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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 113/2004

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office not page-1

SECTION OFFICER (Judl.)

Shah
09.11.17

Contd/-

FORM No.4
(SEE RULE 12)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Org. App. / Misc Petn / Cont. Petn / Rev. Appl. 11/3/2004

In O.A.

Name of the Applicant(s) DR. A. Bagchi

Name of the Respondent(s) U.O. 1 & 2

Advocate for the Applicant Mr. G.K. Bhattacharyya, B. Choudhury, Mr. D. Goswami

Counsel for the Railway/CGSC. Rly. Counsel

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

13.5.2004

Present : The Hon'ble Sri Mukesh Kumar Gupta, Judicial Member.

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

Heard Mr. G.K. Bhattacharyya, learned Sr. counsel for the applicant and also Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents.

In this application it is contended that the inquiry was over. The applicant submitted application dated 16.6.2000. Despite reminders in the year 2001 and 2003, no final action has been taken on the said inquiry report. Further it is stated that though this Bench earlier quashed the order of compulsory retirement, he is yet to allow to join his duties. ~~will not~~ Despite the fact no stay order has been granted by the Hon'ble High Court on the writ petition filed by the respondent no action has been taken by the respondents.

Issue notice to the respondents. Mr. B.C. Pathak, learned Addl. C.G.S.C. accepts notice.

Contd/-

This application is filed/C.F. is deposited vide P.O. No. 339/389352 Dated 10/5/04

Dy. Registrar

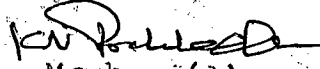
Steps Taken. 11/5/04

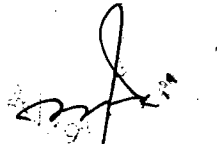
Contd/-

13.5.2004

Respondents to file detail reply within four weeks.

List before the next Division Bench.


Member (A)


Member (J)

mb

14.6.04.

Present: The Hon'ble Mrs. Bharati Roy, Judicial Member and Hon'ble Mr. K.V. Prahladan, Administrative Member.

Heard learned counsel for the parties.

The learned counsel for the applicant submits that the applicant was ^{given} compulsory retirement from service w.e.f. 21.6.2000 and thereafter the applicant approached this Tribunal by in O.A. No.377/2000. Vide ~~this~~ order dated 27.2.02 this Tribunal has set aside the order of compulsory retirement. But the applicant was not allowed to resume his duties on the ground that the respondents have filed a Writ Petition before the Hon'ble High Court. But the Stay was not granted. ~~Therefore~~, Therefore, the Respondents are ~~directed~~ to allow the applicant to resume his duties. The grievance of the applicant in this O.A. is that the charge sheet was issued against the applicant on 26.6.99 and the Inquiry report was served upon the applicant on 1.7.99 and in reply to the inquiry report the applicant has submitted representation on 16.6.2000. But there was no reply. The learned counsel for the Respondents could not ^{enlighten} entertained the position of the

contd/

Received notice
for 13.5.04
for N.F. P. 1/14
copy of order
sent on 24.5.04
N.F. P. 1/14

No W/S has been filed
by the respondents.

JS
11/6/04


O.A.113 /2004

Order dt. 14/6/04,
issuing to ~~both~~
learned counsel
of both the parties.

11.6.04

Writ Petition. Therefore, he prays for
time to get instructions. Let this case
be listed for Admission on 16.6.04.

Cous
15/6/04


Member(A)


Member(J)

lm

16.6.2004

Heard learned counsel for the
parties. Order passed separately.

29.6.04

Copy of the
judgment has been
sent to the office
for filing the
same to the opposite
as well as to the
addl. CLSC for its
response.


Member (A)

bb


Member (J)

Recd
17/7/04

4

Memo No. HC XXI-15,005-13 RM
Dtd. 14-8-2009 received from the
Registry of the Honible Gauhati
High Court.

The judgment and order (oral)
at 'flag A' dated 18-7-2009 passed by the
Honible Gauhati High Court in WP(c) No.
6178/2002 and WP(c) No. 9131/04 received
from the Registry of the Honible Gauhati
High Court. Both the WP(c) No. 6178/02 &
WP(c) No. 9131/04 were filed by the Union
of India and as (Applicant/Respondents)
against the order dated 27/2/02 & 16/6/04
passed in OA No. 377/2002 & OA 113/04 respectively,
by this Honible Tribunal, Gauhati Bench.
Both the WP(c) No. 6178/02 & WP(c) 9131/04
are dismissed.

The matter may be laid before the
Honible Vice Chairman for kind perusal.

Temp
D.A. 10.9.09

10/09/09
S.O.(S)

10/09/09

~~Honible V.C.~~
~~Handle Pleader (A) - 8~~
may like to see it
10/09/09

6

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./RXX.No. 111 113 of 2004.-

DATE OF DECISION 16.6.2004.

...Dr.Ashok Bagchi.....APPLICANT(S).

...Mr.G.K.Bhattacharyya, B.Choudhury & D.Goswami.....ADVOCATE FOR THE
APPLICANT(S).

-VERSUS-

...U.O.I. & Ors.....RESPONDENT(S)

...Mr.B.C.Pathak, counsel for the Railways.....ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MRS. BHARATI ROY, JUDICIAL MEMBER.

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 (J).

x

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 113 of 2004.

Date of Order : This, the 16th Day of June, 2004.

THE HON'BLE SMT. BHARATI ROY, JUDICIAL MEMBER.

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

Dr. Ashok Bagchi
Son of Late S.Bagchi
Station Colony, Hojai
P.O: Hojai, Dist: Nagaon. . . . Applicant.

By Sr.Advocate Mr.G.K.Bhattacharyya & Mr.B.Choudhuri &
Mr.B.Goswami.

- Versus -

1. Union of India
Represented by the General Manager
N.F.Railway, Maligaon
Guwahati-11.
2. General Manager (P)
N.F.Railway, Maligaon?
Guwahati - 11.
3. Chief Medical Superintendent
N.F.Railway, Lumding. . . . Respondents.

By Mr.B.C.Pathak, counsel for the Railways.

O R D E R (ORAL)

SMT.BHARATI ROY, MEMBER(J):

We have heard Mr.G.K.Bhattacharyya, learned Sr.
counsel for the applicant as well as Mr.B.C.Pathak,
learned counsel appearing for the Railways.

2. It is the case of the applicant that he joined
the Railway Service as Assistant Medical Officer
(ad-hoc) on 28.4.1984 at Central Railway Hospital,
After clearing the 'Combined Medical Service

Contd./2

D

Examination' conducted by UPSC the applicant was appointed as Assistant Divisional Medical Officer in N.F.Railway and posted at Hojai where he joined on 1.2.1985. Subsequently, he was promoted to the rank of Senior Divisional Medical Officer and posted to the same unit at Hojai. While serving as Sr.D.M.O, Hojai the charge memo dated 26.6.1999 was issued against the applicant on the allegation that he remained absent unauthorisedly since 20.9.1996. The copy of the charge memo dated 26.6.1999 is enclosed as Annexure-II at page 16 of the O.A. The applicant submitted his written statement to the charge memo denying the charges on 3.9.1999. Thereafter the proceeding started and Enquiry Officer fixed 31.1.2000 for preliminary hearing and regular hearings on 27.3.2000 and 24.4.2000, but the applicant could not attend the same owing to his prolonged back pain which is stated by the applicant at para 4.7 of the O.A. Thereafter the ^{exparte} enquiry was held on 8.5.2000 and the Enquiry Report was received by the applicant on 9.6.2000. The applicant was further asked to make representation, if any against the findings of the Enquiry Report within 15 days of receipt of the report. The applicant submitted his representation against the findings of the Enquiry Report on 16.6.2000. It is the grievance of the applicant that ^{although} he had already submitted his representation against the Enquiry Report ^{very back} on 16.6.2000, ~~whereas~~ the disciplinary authority had not

passed any final order till date. Being aggrieved by the inaction on the part of the respondents in completing the disciplinary proceeding, the applicant had approached this Tribunal for an order quashing and setting aside the impugned proceeding against the applicant by respondent No.1 by his letter dated 26.6.1999 or alternatively to direct the respondents to complete the proceeding within a fixed time.

3. It is seen from the materials on record placed before us that the applicant made a representation to the General Manager, N.F.Railway, Maligaon on 5.2.2003 which is enclosed as Annexure-VII to the O.A. From the said representation it appears that there was another proceeding initiated against the applicant arising out of a CBI/CPE case for accepting the prescribed railway fee from a private patient and ultimately the applicant was imposed with the order of penalty of compulsory retirement. The applicant challenged the said order before this Tribunal in O.A.377/2000 which was allowed by this Tribunal vide judgment and order dated 27.2.2002 setting aside the order of compulsory retirement. Although, the order of compulsory retirement had been set aside by this Tribunal, the applicant was not allowed to resume his duties and therefore, by the said representation dated 5.2.2003 he made a request for allowing him to resume duties by passing appropriate order. The applicant was neither favoured with any reply from the respondent no.1 General Manager, N.F.Railway


nor he was allowed to join duties in terms of the order of this Tribunal.

4. Mr.B.C.Pathak, learned counsel for the Railways, however, submits that the order of this Tribunal has been challenged before the Hon'ble Gauhati High Court in W.P.(C) No.6178/2002 but fairly admits that till date no order has been passed by the Hon'ble Gauhati High Court staying the order of this Tribunal dated 27.2.2002. That being the position, it is not clear as to why the applicant has not been allowed to resume his duties. Since the order of this Tribunal has not been stayed by the Hon'ble Gauhati High Court, the applicant cannot be treated as out of job and that being the position, there is no difficulty in completing the disciplinary proceeding initiated against the applicant long back in the year 1999.

5. In view of the above facts and circumstances, we find it just and proper to dispose of the application at the stage of admission itself by directing the respondents to complete the disciplinary proceeding initiated against the applicant. Accordingly, respondents are directed to complete the disciplinary proceeding initiated against the applicant within a period of two months from the date of communication of this order. The applicant is also directed to co-operate with the disciplinary authority in completing the disciplinary proceeding initiated against him. If the

applicant is further aggrieved with order of the disciplinary authority, he shall be at liberty to approach the appropriate forum after exhausting the appropriate remedy.

The application is accordingly disposed of at the admission stage itself. No order as to costs.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER


(BHARATI ROY)
JUDICIAL MEMBER

BB

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM; NAGALAND; MEGHALAYA; MANIPUR;
TRIPURA; MIZORAM AND ARUNACHAL PRADESH)**

**WRIT PETITION (C) NO. 6178/2002
AND
WRIT PETITION (C) NO. 9131/2004**

IN WRIT PETITION (C) NO. 6178/2002

1. Union of India,
Represented by the Secretary to the
Govt. of India, Ministry of Railways,
Railway Board, New Delhi.
2. The Secretary (Estt.),
Railway Board, New Delhi.
3. The Secretary (S-I),
Union Public Service Commission,
Dholpur House,
Sahjagar Road, New Delhi.
4. The Central Vigilance Commissioner,
Central Vigilance Commission,
Satarkta Bhawan, I.N.A.
Block-A, GPO Complex,
New Delhi.
5. General Manager, NF Railway,
Maligaon, Guwahati-11.
6. The Divisional Railway Manager,
NF Railway, Lunding,
Dist- Nagaon.

.....PETITIONERS

-versus-

Dr. Ashok Bagchi,
Son of Late S. Bagchi,
Resident of Railway Quarter No. M/2,
Station Colony, Hojai,
P.O. Hojai, Dist- Nagaon

.....RESPONDENT

50(N)
1/5
26/8/09

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IN WRIT PETITION (C) NO. 9131/2004

1. Union of India,
Represented by the General Manager,
N.F. Railway, Maligaon,
Guwahati.

2. The General Manager (P),
N.F. Railway, Maligaon, Guwahati-11.

3. The Chief Medical Superintendent,
N.F. Railway, Lunding.

.....PETITIONERS

-versus-

1. Dr. Ashok Bagchi,
Son of Late S. Bagchi,
Resident of Railway Quarter No. M/2,
Station Colony, Hojai,
P.O. Hojai, Dist- Nagaon

2. Central Administrative Tribunal,
Guwahati Bench.

.....RESPONDENT

P R E S E N T

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE A.C. UPADHYAY

For the petitioners

Mr S Sarma
Central Govt. counsel

For the respondents

Mr. AK Goswami
Mr B. Choudhury,
Advocates

Dates of hearing

16.7.2009 & 17.7.2009

Date of Judgment

18.7.2009

JUDGMENT & ORDER
(ORAL)

Ranjan Gogoi, J

Both the Writ Petitions having been heard analogously are being disposed of by this common judgment and order

Writ Petition (C) No. 6178/2002

In this Writ Petition an order dated 27.2.2002 passed by the Gauhati Bench of the learned Central Administrative Tribunal in a proceeding registered and numbered as O.A. No. 377/2000 has been challenged by the Union of India. By the aforesaid order dated 27.2.2002, the learned Tribunal has interfered with the punishment of compulsory retirement imposed on the respondent (applicant) following a regular departmental proceeding initiated against him. The facts that will be required to be noticed may be set out hereunder, though very briefly :

2. At the relevant point of time, the respondent (applicant before the learned Tribunal) was holding the post of Senior Divisional Medical Officer and was posted at Hojai. In terms of the Railway Board Circular No. PC-1V/87/01/326/7 dated 6.10.87, though the respondent was enjoying non-practising allowance of Rs. 900/- per month, he was entitled for restricted private practice. There was a circular dated 10.5.94 laying down the procedure to be followed in case of treatment of patients who were not railway employees. Patients who are not employees of the railway were permitted to have consultation with the railway doctors if they were

to be brought by a railway employee and the situation is emergent and no medical facilities are available at that point of time. Under the aforesaid circular, the railway doctors are required to maintain a separate register for the non-railway patients and a monthly return of such patients are required to be submitted to the Chief Medical Officer, NF Railway at Maligaon. The fee chargeable for the non-railway patients was laid down at Rs. 40/- per patient. The fees collected from the non-railway patients are required to be shared with the railway administration and the same is required to be remitted to the railway authorities. Under the norms in force a room in the official residence of a railway doctor could be utilized as the consultancy room for examination and treatment of patients.

3. On 10.5.95 one Hareswar Das came to the respondent (applicant) for consultation. Apparently, his condition was serious as he fell down on the floor of the consultancy room of the respondent (applicant) and had also started vomiting blood. The applicant rendered medical advice to the said patient and issued a prescription to him and had also collected Rs. 40/- as consultancy charges. Subsequently, the patient re-appeared with a group of persons who identified themselves to be officials of the Central Bureau of Investigation (CBI). Four Nos. of Ten Rupee note paid by the patient Hareswar Das were seized from the applicant along with other amounts. An FIR was also registered in respect of the aforesaid incident on 10.6.95. The matter was investigated into. However, the same was not proceeded with by the CBI for want of sufficient evidence.

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4. Thereafter, on 2.4.97 a Memorandum was issued the respondent (applicant) under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The Article of Charge against the applicant (respondent) which was appended to the aforesaid Memorandum contained the following charge :

"Dr. A.K. Bagchi posted and functioning as Sr. DME/N.F. Rly/HJI Health Unit since May/1984 has been misusing his Govt. accommodation as a private Nursing Home testing private outdoor patients without permission of the competent authority and has been accepting consultation fees from them without maintaining a Register for this purpose and without depositing the amount to the Railway Administration as provided for under the rules.

By the above act Dr. Bagchi has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant and thereby contravened the provisions of rule 3(1)(i), (ii) & (iii) of the Railway Service (Conduct) Rule, 1966."

5. On receipt of the aforesaid Memorandum dated 2.4.97 the respondent (applicant) submitted his written statement of defence on 12.5.97 denying and disputing the charge. Thereafter, an enquiry was held in respect of the charges levelled against the respondent (applicant), at the conclusion of which, a report of enquiry dated 21.10.98 was submitted to the disciplinary authority. The aforesaid enquiry report was furnished to the applicant under covering letter dated 27.1.99. On receipt of the

enquiry report, the respondent sought for copies of certain documents, which not having furnished to him, he submitted his representation on 13.5.99. Thereafter, it appears, on consideration of the reply/ representation of the respondent, the General Manager, NF Railway was of the opinion that the punishment of removal from service should be imposed on the respondent (applicant). However, the applicant (respondent) being a Class-I officer the said punishment could not have been imposed by the General Manager. The General Manager, therefore, referred the matter to the Railway Board. The Railway Board by communication dated 25.10.99 requested the Union Public Service Commission (UPSC) to convey the advice of the Commission. The advice of the UPSC was sought in view of the proviso to Rule 10(5) of the Railway Servants (Discipline and Appeal) Rules, 1968. The UPSC by the letter dated 2.6.2000 informed the Secretary to the Govt. of India, Ministry of Railways (Railway Board) that the charges against the respondent (applicant) with certain modifications as indicated in the aforesaid letter of the UPSC stood proved and that the Commission is of the view that the punishment of compulsory retirement should be imposed on the applicant. Thereafter, by order dated 21.6.2000, the punishment of compulsory retirement was imposed on the respondent (applicant) giving rise to the Original Application out of which this writ petition has arisen.

6. The learned Tribunal by a very elaborate order, after considering the rival cases placed before it, thought it proper to allow the Original Application filed by the respondent (applicant) by interfering with the order of punishment of compulsory retirement. The said decision of the learned Tribunal was primarily on the

ground that the Public Service Commission in its report dated 2.6.2000 had clearly recorded the view that the first charge against the respondent (applicant) i.e. of using the entire official residence as a Nursing Home was not established and, at best, what was proved by the materials on record is that the said premises was used by the respondent (applicant) for the purpose of consultation. According to the learned Tribunal, the said finding of the Public Service Commission which was accepted by the disciplinary authority, necessarily resulted in dis-agreement with the findings of the enquiry officer, which enjoined the disciplinary authority to follow the prescribed procedure but the same was not done in the present case. Furthermore, the learned Tribunal came to the finding that on the basis of the documents exhibited in the course of enquiry, particularly Exhibit-D2, D3 and D5 what was established is that the register of non-railway patients was maintained by the applicant (respondent) though not very accurately and further that the fees collected from the non-railway patients were remitted in part to the railway authorities. The learned Tribunal took the view that the above finding, which was recorded by the enquiry officer, was different from the charge levelled against the applicant. The charge against the applicant was that he had not maintained any such register and he had not remitted the fees collected by him from the non-railway patients. Above all, the learned Tribunal also recorded the finding that in the case before it no independent decision was taken by the disciplinary authority to impose the punishment of compulsory retirement. In fact, the said decision was that of the Public Service Commission which was merely followed by the disciplinary authority. As under the provisions of the relevant Rules, the Public

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Service Commission was only required to tender its advice on the punishment contemplated by the disciplinary authority, in the present case, there was an abdication of the statutory duties cast on the disciplinary authority of the applicant. On the basis of the aforesaid core findings, the learned Tribunal thought it proper to interfere with the punishment of compulsory retirement imposed on the applicant (respondent). The correctness of the aforesaid conclusion has been challenged before us in this writ petition filed by the Union of India.

7. We have heard Sri S Sarma, learned counsel for the writ petitioners and Sri AK Goswami, learned senior counsel assisted by Sri B Choudhury, learned counsel for the respondent.

8. The charge against the respondent brought by the Memorandum dated 2.4.97, according to us, can be dissected into three parts. Firstly, that the respondent (applicant) had been misusing the accommodation provided to him by the railways and had converted his official residence into a Nursing Home. The second component of the charge is that without due permission of the competent authority he had been examining patients and accepting consultation fee without maintaining the requisite register. The third part of the charge is that the respondent (applicant) had not been depositing the amount collected as consultation fee from the non-railway patients with the Railway Administration, as required. The second and the third charge are somewhat inter-related and, therefore, can be taken up for consideration together.

9. In so far as the first charge against the respondent (applicant) is concerned, it is clear from the communication of the Public Service Commission dated 2.6.2000 that the materials on record indicated that there is no basis to sustain the said charge, inasmuch as, a private Nursing Home requires certain infrastructure and manpower which was not found in the official residence provided to the applicant. Accordingly, the Public Service Commission was of the view that, at best, what the applicant could be guilty of is conversion of his official accommodation into premises for medical consultancy. In so far as the second and the third charge are concerned, the enquiry officer in his report himself had clearly recorded that a register had been maintained though not very accurately and fees had been remitted by the applicant though not fully.

10. The aforesaid findings of the Public Service Commission and the enquiry officer, in our considered view, has the effect of giving rise to a situation where it can be reasonably held that the charges against the respondent (applicant) have not been proved to the full extent. In such an event, whether the punishment of compulsory retirement should have been imposed on the respondent (applicant) is a question that really would require re-consideration by the disciplinary authority of the respondent (applicant). The punishment of compulsory retirement having been imposed on the applicant on a mistaken notion that all the charges levelled against him have been proved in full, naturally, on our finding that the said charges have only been partially proved, the question of infliction of appropriate punishment would require a fresh consideration. We have, however, noticed that the learned

Tribunal has taken the view that, in the present case, the disciplinary authority of the applicant had surrendered itself to the decision of the Public Service Commission ^{and} it is the Commission which had really decided on the quantum ⁿ of punishment that should be imposed on the respondent (applicant). If the above view of the Tribunal is to commend us, naturally, our conclusions on the other charges as recorded above and the view expressed as to the requirement of a re-consideration of the question of punishment would have to stand on an entirely different footing.

11. There can be no manner of doubt that it is the duty of the disciplinary authority to decide on the quantum of punishment. Under the provisions contained in the proviso to Rule 10(5) of the Railway Servants (Discipline and Appeal) Rules, 1968 in certain situations the advice of the Public Service Commission is required to be obtained. It is agreed that the present is such a case by virtue of the fact that the applicant was a Class-I Officer in the Railways. We have perused the letter dated 2.6.2000 of the Public Service Commission rendering its advice in the matter, as sought for by the Ministry of Railways by its communication dated 25.10.99. In the said communication the Public Service Commission had considered and analyzed the evidence brought in support of the charges levelled in the course of the disciplinary proceeding and, on such consideration, the Public Service Commission had recorded its view that the charges levelled against the applicant, (respondent), with the modifications mentioned therein, should be held to be proved. Thereafter, the punishment of compulsory retirement was recommended by the Commission. The learned Tribunal in the order dated 27.2.2002 has held that no

material had been placed to satisfy the Tribunal that there was any independent view of the disciplinary authority in the matter. No material in this regard has also been laid before us in the course of the hearing by the learned counsel for the writ petitioners. No document has also been placed before the Court to show that after the matter was sent to the Railway Board by the General Manager, the Railway Board had taken any decision with regard to the quantum of punishment that should be imposed on the applicant before sending the matter to the Public Service Commission for its advice. When under the Rules the role of the Public Service Commission is advisory and recommendary, it was incumbent on the part of the disciplinary authority to take its own independent decision with regard to the quantum of punishment and, thereafter, confirm the same in the light of such advice that may be tendered by the Public Service Commission. The said course of action was not adopted in the present case. In fact, there is nothing to suggest that even after the letter dated 2.6.2000 of the Public Service Commission was received by the disciplinary authority of the applicant any consideration with regard to the quantum of punishment that should be imposed was made independently by the disciplinary authority. Reading the provisions of Rule 10(5) and the proviso thereto, it is our considered view that advice of the Commission enjoined by the Rules has to be with regard to a course of action contemplated by the disciplinary authority which, naturally, required the said authority to arrive at its own and independent decision in the matter. As already observed, no material is forthcoming on this score to enable the Court to be satisfied that there was any independent decision of the disciplinary authority, at any point of time, with regard to the

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quantum of punishment to be imposed. In such circumstances, we cannot find any fault with the order of the learned Tribunal in coming to the conclusion that the disciplinary authority had really abdicated its role and responsibility in the matter and had merely dittoed the views expressed by the Public Service Commission.

12. The above conclusion of ours would be sufficient to hold that the punishment imposed on the respondent (applicant) is vitiated in law. We, therefore, affirm the order dated 27.2.2002 passed by the learned Tribunal and dismiss the writ petition. The respondent (applicant) will, naturally, be entitled to all consequential reliefs including re-instatement with effect from the date of dismissal with full pay and allowances and continuity of service.

Writ Petition (C) No. 9131/2004

An order dated 16.6.2004 passed by the Gauhati Bench of the Central Administrative Tribunal in O.A. No. 113/04 has been assailed by the Union of India in this writ petition. By the aforesaid order, the learned Tribunal had allowed the Original Application filed by the applicant (respondent) by directing the writ petitioners herein to complete the disciplinary proceeding initiated against the applicant by Charge Memo dated 26.6.99 within a period of two months from the date of communication of the aforesaid order of the learned Tribunal. Aggrieved, the Union has instituted the present writ proceeding before this Court.

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2. We have heard Sri S Sarma, learned counsel for the petitioner and Mr AK Goswami, learned senior counsel assisted by Mr B Choudhury, learned counsel for the respondent (applicant).

3. By a Charge Memo dated 26.6.99 a charge of unauthorized absence with effect from 20.9.96 was brought against the respondent. The respondent (applicant) had filed his written statement denying the charge and contending that his absence from duty could not be considered to be unauthorized as the said absence had been occasioned by his illness which fact was duly supported by the requisite medical certificates. The respondent (applicant) could not attend the enquiry proceedings which was held in respect of the charge levelled as he was unwell. Consequently, the enquiry was held and concluded ex-parte leading to a report dated 9.6.2000. The applicant who was furnished with a copy of the enquiry report submitted his representation against the said report as far back as on 16.6.2000. Thereafter, as the matter had not proceeded any further, after representing without any success, the Original Application out of which writ petition has arisen, was instituted before the learned Tribunal.

4. Before the learned Tribunal the Union contended that on the basis of another disciplinary proceeding held against the respondent (applicant) the punishment of compulsory retirement was imposed on him by an order dated 21.6.2000. As by virtue of the said order the applicant was no longer in service, the disciplinary proceeding pursuant to the Charge Memo dated 26.6.99 was not proceeded with. The Union further contended that though the aforesaid order of compulsory retirement was interfered

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with by the learned Tribunal by an order dated 27.2.2002 passed in O.A. No. 377/2000, the said order of the Tribunal was challenged before this Court and as the writ petition was pending, the departmental proceeding in question was not finalized. The learned Tribunal took note of the fact that in the writ petition filed by the Union challenging the order of the learned Tribunal interfering with the punishment of compulsory retirement, no interim order had been passed staying the order of the learned Tribunal. Therefore, the learned Tribunal by the impugned order took the view that the applicant was entitled to be re-instated in service and the disciplinary proceeding initiated against him by the Charge Memo dated 26.6.99 was required to be brought to its logical conclusion. Accordingly, the directions as already noticed were issued by the learned Tribunal for conclusion of the departmental proceeding initiated against the applicant.

5. Having regard to the facts noticed above, we find absolutely no justification whatsoever to interfere with the order of the learned Tribunal impugned in this writ petition. The applicant by virtue of the order dated 27.2.2002 passed in O.A. No. 377/2000 was entitled to be reinstated and the departmental proceeding initiated against him was liable to be concluded. Even otherwise, we are of the view that where a departmental proceeding had been initiated against a railway servant it was incumbent on the part of the disciplinary authority to bring the same to its earliest conclusion. Instead, the said proceeding has been kept pending to the prejudice of the applicant on what we are constrained to observe to be absolutely unjustifiable grounds.

6. We, therefore, find no good reason to cause any interference with the order of the learned Tribunal dated 16.6.2004 passed in O.A. No. 113/04. Accordingly, this writ petition is dismissed.

7. We are also inclined to take the view that this writ petition has been filed without adequate justification and the same is entirely frivolous and an abuse of the process of the Court. We, therefore, deem it appropriate to impose a cost of Rs. 10,000/- on the writ petitioner which will be paid to the respondent (applicant) within a period of thirty days from today.

8. Having answered both the writ petitions in the manner indicated above, we are of the view that it is necessary for us to address ourselves to the actions of the Union of India (Ministry of Railways/Railway Board) in not implementing the orders of the learned Tribunal passed in the two cases despite the fact that there was no interim order passed by this Court while entertaining the writ petitions in question. In WP(C) No. 6178/2002, the learned Tribunal as far back as on 27.2.2002 had interfered with the order of compulsory retirement of the applicant (respondent). The writ petition filed on 23.9.2002 was entertained, but no interim relief was granted to the writ petitioner. In such circumstances, it was incumbent on the part of the writ petitioner to implement the order of the learned Tribunal. The same had not been done and, in fact, the order of the learned Tribunal remains unimplemented till date. Similarly, in WP(C) No. 9131/2004 the learned Tribunal had directed conclusion of the departmental proceeding initiated against the applicant (respondent) as far back as on 16.6.2004.



Though the writ petition was entertained, once again no interim relief was granted to the petitioner. Yet, the writ petitioner had not implemented the order of the learned Tribunal. The writ petitioner is the Union of India represented by the Ministry of Railways (Railway Board). We are distressed by the conduct of the Union of India in showing scant respect to the orders passed by judicial and quasi-judicial forums. At the same time, the applicant (respondent) in both the writ petitions, at no point of time, had brought the fact of non-implementation of the orders to the notice of this Court. Such facts had been revealed to the Court only when the writ petitions were heard. In such circumstances, we do not deem it necessary to proceed any further in the matter except to indicate our deep dis-pleasure with the conduct of the Union. The Union will now implement the orders of this Court passed in the two writ petitions forthwith and without any delay.

Sd/- A.C. UPADHYAY
JUDGE

Sd/- RANJAN GOGOI
JUDGE

Contd...

URGENT

Memo No. HC.XXI.....15,005 - 13.....R.M.Dtd.....14/08/09.....

Copy forwarded for information and necessary action to: -

1. The Union of India, represented by the Secretary, Govt. of India, Ministry of Railways, Railway Board, New Delhi.
2. The Secretary (Estt.), Railway Board, New Delhi.
3. The Secretary (S-I), Union Public Service Commission, Dholpur House, Sahjahan Road, New Delhi.
4. The Central Vigilance Commissioner, Central Vigilance Commission, Satarkta Bhawan, I.N.A., Block-A, GPO Complex, New Delhi.
5. The General Manager, N.F. Railway, Maligaon, Guwahati-11.
6. The General Manager (P), N.F. Railway, Maligaon, Guwahati-11.
7. The Chief Medical Superintendent, N.F. Railway, Lumding.
8. The Central Administrative Tribunal, Guwahati Bench, Rajgarh, Guwahati-5.
9. Dr. Ashok Bagchi, S/o Late S. Bagchi, Resident of Railway Quarter No. M/2, Station Colony, Hojai, P.O. Hojai, Dist.- Nagaon.

By order

R. B. M. K.

Asstt. Registrar (B)
Gauhati High Court, Guwahati.

12/8/09

1 MAY 2004

গুৱাহাটী ন্যায়পীঠ
Guwahati Bench

21

O.A. No. 112/2004 (Dr. Ashok Bagchi vs- Union of India & Others)

Synopsis / List of Dates

1.2.85 : After clearing Combined Medical Service Examination the applicant was appointed a Assistant Divisional Medical Officer and posted at Hojai. Subsequently, promoted to Sr. Divisional Medical Officer.

1995. : Falsely implicated by CBI alleging acceptance of consultation fee from non-railway employees. Later on case was handed over to department for taking department action. Imposed the penalty of compulsory retirement. Filed O.A. 377/2000 against the penalty. On 27.2.2002, this Hon'ble Tribunal quashed the penalty of compulsory retirement.

12.2.96 : Received transfer order but he could not carry out the order as he was undergoing treatment at Lunding Railway Hospital.

1.3.96 : As he was not recovering Lunding Hospital referred him to Central Hospital Maligaon.

ANNEXURE - II pg 15

6.5.96 : Central Hospital, Maligaon, doctor later on referred him to Gauhati Medical College where he was advised rest for 3 months by the department of Neurology w.e.f. 20.8.96 and accordingly he informed the authorities.

13.9.96 : The authorities instead of waiting for him to be declared fit by CMCH, the Respondent no 3 issued a letter asking him to appear before a Medical Board on 18.9.96. But the authorities instead of considering his intimation about his illness refused the Medical Board on 20.9.96. Due to his illness the applicant could not attend the same.

20.9.96: Applicant's name was strucked from the sick list due to non attendance of Medical Board.

31.7.99 : Received the memorandum of charge sheet dt 26.6.99.

ANNEXURE-II pg 16-21.

3.9.99 : Submitted his written statement denying the charges.

26.11.99 : Sri P.K. Agarwal, Officer on Special Duty, Rangia appointed as Inquiry Officer.

8.5.2000 Date fixed for hearing but the notice of the hearing could not be served to the applicant which was duly intimated by respondent No. 3 by his wireless message dated 5.5.2000 but the enquiry officer went ahead with inquiry ex-parte.

ANNEXURE-III, pg 22.

9.6.2000 Received inquiry report dated 10.5.2000.

ANNEXURE-IV, pg 23-24.

16.6.2000 : Submitted his representation against the findings of the inquiry report.

ANNEXURE-V, pg 25-28.

4.4.2001

and

5.2.2003 Submitted representations before Respondent No.1 inquiring about the departmental proceeding and to pass final order but till date no final order has been passed.

ANNEXURE-VI, pg 29.

ANNEXURE-VII, pg 30-31.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI
BENCH : GUWAHATI

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

O.A. NO. 113 OF 2004

Sri (Dr.) Ashok Bagchi ... Applicant

-Vs-

Union of India and others ... Respondents

I N D E X

Sl No.	Annexure	Particulars	Page No.
1.		Original Application :	1-13
2.		Verification :	14
3.	I	: Memo dtd. 1.3.96 :	15
4.	II	: Memo. Of chargesheet: dtd.26.6.99 :	16-21
5.	III	: Wireless message dtd. 5.5.2000 :	22
6.	IV	: Inquiry Report dtd. 10.5.2000 :	23-24
7.	V	: Representation dt. 16.6.2000 :	25-28
8.	VI	: Representation dt. 4.4.01 :	29
9.	VII	: Representation dt. 5.2.03 :	30-31

Filed by

Devojit Goswami

Advocate

Filed by the applicant
through Devajit Goswami,
Advocate.
11.8.2004
Rohit Bose for.

32

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI

BENCH : GUWAHATI

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

O.A. NO. 113 of 2004

Dr. Ashok Bagchi,
Son of late S. Bagchi,
Station Colony, Hojai,
P.O. Hojai Dist. Nagaon.

... Applicant

-Versus-

1. Union of India,
Represented by the
General Manager, N.F. Railway,
Maligaon, Guwahati-11.
2. General Manager (P),
N.F. Railway, Maligaon,
Guwahati-11.
3. Chief Medical Superintendent,
N.F. Railway, Lumding.

... Respondents

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

- (i) Charge Memorandum No.E/74/GAZ/386/CON dated 26.06.99 issued by the Respondent No.1

whereby the applicant was informed that an inquiry under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 is contemplated against him on the charge of not complying with the transfer order No.E/283/III /130/Pt.X(O) dated 12.2.96 and remaining on unauthorized absence since 20.9.96.

- (ii) Action of the authorities in conducting the enquiry ex-parte in complete violation of the rules.
- (iii) Illegal and arbitrary action of the authorities in delaying the finalisation of the proceeding even after submission of the inquiry report dated 10.5.2000.

2. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter against which he wants redressal is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :

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

4. FACTS OF THE CASE :

- 4.1) That the applicant passed the M.B.B.S. Examination from Gauhati Medical College and

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joined Railway Service as Assistant Medical Officer (ad-hoc) on 28.4.84, at Central Railway Hospital, Maligaon. Thereafter he cleared the "Combined Medical Service Examination" conducted by UPSC and he was appointed as Assistant Divisional Medical Officer in N.F. Railway and posted at Hojai. He joined his new assignment at Hojai on 1.2.85 and he was allotted an official quarter No. M-2, Type-II with effect from 1.4.85. Subsequently, the applicant was promoted to the rank of Senior Divisional Medical Officer and posted to the same unit at Hojai.


4.2) That the applicant begs to state that in the year 1995 he was falsely implicated by the CBI in a case alleging acceptance of consultation fee from non-railway employees/patients by presenting a non-railway employee as a decoy patient in an emergency case. However, later on the case was handed over to the department by the CBI for taking department action. On finalisation of the proceeding the applicant was imposed the penalty of compulsory retirement. Being aggrieved the applicant filed an original application before this Hon'ble Tribunal and the same was registered and numbered as O.A. No.377 of 2000. On 27.2.2002, this Hon'ble Tribunal after hearing both sides quashed the penalty of compulsory retirement. Though the respondent authorities have filed a

writ petition before the Hon'ble High Court but no stay has been granted.

4.3) That the applicant begs to state that in the meanwhile the applicant received order No. 37/96 (medical) dated 12.2.96 issued by the Respondent No.2 transferring the applicant from Hojai to Lumding. However, the applicant could not carry out the transfer order as he was sick since 9.2.96 and was undergoing treatment at Lumding Railway Hospital. Later the applicant on not responding to the treatment/medicine was referred to the Central Hospital, Maligaon by the Respondent No.3 vide memo No.H/184/LM-17 dated 1.3.96 stating that he was suffering from Acute Prolapsed Inter Vertebrae Disc.

Copy of the memo dated 1.3.96 is annexed herewith and marked as Annexure-I.

4.4) That thereafter the applicant attended Central Hospital, Maligaon where he was examined by Sr. DMO (Ortho) who after treating him for some months referred the applicant to Gauhati Medical College Hospital, Department of Surgery on 6.5.96. There he was advised rest for three months by the Department of Neurology w.e.f. 20.8.96 and accordingly the applicant informed the authorities. Thereafter the authorities without



waiting for the applicant to be declared fit by the Gauhati Medical College Hospital, the Medical Superintendent, In-charge issued letter dated 13.9.96 asking the applicant to appear before a Medical Board at Lumding on 18.9.96. Since the applicant was sick he duly informed the authorities that he was not in a position to attend the Medical Board. But, the authorities did not consider the illness of the applicant and refined the Medical Board on 20.9.96, on which date the applicant could not attend the Board due to his sickness. Thereafter the applicant's name was struck off from the said list of Medical Superintendent I/c, Lumding w.e.f. 20.9.96 due to not attending the Medical Board.

4.5) That thereafter, the applicant on 31.7.99 received the memorandum of charge sheet no E/74/GAZ/386/CON, dated 26.06.99, under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 issued by the Respondent No.1 whereby the applicant was informed that an enquiry under Rule 9 of the said Rules was proposed to be held against the applicant on the allegation that he had remained on unauthorized absence since 20.9.96.

A copy of the said memorandum
of charge sheet dated

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26.06.99 is annexed herewith and marked as Annexure-II.

4.6) That thereafter the applicant on 3.9.99 submitted his written statement denying the charges and fully explaining that in the facts and circumstances of the case he could not be treated as being on unauthorized absent under the Rules. However the disciplinary authority after receiving the written statement instead of considering the same under Rule 9 (a) (1) of the Rules, decided to proceed with the inquiry under the Rules and appointed Sri P.K. Agarwal, Officer on Special Duty, Rangia as Inquiry Officer by letter No.E/74/GAZ/386/CON dated 26.11.99 issued by the Respondent No.2.

(The applicant craves leave of this Hon'ble Tribunal to produce and rely upon the written statement at the time of hearing).

4.7) That thereafter the proceeding started and Inquiry Officer fixed 31.1.2000 for preliminary hearing and regular hearings on 27.3.2000 and 24.4.2000 but the applicant could not attend the hearing owing to his prolonged back pain and kerato conjunctivitis in both eyes and he duly intimated about his health condition to the Inquiry Officer.

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4.8) That finally the Inquiry Officer fixed 8.5.2000 for hearing but the notice for said inquiry could not be served on the applicant and the Respondent No.3 by his wireless message No. H/SS/LN-8 (Loose) dated 5.5.2000 informed the Inquiry Officer about it. However the inquiry officer went ahead with the inquiry ex-parte and finalized the same on 8.5.2000 in spite of being informed about the non-service of the notice of the inquiry on the applicant.

A copy of the wireless message dated 5.5.2000 is annexed herewith and marked as Annexure-III.

4.9) That, thereafter, the applicant received the Inquiry Report dated 10.5.2000 submitted by the Inquiry Officer from the Office of the Respondent No.2 which he received on 9.6.2000, under the cover of letter No. E/74/GAZ/386/CON dated 31.5.2000. He was further asked to make a representation, if any, against the findings of the inquiry officer within 15 days of receipt of the report. The applicant on 16.6.2000, submitted his representation against the findings of the inquiry report.

Copy of the inquiry report
dated 10.5.2000 and

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representation dated
16.6.2000 are annexed
herewith and marked as
Annexure-IV & V respectively.

4.10) That thereafter the applicant did not received any response from the authorities nor any order was issued with regard to the disciplinary proceeding. The applicant then on 4.4.2001 and 5.2.03 submitted representations before the Respondent No.1 enquiring about the departmental proceeding and to pass final order. But till date the respondent authorities has not passed any final order on the departmental proceeding.

Copies of the representation
dated 4.4.2001 and 5.2.03
are annexed herewith and
marked as Annexure-VI & VII
respectively.

4.11) That, being highly aggrieved by the said impugned action, the applicant is now approaching this Hon'ble Tribunal for relief.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

I. For that, in the given facts and circumstances of the case, the action of the authorities in instituting the

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departmental proceeding is highly illegal and bad in law and the same is liable to be quashed and set aside.

II. For that, the action of the authorities in delaying the finalization of the proceeding for more than 4 years cannot in any way, be attributed to the applicant and this inordinate delay has subjected the applicant to suffer physically, mentally and financially and as such the action of the authorities is bad in law and liable to be set aside.

III. For that, as per Indian Railway Medical Manual the Chief Medical Director has the power to hold the Medical Board and the action of the Respondent No.3 in holding the same on his own is without jurisdiction, arbitrary and malafide.

IV. For that, the action of the authorities in deleting the name of the applicant from railway sick list on the pretext of non-attendance before the medical board and thereby treating him unauthorisedly absent from 20.9.96 is arbitrary, illegal and bad in law.

V. For that, the action of the Inquiry Officer in holding the inquiry ex-parte even after




receiving communication from the Respondent No.3 that the notice of the hearing could not be served on the applicant is illegal and bad in law and the same is liable to be quashed and set aside.

VI. For that, it will be apparent from the inquiry report that the inquiry officer has not given a reasoned finding on each imputation of misconduct and this fact thus show that the inquiry officer has not applied his mind to the facts and circumstances of the case and that not having been done, the entire proceeding is bad in law and liable to be set aside.

VII. For that, as per various circulars of Railway Board department proceedings should be finalized within 205 days and as such the action of the disciplinary authority in keeping the proceeding pending for about 4 years even after receipt of representation against the findings of the inquiry report way back on 16.6.2000 is highly arbitrary, illegal and bad in law and the proceeding is liable to be quashed and set aside.

VIII. For that, from the facts and circumstances no case of unauthorized absence has been made out and the disciplinary action



initiated on the facts is totally misconceived as no misconduct was committed by the applicant and as such the impugned action is liable to be quashed and set aside.

IX. For that, in any view of the matter the impugned action of the authorities is bad in law and liable to be set aside.

6. DETAILS OF REMEDIES EXHAUSTED:

The applicant had submitted representations dated 4.4.2001 and 5.2.2003 before the Respondent No.1 but till date there has been no response.

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

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

8. PRAYER :

It is, therefore, prayed that Your Lordships, would be pleased to admit this application, call

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for the entire records of the case, ask the respondents to show cause as to why the disciplinary proceeding initiated against the applicant by the Respondent No.1 by his letter dated 26.6.99 (Annexure-II) should not be quashed and set aside being in serious contravention of the standing circulars/guidelines and after perusing the causes shown, if any and hearing the parties quash and set aside the impugned proceeding initiated against the applicant by the Respondent No.1 by his letter dated 26.6.99 (Annexure-II) or alternatively direct the Respondent authorities to complete the proceeding within a fixed time and / or pass any other order/ orders as Your Lordships may deem fit and proper.

And for this act of your kindness the applicant as in duty bound shall ever pray.

9. INTERIM ORDER PRAYED FOR : NIL

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10. DOES NOT ARISE:

11. PARTICULARS OF BANK DRAFT/POSTAL ORDER IN
RESPECT OF THE APPLICATION FEE.

- (i) I.P.O No. : 116 389 352
- (ii) Date. : 10.5.2004
- (iii) Issued by Guwahati Post Office.
- (iv) Payable at Guwahati.

12. LIST OF ENCLOSURES :

As stated in the INDEX



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

I, Sri (Dr.) Ashok Bagchi, son of late S. Bagchi, aged about 44 years, resident of Station Colony, Hojai, P.O. Hojai in the district of Nagaon, Assam the applicant of the instant case do hereby solemnly verify that the statements made in Paragraphs No. 4. (1, 2, 4, 7, 10 and 11) are true to my personal knowledge and the statements made in paragraphs No. 4. (3, 5, 6, 8 and 9) are being matter of records which are true to my information derived therefrom and are believe to be true to my legal advice and rest are my humble submissions before this Hon'ble Tribunal I have not suppressed any material facts.

And I sign this verification on this the^{11th} day of May, 2004 at Guwahati.

Ashok Bagchi

H.F. railway

(15)

No. H/184/LM-17

CMS's office/LMG
dt. 01.3.76.

To
The Medical Director
C.H./Maligaon
(for attention of Sr.DMO/Orth./MLG)

Subj:- Dr. A. Bagchi, Sr. MO/HJI

The above named patient is referred to you for
your further examination and treatment please. A Case Note is
enclosed.

DA: As above

copy to CMO/MLG
DMA(P)GAZ/LMG

(Dr. S.C. Das)
Medical Suplt./Lumling.
for information please.

(Dr. S.C. Das)
Medical Suplt./Lumling.

CASE NOTE.

Name : Dr. A. Bagchi, Sr. MO/HJI
C/O : Low back pain - 3 weeks
HPI : Complaining of sudden backpain ache since 9th.
Feb'76. The intensity of pain increase on coughing
forward bending and sneezing. The pain is dull aching in
nature.
O/E : Pulse 78/min
BP 130/90 mm of Hg
Chest Clear
CVS :
ABD : NAD
CMS : No Neurological deficit
Examination Spine-
X-Ray Spine L/S (Enclosed)
P.S. : Radiograph Acute P I D. (Prolapsed Intre Vertebre
Disc.)
Treatment : Analgesis
Smooth muscles relaxant
Absolute bed rest for 2 weeks.

Dr. T. Daimari
DMO/IPD/Lumling.

Attested by
Durgit Goswami
Advocate

Recd on
31.7.73

STANDARD FORM NO.5 MEMORANDUM OF CHARGE SHEET UNDER
RULE 9 OF THE RS (D & A) RULES- 1968.

NORTHEAST FRONTIER RAILWAY

OFFICE OF THE
GENERAL MANAGER
GUWAHATI-781011.

NO.E/74/GAZ/386/CON

DATE: 26-06-99

MEMORANDUM

The undersigned propose(s) to hold an inquiry against Dr. Ashoke Bagchi, Sr. DMO/Hojai under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The substance of the imputations of misconduct or 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 imputations of misconduct or misbehaviour in support of each articles of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed. (Annexure-III & IV).

2. Dr. Bagchi is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure-III) at any time during office hours within ten days of receipt of this Memorandum. For this purpose he should contact Dy. CPO (GAZ)/MLG, N.F. Railway, maligaon, immediately on receipt of this Memorandum.

3. Dr. Bagchi is further informed that he may, if he so desires, take the assistance of any other Railway servant (who satisfies the requirements of Rule 9(13) of the Railway servants (Discipline & Appeal) Rules, 1968 for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Railway Servant(s), Dr. Bagchi 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 cases if any, in which the nominee(s) had already undertaken to assist and the undertaking should be furnished to the undersigned, along with the nomination.

Contd to page -2.

Attested by
Devjit Goswami
Advocate.

(2)

4. Dr. Bagchi is hereby directed to submit to the undersigned a written statement of his defence within ten days of receipt of this Memorandum, if he does not desire to inspect any documents for the preparation of his defence and within ten days after completion of inspection of documents, if he desires to inspect documents, and also-

(a) to state whether he wishes to be heard in person; and

(b) to furnish the names and addresses of the witnesses, if any, whom he wishes to call in support of his defence.

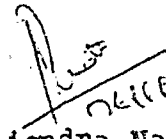
5. Dr. Bagchi is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

6. Dr. Bagchi is further informed that if he does not submit his written statement of defence within the period specified in para 4 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 order/ directions issued in pursuance of the said rule, the Inquiring Authority may hold in the Inquiry ex- parte.

7. The attention of Dr. Bagchi 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 his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Dr. Bagchi 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:- Annexures- I, II, III, & IV.


(Rajendra Nath)
General Manager

To
Shri/Smt. Dr. Ashoke Bagchi,
Sr. DMO/NFR/Hojai.

(Through DEM/NFR/LUNDING).

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ANNEXURE-I

Statement of article of charge, framed against
Dr.Ashoke Bagchi, Sr.DMO/HJI (under orders of transfer to LMG)

That the said Dr.Ashoke Bagchi, Sr.DMO, did not comply with the orders of transfer, issued under GM(P)/Maligaon's No.E/283/III/130/Pt.X(O) dated 12-2-96 and remained on unauthorised absence since 20-9-96, thereby failed to ensure complete devotion to duty and acted in a manner unbecoming of a Railway servant in clear violation of Rule 3(1) (ii) and (iii) of Railway Service (Conduct) Rules 1966.


(Rajendra Nath)
General Manager

-19-

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Annexure-II

Statement of imputation of misconduct in support of
the article of charge, framed against Dr.Ashoke Bagchi, Sr.DMO/HJI
(under orders of transfer to Lumding)


Dr.Ashoke Bagchi while working as Sr.DMO/HJI was transferred from Hojai to Lumding Railway Hospital in terms of GM(P)/Maligaon's order No.E/283/III/130/Pt.X(O) dated 12-2-96. Dr.Bagchi did not carry out his transfer order and reported sick on RMC under MS/IC/LMG with effect from 8/9-2-96. MS/IC/LMG referred his case to MD/Central Hospital/Maligaon vide his No.H/184/LM-17 dtd.1-3-96. In the meantime, Dr.Bagchi was requested to appear before the then MS/IC/LMG on 19-8-96 for his medical examination vide MS/IC/LMG's letter No.H/SS/LM/8(Loose) dtd.14-8-96. But instead of appearing before MS/IC/LMG, Dr.Bagchi informed MS/IC/LMG vide his letter dtd.21-8-96 that as per MS/IC/LMG's referral note dtd.1-3-96, he had attended Sr.DMO(Ortho)/Central Hospital/MLG and from there he was referred to Gauhati Medical College Hospital(GMCH), Department of Surgery on 6-5-96 by MD/Central Hospital/MLG. He was advised rest for three months by the Department of Neurology/GMCH with effect from 20-8-96. As per advice of the Hd.Qrs., Dr.Bagchi was asked to appear before a Medical Board at Lumding Railway Hospital on 18-9-96 vide MS/IC/LMG's letter No.H/174/LM dtd.13-9-96. Dr.Bagchi vide his letter dtd.17-9-96 informed that he was suffering from severe Bilateral Conjunctivitis with Viral Pyrexia and that he was unable to attend the Medical Board on 18-9-96. The next date of Medical Board was fixed on 20-9-96 vide MS/IC/LMG's letter No.H/174/LM dtd.18-9-96. But Dr.Bagchi did not appear before the Medical Board. On account of non-appearing in the Medical Board as well as for not submitting authentic documents in support of his eye problem, his name was deleted from the sick list of MS/IC/LMG with effect from 20-9-96.

Thereafter Dr.Bagchi was again advised vide MS/IC/LMG's letter No.H/174/LM dated 29-1-97 to let him know whether he was in a position to attend the Medical Board at Central Hospital/Maligaon for further examination. Dr.Bagchi vide his letter dtd.27-2-97 informed that he was still under treatment of private Doctor and was unable to attend Medical Board till he was declared fit for duty by the treating Doctor.

From the above correspondence it transpires that Dr.Bagchi being a

Railway Doctor himself and knowing fully well that PMC is not considered a valid document in support of sickness, has willfully disregarded the various advices sent to him to attend Railway Medical Board with an intention to evade the transfer order.

By the above acts of omission and commission, the said Dr. Bagchi has failed to ensure complete devotion to duty and has acted in a manner unbecoming of a Railway servant in clear violation of Rule 3(1) (ii) & (iii) of Railway Service (Conduct) Rule 1956.


(Rajendra Nath)
General Manager

- 21 -

ANNEXURE-III

List of documents by which article of charge framed against
Dr.Ashoke Bagchi, Sr.DMO/N.F.Railway,are proposed to be substantiated

- (1) GM(P)/MLG's order No.E/283/III/130/PLX(O)
dated 12-2-96;
- (2) MS(IC)/LMG's letter No.H/184/LM-17 dated 1-3-96;
- (3) MS(IC)/LMG's letter No.H/SS/LM/8(Loose) dtd.14-8-96;
- (4) MS(IC)/LMG's letter No.H/174/LM dated 13-9-96;
- (5) MS(IC)/LMG's letter No.H/174/LM dated 18-9-96;
- (6) MS(IC)/LMG's letter No.H/174/LM dated 29-1-97.

ANNEXURE-IV

List of witnesses by whom the article of charge framed
against Dr.Ashoke Bagchi,Sr.DMO, are proposed to be sustained

—NIL—


(Rajendra Nath)
General Manager

FOR - OSD/RNY through CME.

53 P

ANNEXURE-III

XXR

LMB

5.5.2000

OSD/RNY

M/SS/LMB(LOOSE) (.) PERTIN. OSD/RNY/MISC DATED 27.4.2000 (.)
DR. ASHOK K. BAGCHI IS OUT OF HOJAY (.) LETTER COULD NOT
BE SERVED (.)

CMS/LMB

Not to be telegraphed.

Chief Medical Superintendent,
H. F. Railway, Lunding.

Copy by post in confirmation to : CMD

1. OSD/RNY (H.O.)

Chief Medical Superintendent,
H. F. Railway, Lunding.

...
...
...
...
...

Attested by
Devjit Goswami,
Advocate.

PROCEEDINGS OF EX-PARTE DAR ENQUIRY AGAINST DR.A. BAGCHI,
SR.DMO/HOJAI INTO THE MAJOR MEMORANDUM NO.E/74/GAZ/386/
CON.DATED 26-6-96.

BRIEF HISTORY OF THE CASE :

A major memorandum bearing No.E/74/Gaz/386/Con. dated 26-6-99 was issued to Shri Dr.A.Bagchi, Sr.DMO/Hojai placed at flag 'A'. The same was acknowledged by Dr.Bagchi vide flagged 'B'. He submitted his defence vide flag 'C' in which he denied the charges levelled against him. The charge in brief is that Dr.Bagchi did not comply with the orders of transfer issued under GM(P)/Maligaon's No. E/283/III/130/Pt.X(0) dated 12-02-96 and remained on unauthorised absence since 20-9-96, thereby failed to ensure complete devotion to duty and acted in a manner unbecoming of a Railway servant in clear violation of Rule 3(i) (ii) and (iii) of Railway Service (Conduct) Rules 1966.

Dr.Bagchi was sick under RMC under MS/IC/LMG from 9th Feb/96 and was referred to MD/CH/MLG under MS/IC/LMG's letter No.H/184/LM-17 dt.01-3-96 flag 'D' under MS/IC/LMG's letter No. H/SS/LM/8(Loose) dt.14-8-96 the C.O. was asked to attend MS/IC/LMG's office on 19-8-96 at 10.00 hrs regarding his sickness flag 'E'. C.O.was further asked to attend Medical Board at LMG Rly.Hospital on 18-9-96 at 10.00 hrs. vide flag 'F' and on 20-9-96 vide flag 'G'. As he failed to attend Medical Board on both the above dates, MS/IC/LMG under his letter at flag 'H' asked the C.O.to let him know whether he is in a position to attend Medical Board at CH/MLG. Name of Dr.Bagchi was deleted from RMC w.e.f.20-9-96 and as such he has been charged for unauthorised absence since 20-9-96.

REASONS FOR EX-PARTE ENQUIRY :

Under GM(P)/MLG's letter No.E/74/GAZ/386/Con.dated 26-11-99 the undersigned has been nominated as I.O.in this DAR case flag I.

31-01-2000 was fixed for preliminary enquiry and the C.O.was asked to attend OSD/RNY's office at RNY station at 10.00 hrs on 31-01-2000. He was also advised to inspect documents if he so desire along with his defence counsel flag 'J'. But he did not attend.

Second date was fixed on 27-3-2000 at 10.00 hrs.at OSD/RNY's office at RNY station and the same was communicated to C.O.through CMS/LMG which has been acknowledged by the C.O. I.O's letter at flag 'K' and CMS/LMG's letter and C.O's acknowledgement thereon at flag 'L'. He again did not attend the enquiry.

Third date was fixed on 24-4-2000 at 10.00 hrs.at OSD/RNY's office at RNY station. The same was communicated to C.O.through CMS/LMG at flag 'M'. The same has been communicated to C.O.by CMS/LMG under his letter at flag 'N' and acknowledged by C.O.at flag 'O'.

The fourth date for ex-parte enquiry was fixed on 8-5-2000 at 10.00 hrs.at OSD/RNY's Office at Rangiya station. The same has been communicated to C.O.by CMS/LMG under his letter at flag P which was refused by C.O.this time. *being away*

*Attested by
Devraj Gernani,
Advocate.*

Contd...P/2.

Continuation sheet (2)

As the C.O. failed to attend the DAR enquiry on four consecutive dates on 31-1-2000, 27-3-2000, 24-4-2000 and 8-5-2000, There was no alternative but to finalise the case by holding DAR enquiry ex-parte.

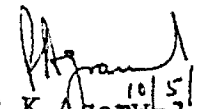
Ex-parte DAR enquiry against Dr. Ashoke Bagchi, Sr.DMO/Hojai against major memorandum No.E/74/GAZ/386/Con. dated 26-6-99. The C.O. did not turn up upto 11.00 hrs. on specified date, time and place and after perusal of all relief upon documents available in this docket DAR loose case file. I came to the conclusion that charge of unauthorised absence since 20-9-96 levelled against Dr. Ashoke Bagchi, Sr.DMO/Hojai under major memorandum No. E/74/GAZ/386/Con. dated 26-6-99 vide Article I is proved beyond doubt.

REASONS OF FINDINGS :

Under Article - I of the Major Memorandum issued to Dr. Ashoke Bagchi, Sr.DMO/Hojai charge of unauthorised absence since 20-9-96 has been levelled. Under MS/IC/LMG's letter his name has been struck off from RMC w.e.f. 20-9-96 and thereafter he has not joined at LMG the place of posting on transfer till the date of ex-parte enquiry (24-4-2000). Prior to struck off his name from RMC he was given opportunity twice to attend Medical Board at Railway Hospital/LMG on 12-9-96 and 20-9-96. He failed to attend and willfully remained unauthorisedly absent and evaded the DAR enquiry also.

FINDINGS :

On perusal of list of documents as per Annexure-III attached with the Memorandum and other relied upon document available in the Docket DAR case file I have come to the conclusion that charge of unauthorised absence since 20-9-96 levelled against Dr. Ashoke Bagchi, Sr.DMO/Hojai under major memorandum No.E/74/GAZ/386/Con. dated 26-6-99 is fully proved beyond doubt.


(P.K. Agarwal)
Inquiry Officer
O.S.D/Rangiya.

From: Dr. Ashok Bagchi,
Sr.DMO/Hojai.

Dated, 16.6.2000

To
General Manager,
N. F. Railway,
Maligaon, Guwahati-11.

Sub:- Representation against the inquiry
and findings of the inquiry officer,
Shri P. K. Agarwal, OSD/Rangiya,
in DAR case No.E/74/GAZ/386/Con
dated 26.6.99.

Ref:- GM(P)/MLG's letter No.E/74/GAZ/386/CON
dated 31.5.2000 received on 9.6.2000.

Sir,

In terms of GM(P)/MLG's letter referred to above, I have been supplied with a copy of the inquiry report submitted by the inquiry officer, Shri P.K.Agarwal, OSD/Rangiya, in connection with the DAR inquiry he held ex parte on the charges framed under charge memorandum No.E/74/GAZ/386/CON dated 26.6.99. I have the following submissions to make against the inquiry report.

1. That the conduct of the inquiry ex parte by the inquiry officer is illegal and ultra vires the provisions of Rule 9(23) of RS(D&A)Rules, 1968.
2. That the findings of the inquiry officer on the charges framed under charge memorandum dated 26.6.99 are perverse.
3. That the findings of the inquiry officer are based on no evidence at all.
4. That the findings are mechanical indicating total lack of application of mind and the reasons for findings are non est.
5. That the conclusions of the inquiry officer are such that no reasonable man acting reasonably would arrive at it from the material before him.
6. That the conduct of the inquiry and the report are violative of the principles of natural justice and fair play enshrined in Article 311(2) of the Constitution.

The above points are established as follows:

- (a) In terms of Rule 9(23) of RS(D&A)Rules, 1968, if the Railway servant, to whom a copy of the article of charge has been delivered, does not submit a written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex parte.

Since I had submitted a written statement of defence there could be no question of holding ex parte inquiry on that count. The other ground of holding ex parte inquiry is non-appearance of the charged officer before the inquiring officer. The inquiry officer in this case has held the inquiry ex parte on this ground.

From the inquiry officer's own ipse dixit, he held

Biswajit Borah (Contd....2)

Attested by
Devajit Gogoi
Advocate.

fixed the preliminary hearing on 31.01.2000. But unlike two other instances of service of notice on me he has relied on no documentary evidence to hold that I did not attend on that date inspite of receiving the notice.

However, for the dates of inquiry fixed on 27.3.2000 and 24.4.2000, the inquiry officer has cited evidence for service of the notices. I also do not dispute the same. But the inquiry officer has conveniently omitted to mention in the report that I had sent a wire (No.256 dated 23.3.2000) acknowledging receipt of the notice for the inquiry on 27.3.2000 and my inability to attend the same on account of illness.

L of CMG/1-4
The most crucial date fixed for inquiry non-appearance in which caused the inquiry officer to hold the inquiry ex parte was 8.5.2000. The inquiry officer himself has stated that the fourth date for ex parte inquiry was fixed on 8.5.2000 and the same was communicated to C.O. by CMS/LMG which was refused being away. How can one refuse a notice when one is away? The inquiry officer has conveniently omitted to mention the wire (XXR No. H/SS/LM-8(Loose) dated 5.5.2000) stating that "Letter could not be served". This document proves that holding of the inquiry ex parte on 8.5.2000 notice for which could not be served on the charged officer was totally illegal, unconstitutional and ultra vires the rules. Inquiry cannot be legitimately held ex parte when no notice for the inquiry could be served on the charged officer.

From the foregoing, it is palpable that the conduct of the inquiry ex parte by the inquiry officer is against all canons of justice; it is violative of the rules of natural justice and fair play enshrined in Article 31(2) of the Constitution. The inquiry proceeding and the findings drawn ex parte are liable to be rejected on this ground alone.

(b) That the findings of the inquiry officer are perverse is evident from the fact that the inquiry officer has held the charge proved "On perusal of list of documents as per Annexure III attached with the Memorandum and other relied upon documents available in the Docket DAR case file".

Firstly, no finding could be drawn on the basis of only "list of documents as per Annexure III of the Memorandum". They were the only documents relied on by the disciplinary authority to sustain the charge. The inquiry officer is not competent to rely on other documents which were not cited in Annexure III.

The list of documents cited in Annexure III comprises of 6 documents and a mere glance or perusal thereof could not enable any one to conclude as to the guilt of the charged officer.

(c) That the findings of the inquiry officer are based on no evidence at all is evident from that he has not discussed the evidence before him. A mere "perusal of list of documents in Annexure III" of the charge memo was not sufficient to infer the guilt of the charged officer.

(d) That the findings of the inquiry officer are mechanical with attendant non-application of mind are

BS/14 RWC (Contd3)

evident from the reasons supplied by the inquiry officer for arriving at the conclusion of guilt of the charged officer. In his "Reasons for findings", the inquiry officer holds that under MS/IC/LMG's letter his name has been struck off from RMC w.e.f. 20.9.96 and thereafter he has not joined at LMG the place of posting on transfer till the date of ex parte inquiry (24.4.2000). That prior to struck off his name from RMC he was given opportunity twice to attend Medical Board at Railway Hospital/LMG on 18.9.96 and 20.9.96 and that he failed to attend and wilfully remained unauthorisedly absent and evaded the DAR inquiry also."

From the above reasons supplied by the inquiry officer based on which he has drawn a conclusion of guilt against the charged officer it is evident that he has inferred my guilt on the basis of my failure to carry out transfer to Lumding and failure to attend the DAR inquiry also. He has totally omitted from consideration the fact that I was sick from 8/9.2.96 under RMC, that I was referred to MD/Central Hospital/Maligaon under MS/IC/LMG's letter dated 1.3.96 (SN-2 of Annexure III of the charge memo), that I was referred to GMCH, Department of Surgery on 5.5.96 by MD/CH/MLG, that I was advised rest for three months by the Department of Neurology/GMCH w.e.f. 20.8.96 to 20.11.96, that appearance before the Medical Board on 19.8.96 when I was under the treatment of GMCH on being referred by Central Hospital/MLG was totally unwarranted, that my appearance before the medical board at Lumding on 18.9.96 was also uncalled for when I was under the treatment and advice of GMCH, where I was referred to by MD/CH/MLG in the first place. The same applies to the appearance before the Medical Board on 20.9.96. All these facts are narrated in the Annexure II of the charge memorandum itself.

The inquiry officer also did not consider the vires of the authority in striking off my name from the sick list of MS/IC/LMG w.e.f. 20.9.96 on account of non-appearance in the Medical Board as well as for not submitting authentic documents in support of my eye problem. When the MS/IC/LMG had referred my case to MD/CH/MLG from where I was referred to GMCH/GHY, unless GMCH/GHY referred the case back to MD/CH/MLG, MD/CH/MLG or MS/IC/LMG had no jurisdiction to consider my case of treatment and there was no justification for holding medical board.

However, the failure to attend the medical board is not ground enough for deleting the name of a sick person from the sick list. It has been clearly laid down in para 556(4) of Indian Railway Medical Manual, 2000 ed., that "Normally, such medical boards will be convened at the headquarters of the CMS/MS of the division referring the case, unless the nature of the case is such that the Railway servant is unable to undertake the journey to the place at which the medical board is to be held in which case it will be held at the nearest Railway hospital or health unit where the patient resides."

On my inability to attend the medical board at Lumding on ground of sickness, instead of deleting my name from the sick list, the only course open to the CMS/LMG was to hold the medical board at Hojai Health Unit, as laid down in para 556(4), IRMM, as reproduced above.

jsf (H B) (Contd....4)

(4)

From the above, it is palpable and crystal clear that the inquiry the inquiry officer did not apply his mind at all to the circumstances appearing from the documents relied on by the disciplinary authority himself as well as the statement of imputations vide annexure II of the charge memorandum. He also did not bother to consult with the rules and procedure laid down in Indian Railway Establishment Code, vol.I and the Indian Railway Medical Manual vol.I.

(e) Had the above evidence been placed before a reasonable man acting reasonably he would never have failed to draw an inference of total innocence of the charged officer. That the inquiry officer acted contrarily establishes that the inquiry officer had acted in an unreasonable, arbitrary and mechanical manner.

(f) That the purpose of an inquiry under Rule 9, ibid, is to afford all reasonable opportunities to the charged officer not only to refute the charges but also to establish his innocence. The inquiry officer was not inclined to do that. As out of the four dates, there was evidence before him, notices for the first and the last dates of inquiry could not be served. Yet he held the inquiry ex parte. Further, he was dealing with a man who was sick and under treatment of a medical practitioner. Assuming the sickness to be a case of malingering, no government authority can declare a government servant a malingerer unless procedure prescribed for the same has been observed. That inquiry officer could very well have held a sitting of inquiry at Hojai itself. But acting on the premise that I must be malingering he held the inquiry ex parte and proved the charge. It demonstrates that the inquiry officer was ab initio and ad nauseam interested in establishing the guilt of the charged officer. Fixing dates for the inquiry was a ritual that the inquiry officer observed just to show that he tried to hold an inquiry. It was an empty ritual with foregone conclusions. No reasonable opportunity can be said to have been given in this case when without service of notice the inquiry was finalised ex parte. As such, the conduct of the inquiry and the findings drawn by the inquiry officer are violative of Articles 14, 19, 21, 51A(h) and 311(2) of the Constitution of India and the same is liable to be rejected as being void and inoperative by reason of Article 13(2) of the Constitution.

In view of the foregoing, I pray that the findings of the inquiry officer may kindly be rejected.

Thanking you,

Yours faithfully,

(Dr. Ashok Bagchi)
Sr.DMO/Hojai.

From: Dr. Ashok Bagchi,
Sr.DMO/Hojai
(Compulsorily retired)

Dated, 4-04-2001

To
The General Manager,
N. F. Railway,
Maligaon, Guwahati-11,

Sub:- Finalisation of charge sheet
No.E/74/GAZ/386/CON dated 26.6.99
alleging unauthorised absence.

Ref:- GM(P)/MLG's letter No.E/74/GAZ/386/CON
dated 31.5.2000 and my representation
thereon dated 16.6.2000.

Dear sir,

I have been compulsorily retired from service w.e.f. 21.6.2000 by a Presidential order in a disciplinary proceeding that arose out of a CBI/SPE case for accepting the prescribed railway fee from a private patient sent to me by CBI as an emergency case. I have challenged the order of compulsory retirement before the hon'ble CAT/GHY and the matter is sub judice.

However, not satisfied with implicating me in a CBI case, certain vested interests also implicated me in a departmental proceeding for unauthorised absence for my absence from duty on account of sickness. A slapdash inquiry into the charges was also held ex parte by the inquiry officer, Shri P.K.Agarwal, the then OSD/Rangiya and a sloppy finding establishing the charge was submitted. A copy of the said finding was supplied to me vide GM(P)/MLG's letter referred to above and I submitted a representation against the same on 16.6.2000. No order on my representation has been communicated to me as yet. This proceeding is thus hanging on my head like Damocles' sword.

Therefore, I request you to kindly communicate to me a decision on the said pending proceeding so that at any point of time in future this proceeding is not resurrected to strike me down with again.

I shall be highly obliged if a decision is conveyed soon.

Thanking you,

Yours faithfully,

Dr. Ashok Bagchi
(Dr.Ashok Bagchi)
Sr.DMO/Hojai
(Compulsorily retired)

*Attested by
Rajit Goswami
Advocate.*

To
The General Manager,
N.F. Railway, Maligaon.
Guwahati-II

Sub:- Finalisation of departmental proceeding.

Ref:- Memorandum No.E/74/GAZ/386/CON dt.26.6.99.

Sir,

I would humbly like to place the following before your Goodself for your kind consideration and necessary action so that I am not made to suffer any longer.

1. That while serving as Senior D.M.O.Hojai a proceeding was drawn up against me vide memorandum No.E/74/GAZ/386/CON dt.26.6.99 on the allegation that I had remained on unauthorised absence since 20.9.96, though during this period I was undergoing treatment in the Gauhati Medical College Hospital on being referred by the Sr.DMO(Ortho) Central Medical Hospital, N.F.Rly.Maligaon. I had submitted my written statement denying the charges and fully explaining that I couldnot be treated as being on unauthorised absent. However, an ex-parte inquiry was held in a most perfunctory manner and the enquiry officer had submitted his report as far back as on 10.5.2000 and I have also submitted my representation against the same.

2. That though the enquiry officer had submitted his report on 10.5.2000, no final order on the proceeding was passed. Subsequently I was compulsorily retired from service w.e.f.21.6.2000 /on the basis of another proceeding that arosed out of a CBI/SPE case for accepting the prescribed railway fee from a private patient. I had file an application in the Hon'ble C.A.T.,Guwahati Bench challenging the order of compulsory retirement and the same was admitted and numbered as O.A.377/2000. The Hon'ble Tribunal after hearing all concerned by judgement dt.27.2.02 has set aside the order of compulsory retirement.

Though I had submitted a copy of the judgement passed by the Hon'ble Tribunal alongwith an application to allow me to resume my duties till date I have not been allowed to resume my duties as a result of which I am facing great hardship and as such I pray before your Goodself to kindly look into the matter and pass necessary orders so that I can resume my duty in terms of the judgement passed by the Hon'ble Tribunal.

Contd....P.2.

Assisted by
Devraj Goswami
Advocate.

Reck
File Bk
5-2-03

3. That since the enquiry officer had already submitted his report and I have also submitted my representation in the proceeding drawn up on 26.6.99 and I am in service the final orders in the said proceeding may be passed immediately so that I am not made to suffer further harassment.

I humbly pray before your Goodself to kindly pass the final orders on the said proceeding at your earliest.

Yours faithfully,

Dr. Ashoke Bagchi
S-2-03

(DR. ASHOKE BAGCHI)
Ex. Sr.DMO.N.F.Rly.Hojai.