

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 152/2004

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SECTION OFFICER (Judl.)

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

ORDER SHEET

Org. App. / Misc Petn / Cont. Petn / Rev. Appl. 15.2/2004

In O.A.

Name of the Applicant(s) ... P. Suryanarayana ...

Name of the Respondent(s) ... M. O. I. & O. S. ...

Advocate for the Applicant ... Mr. N. N. B. Choudhary ...
Mr. T. Deuri

Counsel for the Railway/CGSC ... P. C. Counsel ...

OFFICE NOTE	DATE	ORDER OF THE TRIBUNAL
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This application is in form 19.7.2004 present: The Hon'ble Shri K.V. Sachidanandan
is filed/C.F. Rs. 50/- Member (J).

deposited in PC/BD The Hon'ble Shri K.V. Prahladan
No. 37C 428987 to 428955 Member (A).

Dated 9/7/04
No. 37C 428998

1/c Dy. Registrar

Steps taken

9/7/04
Received notice & order
dtd. 19-7-04 fr. Reg.
N.O. 2 Advt
21-7-04
N.F. Rly, Maligaon

Dr. M.C. Sharma, learned counsel for the Railways, took notice for the respondents and submitted that he would like to get instruction from the respondents. Dr. Sharma also submitted that he has no objection in admitting the O.A. Admit the O.A. Four weeks time is granted to the respondents to file written statement and two weeks for rejoinder, if any.

With regard to the interim relief, we are not inclined to grant the same. As per the Annexure-H the punishment imposed on the applicant is the reduction to the lower post and fixation of pay of Khalasi helper in the pay scale of Rs. 2650-5000/- for a period of 4 years with the condition that he will be restored back to original post. Mr. T. Deuri, learned counsel for the applicant has taken our attention to Annexure-M, page 33-34, which show that the applicant was given the basic pay of Rs. 2550/-

Dr. M.C. Sharma, learned counsel for the respondents, submits that they have

Contd.

19.7.2004 no objection if a representation is filed by the applicant with regard to his actual basic pay. Accordingly, applicant is directed to make a representation before the respondents and ~~the~~ if such representation is made, respondents shall take a decision thereof without much delay.

changing the Respondent of Mr. A.D.
List on 6.9.2004 for order.

Notice & order
dt. 19/7/04; Sent
to D/Section
for issuing to
resp. Nos. 1, 3, 4 & 5,
by regd. with A/D
post.

Cms
26/7/04.

D/Memo No. 1138 to 1141

dt. 26/7/04.

6.9.04.

le
16/8/04.

Notice duly served
on resp. Nos 3, 4.

le
20/8/04.

lm

3-9-04

6.10.04.

No. w/s has been filed

4-10-04

1/ Notice duly served

2- No. 3, 4

3- S/D. awarded for 1 & 5.

4- No. w/s has been filed.

Service Reports is still
awaited for Respondents

NOS. 1, 2, 5.

w/s has not been filed.

NV
25/11/04

Member (A)
Member (A)

Member (J)
Member (J)

bb

Four weeks time is allowed to the Respondents to file written statement.

List on 6.10.04 for filing of written statement and further orders.

Member
Member

Present: Hon'ble Mr. Justice R.K. Batta, Vice-Chairman.

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

On the request of learned counsel for the respondents matter is adjourned for filing written statement. Stand over to 29.11.04.

Member
Member

Vice-Chairman
Vice-Chairman

lm

-3-

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O.A.152/2004

Notes of the Registry	Date	Order of the Tribunal
10-1-05 No W/S has been filed.	29.11.2004	On the prayer made by XXXXXX Mr.S. Sarma, learned Railway counsel six weeks time is allowed to the respondents to file written statement. List on 11.1.2005 for further orders. Member
	bb	
	11.1.2005	Four weeks time is allowed to the respondents to file written statement as prayer was made on their behalf. List on 10.2.2005 for written statement. Member
	bb	
No reply has been filed. 11.3.05	10.2.05.	Ms.U.Das learned counsel appearing on behalf of the Respondents states that they have not received any instructions from the Railway. Accordingly, further four weeks time is granted to file reply. List on 8.3.05. Member(A) Member(J)
8.4.05 No W/S has been filed. 12.	lm	
	28.03.2005	Since this is a Division Bench matter post on 11.4.2005. Vice-Chairman
9-5-05 No W/S has been filed.	bb	
	11.04.2005	Till today there is no written statement in spite of several opportunities were given. Hence post for final hearing on 10.5.2005. Written statement if any in the meantime. Member Vice-Chairman
	bb	

10.5.05.

~~Decided counsel for the parties~~
~~was present. Post the matter on 9.6.05.~~

~~Vice-Chairman~~

10.5.05.

On behalf of learned counsel for the applicant sought for adjournment. Dr. M.C. Sharma, learned counsel appearing on behalf of Railway counsel.

Post the matter for hearing on 9.6.05. In the meantime the Respondent will file the written statement.

[Signature]
Member

[Signature]
Vice-Chairman

8-6-05
No. 105 has been
filed.

lm

09.06.2005

Dr. M.C. Sarma, learned Railway counsel for the respondents submits that written statement is being filed today. Post on 19.7.2005. Rejoinder, if any, in the meantime.

10.6.05
w/s filed by the
Respondents.

[Signature]

[Signature]
Member

[Signature]
Vice-Chairman

mb

19.7.2005

On behalf learned counsel for the applicant adjournment is sought. Post on 23.08.2005.

No Rejoinder has
been filed.

22.8.05

[Signature]
Member

[Signature]
Vice-Chairman

mb

23.8.05.

Post the matter before the next available Division Bench.

23.8.05
Affidavit in reply
filed by the Applicant.

lm

[Signature]
Vice-Chairman

5.10.2005

Ms. B. Bhuyan, learned counsel on behalf of Mr. N.N.B. Choudhury, learned counsel for the applicant seeks for short adjournment. Dr. M.C. Sarma, learned counsel for railways submits that as a last chance can be given. Post on 22.11.2005.

4-10-05
① w/s and Rejoinder
has been filed.

4.10.05

Member

[Signature]
Vice-Chairman


-5-

O.A. 152/2004

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22.11.2005

Post before the next Division Bench.



Vice-Chairman

Case is ready for hearing.

mb

8.3.06.

Judgment delivered in open Court. Kept in separate sheets. Application is dismissed. No costs.

Vice-Chairman

Vice-Chairman

lm

16.3.06

Copy of the
order has been
sent to the office
for filing the
same to the applicant
by post and a copy
of the same handed over
to the sdy. standing
counsel for the Respond.
Hb

my
7.3.06

CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH.

O.A. No. 152 of 2004

DATE OF DECISION: 08.03.2006.

Shri Pappu Suryanarayan

APPLICANT(S)

Mr.N.D.B.Choudhury, Mr.T.Deuri

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

U.O.I. & Ors

RESPONDENT(S)

ADVOCATE FOR THE
RESPONDENTS

Dr.M.C.Sarma, Railway advocate

THE HON'BLE MR. JUSTICE G. SIVARAJAN VICE-CHAIRMAN
HON'BLE MR.N.D.DAYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgments? *M*
2. To be referred to the Reporter or not? *M*
3. Whether their Lordships wish to see the fair copy of the judgment? *M*
4. Whether the judgment is to be circulated to the other Benches? *No*

Judgment delivered by Hon'ble Vice-Chairman

8/3/06

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.152 of 2004.

Date of Order: This the 8th Day of March, 2006

HON'BLE MR.B.N.SOM, VICE-CHAIRMAN(A)
HON'BLE MR.K.V.SACHIDANANDAN, VICE-CHAIRMAN.(J)

Shri Pappu Suryanarayan
Son of Late Pappu Laxmia,
Aged about 45 years, resident of
New Guwahati, Railway Colony. Police Station,
Chandmari,
Guwahati-21

... Applicant

By Advocate Mr.N.D.B.Choudhury,
Mr.T.Deuri.

-Versus-

1. The Union of India,
Represented by the Secretary to the Government of India,
Ministry of Railways.
2. The General Manager,
North East Frontier Railway,
Maligaon, Guwahati-11.
3. The Divisional Electrical Engineer,
North East Frontier Railway, Guwahati.
4. The Assistant Divisional Electrical Engineer,
North East Frontier Railway, Guwahati.
5. The Senior Sectional Engineer,
Electrical/Power).
N.F.Railway, New Guwahati-21.

Respondents

By Advocate Dr.M.C.Sarma, Railway advocate.

ORDER(ORAL)

K.V.SACHIDANANDAN:

The applicant joined earlier on 3.8.1976 as Khalasi on compassionate ground due to the demise of his father on and the applicant promoted as Station Pump Asstt. The LAP granted to the applicant to visit his native place at Matshilesam District Srikakulam.

W


As his mother was ill. According to him he himself felt ill and was diagnosed of TB. He was permitted to resume duty on 2000. The charge sheet was issued on 1999 stating that applicant unauthorisedly absent from duty but this charge sheet never reached the applicant and was received the same on 9.5.2002. Reply filed by the applicant contended that he felt seriously ill and therefore, he could not join the duty. The Inquiry was held by the respondent against the applicant and passed a punishment by reducing him to a lower post of Khalasi and fixation of pay in scale of Rs.2650-3000/- for a period of 4 years. The applicant filed an appeal before the Respondent, but the said appeal was rejected. The applicant has filed another appeal to the D.P.O, Lumding, N.F.Railway against the penalty of demoting him to a lower post. But the said appeal was rejected. Hence the applicant has filed this O.A. for following reliefs:-

"In the premises aforesaid applicant prays for an order setting aside and/or quashing the impugned demotion order dated 12.12.02 (Annexure H) and for a direction to the respondents No.4 to promote the applicant to the post he deserves in terms of the rules and/or to pass any other appropriate order/orders as this Hon'ble Tribunal may deem fit and proper."

In the written statement plea is taken that the applicant was working as SP Grade III, was granted 15 days' leave on average pay from 27.1.96 to 10.2.96 to enable him to attend to his sick mother. However, the applicant did not report back for duty after expiry of his leave period nor did he send any intimation about his possible absence until nearly six years. Due to his unauthorized


absence for a prolonged period an attempt was made in February, 1999, to initiate disciplinary action on the applicant and a charge sheet was made ready. However, it could not be proceeded with as the whereabouts the applicant was not known. The applicant however, reported for duty on 8.5.2002, that is after unauthorized absence of nearly six years and he submitted that he could not return to Guwahati on expiry of his leave on account of illness. That applicant had submitted certain medical certificate from a state government doctor although the railway hospitals not far from his native place. Had he reported for treatment at a Railway hospital, not only would he have been treated free of charge but also he could escape being charged as unauthorized absent as the hospital would have informed his employers at Guwahati about his medical status.

2. We have heard Mr. T.Deuri, learned counsel for the applicant and Dr.M.C.Sarma learned Railway counsel appearing for the Respondents. We have also heard the counsel for the applicant and materials evidence on records and he has also submitted that the order of demotion has been passed without giving the applicant a fair chance of cross examination the witnesses that he was suffering from TB and that why he was unable to join service still his prayer was not allowed. The said order having been passed without any opportunity to the applicant. The learned counsel for the respondents has submitted that reasonable opportunity has been given to the applicant and imposed punishment by reduction in rank for four years and was allowed to resume duty on furnishing by him the necessary medical fitness certificate as indicated by the applicant. In this connection the learned counsel for the respondents has also mentioned that under Rule 510 of the Indian Railway Establishment Code Vol. I "No Railway servant shall be granted leave of any kind for a continuous period exceeding 5(Five) years."


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Exception to this Rule can be made by the President of India only. Though initially the applicant was granted 15 days leave to attend his ailing mother, but he was unauthorisedly absence from duty for a period of 6 years. Admittedly the applicant is a permanent employee and he should know the leave rules. It is quite unfortunate and unbelievable that he has not made any correspondence with the respondents within the six years. The medical certificate has been produced by the applicant in the intermittent period of 2 years. During the said period no proceedings initiated by the respondents. On pleadings available on records, we find that some opportunity have been given to the applicant in the Inquiry proceedings. The counsel for the respondents has submitted that under normal circumstances a more severe action such as dismissal or removal from service would have been taken against the applicant. However, the respondents had taken compassionate view of the matter as the applicant reportedly suffered from a TB supported by the Medical certificate. He neither intimated about his illness nor did he report to any Railway Medical authority at a nearby Divisional headquarter or the Zonal Headquarter at Secunderabad as is expected of a person similarly placed. The applicant had reported for his treatment in any Railway Medical facility he could have been rendered all necessary medical treatment free of charge as per admissibility. The applicant never intimated about his whereabouts for years together, the respondents had no alternative but to treat him as unauthorized absent for the period between the dates he was supposed to report back for duty after leave.

3. In the facts and circumstances we are of the view that the punishment that has been given to the applicant is not disproportionate to the gravity of his guilt considering his unauthorized absence of six years and therefore the punishment imposed by the respondents is also reasonably fair.



The O.A. does not merit in any grounds and hence dismissed. In the circumstances no order as to costs.



(K.V.SACHIDANANDAN)
VICE-CHAIRMAN



(B.N.SOM)
VICE-CHAIRMAN

LM

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH.

IN THE MATTER OF

O.A.152/2004

P.Suryanarayana

...

Applicant

Versus

Union of India & Others

...

Respondents

AND

IN THE MATTER OF

Compliance of Hon'ble Tribunal's order dated 19.7.04.

The respondents beg to submit that the applicant has been given a basic pay of Rs.2,650/- in the scale Rs.2,650-400/- on the basis of order No.

LM/L/D-25/GHY/G/Loose dated 12.12.2002.

In the month of April, 2005, Shri P.Suryanarayan has been paid the following salary:

- | | | |
|----------------|------------|----------------------------|
| 1. Basic pay - | Rs.2,780/- | (in scale Rs.2,650-4000/-) |
| 2. DP | - | Rs.1,390/- |
| 3. DA | - | Rs.709/- |
| 4. TA | - | Rs.75/- |
| 5. SCA | - | Rs.40/- |

The above facts are submitted before the Hon'ble Tribunal on behalf of the respondents.

huv
1075705
Dr. M.C.Sarma,
Railway Advocate.

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THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

AT GUWAHATI

O. A. NO. /2004

Shri Pappu Suryanarayan

-Vs-

Union of India & Ors.

LIST OF DATES

- 20.4.79 - Applicant joined as Khalasi on compassionate ground due to the demise of his father on 3.8.76.
- 18.11.92 - Applicant promoted as station pump Asstt.
- 27.1.96 - 15 days LAP granted to the applicant to visit his native place at Matshilesam District Srikakulam, Andhrapradesh as his mother was ill and where he himself felt ill and was diagnosed of TB. T.B.
- 6.10.98 - Medical Certificate issued by the Civil Asstt. Surgeon, Dist. T.B. Control Centre by Dr. Ram Gopal.
- 10.8.2000 - Medical Certificate issued by the Civil Asstt. Surgeon, Dist. T.B. Control Centre by Dr. Ram Gopal.
- 16.4.2002 - Medical Certificate issued by the Civil Asstt. Surgeon, Dist. T.B. Control Centre by Dr. Ram Gopal.

27-1-96
12-2-02

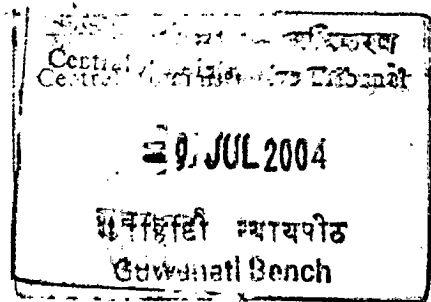
Contd..P/-

- 8.5.2000 - Application by application to Senior Section Engineer, Elect., NF Rly., New Guwahati to allow him to resume duty.
- 9.5.2002 - Forwarding letter by SSE/NFR/NGC, New Guwahati to the DEE/Ghy stating that the applicant has made an application to join duty.
- 1.2.99 - Charge sheet stating that applicant unauthorisedly absent from duty but this charge sheet never reached the applicant and was received the same on 9.5.02.
- 27.5.02 - Reply by the applicant stating that while he was on leave LAP he felt seriously ill and was diagnosed of TB and it took him a long time to recover and now when he is fully fit he may be allowed to join duty.
- 12.12.02 - Inquiry by the Asstt. Divn. Elect. Engg. NF Rly. Guwahati against the applicant and then passed a punishment by reducing him to a lower post of Khalasi and fixation of pay in scale of Rs.2650/3000/- for a period of 4 years.
- 2.6.03 - Medically fit Certificate by Chief Medical Director, Guwahati allowing the applicant to resume duty.
- 26.6.03 - The applicant allowed to join duty as KH/H (helper/1) by DEE/NFR/Ghy.

Contd..P/-

18.2.04 - Appeal before the Divisional Engineer, Ghy .
by the applicant against the penalty of
demoting him to a lower post by order dtd.
12.12.02 by the Assistant Divisional
Electrical Engineer, Guwahati.

6.4.04 - Applicant filed another appeal to the D.P.O
Lumding, NF Rly against the penalty of
demoting him to a lower post by order dtd.
12.12.02 by the Assistant Divisional
Electrical Engineer, Guwahati.



THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH

GUWAHATI

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

Filed by
Tapan Sen
Advocate
9/7/04

D.A. No. **152** of 2004

Sri Pappu Suryanarayan

....Applicant

-Versus-

Union of India & Ors.

.....Respondents.

I N D E X

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- Date of filing

Filed by: Tapan Sen
Advocate
GHC
9/7/04

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THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
AT GUWAHATI

O. A. NO. /2004

BETWEEN

Shri Pappu Suryanarayan
Son of Late Pappu Laxmia,
aged about 45 years, resident of
New Guwahati, Railway Colony
Police Station Chandmari, Guwahati-21.

.. APPLICANT

-VERSUS-

1. The Union of India,
represented by the Secretary to the Government of
India, Ministry of Railways.
2. The General Manager,
North East Frontier Railway,
Maligaon, Guwahati-11.
3. The Divisional Electrical Engineer,
North East Frontier Railway, Guwahati.
4. The Assistant Divisional Electrical Engineer,
North East Frontier Railway, Guwahati.

Contd..P/-

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5. The Senior Sectional Engineer,
(Electrical/Power),
N.F.Railway, New Guwahati-21.

...RESPONDENTS

DETAILS OF APPLICATION

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

Order dated 12.12.02 by the Assistant Divisional Electrical Engineer, N.F.Railway, Guwahati imposing a penalty of the applicant by reduction to a lower post and fixation of pay of Khalasi helper in scale of 2650-5000/- for a period of four years with the condition that applicant will be restored back to original post and scale pay of SPA/III in scale of Rs.3050-4550/- on completion of above penalty and also the to consider his appeal to the D.P.O. Luming, N.F.Railway on 6.4.04 praying to consider his case and to restore him back to his original post.

2. JURISDICTION OF THE TRIBUNAL:

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

Contd..P/-

2N

3. LIMITATION:

The applicant further declares that the application is filed within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985 and as such the applicant has filed an appeal to the competent authority on 6.4.04 praying to consider his case. The applicant further states that there is no deliberate delay and/or negligence and/or laches in filing the instant application.

4. FACTS OF THE CASE:

4.1 That the applicant entered service as Khalasi on 20.4.1979 on compassionate grounds due to demise of his father on 3.8.1976. the applicant further begs to state that he was working in the Guwahati Railway Station as Khalasi.

4.2 That the applicant begs to mention that he was promoted to the post of Station Pump Assistant Grade-III, New Guwahati Division on 18.11.92. It is pertinent to mention here that the applicant always worked with sincerity and dedication.

A copy of the order dtd. 18.11.92 having No. E/283/1/1486 promoting the applicant is annexed herewith as Annexure - A.

Contd..P/-

PN

4.3 That the applicant begs to state that in the month of January, 1996 the applicant came to know that his mother was seriously ill who stayed in village Matchilesam, Dist. Sri Srikakulam (Andhra Pradesh). The applicant states that the applicant at that time was working under SEE/Power/New Guwahati as SPA Gr-III and on coming to know about his mother's illness he applied for leave and was sanctioned 15 days LAP w.e.f. 27.1.96 to 10.2.96. The applicant further begs to state that while the applicant was availing his leave at his native place at Matchilesam, District Srikakulam (Andhra Pradesh) he felt seriously (diagnosed as TB) for which he had to take medical treatment under Dr. N. Ram Gopal, Civil Assistant Surgeon District TB Control Centre, Srikakulam and as his condition became critical he had to remain in continuous attention of the physician. It is pertinent to mention that the applicant when he was suffering from Tuberculosis sent many letters and a telegram informing the concerned authorities that he was suffering from TB, time to time and many of these letters are annexed herewith the petition. It is also stated by the applicant that many letters or prescription by the Doctor are not available with the applicant but what ever medical certificate are available with the applicant are annexed herewith the application. It is also stated that these above mentioned medical certificates were issued by Dr. N. Ram Gopal, Civil Assistant

Contd..P/-

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Surgeon, District TB Control Centre, Srikakulam on 6.10.98, 10.8.2000 and 16.4.2002.

Copy of the telegram sent by the applicant is annexed as Annexure - B. Copies of the Medical certificate issued by the Civil Assistant Surgeon District TB Control Centre, Dr. N. Ram Gopal dtd. 6.10.98, 10.8.2000 and 16.4.2002 are annexed herewith as Annexure-C series.

4.4 That the applicant begs to state that as soon as the applicant recovered from his disease and regained his health he returned to Guwahati on 8.5.2000 and thereafter made an application to the senior Section Engineer (Electrical/Power), NF Railway, Guwahati that he may be allowed to join in his post. the applicant begs to state that in the said application the applicant has stated that due to his illness (Tuberculosis) he was unable to come to Guwahati and do his duty as he needed continuous treatment from the Physician and also that after a prolong treatment his physician has now allowed him to resume duty. It is also stated that one original medical certificate and two photo copies of sick certificates were enclosed with his application.

A copy of the application dated 8.5.2002 to the senior Section Engineer, Electrical, NF Rly, New Guwahati is annexed herewith as Annexure -D.

Contd..P/-

3N

4.5 That the applicant begs to state that his matter of resuming and rejoining in his duty was forwarded to the DEE/Ghy by the Senior Section Engineer, Electrical, NF Rly, New Guwahati. The petitioner begs to mention that to his utter shock and disbelief on 24.5.2002 the applicant was served with a charge sheet bearing No. N.LM/L/D/25/GHY/9(house)150 by DEE/GHY/NF Rly alleging that the applicant had been absenting himself from duty unauthorisedly since 1997. It is pertinent to mention here that this charge sheet was prepared on 1.2.99 by the Divisional Electrical Engineer/NF Railway/ Guwahati but the copy was never ever served to the applicant before hand.

A copy of the forwarding letter dated 9.5.02 by SSE/NFR/NGC bearing memo No. EC/E-1/NGC/2-108 is annexed herewith as Annexure-E. A copy of the alleged charge sheet dtd. 1.2.99 by DEE/Ghy bearing memo No. LM(L)/D-23/GHY/G(loose)-190 is annexed herewith as Annexure-E.

4.6 That the applicant begs to state that the applicant on 27.5.2002 filed a reply of the charge sheet served to him on 24.5.2002 prepared on 1.2.99 by DEE/Ghy/ NF RLY stating that in the year 1996, while he was sincerely doing his duty in Guwahati, under Senior

Contd..P/-

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Section Engineer (Electrical) as SPA, Grade-III the applicant prayed for a leave of 15 days as his mother was ill and his leave was granted w.e.f. 27.1.96 to 10.2.96. The applicant further states that while he was availing his leave at his native place i.e. Matchilesam (Andhra Pradesh) he felt seriously ill and it was diagnosed by the doctor i.e. Govt. Physician that he was suffering from TB and it took him a long time to recover and as he had recovered completely the applicant may be allowed to join service. The applicant begs to state that the applicant may kindly be excused as it his first and last case and till this incident he had a clean service record.

A copy of the reply letter dtd. 27.5.02 by P.S. Narayana is annexed herewith as Annexure - G.

4.7 That the petitioner begs to state that inspite of his genuine request of reinstating him in service an enquiry was instituted against the applicant and after the enquiry the Assistant Divisional Electrical Engineer NF Railway, Guwahati passed a punishment so the applicant reducing him to a lower post and fixation of pay of Khalasi helper in scale of Rs.2650-3000/- for a period of 4 years.

A copy of the order dtd. 12.12.02 by Asstt. Divisional Electrical Engineer, NF Railway Guwahati is annexed herewith as Annexure-H.

Contd..P/-

PN

4.8 That the Applicant begs to state that after the enquiry and the punishment imposed on the applicant by the authorities he was given permission to join his service and fit certificate dtd. 2.1.03 issued by Chief Medical Director bearing Memo No. HM/37/2-Pt was issued to the applicant. The applicant further states that on 26.6.03 issued to the applicant. The applicant further states that on 26.6.03 the applicant was allowed to join in the original grade IV post as KH/H(helper/I) in scale Rs.2650-4000/- by the Divisional Electrical Engineer, NF Railway, Guwahati through an order having memo No. EL/252/89/Ghy-665.

A copy of the Medical Certificate dtd. 2.6.03 issued by the Chief Director bearing Memo No. HM/37/2-Pt is annexed herewith and marked as Annexure - I. A copy of the letter dtd. 26.6.03 issued by the Divisional Electrical Engineer, NF Railway, Guwahati having memo No. EL/252/89/GHY-665 is annexed herewith as Annexure - J.

4.9 That the applicant filed an appeal before the Divisional Electrical Engineer, Guwahati, NF Railway against the penalty of demoting him vide notice No. LM/L/B25/Ghy/G/Lose dated 12.12.02 by the Assistant Divisional Electrical Engineer, Guwahati. The applicant in his

Contd..P/-

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appeal stated that as he was suffering from Tuberculosis he was not able to join his duty and now when he is fit he has come to join duty but he has been demoted to a lower rank which is caused him lot of trouble both financially and mentally and as such he may be restored back to his original position.

A copy of the letter dtd. 18.2.04 is annexed herewith as Annexure - K.

4.10 That the applicant begs to state that the applicant filed another appeal to the D.P.O., Lumding, N.F. Railway praying that his case may be looked into and he may be promoted as he have been demoted by way of punishment and has been made to join in grade IV post as Khalasi. Be it stated that in the meantime his two juniors have been promoted.

A copy of the letter dtd. 6.4.04 is annexed herewith as Annexure - L.

4.11 That the applicant begs to state that applicant when has allowed to join in Grade-IV as Helper/I(KH/H) his pay scale was fixed as Rs.2650-4000/- per month but it very sad that he is only paid Rs.2550/- a basic pay in the month of January, February, March, April.

Contd..P/-.

PN

Copies of the salary slip for the month of January, February, March and April are annexed herewith and marked as Annexure - M.

5. GROUND'S FOR RELIEF WITH LEGAL PROVISIONS

5.1 For that the impugned order of demotion dated 26.6.03 has been passed in a unfair, unreasonable and capricious manner and in complete violation of the rights guaranteed to the applicant under Article 14 and 16 of the Constitution of India.

5.2 For that the impugned order dated 26.6.03 is discriminatory against the applicant without any reasonable basis on justification and denies the applicants equality of law and/or equal protection under law.

5.3 For that the impugned order reflects colourable exercise of power for collateral purposes in as much as the said order of demotion has been passed without giving the applicant a fair chance of cross examining the witnesses that he was suffering from TB and that why he was unable to join service still his prayer was not allowed. The said order having been passed without any such opportunity to the applicant and as such the same is void and without jurisdiction and in violation of the principles of natural justice.

Contd..P/-

PN

5.4. For that the impugned order of demotion, has been passed by taking irrelevant and extraneous consideration devoid of any reason. There has been a total non application of mind to the relevant facts. No reasonable persons in the facts could have passed such order. There is malice in law and malice in fact.

5.5 For that the impugned order is most arbitrary and malafide and has caused great loss to the applicant. That the applicant submit that he is suffering both financially and mentally.

5.6 For that the impugned order of demotion has caused great damage to the service career of the applicant as the applicant is a man had an unblemished service record till the order was passed.

5.7 For that in the impugned order it was clearly stated that the applicant should be paid a basic pay of Rs.2650-4000/- instead from the date of his joining in service from the month he has been paid Rs.2650/-.

6. DETAILS OF REMEDIES EXHAUSTED:

The applicant has already filed appeal against the order of demotion before the competent authority for redressal of his grievances.

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

The applicant further declares that no other application, writ petition or suit in respect of the

Contd..P/-

RN

subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ, petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

In the premises aforesaid applicant prays for an order setting aside and/or quashing the impugned demotion order dtd. 12.12.02 (Annexure- H) and for a direction to the respondents No. 4 to promote the applicant to the post he deserves in terms of the rules and/or to pass any other appropriate order/orders as this Hon'ble tribunal may deem fit and proper.

9. INTERIM ORDER PRAYED FOR:

For stay/suspend the letter dtd. 12.12.02 issued by the Assistant Divisional Electrical Engineer, NF Rly, Guwahati demoting the applicant as Grade-IV employee and on any other order/s as your Lordships may deem fit and proper.

10.....

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O.:

- i) I.P.O. No. : 37C 428984 - 95, 37C 428988
- ii) Date : 01/7/04
- iii) Payable at : Guwahati Chandmari Post office

12. LIST OF ENCLOSURES:

As stated in the Index.

Contd..P/-

2N

VERIFICATION

I, Shri Pappu Suryanarayan, aged about 45 years, Son of Late Pappu Laxmia, resident of New Guwahati Railway Colony, P.s. Chandmari, Guwahati in the district of Kamrup, Assam do hereby solemnly affirm and verify that the statements made in paragraphs 1, 2, 3, 4.1, 6 and 7

~~are true to the best of my knowledge~~ are true to the best of my knowledge, those made in paragraphs 4.2 to 4.11

are true to my information derived from records and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this day of July, 2004 at Guwahati.

Pappu. Surya Narayana.

Signature

-14-
-:- H.P. Rly :-:-

Annexure - A
3)

Extt. Order No. 67 of 1992.

Office of the
APO/CHY.

Shri P. Surjya Narayan Khali/Halp/EC in scale S. 800-1150/- (P) under Sr. SP/EC who is approved for promotion for the post of SP/Gr. III in scale S. 950-1500/- under order of Transfer to AMJ under EC/AMJ vide E.O. No. 77 of 1991 is hereby retained at EC under Sr. SP/EC as SP/III against an existing vacancy with immediate without effect.

This has the approval of DEO/CHY.

APO/CHY.

NO. E/283/1/1486

dt. 18/11/92

Copy forwarded for information and necessary action to :- (1) PA & CAO/MIG. (2) Sr. SP/EC. (3) DEO/CHY. (4) SRM(P)/LMS (5) S/Dir in office (Shri R. Akker, Sr. Clerk (B) (6) Staff Concerned.

APO/CHY.

.....

Certified to be true copy
Tapan Suro
Advocate G.H.C.

- 15 -

Annexure B



ICZC EGHCC0195 BBB EGHCCA EZ

89

80

O 1025 PC0016 A1/CALINGAPATNAM 15 01 015/022

E F OFFICE

N F RAILWAY

GAUHATI

DISTKAMRUPASSAM 781021

1200

I AM CONTINUING TREATMENT UNDER DOCTOR

P S NARAYANA

COL 781021

ASKPGM0016

===

AVMETC0248 AVMCNA0587 OCKMSS0483 OCKMSA0701

WCAMSS0683

EGHEDE0093

NNNN

*certified to be true copy
Tapan Sin
Advocate*

Dr. N. RAM GOPAL, M.B.B.S.

PHYSICIAN & SURGEON

Regd. No. 10061,

Station : *Trichy*

Date : *06/10/1998*

Reg. No. : *100102*

Annexure - C Series

MEDICAL CERTIFICATE : SICK / FIT

This is to certify that
Sr. Pappu Suryanarayana, SPA /
Gr A N.P.R. Railway, New Coohallur,
native of Hatai sam, Sikkalulam Dt.
has been suffering from
(Lumbar spinal tuberculosis) and
he is under treatment since
DI- 11.2.1996. Now after careful
examination, the recovery is poor
and needs prolonged treatment
for about 2 years more for the
recovery of his health.

sig of the applicant

N. Ram
CIVIL ASST. SURGEON,
District T.B. Control Centre

P.S. Narayana
SRIKAKULAM,

6-10-1998

Fit 2 years

certified to be true copy
Tapan Duni
Advocate

Dr. N. RAM GOPAL, M.B.B.S.,
CIVIL ASSISTANT SURGEON

Regd. No. 10051

Station: Srirakulam,

Date : 10/8/2000

Rec. No. 168/00.

MEDICAL CERTIFICATE : SICK/FIT

This is to certify that
Mr Pappu. Suryanarayana, SPAF
Co III N.F. Railway, New Gokul
native of Patehilesam, Srirakulam Dist-
has been suffering from Extra pulmo-
nary Tuberculosis (Lumbar Spinal)
and is under treatment since
11.2.1998. As the condition is
complicated and recovery is very
slow and he is advised further
expert treatment for about 2 years
more.

Sig of the
Applicant
x.

N. D. Singh
10/8/2000.
CIVIL ASST. SURGEON,
District T.B. Control Centre,
SRIRAKULAM.

P. S. Narayana
10.8.2000

certified to be true copy
- Tapan Kumar
Advocate

DR. N. RAM GOPAL

M.B.B.S.,

Regd. No. 10051

CIVIL ASSISTANT SURGEON

A.P. Medical & Health Services

MEDICAL OFFICER

Dist. T.B. Control Centre

SRIKAKULAM - 532 001

Date :

16/4/2002

MEDICAL CERTIFICATE : SICK/FIT

This is to certify that
Sri. Pappu Suryanarayana SPA
C/o III N/F Pky. New Gowdali
village of Machilasa (Srikakulam Dist)
had been suffering from Chronic
Spine Up L5. and he was under
treatment since 11.2.1996 and now
as he has recovered from his long
illness and he is fit for resuming
his duties from 1st May 2002 onwards.

N. Ram - 16/4/2002

CIVIL ASST. SURGEON,
District T.B. Control Centre,
SRIKAKULAM.

verified to be true copy
Tapan
Advocate

= 19 = ~~PS~~ Annexure - D 36

To

The Sr. Section Engineer (Electrical)
N. F. Rly. New Guwahati.
Guwahati-781021

Sir,

Sub:- Praying for Joining permission after long absent.

With due respect, I beg to inform you the following few lines for your kind consideration and sympathetic permission.

That Sir, I Sri, & P.S. Narayan was appointed in the Rly. on 20.4.79, since then I was performing my duty sincerely. In the year of 1996 I was working under SSE/Power/New Guwahati as SPA Gr. III. On 27.1.96 I had been sanctioned 15 days LAF w.e.f. 27.1.96 to 10.2.96, while I was availing my leave at my native place at Matchilesan District Srikakulam (Andhra Pradesh) I felt there seriously ill for which, I had to attend for medical treatment. Accordingly I attended a Govt. physician & Surgeon Dr. N. Ram Gopal of Srikakulam (Andhra Pradesh) since, my sickness was critical and serious I had to take continuous remained under the attention of physician.

Regarding my illness I had informed time to time (Photo copy of the sick certificate also enclosed)

Sir, After a prolong treatment of the physician now, I have been allowed to resume duty by him from this month

Under such condition I earnestly request you to look into the matter and arrange to consider the case for allowing me to resume duty.

Yours faithfully,

P.S. Narayana
SPA/III under
SSE/P/New Guwahati.

Enclosure:

One original Medical Certificate
Two photo copies of sick certificates.

Dated:

8.2.2002

Verified to be true
Tapam
Advocate

N.F. Rly

- 20 -

Annexure - E

32

Office of the
SSE/A/NAC

NO-EYE-1/NAC/2-108

DL 8/5/02

To,
DEE/CHY

Sub: - Long unauthorised absent
of Sni P.S. Narayana - SPA III

It is intimated that Sni P.S. Narayana SPA was originally working under this office. On 24.5.97 at the time of bifurcation of V.B. Chat from NAC to CHY 31 staff working at V.B. Chat/CHY have been transferred from NAC to CHY and spared in this office. NO - E/CHY/E-1/200 dt 24-5-97 against APO/CHY's memorandum NO - E/4/1/1/PT-II/10 dt 7/5/97. Among the 31 staff Sni P.S. Narayana was also one of them but he was unauthorised absent from 11/2/96 to till now.

Now after a long unauthorised absent he has come to resume duty with medical certificate.

So the case is referred to you for taking further action please.

DA

4 (Four)

Containing one application
one original M/Certificate
Two photocopy of M/Certificate

Verified by the
Tapan Sani
Advocate

8/5/02
S. S. S. S. S.
(SSE/CHY)
N.F. Rly. Non Circular

STANDARD FORM OF CHARGE SHEET

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

NO. 2012/10-25/64/6(1000)-190

Name of Railway Administration)

(Place of issue)

SRG/64

Dtd. 1-2-79

MEMORANDUM

1. The Chairman Railway Board/Undersigned propose(s) to hold an inquiry against Shri P. S. Narayan, SPAD under Rule-9 of the Railway Servants (Discipline and Appeal) Rule, 1968. The substance of the imputations of misconduct and 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 imputations 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 witness by whom, the articles of charge are proposed to be substantiated are also enclosed (Annexures-III & IV). Further, copies of documents mentioned in the list of documents, as per Annexure-III are enclosed.

2. *Shri P. S. Narayan 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 SRG/64 immediately on receipt of this memorandum.

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

4. Shri P. S. Narayan is hereby directed to submit to the undersigned (through General Manager N/A Railway) a written statement of his defence (which should reach the said General Manager) within ten days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of his defence and within ten days after completion of inspect of 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. Shri P. S. Narayan is informed that an inquiry will be held only in respect of those articles of charge are not admissible admitted. He should, therefore, specifically admit or deny each articles of charge.

6. Shri P. S. Narayan 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 and Appeal) Rules, 1968, or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry ex-parte.

entitled to
three copies
from Secy
Adm

(Page-2)

7. The attention of Shri P. S. Narayan is invited to Rule-20 of the Railway-Servants(Conduct) Rules, 1936, under which no Rly. servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representations is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri P. S. Narayan 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.

(By order and in the name of the President)

Enclo:

(Signature) B. K. Kichlop
Name and designation of competent authority.

To

1. Shri P. S. Narayan (designation) General Electrical Engineer
Through: Mr. S. D. P. G. H. Y.
2. P/Case, P. S. Narayan, SPA/Gr. III
3. Mr. S. D. P. G. H. Y. (name and designation 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 or to enable that authority being mentioned in the draft memorandum.

Where the President is the Disciplinary Authority.

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

To be saved wherever applicable- Not to be inserted in the copy sent to the Railway Servant.

(S.F. 5 introduced by Bd. vide No. E(D&A) 78 RG 6-11 dtd. 16.10.80 NR 7684)

23 40 ①
ANNEXURE TO STANDARD FORM NO. 5

Memorandum of charge sheet under Rule-9 of the RS (B & A)

ANNEXURE - I

Statement of Articles of charge framed against Sri, P.S. Narayan,
SPA/D

ARTICLE - I

That the said Shri _____ while functioning as

_____ during the period _____

(hereunder enter

definite and distinct articles of charge)

ANNEXURE - II

Statement of imputations of misconduct or misbehaviour in support
of the articles of charge framed against Shri P.S. Narayan

*He has been absenting himself from duty
unauthorisedly since 1997.*

ANNEXURE - III

List of documents by which the articles of charge framed against
Shri P.S. Narayan are proposed to be sustained

Attendance Register.

ANNEXURE - IV.

List of witnesses by whom the articles of charge framed against
Shri P.S. Narayan are proposed to be sustained.

- 1) Shri B. Saitia, S. SE/P/BH.
- 2) "
- 3) "

a.261198).

MA
01.3.81
A.E.E. New Guwahati.
Regional Electrical Engineer
Guwahati

etc

To,

The Divisional Electrical Engineer,
N.F. Railway,
Guwahati.

Sub; Reply of chargesheet.Ref; Your chargesheet N .LM/L/D/25/WHY/9(10000)
190 Dtd. 01.2/3.99

Sir,

In response to your above charge sheet (received by me on 24.5.2002) for imposing the allegation of remaining unauthorisedly absent from duty since 1997 is agreed by me .

In this subject, I want to state the following few lines before you for your kind consideration and sympathetic action please .

That Sir, I Sri P.S. Narayana was appointed in this administration under SSR/Power/New Guwahati, on 20.4.1979 since then I was performing my duties sincerely the, I was performing my duties sincerely and honestly. I never denied my job whatever, I had been given for . But during the absent period situation was beyond my control and forced me to remain absent .

That Sir, In the year 1996, I was working under SSR/Power/New Guwahati as SPA Grade-III on 27.1.96 I had been sanctioned 15 days LAP w.e.f. 27.1.96 to 10.2.1996 to go to my native place at Matchilesam Dist. Srikakulam (Andhra Pradesh) while I was availing my leave at native place, I suddenly felt there into sick seriously, for which I attended a Govt. physician &

contd..

Verified to be true copy
Tapan Kumar
Advocate

surgeon Dr. N.Ram Gopal of Srikakulam(Andhra Pradesh)
for medical treatment. since my sickness was critical
and serious and as per physicians advice., I had to
remain under his control contineously. It look so
long time for recovering me from illness. Regarding
my illness and my treatment I had informed time to
time to my office.

Now, after a prolong, treatment of the physician
I have been allowed to resum duty from this month.

Under such condition, I do request your honour
to excuse me as first & last case of my service life
being remaining absant un authorisedly for a long time.
And I also promising that in future I will not do so.

With kind regards,

Thanking you,

Yours faithfully,

Enclosure :-

3(three) photocopies
of the medical
certificate.

Guwahati,

Dated 27th May 2002.

(P .S .Narayana),
SPA Grade -III,
under SSE/P/GHY.

= 26 =

Annexure 'H' 27

~~Annexure 'H'~~

Therefore, I have applied my mind to the facts, circumstances and record of the case and then records of its findings on imputation of misconduct and mis-behaviour and impose the punishment of "Reduction to the lower post and fixation of pay of khalsi helper in Scale B. 2650-8000/- for a period of 4 years with the condition that you will be restored back to original, post and Scale of pay of SPA/III in Scale B. 3050-4590/- on completion of the above penalty". The above orders will take effect from 1.11.2002.

APM
12-12-02

सहायक मंडल विद्युत अभियंता

पु.सी.रेलवे, गुवाहाटी

Asstt. Divl. Electrical Engineer
N.F. Railway. Guwahati.

certified to be true (gms)
Raman Anni
Advocate

27 =

Annexure 'H' 34

पंजीकृत-17480
N.F.G.-174 M

पूर्वोत्तर सीमा रेलवे
Northeast Frontier Railway

नियम 1707 (1) की मद (i), (ii) और (iii) और नियम 1707 (2) स्पष्ट को मद (i) और (ii) के अन्तर्गत दण्ड देने के संबंध में सूचना/Notice of imposition of penalties under items (i), (ii) & (iii) of Rule 1707 (Hand Item (i) and (ii) of Rule 1707 (2) RI. D & A Rules, 1968.

सं/ No. LM/L/P-25/Glry/G/Loose तारीख/ Dated 12-12-02

प्रपत्र/From ADEE/GHY

सेवा में/ To Shri P.S. Narayan, SPA/III at Office
Thro: SSE/P/GHY

आरोप पत्र सं० दिनांक पर आपके स्पष्टीकरण के संदर्भ में आपको सूचित किया जाता है कि आपका स्पष्टीकरण संतुष्ट नहीं है तथा * ने निम्नलिखित आदेश दिया है
** :-/ With reference to your explanation to the charge sheet No. Nil dated 27/5/02 & 23/11/02 you are hereby informed that your explanation is not considered satisfactory and that the following has passed the following orders : **

ANN - A

APR 12-12-02
अनुशासनिक प्राधिकारी का हस्ताक्षर एवं पदनाम
Signature and Designation of the
Asstt. Divl. Electrical Engineer
N.F. Railway, Guwahati.

टिप्पणी - हिदायत दुसरी तरफ देखें।/N.B. :- Please see instructions on the reverse.

(इस भाग को काटकर हस्ताक्षर करके जारी करनेवाले कार्यालय को लौटा दें/ The portion must be detached signed and returned to the office of issue).

प्राप्ति स्वीकृति/ACKNOWLEDGEMENT

सेवा में/To Shri P.S. Narayan, SPA/III at Office.

मैं सूचना पत्र सं० दिनांक की

आरोप पत्र सं० दिनांक

प्राप्ति स्वीकार करता हूँ।/I hereby acknowledgement receipt of your Notice No dated the charge Sheet No

तारीख/Dated

स्टेशन/Station

हस्ताक्षर या अंगुठ का निशान
Signature or Thumb Impression

पदनाम Designation

-28-

* जब अनुशासनिक प्राधिकारी के सिवा अन्य प्राधिकारी द्वारा सूचना पर हस्ताक्षर किया जाये तो यहाँ आदेश देनेवाले प्राधिकारी का उल्लेख करें।/When the notice is signed by an authority other than the Disciplinary authority here quote the authority passing the order.

** यहाँ स्वीकरण की स्वीकृति या अस्वीकृति और दिये गये दण्ड का उल्लेख करें।/ Here quote the acceptance or rejection of explanation and the penalty imposed.

हिदायतें/INSTRUCTIONS

(i) इन आदेशों के विरुद्ध अपील

(आदेश देनेवाले प्राधिकारी से ठीक ऊपर का प्राधिकारी के पास की जा सकती है।/ An appeal against those order lies to DEE / Gky next (immediate superior to the authority passing the order)

ARPL
सहायक मंडल विद्युत अभियंता
पु.सी.रेलवे, गुवाहाटी
Asstt. Divl. Electrical Engineer
N.F. Railway. Guwahati.

44

verified to be true copy
Tapan Sinha
Advocate

30-
N. F. Railway.

Annexure-5

Office of the
Divisional Electrical Engineer,
N. F. Railway, Guwahati.
Dated. 25-06-03

No. EL/252/89/GHY- 665
2003.

To
✓ SSE/P/GHY.

Sub:- Permission to resume duty.
Ref:- Your L/No. E/3/GHY(P)/406 dt 12/6/2003.

Referred above Sri P. S. Narayan, SPA/III is hereby allowed to resume his duty as Helper /I (KII/II) and asked to fixation of pay of KII/II (Helper/I) in scale Rs. 2650-4000/- for a period of four years with the condition that you will be restored back to original post and scale of pay of SPA/III in scale Rs. 3050-4590/- on completion of the above penalty.

This is as per DAR preceding (Speaking order). The order will take effect from date of his joining.

26/6/03
Divisional Electrical Engineer,
N. F. Railway, Guwahati

Copy to :
APO/GHY : For information and necessary action.

Divisional Electrical Engineer,
N. F. Railway, Guwahati

at -
10.15 am
28/06/03 permitted
28/06/03
verified to be true
Tapan Bani
Advocate

10. DEE / GHY.

31

Anneure ^{'K'}

N.F. RLY.

Through proper channel.

Sub : Appeal against imposition of penalty.

Ref : ADEE/GHY's Notice No.LM/L/D25/GHY/G/Loose dtd. 12.12.2002.

Sir,

With due respect and humble submission I beg to lay before you the following lines for your sympathetic attention and favourable order please.

Sir, I was allowed to avail 15 days LAP from 27.01.96 to 10.02.96 as sanction and went to my native place at Matchilesan in Andra Pradesh. But due to my sudden illness I could not return back in time to resume my duty. After medical check-up at District T.B. Control Centre, Srikakulam it is detected that, I am suffering from T.B. for which I compelled to take treatment from District T.B. Control Centre at Srikakulam upto 30.04.02 regarding my illness I had informed to SSE/P/NGC alongwith medical certificate time to time. After prolonged treatment the doctor allowed me to resume my duty w.e.f. 1.5.2002. On 8.5.02 I have submitted an application to allow me to resume my duty. But ADEE/GHY served me a SF-5 vide No.LM(I)/D-25/GHY/G (Loose)-190, dtd. 01.02.99 which I have received on 2nd week of May/02. Accordingly DAR enquiry also done.

After initiating of DAR enquiry ADEE/GHY has imposed punishment of "Reduction to the Lower post and fixation of pay of Khalasi helper in scale Rs.2650-4000/- for a period of 4 years with the condition that I will be restored back to original post of scale of pay of SPA/III in scale Rs. 3050-4590/- on completing the above penalty vide notice under reference above.

Sir, due to the above punishment I am facing a lot of financial problem which reflects on my family. I am also mentally shocked for the above punishment.

Therefore, I would request your honour to kindly look into the matter and review the above punishment so that a poor Rly. employee with family can save in this hard days. For this act of your kindness, I shall grateful to you. Some documents are enclosed for your ready reference please.

Enclo : As above.

Yours faithfully,

Dated, Guwahati
the 18th Feb/04.

(P.S.NARAYAN)
SPA/III
Under SEE/P/GHY

verified to be true copy
Tapan
Advocate

32

Annexure - L

29

D.P.O./Landing
N.P. Railway.

Through proper channel.

sub:- prayer for clearance regarding pay fixation.

Sir,

I have the honour to state that my p/case was sent to your end vide APO/GHY's challan No. Nil dated 21.8.03. But still my p/case is not return back to APO/GHY. It is learnt that some clarification is sought by APO/GHY and the same is received by you on 28.8.03.

It is a matter of fact that I was on private sick w.c.f. 11.2.96 to 1.5.02. But my case has not been finalised. DAR inquiry has been done and punishment was imposed upon me. For which I was down graded to Khalasi Helper in the scale of Rs.2550-3230/- My 2(two) juniors namely Sri Umash Deka and Sri Kajal Das were promoted to Gr.II vide APO/GHY's letter No. E/283/1/pt.TV /GHY(power)/251 dtd. 31.3.04.

In view of the above, I fervently request your honour to arrange for my promotion by withdrawing the previous punishment.

Further it is to inform you that if justice is taken for me, I will have to shelter in rule of law and thereby oblige.

Yours faithfully,

P.S. Narayana
(P. S. Narayan)
Khalasi/Helper

Copy to:

1. SR. DEE/GHY for information and necessary action please.

2. APO/GHY for information and necessary action please.

P.S. Narayana
(P. S. Narayan)
Khalasi/Helper

verified to be true copy
Tapan Kumar
Advocate

Answer M-33

Annexure M


N.E. RAILWAY/EDPC-MLG AU-BU = 05-265 PAY-IN-SLIP FOR FEBRUARY 2004 I. ONE DEPT ELECTRIC SRL NO 8 (M)

P SURYA NARAYANA	BASIC PAY	2550.00	SRPF	213.00	GROSS PAY *	6140.00
DESIGN-KHAL CAT = D	DA	1505.00	LICENCE FEE	50.00	TOT DEDNS *	336.00
PEND # 01870520-NC	ARREAR-PAY	1200.00	PROF-TAX	50.00	NET PAY *	5804.00
DUTY DAYS 29 LEAVE 00	TRANSPRT ALL	75.00	GRIS	19.00		
	NHA	170.00				
	ARR DA / I-R	600.00				
	SCA	40.00				

OTR NO# 323/1 MG.COL

ALLOCATION NO# 110552

SIGNATURE



B/F GRS: 562,311.00 B/F DED: 519,462.00 B/F NET: 542,849.00

1 copy
Advocate
verified
to be
true
copy

25/2/04
Annexure M

= 347

N.F. RAILWAY/EDPC-MLG. AU-BU = 05-265 PAY-IN-SLIP FOR MARCH 2004 I. DUE DEPT ELECTRIC SRL NO 8

P SURYA NARAYANA	BASIC PAY	2550.00	SRPF	213.00	GROSS PAY *	4856.00
DESIGN# KHAL CAT = 0	DA	1556.00	LICENCE FEE	58.00	TOT. DEDNS *	324.00
PFNS # 01870520-NC	ARREAR-PAY	1250.00	PROF-TAX	50.00	NET PAY *	4532.00
	TA	500.00	GRIS	15.00		
DUTY DAYS 31 LEAVE 00	TRANSPRT ALL	75.00				
	NDA	85.00				
	ARR DA / I-R	738.00				
	ARR DA / I-R	102.00				
	SCA	40.00				

GTR NO* 323/1 MG. COL

ALLOCATION NO* 110551

SIGNATURE



B/F GRS: 564,734.00 B/F DED: 517,213.00 B/F NET: 47,521.00

N.F. RAILWAY/EDPC-MLG. AU-BU = 05-265 PAY-IN-SLIP FOR APRIL 2004 I. DUE DEPT ELECTRIC SRL NO 8

P SURYA NARAYANA	BASIC PAY	2550.00	SRPF	319.00	GROSS PAY *	4907.00
DESIGN# KHAL CAT = D	DEARNESS-PAY	1275.00	LICENCE FEE	58.00	TOT. DEDNS *	442.00
PFND # 01870520-NC	DA	421.00	PROF-TAX	50.00	NET PAY *	4465.00
	TA	374.00	GRIS	15.00		
DUTY DAYS 30 LEAVE 00	NDA	172.00				
	TRANSPRT ALL	75.00				
	SCA	40.00				

GTR NO* 323/1 MG. COL

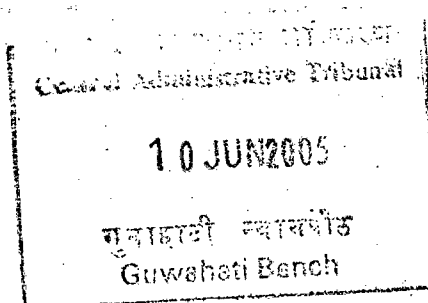
ALLOCATION NO* 110552

SIGNATURE



B/F GRS: 463,283.00 B/F DED: 518,729.00 B/F NET: 44,554.00

[Handwritten signature]



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

IN THE MATTER OF

O.A.152 OF 2004

Shri P.Suryanarayana

Versus

Union of India & Others

AND

IN THE MATTER OF

Written Statement on behalf of the respondents.

The answering respondents respectfully SHEWETH :

1. That the respondents have gone through the copy of the application filed and have understood the contents thereof. Save and except the statements which have been specifically admitted hereinbelow or those which are borne on records all other averments/allegations as made in the application are hereby emphatically 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 as will be clear from the submissions made in the relevant paragraphs below.

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 hereunder.

5. Facts of the case:

5.1. Shri P.Suryanarayan, who was working as SPA Grade III, was granted 15 days' leave on average pay from 27.1.96 to 10.2.96 to enable him to attend to his sick mother in Matchilesam, District Srikakulam in Andhra Pradesh. Shri Narayan however did not report back for duty after expiry of his leave period nor did he send any intimation about his possible absence until nearly six years thereafter. Due to his unauthorised absence for a prolonged period

Filed by

9/6/2005

DR M.C. Sarma

Ry. Advocate

DR M.C. Sarma

DR M.C. Sarma

DR M.C. Sarma

DR M.C. Sarma

an attempt was made in February, 1999 to initiate disciplinary action on the applicant and a charge sheet was made ready. This however could not be proceeded with as the whereabouts of the applicant was not known.

The applicant however reported for duty on 8.5.2002, that is after unauthorised absence of nearly six years and submitted that he could not return to Guwahati on expiry of his leave on account of illness. He had of course submitted some medical certificates from a state government doctor although Railway hospitals are at hand not far from his native place. Had he reported for treatment at a Railway hospital, not only would he have been treated free of charge but also he could escape being charged as unauthorised absent as the hospital would have informed his employers at Guwahati about his medical status. The reason why he did not take recourse to this facility is not known. However, when he reported for duty he was issued a chargesheet with the charge of unauthorised absence. A DAR enquiry was duly conducted. On proof of the charge and after following the prescribed procedure under D.A. Rules the applicant was allowed to join duty as Khalasi helper in the reduced scale of pay Rs.2,650-4000/- for a period of four years. He joined duty in the reduced rank with effect from 26.06.2003 as stated by him at paragraph 4.8 of the O.A.

5.2. From the abovementioned facts it is clear that the applicant was unauthorisedly absent from 10.2.96 to 8.5.2002 and the respondents had no alternative but to allow him to join duty after taking necessary disciplinary action against him. At this stage it is submitted that under normal circumstances a more severe action such as dismissal or removal from service would have been taken against the applicant. However, the respondents had taken a compassionate view of the matter as the applicant reportedly suffered from a serious disease and left him with a reasonable punishment so that he could make both ends meet.

5.3. In this connection, it is mentioned that under Rule 510 of the Indian Railway Establishment Code Vol.I "No Railway Servant shall be granted leave of any kind for a continuous period exceeding 5 (five) years". Exceptions to this Rule can be made by the President of India only. Normally, therefore, under provisions of these Rules the applicant could have been dismissed or removed from service. However, as stated above, a lenient view was taken of the matter and only reversion to a lower grade was ordered after following the prescribed procedure.

The respondents beg leave to present the Codal provisions at the time of hearing. P...3....

Divisional Electrical Engineer
 P. P. Railway/Guwahati

6. Parawise comments:

6.1. As regards paragraphs 4.1 and 4.2 the answering respondents have no remarks to offer except to state that the applicant is put to a strict proof of his claims.

6.2. As regards paragraph 4.3, the respondents beg to deny that the applicant intimated from his native place at Matchilesam in Andhra Pradesh that he was diagnosed as suffering from Tuberculosis. In the DAR enquiry he was unable to provide proof of such intimation. He neither intimated about his illness nor did he report to any Railway Medical authority at a nearby Divisional headquarter or the Zonal headquarter at Secunderabad as is expected of a person similarly placed. It is stated here that had he reported for his treatment in any Railway Medical facility he would have been rendered all necessary medical treatment free of charge as per admissibility. It is therefore not understood why the applicant did not avail of this facility although he is quite literate and knowledgeable. However, as the applicant never intimated about his whereabouts for years together, the respondents had no alternative but to treat him as unauthorised absent for the period between the date he was supposed to report back for duty after leave (that is from 11.2.1996) and the date he actually reported back after about six years (that is on 8.5.2002).

6.3. That as regards paragraphs 4.4, 4.5 and 4.6 the respondents beg to state that the applicant submitted on 8.5.2002 (NOT on 8.5.2000, as stated on the O.A.) an application praying for resumption of duty. As the period of absence was excessive and as no prior intimation explaining his absence for nearly six years was submitted by the applicant the ~~fix~~ field office of the applicant had to obtain necessary official directive from the superior authority and accordingly brought the matter to the notice of the Divisional office for direction. The authorities decided to initiate disciplinary proceedings against the applicant due to his long absence without any authority. For this purpose a charge sheet was served on the applicant and the same was processed by following the provisions of prescribed DAR procedure and by keeping the principles of natural justice in view.

In this connection the respondents beg to state that the charge sheet was prepared in 1999 and served later did not alter the charge on the charged official that he absented himself unauthorisedly for an abnormally long period of time without giving any intimation to the employers about his whereabouts.

6.4. That as regards paragraphs 4.6, 4.7, 4.8, 4.9, and 4.10, the respondents beg to state that after conducting the DAR enquiry and carefully following the provisions regarding affording opportunity to defend and natural justice the applicant was punished by reduction in rank for four years and was allowed to resume duty on 26.06.2003 on furnishing by him the necessary medical fit certificate as indicated by the applicant at para 4.8 of the O.A.

6.5. That as regards paragraph 4.11 the respondents deny that the applicant was paid a basic salary of Rs.2,550/- in the scale Rs.2,650-4000/-. This position has been clarified by respondents vide submission made on 10.05.2005 before the Hon'ble Tribunal. The respondents beg to confirm that the applicant has been given a basic pay of Rs.2,650/- in the scale Rs.2,650-4000/- on the basis of order No.LM/L/D-25/GHY/G/Loose dated 12.12.2002. In the month of April, 2005 the applicant was paid the following:-

- | | | |
|--------------|---|---------------------------------------|
| 1. Basic pay | - | Rs.2,780/- (in scale Rs.2,650-4000/-) |
| 2. DP | - | Rs.1,390/- |
| 3. DA | - | Rs. 709/- |
| 4. TA | - | Rs. 75/- |
| 5. SCA | - | Rs. 40/- |

6.6. That the facts mentioned above would show that the applicant was treated by the respondents in a fair manner in spite of the fact that the applicant was not available for any service for nearly six years without any intimation and in spite of his ~~un~~ unauthorised absence which normally would have attracted very serious punishment such as dismissal or removal from service. The respondents took a compassionate view of the matter as the applicant reportedly suffered from serious disease and left him with a reasonable punishment of reduction in rank but retaining him in service.

Under the circumstance the respondents beg to submit that the O.A. is devoid of any cause of action and that the same deserves to be dismissed. As regards cost the respondents beg to leave the matter to the Hon'ble Tribunal's discretion.

(5)

VERIFICATION

I, Shri Ram Dayal Meena, son of Shri J. M. Meena, aged about 37 years, at present working as Sr. DEE/Guwahati, N.F. Railway, _____, do hereby verify and solemnly affirm the the statements made in paragraphs 1 to 6 are true to the best of my knowledge and information derived from records which I believe to be true and the rest are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the 7th day of June, 2005.



Signature

Designation.

राम दयाल मिश्रा
जु. सी. रेलवे/गुवाहाटी
Sr. Divisional Elect
N. F. Railway

Central Administrative Tribunal

23 AUG 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI

BENCH:::GUWAHATI

IN THE MATTER OF :

An affidavit-in-reply filed by
the applicant against the Written
Statement filed by the respondents.

O.A.No.152 of 2004

Shri P.Suryanarayana.

....Applicant.

-VS-

Union of India & Ors.

....Respondents.

Affidavit-In-Reply.

I, Shri Pappu Suryanarayan, son of Late Pappu
Laxmia, resident of New Guwahati Railway Colony,
P.S.Chandmari, Kamrup, Assam, do hereby solemnly
affirm and state as under :

1. That , I am the applicant in the above-
mentioned case and as such is fully acquainted with
the facts and circumstances of the Case.
2. That, a copy of the Written statement
filed by the Respondents is served upon me through
my Counsel. I have gone through the same and
understood the contents thereof.
3. That, save and except those statements in the
written statement which are specifically admitted

contd.....2

P. Suryanarayana,
Filed by the Applicant
Through Nayan Sen
Advocate

herein-~~in~~-below the rest of the statements may be deemed to have been denied by the applicant, who further does not admit anything which is contrary to and/or inconsistent with the records of the case.

4. That, as regards to the statements made in paragraphs 1 and 2 of the Written statement the answering applicant has no comment to make.

5. That, as regards to the statement made in paragraph 3 of the Written statement the answering applicant vehemently denies that the application suffers from want of a valid cause of action on the contrary the applicant states that there has been great injustice on the part of the respondents in reducing the rank of the applicant without giving him a proper opportunity to put up his case before the concerned authority and without giving a second thought or hearing to his genuine grievance that he was suffering from tuberculosis for a long period of time.

6. That, as regards to the statement made in paragraph 4 of the Written statement the answering applicant strongly denies that the application suffers from wrong representation or lack of understanding of the facts and circumstances. The answering applicant who is a law abiding citizen has suffered grave injustice in the hands of the respondents and will never try to

mislead the Hon'ble Court in any matter. The applicant further states that the Respondent had made some baseless allegation which are contrary to records.

7. That, as regards to the statements made in paragraph 5.1 to 5.3 of the Written statement the answering deponent states that the same are matters of records, the answering deponent does not admit anything which is contrary to and/or inconsistent with the records of the case. The applicant however strongly denies the allegation that he had never sent any intimation about his possible absence from 96 to till 2002 . The answering applicant begs to state that he had many times sent telegrams and intimation to the concerned authority informing them of his sickness and that he is undergoing treatment and is unable to come and perform his duties. This fact along with the concerned medical certificate and telegrams has been already stated in the original application. So it is absolutely a baseless proposition that he came back to join duty suddenly after 6 years of prolonged absence. It is further stated by the respondents in the written statement that they had prepared a chargesheet on February, 99 to initiate a disciplinary proceeding against the applicant on the ground that he was unauthorisedly absent from duty but the respondents were unable to proceed with the disciplinary proceedings as they were unaware about the place of residence of the applicant. The applicant here would like to bring to the notice of this Hon'ble Court

contd.....4

that the above statement is false as the respondents were aware of his original place of residence. This point is proved from the letter Of Divisional Electrical Engineer, Guwahati wherein it has been stated that the permanent address of the applicant in the official service records has been stated as village Matchilesam, P.O. Calingapatnam, Dist. Srikakulam, Andhra Pradesh.

It has been further stated in the Written statement by the respondents that the applicant if he was suffering from tuberculosis or illness he should have gone to a railway hospital wherein he would have got free medical treatment. The applicant would like to bring to the notice of the Hon'ble Court that he native place of the applicant is located at Vishakhapatnam which is around 130 Kms. away and the Government T.B. Hospital is only 17 Kms away. So the applicant who was severely suffering from Tuberculosis went to the nearest Government T.B. Hospital and did his treatment there. The applicant further states that the treatment given in the Government T.B. Hospital is free from charge.

The applicant begs to state that he is suffering from T.B. from 1996 to 2002 and immediately he informed about the matter to Sectional Engineer of his Department. The Applicant further states that it is known to the Respondent authority about his native village but the Respondent authority did not send a single letter to ~~xxxx~~ applicant asking him to attend the office immediately and about 510 of the Indian Railway Establishment Code. The applicant further states that it is the

61

duty of the Respondent authority to make a paper publication in any ~~daily~~ daily/national news paper about the unauthorised absence of the applicant and ask him to attend the office immediately, but the Respondent authority failed to do the same which is mandatory in the eye of law.

A copy of the letter dated 15-6-2005 by the Electrical Engineer Railway, Guwahati is annexed herewith and marked as Annexure-A.

8. That, as regards to the statement made in paragraph 6.1 the answering applicant has no comment to make.

9. That, as regards to the statements made in paragraph 6.2, 6.3, 6.4, 6.5, 6.6 of the Written statement the answering deponent states that the same are matters of records, the answering deponent does not admit anything which is contrary to and/or inconsistent with the records of the case and reiterates the statements that has been made in paragraph 7 of the present affidavit-in-reply.

That, the statements made in this Affidavit-In-Reply and in paragraphs No. 1, 2, 3, 4, 5, 6, 7 (partly) & 8 & 9 are true to my knowledge and those made in paragraphs 7 (partly) are being matters of records and which are believe to be true.

And I sign this Affidavit-In-Reply on this _____ day of August, 2005 at Guwahati.

Identified by -

Applicant.

P. Surya Narayana.

-6-

2

TO WHOM IT MAY CONCERN

This is to certify that SHRI PAPPU SURYA NARAYAN, S/O late Laxmayya, working as Helper No.1 under SSE/P, Guwahati, N.F. Railway. His date of appointment in this Railway is 20-04-1979. According to the service record his permanent Address is village Matchilesam, P.O. Calingsapatnam District - Srikakulam, Andhrapradesh and his present address is Railway, Qr. No. 323/I, Type- I at M.G. Colony New Guwahati.

Sre. *B. 18/6/05*
 ASSISTANT ENGINEER
 ELECTRICAL ENGINEER / DIVISIONAL RAILWAY
 GUWAHATI
 N.F. Railway Guwahati

13/6/05

*Certified to be true Copy
 Tapan Debi
 Advocate
 dt 22/8/05*