted to cross the L.C.Gate by forcibly lifting the barrier on BG side. He says, barrier as usual was not properly housed and there was also no locking arrangements to secure the boom. This fact as brought out in the enquiry by Shri J.L.Bargayari, TI/BNGN (EO) cannot be ascertained for want of evidence being night time and therefore, untenable.

In para 2, the appeal says the charges framed against him were vague, factually incorrect and were aimed at making me a scapegoat. This argument is also untenable as in CRS's enquiry a total of 5 persons / departments were held responsible for this accident. The responsibility fixed by CRS enquiry as per para 8.2.1, 8.2.2 and 8.2.3 are as under :-

Contd.to.....P/3

- 8.2.1. Primary - Shri N.C.Barman, Gateman/NLV,  
8.2.2. Secondary - None,  
8.2.3. Blameworthy -  
(i) Shri Basanta Kumar Barman, ASM/NLV,  
(ii) Shri Alisher Ansari, SM/NLV,  
(iii) Shri Janaklal Bargayari, TI/RNY now TI/BNGN,  
(iv) Engineering Department of APDJ Division.

Therefore, seeing that he was made scapegoat was not correct. Further, the Charge Sheet was accurate as the violation of Rules and also the lapses on the part of employee were clearly identified and brought out.

/// The Charge Sheet was revised in the light of CRS's enquiry and not on the representation of the employee.

In the para 6 of his appeal, the employee submits that enquiry proceedings were conducted in hasty manner and copies of the proceedings and CRS's report were supplied to him and the same were not complete. For this, the employee had to face hindrance in preparation of his explanation. This argument is not acceptable as this could have been brought out at the time of enquiry itself and there was no haste in the enquiry as is evident from the time taken to complete it and Shri Barman was given full freedom to bring out any fact which he deemed fit.

In para 9 the appellant states that the order was passed without giving reasonable opportunity to make representation is incorrect as due opportunity was given to him at the time of enquiry to bring out any fact having bearing on the case.

In para 18 the appellant submits that the penalty has been imposed on the total disproportionate is also untenable as this was a case of gross misconduct resulting in loss of lives affecting Railway image and endangering the safety and also as per guidelines issued by Railway Board (Ministry of Railways) circulated under No. 99/Safety (A&R)/6/1 dated 23-04-99. No new fact or evidence has been brought out in this appeal having bearing on the whole case.

However, as the delinquent employee's family is totally dependent on him and to reduce the hardship on them, I decide to impose the penalty of removal from service as a result of this appeal with compassionate allowance at two-third of pension admissible to the employee Shri N.C.Barman.

This order is without any prejudice and review can be applied for as per prescribed norms. "

*Shand*  
~ Divl.Rly.Manager (Optns.),  
N.F.Railway, Alipurduar Junction

Copy to :-  
DRM(P)/APDJ (ET/Bill, Cadre) for information and necessary action please.

~ Divl.Rly.Manager (Optns.),  
N.F.Railway, Alipurduar Junction

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Annexure-

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III

N. F. Railway.

STANDARD FORM NO.1

G. 174.A

Standard form of order of suspension  
(Rule 5(I) of RS (D & A) Rule 1968)

No. 72/AP/T/4/2001-2002.

Date 31-07-2001

Name of Administration N.F. Rly

Place APDT

O R D E R

Whereas a disciplinary proceeding against Shri Smt. N.C. Barman Designation Gate man / NLV  
(Name and designation of the Rly. Servent) is contemplated pending.

Whereas a case against Shri Smt. N.C. Barman Designation Gate man in respect of criminal offence is under investigation, inquiry / trial.

Now, therefore, the undersigned (the authority competent to place the Rly. Servent under suspension in terms of Schedules I, II and III appended to R.S(D&A) Rules 1968 an authority mentioned in proviso to Rule 5(I) of RS (D & A) Rule 1968 in exercise of the power conferred by rule 4 proviso to rule (51) of RS (D & A) Rules 19.8, hereby places the said Shri Smt. N.C. Barman

Under suspension with effect from 28-07-2001

It is further ordered that during the period of this order shall remain in force, the said Shri Smt. N.C. Barman shall not leave the head quarter without obtaining the prior permission of the competent authority.

(Signature) Sanjay Tripathi

(Name) S. Tripathi

Designation of the suspending authority: SS/ NLV  
N. F. Railway/Allpurduar Jn.

Copy to:-  
✓ Shri Smt. N.C. Barman

Designation Gate man Thro: SS/ NLV

Orders regarding subsistence allowance admissible to during the period will be issued separately

C/- OS/ET/cadre/APDT

OS/ET/Bill

SS/ NLV

For information and necessary action.

certified To be true copy  
of N.C. Barman  
Advocate

Sanjay Tripathi

N. F. Railway/Allpurduar Jn.



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Annex - IV

N.F. Railway.

(Standard Form No. 1)

STANDARD FORM OF CHARGE SHEET  
(Rule 9 of the Rly. Servants (Discipline & Appeal Rule 1968))

No. T2/AP/I/4/2001-2002

(Date 17.10.01)

Place of issue : Alipurduar Junction, Rly. Administration :

N.F. RAILWAY.

M E M O R A N D U M

1. The undersigned proposes to hold an inquiry against Shri N.C. Barman, Gateman under Rule 9 of the Rly. Servants (Discipline & Appeal) Rules, 1968. The substance of the imputations of misconduct of misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of Articles of charge (Annexure-I). A statement of the imputation of misconduct or misbehaviour 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 charges proposed to be sustained are also enclosed (Annexure-III & IV). Further, copies of documents mentioned in the list of documents as per Annexure-III are enclosed.
2. Shri N.C. Barman 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) at any time during office hours within 10 (ten) days of receipt of this memorandum. For this purpose he should contact Sr.DOM/APDJ's office immediately on receipt of this memorandum.
3. Shri N.C. Barman is further informed that he may, if he so desires, take the assistance of any other railway servant an official of Railway Trade Union (who satisfied the requirement of Rule 9(12) of the Rly. Servants (Discipline & Appeal) Rules, 1968 and Note-I and/or Note-2 there under as the case may be) for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an Oral inquiry being held. For this purpose, he should nominate one or more persons or order of preference. Before nominating the assisting railway servant(s) or Railway Trade Union Official(s) Shri N.C. Barman 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) has already undertaken to assist and the undertaking should be furnished to the undersigned along with the nomination.
4. Shri N.C. Barman is hereby directed to submit to the undersigned a written statement of his defence within 10 (ten) days of receipt of this Memorandum, if he does not require to inspect and documents for the preparation of his defence, and within 10 (ten) days after completion of inspection of documents if he desires to inspect documents and also :-
  - (a) To state whether he wished to be heard in person and
  - (b) To furnish the names and addresses of the witness, if any, whom he wishes to call in support of his defence.

Contd.....2

*certified to be true copy  
A.K. Gupta*

*N.C. Barman*

17-10-2001

= 2 =

N.C. Barman

5. Shri \_\_\_\_\_ is informed that an inquiry will be held only in respect of those articles of charges are not admitted. He should, therefore, specifically admit or/deny each article of charges.

N.C. Barman

6. Shri \_\_\_\_\_ 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 Railway Servants (Discipline & Appeal) Rules, 1968, or the orders/directions issued in pursuance of the said rule, the Inquiring Authority may hold the inquiry ex-parte.

N.C. Barman

7. The attention of Shri \_\_\_\_\_ is invited to Rule 20 of the Railway Services (Conduct) Rules, 1966 under which no Railway Servant shall bring or attempt to bring any Political or other influence to bear upon any Superior authority to further his interests in respect of matters pertaining to his service under the Government if any representation is received on this behalf from another person in respect of any matter ~~within~~ those proceedings, it will be presumed that Shri \_\_\_\_\_ 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 Railway Services (Conduct) Rules-1966.

8. The receipt of this memorandum may be acknowledged.

Encls:-

(Signature)  
Name & Designation of competent Authority

To N.C. Barman, Gateman/NLV.

Shri \_\_\_\_\_

Through now at Sr. DOM office/APs

Place : Alipurduar Junction.

Copy to:-

Shri \_\_\_\_\_ (name and desig. of the lending authority) for information.  
Strike out whichever is not applicable.  
To be deleted if copies are given/not given with the memorandum as the case may be;  
Name of the authority. (This would imply that whenever a case is referred to the disciplinary authority by the investigating authority or any authority who are in the custody of the listed documents or who would be arranging for inspection of the documents to enable that authority being mentioned in the draft memorandum.  
Where the President is the disciplinary authority.  
To be retained wherever President or the Rly. Board is the competent authority.  
To be issued wherever applicable, see Rule-16(1) of the RS(DA) Rule, 1968 Not to be inserted in the copy sent to the Rly. Servant.

4981  
Sudhir Ch. Barman  
W.P. Railway/Alipurduar Jn.

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A

Annexure-I

Annexure of standard form No.5 memorandum of charge sheet under rule-9 of D&AR-1969.

Statement of article of charges framed against Sri N.C.Barman, Gateman/NLV.

On 24.07.2001, while Sri N.C.Barman, working as on duty gateman at the L.C.Gate No. SK/21 from 22.00 hrs. to 06.00 hrs. DN Security pilot No. 14840 WDG2 met an accident at the L.C.Gate with Maruti Gypsy No. AS-30/0928 Assam Police and as result 7 personnels of Assam Police were died, due to carelessness of gateman on duty.

He was on duty from 22.00 hrs. of 23.07.2001 to 06.00 hrs. of 24.07.2001. Though in the absence of Gate records viz. Private number book and relevant pages of level crossing book. And it appears that gate was in open condition at the time of passing of DN Security pilot engine.

Thus Sri N.C.Barman while functioning as on duty Gate man/NLV committed gross negligence by acting in a manner of most irresponsible and unbecoming of a Railway servant contravening Rule-3.1(i), (ii) & (iii) of Railway servants service conduct Rules, 1966. Thus he violated SR-16.03/4(iii) of G&SR book of N.F.Railway.

Annexure-II

Statement of imputation of misconduct and negligence in support of Article of charges framed against Sri N.C.Barman, Gateman/NLV.

The said Sri N.C.Barman, Gateman/NLV while working at the time of DN Security pilot No. 14848 WDG2 on 24.07.2001. As he failed to observe the instruction of safety rules. Dashing between DN Security pilot and Maruti Gypsy causing 7 persons of police died and 2 persons were injured. Thus he violated the G&SR No. 16.03/4(iii).

Thus he committed gross misconduct by acting in a manner of most irresponsible and unbecoming of Railway servant contravening rule No. 3.1(i) (ii) & (iii) at Railway service conduct rules 1966 in as much as he failed to comply with provision at the relevant safety rules.

Annexure-III

List of documents in support of which article of charged framed against Sri N.C.Barman, Gateman/NLV.

Enquiry report of which is drawn by Commissioner of Railway Safety/ South Central/Secundrabad vide D.O letter No. T/2/B/A(GOE-NLV)2001-2002 Dated 16.08.2001.

Annexure-IV

List of witness by whom article of charge framed against Sri N.C. Barman, Gateman/NLV.

= N I L =

*Chand*  
17.10.01  
Asstt. Optns. Manager  
N.F.Rly., Alipurduar Jn.

Asst. Operations Manager  
Sudhakar Ch. Kumar  
No. 17, 18 Alipurduar Jn  
N.F. Railway, Alipurduar Jn

N. F. RAILWAY

STANDARD FORM NO. 7

G-174F.

Standard form of order relating to appointment of Inquiry Officer - Board of Inquiry (Rule-9 (2) of R.S.D. & A. Rule, 1958).

No. T2/AP/T/4/2001-2002

N.F. RLY

(Name of Rly. Administration)

Place of issue Alipurduar Jn dated 02-11-2001

ORDER

Whereas on inquiry under rule 9 of the Railway Servants (Discipline and Appeal), Rules, 1958 is being held against Shri N. C. Barman, Gateman/NLV (Name and designation of the Railway servant),

and whereas the ~~Railway Board~~/the under signed consider(s) that a ~~Board of Inquiry~~/an Inquiry Officer should be appointed to inquire into the charges framed against him.

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

Board of Inquiry consisting of:

- 1.
- 2.
- 3.

OR

Shri J. L. Bargaray, TI/RNY (name and designation of the Inquiry Officer) as Inquiry Officer to inquire into the charges framed against the said Shri N. C. Barman, Gateman/NLV

Now at Sec DOM office/APB

Signature

Name

Secretary, Railway Board

OR

Designation of the Disciplinary Authority

Copy to (name and designation of the Railway servant)

Copy to (name and designation of the Members of the Board of Inquiry/Inquiry Officer).

Copy to (Name and designation of the lending authority) for information.

Note: To be used wherever applicable & not to be inserted in the copy sent to the Railway servant.

certified  
to be true copy  
A. K. Koley  
Advocate

\*\*\*\*\* 5/11/92

ANNEXURE.VI

No.T2/AP/T/14/2001-2002

dated 05.01.2002

Sri N.C.Barman, Gate Man, NLV (Now at Sr.DOM/APDJ office)

Sub:- Regular and final hearing of your major Memorandum.

Ref:- Sr.DOM/APDJ's office Memorandum No.T2/AP/T/14/2001-2002 dt. 17-10-2001.

The next date of your regular and final hearing against your major memorandum is fixed on 16.01.02 and 17.01.2002 in the office of AOM/NBQ from 10.00 hrs. Hence you are advised to attend during hearing alongwith your Defence counsel positively.

Sd/-

(J.L.Bargahari)

TI/NBQ, E.O.

- Copy to 1. SS/NLV and he is requested to spare Sri R.C.Das, Gateman, ASM/NLV to attend during the enquiry.
2. TI/NLV. He is requested to spare Shri under TI/RNY who previously working at NLV station in various times to record his statement in connection with the accident.
3. Sr.DOM/APDJ for information please.
4. DRM(P)/APDJ. He is requested to issue one set of 1st class spl. pass in favour of Shri P.K.Mitra Ex. TI/Safety/APDJ (Now at Siliguri) covering journey Ex. Siliguri/NBQ and NBQ and BNGN and the pass may be sent in his present home address given below:-

Shri P.K.Mitra, Retd. TI/Safety/APDJ

133 East Millan Polly

contd...2.

*certified to be true  
S.K. Kante  
Advocate*

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- 2 -

P.O. Siliguri Bazar,

Dist. Darjeeling, West Bengal

PIN -

5. Sri P.K.Mitra, Ex. TI/Safety/APDJ Defence Counsel  
of C.O. Hâ is requested to attend during enquiry  
positively.

6. /APDJ for information please.

7.

8.

(J.L.Bargiyari)

E.O.

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ANNEXURE - VI

Regular hearing against major memorandum of  
Sri N.C.Barman Gateman NLV vide Sr.DOM/APDJ's  
letter No. T2/AP/T/4/2001-2002 dated 17.10.2001.

Date: 05-02-2002.

Present : I. Shri N.C.Barman, Gateman NLV charged  
official:

II. Shri P.K.Mitra ,Retd. TI/Safety/APDJ,  
the nominated Defence counsel of  
Sri N.C.Barman.

Question to Sri N.C.Barman, Gateman, NLV the charge  
official in presence of nominated Defence counsel:-

Ques. No.1 - Although during preliminary enquiry  
you explain that you received the major  
memorandum No.T2/AP/T/4/2001-2002 dt.  
17.10.2001 issued by AOM/APDJ (Disci-  
plinary authority) and you have  
understood the same. You are once again  
asked to confirm as to whether you have  
understood the charges levelled against  
to you ?

Asn: Yes.

Ques No.2 Being the E.O. I would like to apprise  
you in presence of your D.C. that your  
request for production of Defence docu-  
ments and witnesses is not considered  
separately as the complete report of  
CRS/SC Circle includes the reference  
of the documents and the deposition  
of the witnesses for which and whom  
contd...2.

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45-

you submitted your prayer. The xrox copy of the report supplied to you may be carefully gone through with the assistance of your D.C. and state as to whether you are in a position to go ahead with the proceedings of the regular hearing ?

Asn. Having gone through the report of CRS and as explain by ~~me~~ my D.C. I offer my comments that you may please go ahead with the proceedings of the regular hearing and also request to see that all the reasonable opportunity is given to me effectively and adequately.

Ques.No. The incident of accidents at L.C. Gate No. 3. SK-21 where you were on duty from 22.00 hrs. to 06.00 hrs. shift of 23/24.07.2001 took place at about 01.08 hrs. on 24.7.2001. Can you remember as to how the accident took place and you are advised to give a statement in brief regarding the accident.

Ans: As per as I can remember in the night of 23/24.7.2001 regarding passage of Dn.~~38fx~~ Security Pilot engine, Sri B.K.Barma on duty SM at NLV station informed and advised to close the gate against the road traffic supported by a private No.(82).After closing the gate by operating the winch without pad locking (there being no provision of lever/ pad locking) I issued private No.(88).After doing so one maruti Gypsy coming from BG side

contd...3.



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stopped outside the closed barrier. One Police person with uniform came out of the vehicle and without asking anything, he hurriedly lifted the unlocked barrier and the gypsy entered on to the BG track which before clearing the BG track was checked by the approaching Dn. Security Pilot(L.engine) causing accident.

At that stage, out of panic of being harrassed by the police I left the working place leaving behind everything in the goomty. But I open the gate by operating winch while leaving the gate I found a few bodies of police personnel lying around the BG track. Seeing them in such condition, I rushed towards station and informed of the incidents to SS/NLV Sri Anshari in his Rly. Qtr. and Sri Barma on duty SM at NLV station. Thereafter I kept myself allop from the station premises.

Ques.No.4. Are you aware of the working procedure of Gate No. SK-21 for the passage of train over it as per SMR?

Ans. As per SMR, as per I can remember, the SM on duty at NLV station with informed the gateman about the No. and description of the train and it is expected time of passing over the gate supported by private No. advising the gateman to close and lock the gate against the road traffic and watch the moving train and exchange all right signal with the guard. The gateman after safe passage of the train will then open the gate for the road traffic.

contd....4

Ques No.5 - Can you say whether the procedure of working as described by you above was being followed in practice or there was any local arrangement in this regard specially for DN train ?

Ans. The system varies SM to SM as for example, the SS Mr. Anshari after exchanging private No. for a Dn train, intimates the departure of DN train Ex. GOE and instructs the gateman to close the gate. Whereas the other ASMs after departure DN train from GOE, exchange private Nos. and the gate after closing the gate issued the private No.

Ques. No.6 - Have you brought the matter of deviation of the working procedure from that which have been written in the SWR to your higher authority and what was response ?

Ans. I have brought it to the knowledge of SS including there being no system of Leyer/ Pad locking. In response it was stated that action was being taken from his end. Beside I along with my co-worker suggested to get this L.C. Gate interlocked considering its location and importance.

Ques No.7 It is revealed from the deposition of Sri C.K. Datta, driver of Dn. Security Pilot while approaching NLV station he found the signal aspects in favour of the train to pass through but the gate booms were in open condition and no gateman was found by him.

contd....6

What is your comments on this ?

Ans - This gate is non-interlocked. As such booking of signal by the SM from the panel does not have any bearing with the closing of gate.

As I have stated earlier that the police man lifted the closed barrier prior to the passage of the engine over the gate, naturally. Therefore, the driver found the gate booms in open condition.

When the moving engine entered the gate portion having a vehicle on the BG track, it was quite natural that the attention of the driver was confined to save the dashing.

Therefore, he had no scope to look at me.

Ques No. 8 - After the accident various officials attended the site of accident including Sectional TI who while had gone gate goompty to seize the gate records, the gate log register and the private Nos. sheet are not found available. These records were subsequently found available with few concerned pages in thorn and missing condition. How it was possible ?

Ans - I left the gate goompty immediately after accident leaving behind all the records including those two in sound condition but I cannot say how these was happen.

Ques No. 9 Clarify whether on the day of occurrence, you closed the gate on receiving First information from SM/NLV Sri Barma or

contd...7-

or closing was done after received of communication about report of the pilot engine Ex. GOE by Shri Barma to you.

Ans. - AS I have already deposte that only SS Sri Anshari advise the gateman to close the gate after receiving out report from GOE and communication of the same to the gateman. Therefore, it is implied that out report of the pilot engine was not communicated to me by the SM Sri Barma and I closed the gate on received First information. to me.

Ques.No.10 - Once again confirm as to whether you closed the gate for the passage of DN Security pilot on received of First information from SM on duty or you closed it after communication the out report of the engine Ex. GOE by the SM Sri Barma to you ?

Ans- I confirm that on receive of First information from the SM I closed the gate and issued private No. from my end.

QuesNo.11 - State after exchanging between SM NLV and gate man of SK-21 what is the time required to pass the mail/Exp/Light engine in DN direction ?

Ans- Normally if private No. is exchanged after receiving out report Ex. GOE it ~~requires~~ requires 6 to 7 mts. time. If private No. is exchanged after out report Ex. RNY it requires about 16 to 17 mt. time.

contd...8

Ques.No.12 - What is the running time of a light engine between GOE and NLV ?

Ans- It is about 6 to 7 mts.

Ques No.13 - State whether the SM on duty at NLV during informing the gate man of SK-21 about the No. and description of a DN train likely to pass over the gate, give any reference about leaving of the train Ex. GOE or NLV ?

Ans- Yes, reference of leaving station is given. In this connection I would like to clarify that when information is given after receiving out report from GOE, private No. is ~~issued~~ issued by the gateman after closing the gate which I did on the day of accident.

When information is given with reference to the out report from RNY gate is not closed and private is not issued to make inconvenient to the road users. In such case on receive of information about out report Ex. GOE gate is closed and private is issued.

Ques No.14 - It is implied from your answer to the ~~private~~ ~~question~~ previous question that out report of DN train also communicates to the gateman by the SM on duty. How then you can say that besides, SS, ASM do not communicate out report to the gateman of SK-21 ?

Ans- I mean to say that the SMS exchange with the gateman of SK-21 only after receiving of out report of a DN train from GOE.

contd...9

Ques No.15 - Since how long you are working as a gateman of SK-21 ?

Ans. - About 22 years.

Ques No.16 - During first one year prior to the fate of this accident was there any such occurrence of forcibly opening the closed barrier by ~~any~~ any person of road vehicle and attempting to cross the level ~~crossing~~ crossing in face of approaching train ?

Ans- No. But there are instances of lifting the closed barrier by the road users even with motorable vehicle like Scootar etc. for their passage over the level crossing in face of approaching train. Fortunately the accident did not occurred but in these instant case, Police personnel could not success in passing the BG track as a result dashing in the moving engine took place.

I had no control besides informing them about the approaching engine which they have also seen as the engine was approaching sounding whistle with its self roaring sound.

Ques. No.17- Can you substantiate by any witness in support of your closing the gate for the passage of engine ?

Ans.- It was midnight, people generally do not come out fearing the insurgency activities. Only security agencies conducted patrolling duties. On the night, the police personnel also

were rushing with maruty Gypsy towards the  
insurgency activities spot for which they did  
not even care for the approaching engine and  
forcibly open the gate and trapped.

Ques : How could you know that Police Gypsy was moving  
No. 18. towards insurgency activities spot ?

Ans- I have heard about later on.

The enquiry is adjourned to-day. Next date of  
hearing is likely to be fixed within next 10(ten) day.

Sd/-

Narayan Ch. Barman

5/1/2002

Sd/- P.K.Mitra  
DC. 05/1/2002

Sd/-

EQ.

Question put by E.O. to Sri R.C.Das Gupta gateman/NLV  
as witness No.3 who was work as on duty gateman at  
L.C. Gate No. SK-21.

Ques No.1 -How long you are working as gateman of SK-21  
L.C. gate of NLV station ?

Ans- Since Oct/1986.

Ques No.2 - For the passage of DN train how prigate No.  
is exehanged between you and SM on duty of  
NLV station ? prior to the accident in the  
night of 23/24-07-2001 ?

Ans- Prior to the accident of 23/24-07-2001 as per  
as I can remember that private was exchanged  
before closing the gate with SM on duty. The  
SM on duty used to inform me about the out  
report of the train Ex. GOE advising me to  
close the gate and I after closing the gate  
used to inform him about the closure of the  
gate and he used to take off signals from the  
panel for reception of the train.

Ques No.3-Please explain about the working system of  
trains of SK-21 with NLV station as per SWR ?

Ans- The SM will intimate the gateman about the No.  
and description of the train and its expected  
time of passing over the gate supported by a  
private No. to thw ~~SM~~ SM on duty, who, then  
will take off the signal of the train.

Ques No.4- In reference to your answer to question No.2  
and 3 it is seen that there is variation in

contd...12



54

23

the procedure of closing the gate for the passage of DN train. Why such variation, please explain ?

Ans- In view of closure of this bussy gate for a longer period the local arrangement are being adopted by the SM on duty which I have described in my ans. to question No. 3. Thus there is variation in the procedure in closing the gate in Dn. train.

Ques No.5-Let me want to know, is there any rectification of L.C. gate was done by Engg. officials after the that accident prior to inspection of CRS ?

Ans- Yes. The Engg. staff under the supervision of PWI Sri Saharia and Sri Gayari worked at the L.C. gate rectified the manual locking arrangement of the lifting barrier, adjusted the load of the barriers for proper housing of the barriers with the gate post as it was lying in lifted position even after closure of the gate. They also provided gate lamp provided road sign board and painted gate barriers and supplied all deficient safety equipments.

Cross examination between the CO and witness No.1 by E.C.

Ques to C.O. - In your answer to question No. 14 during regular hearing on 5-1-2002, you mentioned that only SS Sri Anshari communicates the out report of DN train to you as gateman of SK-21 advising

contd...13.

to close the gate and accordingly after closing the gate you confirm him and then he takes of signal. ASM do not communicate out report to you. They only exchange private No. once for all. The on duty Sri B.K.Barma and the other ASM of NLV station have expressed that they follows the local arrangement as per SS/NLV which indicates that out report of Dn. Train is communicated to you by all the SMS of NLV station. What is your comments in this regard ?

Ans- In fact, as per local arrangement private No. is exchanged with the SM prior to the closure of the gate. The gate is closed after receipt of communication of the out report by the SM on duty and he advice to close the gate.

While answering question No.14 on 5-1-2002, I did not fully reconcile the issue carefully. Now I have reconciled and given my reply which was the practice involved.

Ques No. From your above answer, thus it not constitute that Sri B.K.Barma communicated you the out report of Dn Security pilot and then you closed the gate for the passage of the pilot over the gate ?

Ans- Yes.

Ques - Once again you are asked to explain as to how the Maruty Gypsy entered into the Rly. track in face of approaching Security Pilot ?

contd....14

Ans- I once again confirm that I closed the gate for the passage of Dn. Security pilot but could not lock there being no provision. The Gypsy entered the Rly. track by lifting the originally lifted lifting barrier by hand by Police.

Sd/-	Sd/-	N.C. Barman	Sd/-
		16/1/02	
E.O.	DC 16/1/2002	C.O.	Witness 16/1/02.

Regular hearing against the major Memorandum of Sri N.C. Barman, gateman NLV vide Sr.DOM/APDJ's office letter No.T2/AP/T/4/2001-2002 dt.17-10-2001.

Date 16/01/2002.

Present: 1. The charge official with his D.C.

2. Witnesses.

Question to Sri Basant Kr. Barma witness No.1 on duty

ASM of NLV. station at the time accident by E.O.

Question No. 1 - How long you are working as ASM at NLV station ?

Ans - Since last 3 years.

Ques No.2 - Please explain the procedure of exchangeing private No. with gateman of SK-21 ~~for the Dn.~~  
~~xxxxxx privatexxxx~~ specially for the passage of Dn. train ?

Ans- After granting L.C.for the Dn train, private No. is exchanged with the gateman. He is advised to close the gate against the road traffic while out report of the train Ex. GOE is communicated to him. These procedure is followed to avoid closure of the gate for a longer period as well as to avoid agitation from the road users as this gate is situated in the hear of the NLV Dist. Town.

Ques No.3 - While you are performing Night shift duty on 23/24-7-2001 at NLV station, did you adopt the above procedure for the passage of Dn. Security pilot No. 14840 ?

Ans - Yes

contd.... 16

Ques No.4 - How did you ensure that Sri N.C.Barman, on duty gateman at L.C. gate No. SK-21 actually/ physically closed the gate after communicating the out report of the pilot by you to Shri Barman ?

Ans - There is no means on the part of on duty of SM/NLV to directly ensure as to whether the gate is physically closed by the gateman or not. Therefore, in this regard the SM on duty is to rely upon the saying of the gateman.

Ques No.5 - While exchange private Nos. with gateman of SK-21 could you recognise the voice of Sri N.C.Barman ?

Ans- I am famillier to the voice of Shri Barman on telephone and I confirm that I talked to Shri Baman and exchange private No. with him.

Ques No.6 - It is revealed from the deposition of Shri Barman that Out report of the Dn. train is always communicated by the SS Sri Abshwari, but it varies from one ASM to the other which includes you also. What is your comments in this regard ?

Ans- In this connection I comment that I always use to communicate the out report to the gateman of SK-21 who ever on duty advising them to close the gate. I cannot say as to how Sri Barman had given such a statement. I also request that my deposition may also be cross checked with other ASM to find out the truth.

contd....17

Ques No.7 - From the above ~~you ask~~ your question to Answer, it is seen that private No. is exchanged must earlier but gate is physically closed by the gateman after received of communication of the out report Ex.GOE by the on duty SM to him. Do you agree to this ?

Ans - Yes.

Question put by D.C.

Ques No.8 - Since how long during your duty hrs. you work with Sri N.C. Barman, Gateman at L.C. gate No. SK-21 ?

Ans- It is very difficult to indicate the total period of working but as and when as per duty roster we work in the same shift I work with him.

Ans - 9 Have you come across any situation in the past during your duty shift that Shri Barman without complying with your advice of closing the gate for the passage of Dn. train kept the gate open ?

Ans- No.

Ques No. 10 - On 23/24-7-2001, after the accident did any body report you about keeping the gate open during the passage of Dn. Security pilot ?

Ans No.

Sd/-

Sd/-

Sd/-

Sd/-

E.O.

D.C.

N.C.Barman

Witness.

60 Amr... V11 7A

Written brief in connection with DAR Enquiry held against Shri Narayan Chandra Barman, Gateman/Tfc/NLV with reference to Major Memorandum No. T2/AP/T/- 001-2002 dated 17-10-2001 issued by AOM/APDJ (Disciplinary Authority)

1. The enquiry has been conducted by Shri J.L.Bargayari, TI/B:SGN, the nominated E.O.
2. Shri N.C.Barman, Gateman/Tfc/NLV, the Charged Official, has been assisted by his *nominated* Defence Counsel - Shri P.K.Mitra, Retd. TI(Safety)/APDJ.
3. The allegation against Shri N.C.Barman, Gateman, is that on 23/24.7.2001, while performing night shift duty at Traffic Non-interlocked LC Gate No.SK/21 at NLV station yard towards GOR end, there was an accident of dashing between Running Down Security Pilot Engine No.14840 and Maruti Gypsy No.AS-30/0928 of Assam Police at this Gate. As a result of which 6 police personnel and one civilian were killed and two police personnel traveling by the gypsy sustained grievous injury.

In this connection, Shri Barman has been charged for carelessness in violation of GR 16.03/4(iii) and Rule 3.1(i), (ii) and (iii) of Railway Service (Conduct) Rules, 1966, based on the report of the enquiry conducted by CRS, S.C. Circle.

4. The charged official Shri Barman during preliminary hearing refuted the charges leveled against him and explained during final hearing that he exchanged Private No. with SM/NLV after closing the gate against the road traffic for the passage of Dn Security Pilot No. 14840 but the barriers not locked there being no provision of locking.

The above statement was also given by Shri Barman to CRS during the enquiry. About the cause of accident, Shri Barman stated that while Dn Security Pilot was approaching the LC Gate, a Maruti Gypsy coming from BG side stopped out side the closed barriers, a police person came out of the Gypsy, lifted the closed unlocked barrier ignoring his warning given to the police man about/thus the Gypsy entered on to the BG track and the accident occurred. The Gateman left the working spot due to fear of police personnel but he had gone to SS/NLV in his Rly.Qrs. and SM on duty at NLV station and reported the incident.

5. CRS in part 5.3.10 of his report has mentioned that a trial was conducted by him to see whether it was possible for a Gypsy to enter into the Railway track by lifting the lifting barrier by hand and since it was not possible it gave an impression that the Gateman was telling cooked up stories and had not given true picture of what had happened.

In this connection attention of the E.O is drawn to the vital point that the accident took place at about 01-08 hrs. on 24.07.2001 and CRS/S.C. Circle conducted the trial on 25.07.2001 after reaching site about 16.30 hrs. and it is quite natural that some adjustment of the lifting barriers had been made by the concerned maintenance staff in view of inspection of CRS. Therefore, during trial it was found not possible on the part of a Gypsy to enter into the track by lifting the lifting barrier by hand. Besides, that the load of the barriers was adjusted by the engg. staff is established by the deposition of W/NO.3.

By this arguments, it can be established the Gateman had given true picture in respect of entering the Gypsy inside the Railway BG track in face approaching train by force opening the unlocked barrier.

Contd...P/2

*approaching train,*


*corroboration to be true copy*  
*S.K. Kaul*  
*Advocate*

Further that the condition of the gate was unsatisfactory and that even manual arrangements were not available and the same had been provided after the accident have been reflected by CRS himself in second para of part 1.2.3 of his report which establishes that the gate was attended to by the maintenance staff after the accident and prior to the inspection of CRS and adjustment of the barriers was done.

6. Regarding evidence given by public evidences, Shri Binoy Kumar Basumary and Shri Manoj Kumar Das of 4 AP Bn traveling by Gypsy about seeing the gate in open condition and absence of Gateman as indicated by CRS in last para of Pt. 1.2.3 of his report, attention of EO is drawn to the point that these two police personnel were sitting on the back side of the Gypsy as is revealed from Pt. 5.1.1. It means that these two police personnel were looking towards back side brandishing the rifle for facing any possible attack of miscreants/militants from the rear end. In that case, how they could look for the condition of the gate and the Gateman as such their deposition to CRS about seeing the gate in open condition while the Gypsy approach the Gate from EG side and absence of Gateman from the Gate is far from truth.
7. Regarding evidence of Driver and DAD of Dn Security Pilot as per Pt. 5.2.1. & 5.2.2., in seeing the gate open while the engine approached nearer to the Gate, it is mentioned that as the Gate was forced open by the police person lifting the unlocked lifting barrier by hand, it was quite natural that the gate was found open by them but their statements mentioning non-availability of the Gateman cannot be agreed to be true because seeing the sudden obstruction on their way, they obviously engaged themselves in taking action to stop the engine for avoiding the accident.

Under the above circumstances, the attention of both Driver and DAD towards the front side of the Loco and therefore, they had no scope to look for the Gateman who was on the goomty's side i.e. on MG side to watch over the moving engine.

In view of the above, it is requested that the EO before findings of the case will apply his judicious mind as the charges brought out against the CO are not sustainable.

  
(P. K. MITRA) 17.11.2002  
Defence Counsel

Submitted to EO



ANNEXURE-VIII

To

The AOM/APDJ

N.F. Railway,

Disciplinary Authority

Sir,

Sub:- Major penalty charge Memorandum

No.T2/~~XXXX~~ AP/T/14/2001-2002

dt.17-10-01.

With due respect I beg to submit that the D & AR enquiry on the aforesaid charge Memorandum has been conducted by Shri Borgiary, TI/RNY and the report in this connection has been submitted by him. But, Sir, the copy of the said report has not been given to me.

Regretted

Sd/-

21/1/03

Since I have been removed from service, I like to submit an appeal to Reviewing Authority to consider my case. In this connection a copy of the EO's Report is essentially required.

Therefore, I request your honour to kindly arrange supply of the said Report by the earliest and for the act of which I shall remain ever grateful.

Yours faithfully,

Sd/-Narayan Ch. Barman

Gateman/NLV(Nalbari)

*certified to be true copy  
A.K.K. Chatterjee  
Advocate*

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Immanu DX 82

N.F. Railway

Office of the  
Divl. Railway Manager (Optns.)  
Alipurduar Junction

No. T2/AP/T/4/2001-2002

Date :- 11-04-2002

To,  
Shri N.C. Barman,  
Ex-Gateman/Nalbari,  
Village - Parakuchi,  
P.O. - Sandha,  
Dist - Nalbari (Assam).

Sub :- Appeal dated 27-03-2002 against Notice of Imposition of Punishment.  
Ref :- Major Memorandum No. T2/AP/T/4/2001-2002 dated 04-09-2001 & NIP  
No. T2/AP/T/4/2001-2002 dated 21-02-2002 issued to Shri N.C. Barman,  
Gateman/NLV.

...  
Please note that on your subject mentioned appeal, Sr. Divisional Operations  
Manager, Alipurduar Junction, the Appellate Authority, has passed the following orders :-

"I have carefully considered all the facts relating to the case. Having carefully  
undergone the appeal of charged official Shri N.C. Barman, Gateman/NLV, the following  
conclusion have been drawn :-

- 1) As per CRS's enquiry, while Shri N.C. Barman was on duty from 22-00 hrs. of 23-07-2001 to 06-00 hrs. of 24-07-2001 at Tfc. L.C. Gate No. SK-21 near NLV station, a Maruti Gypsy (No. AS-30-0928) collided with Security Engine and as many as seven lives were lost. Shri Barman was held primary responsible for violating the provisions of Station Working Rules / Gate Working Instructions, General Rules and Subsidiary Rules as per para 8.2.1 to CRS's enquiry on page No. 22. The relevant extracts of Rules violated were given in Annexure - II of CRS's enquiry which reads -

S.R. 16.03/4 (iii) : Exchange of Private No. between Station Master and Gateman :-

- (a) Private Number shall be exchanged between the Station Masters and Gatemen at all non-interlocked Traffic and Engineering Level Crossing Gates provided with telephonic communication so as to ensure that the Station Master and Gateman have duly communicated and received the instruction / information about the movement of the trains and other shunt movements across the level crossing. For this purpose, the Station Master on duty, before granting Line Clear for a train or before permitting a train to start from his station or before any shunt movements necessitating closure of the level crossing gate(s) shall inform the Gateman on duty about the number and description of the approaching / outgoing trains or brief particulars in case of shunt movements with expected time to pass over the Level Crossing. The Station Master shall give a Private Number in confirmation of the instruction / information communicated to the Gateman and the Gateman shall as an assurance of having closed and locked the gate for safe passage of trains, give a Private Number to the Station Master.

Contd. to .....P/2

*certified to be true copy  
D. K. Maite  
Advocate*

The number and description of trains / brief particulars of shunt movements necessitating closure of the Level Crossing Gate and Private Number exchanged thereof, shall be recorded in a register to be maintained for this purpose both at the station and level crossing gate lodge.

- 2) To establish the responsibility further and giving opportunity to charged official as per canons of natural justice, a DAR enquiry was ordered for which Shri J.L.Bargayari, TI/BNGN was nominated as Enquiry Officer. The enquiry came to conclusion that location of Traffic 'C' class manned interlocked L.C.Gate SK-21 of NLV station and the local arrangements made by the NLV station staff to avoid closure of L.C.Gate for a longer period were in violation of instructions contained in S.R. 16.3/4 (iii). The deficiencies of the Gate pointed out in the CRS's enquiry were made good later on after the accident.

The enquiry further held that evidences of two Police Constables of 4 APBN traveling on back side of the Gypsy in seeing the Gate in open condition could not be considered as true. Further, enquiry also concluded that negligence of Shri N.C.Barman cannot be proved for want of evidence as people are generally not coming out due to harassment by Security Agency and based on the above reasons the enquiry came to the conclusion that the Gteman Shri Barman cannot be held directly responsible for violation of S.R. 16.3/4 (iii) due to non provision of lever locking system or manual locking system of L.C. Gate. However, enquiry held Shri Barman responsible for violating the Railway Service ( Conduct ) Rules 3.1.(i), (ii) & (iii) for tearing off concerned pages of Gate Lodge Register and Private No. sheets.

The Disciplinary Authority after considering issued his speaking orders as per SN 219, over-turned the enquiry findings for being inconclusive and not taking into of full facts as detailed in CRS's enquiry. Also the records of Private Number and four pages of L.C.Gate Lodge Register being torn off by the Gteman were also held against him and a punishment of dismissal from service as required by Railway Board Guidelines circulated under No. 99/Safety(A&R)6/1 dated 23-04-99 was imposed. After receipt of this Notice of Imposition of Punishment issued vide No. T2/AP/T/4/2001-2002 dated 21-02-2002, an appeal dated 27-03-2002, received on 01-04-2002, was submitted by Shri Barman to Sr.DOM.

In this appeal the parawise statement was made against imposition of punishment by AOM(C)/APDJ (Disciplinary Authority) as placed on SN-226.

Para 1 of the appeal says that the occupants of the Maruti Gypsy No. AS-30-0928 attempted to cross the L.C.Gate by forcibly lifting the barrier on BG side. He says, barrier as usual was not properly housed and there was also no locking arrangements to secure the boom. This fact as brought out in the enquiry by Shri J.L.Bargayari, TI/BNGN (EO) cannot be ascertained for want of evidence being night time and therefore, untenable.

In para 2, the appeal says the charges framed against him were vague, factually incorrect and were aimed at making me a scapegoat. This argument is also untenable as in CRS's enquiry a total of 5 persons / departments were held responsible for this accident. The responsibility fixed by CRS enquiry as per para 8.2.1, 8.2.2 and 8.2.3 are as under :-

Contd.to.....P/3

- 8.2.1. Primary - Shri N.C.Barman, Gateman/NLV,  
8.2.2. Secondary - None,  
8.2.3. Blameworthy -  
(i) Shri Basanta Kumar Barman, ASM/NLV,  
(ii) Shri Alisher Ansari, SM/NLV,  
(iii) Shri Janaklal Bargayari, TI/RNY now TI/BNGN,  
(iv) Engineering Department of APDJ Division.

Therefore, seeing that he was made scapegoat was not correct. Further, the Charge Sheet was accurate as the violation of Rules and also the lapses on the part of employee were clearly identified and brought out.

The Charge Sheet was revised in the light of CRS's enquiry and not on the representation of the employee.

In the para 6 of his appeal, the employee submits that enquiry proceedings were conducted in hasty manner and copies of the proceedings and CRS's report were supplied to him and the same were not complete. For this, the employee had to face hindrance in preparation of his explanation. This argument is not acceptable as this could have been brought out at the time of enquiry itself and there was no haste in the enquiry as is evident from the time taken to complete it and Shri Barman was given full freedom to bring out any fact which he deemed fit.

In para 9 the appellant states that the order was passed without giving reasonable opportunity to make representation is incorrect as due opportunity was given to him at the time of enquiry to bring out any fact having bearing on the case.

In para 18 the appellant submits that the penalty has been imposed on the total disproportionate is also untenable as this was a case of gross misconduct resulting in loss of lives affecting Railway image and endangering the safety and also as per guidelines issued by Railway Board (Ministry of Railways) circulated under No. 99/Safety (A&R)/6/1 dated 23-04-99. No new fact or evidence has been brought out in this appeal having bearing on the whole case.

However, as the delinquent employee's family is totally dependent on him and to reduce the hardship on them, I decide to impose the penalty of removal from service as a result of this appeal with compassionate allowance at two-third of pension admissible to the employee Shri N.C.Barman.

This order is without any prejudice and review can be applied for as per prescribed norms. "

*Shand*  
Divl.Rly.Manager (Opns.),  
N.F.Railway, Alipurduar Junction

Copy to :-  
DRM(P)/APDJ (ET/Bill, Cadre) for information and necessary action please.

*Shand*  
Divl.Rly.Manager (Opns.),  
N.F.Railway, Alipurduar Junction

*TV*  
*17/04/01*

*2-*

-66-

Amun Xob



150 GLORIOUS YEARS

OFFICE OF THE  
DIVISIONAL RAILWAY MANAGER (O)  
N.E. RLY/ALIPURDUAR JUNCTION.

No. T2/AP/T/4/2001-2002

DATE: 22-07-2002

To,

Sri. N.C. Barman,  
Ex. Gateman/Nalbari,  
Village - Parakuchi,  
P.O. - Sandha,  
Dist - Nalbari (Assam)

**Sub: Marcy appeal dated 11-07-02 against Review punishment.**

**Ref: Punishment letter No. T2/AP/T/4/2001-2002 dt. 11-04-02.**

Please note that on your subject mentioned appeal, Divisional Railway Manager/Alipurduar Junction, has passed the following orders:

" I have considered the Marcy appeal of the employee very sympathetically. A small percentage chance of the policemen lifting the level crossing barrier and rush to the place of firing (acute emergency) between ULFA extremists and police personal cannot be ruled out.

In view of the above reasons the punishment of dismissal is reduced to removal with maximum pensionary + gratuity benefits as admissible under rules".

Sd/-  
Divisional Railway Manager (O)  
N.E. Railway/Alipurduar Jn.

Copy to: - ET cadre, ET Bill - for information and necessary action please.

Divisional Railway Manager (O)  
N.E. Railway/Alipurduar Jn.

withd. John June 1997  
S. K. Nalbari  
Advocate

- 67 -

Filed by  
Name  
20/8/03  
Dr. M. C. Saxena  
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH, GUWAHATI.

IN THE MATTER OF

O.A. 31 OF 2003.

Shri N.C, Barman

Applicant

Versus

Union of India represented

by General Manager, N.F.

Railway and others

Respondents

AND

IN THE MATTER OF

Written Statement for and on behalf  
of the Respondents

The answering Respondents most respectfully  
SHEWETH AS under:

1. That the answering Respondents have gone through the copy of the application filed by the applicant and have understood the contents thereof. Save and except those statements which are specifically admitted herein below or those which are borne on records all other averments/allegations as made in the application are emphatically hereby denied and the applicant is put to the strictest proof thereof.

2. That for the sake of brevity meticulous denial of each and every allegation/statement made in the application has been avoided. However, the answering respondents have confined their replies to those points/allegations/averments of the applicant which are found relevant for enabling a proper decision on the matter.

3. That the application suffers from want of a valid cause of action. The applicant has no cause of action whatsoever to file the application as will be clear from the following submissions.

4. That the application suffers from wrong representation and lack of understanding of the circumstances and facts relating to the matter on hand as will be clear from the submissions made.

.... P. 2 .....

*Sanjay T. Gupta*  
Sr. Divl. Operations Manager  
N.F. Railway, Guwahati  
N.F. Railway/Alipor Road Jn.

5. At this stage the answering respondents beg<sup>7</sup> to submit a brief history of the matter as follows:-

Brief history

5.1 .The applicant was a Gateman in level crossing Gate No.SK 21 located at Nalbari Station of N.F.Railway. He was on duty from 22.00 hours (10 P.M.) of 23.7.2001 to 06.00 hours (6 A.M.) of 24.7.2001 and his duty and responsibility was to close the level crossing by lowering the Gate boom against road traffic before a train or an engine passed as per instruction of the Station Master on duty. At about 01.08 hours of 24.7.2001 while the Security Pilot Engine No.14840 was approaching the Level Crossing gate manned by the applicant, a Maruti Gypsy No. AS30/0928 of Assam State Police suddenly entered the Railway track as the Gate was in open condition and dashed against the Engine and as a result 7 (seven) persons of the Maruti Gypsy (6 Police personnel and one photographer) died and 2(two) persons of the Maruti Gypsy sustained grievous injury.

5.2.As the accident was of a very serious nature the Railway Ministry instituted a statutory enquiry into the matter through the Chief Commissioner of Railway Safety, under the Ministry of Civil Aviation and independent of the Ministry of Railway. Accordingly, Shri R.P.Agarwal, Commissioner of Railway Safety, South Central Circle, Secunderabad was entrusted to do the enquiry. Shri Agarwal enquired into the accident after site inspection at Nalbari between 25.7.2001 and 27.7.2001. After taking oral and written evidence of 26 witnesses and visit to the site of occurrence, the Commissioner of Railway Safety concluded in his final report dated 4.10.2001 about responsibility for the accident as follows:-

Responsibility

Primary: Shri N.C.Barman, Gateman, Nalbari working as regular Gateman at manned non-interlocked Traffic level crossing gate No. SK 21 is primarily responsible for the above accident.

He has violated the provisions of Station Working Rules/Gate Working Instructions, General Rules and Subsidiary Rules.

Secondary: None is held secondarily responsible.

*Am*  
 Dy. Secy. (Operations) Manager,  
 Sanjay Lal Pathi  
 Secy. (Ops), Aligarh Jn.  
 N.F. Railway/Aligarh Jn.

5.3. The Respondents beg to state that the report of the Commissioner of Railway Safety is of confidential nature. They therefore seek leave of the Hon'ble Tribunal to show the ~~xxx~~ copy of the same at the time of hearing.

6. DAR proceedings:

DAR proceedings against Shri N.C. Barman was started by issue of charge sheet on 17.10.2001 as referred to in annexure IV of the O.A. On conclusion of the enquiry proceedings and after due consideration of various aspects of the enquiry report, the disciplinary authority passed order for dismissal of the applicant from service. On appeal, the Appellate authority took a compassionate view of the hardship caused by the order for dismissal to his family and converted the same to removal from service with compassionate allowance of two-third pension to Shri Barman. Further, on sympathetic consideration of a mercy appeal, the Divisional Railway Manager, Alipurduar Junction Division reduced the punishment of dismissal to removal with maximum pensionary plus gratuity benefits as admissible under the rules.

7. Parawise comments:

The answering Respondents submit the parawise comments as follows:-

7.1. As regards para 4.1 the answering Respondents have no comments to offer.

7.2. In regard to para 4.2 the Answering Respondents submit that the level crossing gate manned by the applicant was not closed to road traffic as required under the rules and hence the accident occurred. The claim of the applicant that the occupants of the Maruti Gypsy forcibly opened the gate is not sustainable as the contrary was proved by trial conducted at the site of accident by the high level enquiry. It is to be noted that after the accident the Gateman (the applicant) was absconding and the pages of the Level Crossing Book were torn off and the Private Number Exchange Book was found missing. All these also indicated involvement of the applicant in the accident.

7.3. As regards paras 4.3 to 4.7 the answering Respondents beg to state that as the matters referred to

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in those paragraphs are borne on records and therefore no comments are offered except to state that some of the averments are made to mislead the Hon'ble Tribunal.

7.4. As regards para 4.8 the answering Respondents beg to state that they did not receive the undated letter mentioned in Annexure VIII, page 62 of the O.A. If this request for a copy of the disciplinary enquiry report were received, the same would have been given to the applicant as he admittedly has a right to get the same as per DAR procedure and practice. It is therefore prayed that the applicant be put to the strictest proof of the same. It is therefore submitted that as the letter of request was not received, the question of refusal to furnish a copy of the enquiry report does not arise.

7.5. As regards paras 4.9 to 4.12 the answering Respondents beg to submit that the allegations made in these paras are denied. The answering Respondents beg to clarify that the DAR enquiry held the applicant responsible for violation of the provisions of Rule 3(1), (i), (ii) and (iii) of the Railway Services Conduct Rules, 1966 which provides that :

Every railway servant shall at all times:-

- (i) maintain absolute integrity;
- (ii) maintain devotion to duty; and
- (iii) do nothing which is unbecoming of a railway or Government servant.

The conduct of the applicant at the time and subsequent to the occurrence of the unfortunate accident, the tearing off of the Level Crossing Book pages and the missing Private Number Exchange Book from the Gate lodge immediately after the accident firmed up the above-mentioned conclusion of the DAR enquiry authority.

8. It is further submitted here that though initially the punishment given to the applicant was dismissal from service, on subsequent appeal the severity of the punishment was lightened to that of removal from service with compassionate grant of  $\frac{2}{3}$ rd (two-third) of

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his pension. On further consideration of a mercy appeal, the Divisional Railway Manager, Alipurduar Junction Division of N.F. Railway lightened the punishment by grant of maximum gratuity benefits as admissible under the rules.

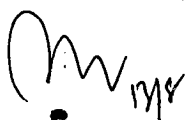
9. The answering respondents therefore submit that the foregoing proves that the applicant was given due consideration by the Respondents at every state of his DAR proceedings upto the stage of mercy appeal although he was considered violating the provisions of conduct rules leading to a serious accident causing death of seven precious human lives and grievous injury to several others.

It is therefore prayed that the elaborate grounds for relief made out by the applicant are not valid. The answering Respondents therefore pray that the Hon'ble Tribunal may dismiss the application with costs.

#### VERIFICATION

I, Shri SANJAY TRIPATHI, aged about 36 years, son of Shri O. P. Tripathi, at present working as Sr. DDM. AM, N.F. Railway do hereby solemnly affirm that the statements made in paragraphs 1, 2, 3 and 4 are true to my knowledge and those made in paragraphs 5, 1 to 5, 3, 6, 7, 1 to 7, 5 and 8 being matters of record are true to my information derived therefrom which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this, the thirteenth day of August, 2003.

  
 Sanjay Tripathi  
 Sr. DDM, Alipurduar Jn.  
 N.F. Railway/Alipurduar Jn.  
 FOR AND ON BEHALF OF  
 UNION OF INDIA