

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Shahila
10/11/17

FORM NO. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUJARATI BENCH

ORDER-SHEET

183/04

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

In O.A.

Name of the Applicant(s) U. C. Kohler

Name of the Respondent(s) U. O. I. Toms

Advocate for the Applicant K. K. Priswani

Counsel for the Railway/C.G.S.C.

ORDER OF THE TRIBUNAL

OFFICE NOTE

DATE

Present: Hon'ble Mr. D. V. Verma, Vice-Chairman.

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

Heard learned counsel for the parties.

Application is admitted. Issue notice on the Respondents. Returnable by four weeks. List on 29.9.04. for orders.

Rejoinder if any, within two weeks.

K. V. Verma
Member

Vice-Chairman

lm

On the request of learned counsel for the Respondents Stand over to 8th Nov., 2004 for filing written statement.

K. V. Verma
Member

Vice-Chairman

lm

Notice & order
sent to D/Section
for issuing to
resp. Nos 1 to 5, by
regd. with A/D post.

27/8/04

8.11.2004

Ms.U.Das, learned Advocate app

in on behalf of Mr.S.Sarma, learned
Railway Counsel, seeks six weeks to
to file written statement. Stand to
to 3.1.2005.A/D card received
from resp. No.5.

15/9/04:

KuPrahlad
Member

R-

Vice-Chairma

bb

03.01.2005

List on 9.2.2005 for hearing.
In the meantime, the applicant may
file rejoinder, if any.

28.9.04

- 1) Reply not yet filed.
- 2) A/D cards received from R-5.

Prao.

mb

KuPrahlad
Member (A).9.2.2005 present: The Hon'ble Mr.M.K.Gupta,
Member (J).The Hon'ble Mr.K.V.Prahladar
Member (A).None appears for the parties. Ad-
journed to 15.2.2005 for hearing.KuPrahlad
Member (A).Jai
Member (J)

by,

bb

31/12/04

- 1) Notice duly served on
Resps. No. 1, 2 & 5.
- 2) No reply has been.
- 3) Service Report awaited
from R. no. 3 & 4.

31/12/04

4.1.05

W/S Invited
by the Respondents.

Prao.

8/2/05

w/s has been 87/ea.
No. Rejoinder has been

OA 183/04

Notes of the Registry Date Order of the Tribunal

15.2.05

15.2.2005

Present: Hon'ble Shri M.K. Gupta,
Judicial Member

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

Respondent submitted
by the applicant.

List the present O.A. on 18.3.05.

Respondents are directed to produce the
records as directed by this Tribunal
vide order passed separately in
M.P.47/2005.

K. K. Biswas
Member (A)

S. V. Prahladan
Member (J)

nkm

18.03.2005

Present: The Hon'ble Mr. Justice G.
Sivarajan, Vice-Chairman
The Hon'ble K.V. Prahladan

At the request made by Ms. B. Devi,
learned counsel appearing on behalf of
Mr. S. Sarma, learned Railway Standing coun-
sel, the case is adjourned to 24.3.2005
for producing the records. It is made
clear that no further time in that regard
will be granted.

K. K. Biswas
Member

S. V. Prahladan
Vice-Chairman

bb

13.4.2005

At the request of Mr. S. Sarma, learn-
ed counsel for the respondents the case
is adjourned to 11.5.2005. Mr. K.K.
Biswas, learned counsel for the applic-
ant is present.

K. K. Biswas
Member (A)

S. V. Prahladan
Vice-Chairman

mb

11.05.2005

present : Hon'ble Mr. Justice G.
Sivarajan, Vice-Chairman

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

Heard Mr. K.K. Biswas, learned
counsel for the applicant and also Ms.
B. Desi learned counsel for the respo-
ndents. Hearing concluded.

The application is closed in
terms of the order passed in separate
sheets.

for Member
Member

W.J.S
Vice-Chairman

Devi
Banda Devi
20/5/05
Advocate

W.J.S
20/5/05
Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./K.L.A. NO. 183 of 2004.

DATE OF DECISION 11.05.2005.

Sri U.C. Kalita APPLICANT(S)

Mr. K.K. Biswas ADVOCATE FOR THE
APPLICANT(S).

-VERSUS -

Union of India & Ors. RESPONDENT(S)

Mr. S. Sarma, Ms. B. Devi ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE CHAIRMAN

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

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

Judgment delivered by Hon'ble Vice-Chairman.

MD
9
2/5/05

X

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 183 of 2004

Date of Order: This the 11th day of May, 2005.

The Hon'ble Sri Justice G. Sivarajan, Vice-Chairman
The Hon'ble Sri K.V. Prahladan, Administrative Member.

Sri Udhab Chandra Kalita
S/o Late Nripati Kalita
Rly. Qr. No. DS-A-613,
Bamunimaidan Railway Colony,
Guwahati - 781 021.

... Applicant

By Advocate Sri K.K. Biswas.

- Versus -

1. The Union of India
Representing by General Manager,
N.F. Railway, Maligaon,
Guwahati - 78011.
2. The Chief Mechanical Engineer,
N.F. Railway, Maligaon, Guwahati - 781 011.
3. The Chief Personnel Officer,
N.F. Railway, Maligaon,
Guwahati - 781 011.
4. The Divisional Railway Manager,
N.F. Railway, Lumding,
Dist. Nowgong, Assam.
5. The Divisional Mechanical Engineer (Power),
N.F. Railway, Lumding,
Dist. Nowgong, Assam.

... Respondents

By Mr. S. Sarma, Railway Advocate and Ms. B. Devi, Advocate.

ORDER (ORAL)SIVARAJAN J.(V.C.)

The applicant while working as Assistant Loco Pilot (DAD)/NGC was charge sheeted in connection with the accident of Passing Signals at danger at RNY in APDJ Division while working UP NGC/Cement on 17.12.2002. At the end of the disciplinary proceedings, the Disciplinary Authority imposed the punishment of reduction of the pay of the applicant to lower 2 stages in the scale of Rs. 3050-4590/- for two years with loss of seniority. In the appeal of the applicant, the Appellate Authority enhanced the punishment to one of compulsory retirement. In the Revision Petition filed by applicant on 15.3.2004 (Annexure - N) the Revisional authority passed an order dated 20.04.2005 (Learned Counsel for the applicant placed the said order before us). The said order shows that the penalty of compulsory retirement has been converted to one of reduction to the lowest in the grade of DAD. It was ordered that his pay and seniority will be fixed as that of a new recruit DAD after completion of training. Other observations also made in the said order.

2. The said order, it must be noted, is passed during the pendency of this application challenging the order of the Disciplinary Authority and the Appellate Authority. Today, when the matter came up for hearing Mr. K.K. Biswas, learned counsel for the applicant submits that since the order dated 20.04.2005 has been passed in the revision petition during the pendency of the application, the applicant must be afforded an opportunity to amend the Original Application to challenge this order

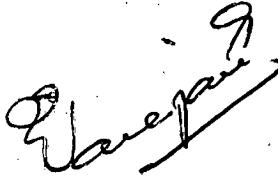
Ypt

also. Counsel further submits that there are lot of procedural lapses on the part of the Disciplinary Authority and the Appellate Authority. We do not propose to go into the merits of the said contentions, which according to us no longer survives since the said are replaced by the order dated 20.04.2005 passed in revision in which the applicant has got some relief and therefore if the applicant is still aggrieved he has got a fresh cause of action.

3. In the circumstances, we are not inclined to afford any opportunity to the applicant to amend the application as sought for by the learned counsel for the applicant. However, we make it clear that the applicant, if he is so advised, is free to challenge the order dated 20.04.2005 in a separate O.A. We also make it clear that we did not consider the merits of the case in this application.

The O.A. is accordingly closed as above.


 (K.V. PRAHLADAN)
 ADMINISTRATIVE MEMBER


 (G. SIVARAJAN)
 VICE CHAIRMAN

/mb/

25/9 10
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH ::

GUWAHATI 2004

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

O. A. No. 183 of 2004.

Sri Udhab Chandra Kalita —————— Applicant.

Vs.

Union of India & Others —————— Respondents.

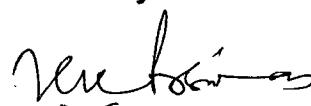
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Filed by :

Place : Guwahati.

Date 23-08-2004.


(K. K. BISWAS)
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH ::
GUWAHATI

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

O. A. No. 183 of 2004.

Sri Udhab Chandra Kalita
S/o. Late Nripati Kalita
Rly. Qr. No. DS-A-613,
Bamunimaidan Railway Colony,
Guwahati - 781021

— Applicant. —

- Vs -

1. Union of India – representing by General Manager, N. F. Railway, Maligaon, Guwahati-781011.
2. The Chief Mechanical Engineer, N.F.Railway, Maligaon, Guwahati-781011.
3. The Chief Personnel Officer, N.F.Railway, Maligaon, Guwahati-781011.
4. The Divisional Railway Manager, N.F.Railway, Lumding, P.O. Lumding, Dist. Nowgong, Assam.
5. The Divisional Mechanical Engineer (Power), N.F.Railway, Lumding, Dist. Nowgong, Assam.

— Opposite Parties. —

Contd.....P/2 – Details.....

Filed by
N. C. Sengupta
23/8/04
Advocate

Sri Udhab Ch. Kalita

DETAILS OF APPLICATION :

1. Particulars of the orders against which the application is made :

a) The Memorandum of charges under No. TP/3/LM/1-13/2002 (Other) dt. 19-12-2002 issued by Divisional Mechanical Engineer (Power), N.F.Railway, Lumding to the Applicant for neglect of duty and violation of service conduct Rules as advised by DRM, Alipurduar Junction vide his Diary Extract and XXR Message No. T2/AP/MISC/12/2002-03 dt. 17-12-2002.

Copies of above chargesheet and Message are annexed as Annexure – A & B.

b) The Notice of Imposition of Penalty issued by Divisional Mechanical Engineer (P), N.F.Rly., Lumding to the Applicant vide his No. TP/3/LM/1-13/2002 (Other) dt. 15-5-2003.

(Annexure - H)

c) Show cause Notice issued by Additional Divisional Railway Manager, N.F.Railway, Lumding for enhancing punishment of compulsory retirement.

(Annexure - K)

d) Order issued by the Addl. Divisional Railway Manager, N.F.Railway, Lumding for imposing punishment of COMPULSORY RETIREMENT OF the Applicant vide Senior Divisional Mechanical Engineer, N.F.Railway, Lumding's letter No. TP/3/LM/1-13/2002 (Other) dt. 12-02-2004.

(Annexure - M)

2. Jurisdiction :

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

Contd.....P/3 – Limitation.

3. **Limitation :**

The Applicant submit that the application has been filed within the limitation period prescribed under Section 21 of the Administration Tribunal Act, 1985.

4. **Facts of the case :**

4.1 That the Applicant is the citizen of India and is, therefore, entitled to the rights and privileges guaranteed to the citizens of India under the Constitution.

4.2 That the Applicant in the instant O.A. had been working as Diesel Assistant Driver (DAD/NGC) in Scale Rs. 3050-4590/- in the Mechanical Deppt. of N.F.Railway in the Lumding Division under the control of Divisional Railway Manager, N.F.Railway, Lumding.

4.3 That on 17-12-2002 the Applicant, a Diesel Assistant Driver (DAD) (Good's)/New Guwahati was booked to work in UP NGC/Cement with LOCO No. 14965 WDG3 T/Ld-101 ex – New Bongaigaon to New Guwahati with the Driver of the said train Sri J.R.Borah.

4.4 That while the said train was standing at Rangiya Railway Station at 00.50 hrs. on 18-12-2002 the Driver Sri Borah all on a sudden started the train without the Line clear from the station authority disobeying the signal kept STARTER on position. Realising the situation immediately the Applicant while applying for the emergency devices by handling the Emergency Brake for making the train halt, the Driver Sri Borah advised him not to apply the Brake since he had already applied the A-9 (another position for applying the Brake) and then both of them pushed back the train on its original position. There was no accident, no casualty and no loss of whatever nature save and except detention of the train for about 2 hours.

4.5 That though the Applicant and the Driver Sri Borah are under the exclusive control of their Disciplinary Authority – Divisional Mechanical Engineer (Power), N.F.Railway, Lumding, never-the-less under the instructions of Divisional Railway Manager, N.F.Railway, Alipurduar Junction, the Sr. Divisional Mechanical Engineer, Alipurduar Junction put both the Driver

Mr. Dinesh
23/10/04
Advocate

Shri Chhabra Ch. Talukda

and the Applicant under suspension as it would be evident from the Diary Extract and Message dt. 17.12.2002 of the Divisional Railway Manager, N.F.Railway, Alipurduar Junction.

Copy of the above Extract & Message is submitted as Annexure – B.

4.6 That being influenced the Extract and Message issued by Divisional Railway Manager, N.F.Rly., Alipurduar junction mentioned in the Para 4.5 above and following the suspension order issued by Sr. DME/APDJ (Senior Divisional mechanical Engineer/Alipurduar Junction) for the said cause of action the Driver of the said train was taken up under DAR and the Applicant also was served with the impugned Memorandum of Major Penalty charges by the Divisional Mechanical Engineer (Power), N.F.Railway, Lumding under No. TP/3/LM/1-13/ 2002 (other) Dt. 19-12-2002 with the single Article of charge “ for failure to exchange proper signal with driver in extreme emergency and being intoxicated with liquor during duty which shows your gross negligence on duty as well as violation of SCR of Rly., 1966 vide Rule 3(i), (ii) & (iii).

Copy of the above chargesheet is enclosed as Annexure – A.

4.7 That the Applicant replied in defence to the Memorandum of chargesheet vide his petition dated 8-1-03 detailing the fact which caused the incident of overshooting the starter signal.

Copy of the above defence reply is annexed as Annexure – C.

4.8 That the Disciplinary Authority revoked the suspension order of the Applicant vide his No. TP/3/LM/1-13/2002 (other) Dt. 15-5-2003 with effect from 16-5-2003.

Copy of the above Order is placed as Annexure – D.

4.9 That during the DAR proceedings in the instant case the Enquiry Officer at enquiry stage examined different witnesses and records and made his report stating that “Sri Kalita called out the Signal aspect and, as such, the charge for not calling out of Signal aspect is not established. But at the same

*Neelkantha
22/8/04
Advocate*

Sri Chalchab Ch. Kalita

time, Sri Kalita consumed alcohol as per the blood report and the charge brought against him vide Major Memorandum No. TP/3/LM/1-13/2002 (others) for consuming of liquor is established.”

Copy of the Inquiry Report is enclosed as **Annexure – E.**

4.10 That in the **Findings of the Accident Committee Report** vide item No. D(V), it was stated that the DAD was not responsible for overshooting the Signal but he was responsible only for consumption of Liquor as per the Doctor's Report for which he was found responsible .

The Respondents may please be advised to submit the relevant Accident Committee Report before this Tribunal for ends of justice.

4.11 That the Applicant had to undergone the Breath Analyser test at New Bongaigaon before putting to work with the said train as per prevailing System and found “fit” to work. The Breath Analyser Reports of the New Bongaigaon starting point and the Doctor's Report at Rangiya Railway Station are with the Respondents and they may be advised to produce the Reports in this Tribunal for ends of justice.

4.12 That the Forensic Expert Report on consumption of alcohol, may be due to taking regular cough syrup which contains certain percentage of alcohols by the charged official was found to be only 0.025% which does not debar a person from not doing his duty according to safety point of view as mentioned and circulated by the Railway Board vide their circular No. 2001/Safety-1/23/4 Dt. 27-11-2001 (Para - 2 (XI).

Copy of the Rly. Board's circular is pleased as **Annexure – F.**

The Respondents may please be directed to submit the relevant Forensic Department's Report in the Tribunal for the ends of justice.

4.13 That a “Brief” duly signed by the Defence Counsel of the charged official was submitted on 24-3-03 detailing all aspects of the case for consideration of the Disciplinary Authority and exoneration of the charges against the charged official, the Applicant in this case.

Copy of the above “Brief” is enclosed as **Annexure – G.**

DR. Bhawna
23/8/04
Advocate

Chhabab Ch. Kalita

4.14 That despite the Enquiry Officer's report dated 04-4-03 mentioned in the Para 4.9 above, the Accident Committee Report mentioned under Para 4.10, Breath Analyser test stated 4.11, the Forensic Expert Report and Railway Board's circular regarding consumption of liquor from the safety point of view as mentioned in Para 4.2 and submission of the detailed "Brief" of the Defence Counsel stated under Para 4.13 above, the Disciplinary Authority punished the charged official with "reduction of his pay to lower 2(two) stages in Scale Rs. 3050-4590/- for 2 years with loss of Seniority vide his NIP No. TP/3/LM/1-13/2002 (other) Dt. 15-5-2003.

Copy of the above order is enclosed as Annexure - H.

4.15 That against such gross injustice to the Applicant, the charged official, an appeal was preferred to the Appellate Authority, in this case being Senior Divisional Mechanical Engineer, N.F.Railway, Lumding for consideration, and cancellation of the punishment in the light of above after dwindling the matter on its proper perspective and as per established law of the land.

Copy of the Appeal is enclosed as Annexure - I.

4.16 That it is astonishing that albeit the appeal of the Charged Official preferred to the Senior Divisional Mechanical Engineer, N.F.Railway, Lumding, for decision and order, nevertheless, the Additional Divisional Railway Manager, N.F.Railway, Lumding suo motu made access to the picture, exercised excess use of his power as Revisioning Authority during pendency of the Appeal before the Senior Divisional Mechanical Engineer/ Lumding and ordered for issuing "SHOW CAUSE NOTICE as to why penalty of COMPULSORY RETIREMENT be not imposed upon them" (Driver – Sri J. R. Borah and DAD – Sri U. C. Kalita) "as brought out by Sr. DSO (Senior Divisional Safety Officer) as per Railway Board's Norms" as the "penalty imposed by DA to Sri J. R. Borah, Driver (G)/NGC, Sri U. C. Kalita, DAD/NGC is not commensurate with act of omission/ commission." The show cause Notice was communicated by Divisional Mechanical Engineer (P), N.F.Railway, Lumding vide his No. TP/3/LM/1-13/2002 (other) Dt. 21-08-2003.

Copy of the above show cause Notice is enclosed as Annexure - J.

Contd.....P/7 – That against.....

Advocate
Mr. S. S. Borah
23/8/04

Utkalak Ch. Kalita

4.17 That against the aforementioned arbitrary show cause Notice the Applicant submitted an "Interim Reply" dt. 27.8.2003 to Divisional Mechanical Engineer (P), N.F.Railway, Lumding praying for supplying certain clarifications and documents required for submission of final reply to the said show cause Notice and thereby oblige this charged official.

Copy of the Interim Reply quoted above is submitted as Annexure - K.

Advocate
Niraj Sengar
23/8/04

4.18 That it is surprising that without obliging the Applicant with the clarifications and documents prayed for submitting the "final reply" to the proposed enhancement of punishment, the Additional Divisional Railway Manager, N.F.Railway, Lumding, straightway imposed the punishment of **COMPULSORY RETIREMENT FROM SERVICE WITH IMMEDIATE EFFECT** without going into the depth and details of the case. The said punishment order was communicated by Sr. DME/IC/LMG (Senior Divisional Mechanical Engineer/in-charge/Lumding) vide his NIP No. TP/3/LM/1-13/2002 (other) dt. 12-02-2004 and as a result of which the Applicant has become jobless then and there and now passing the days with his members of the family on starvation as all his dues also are kept withheld with the Respondent.

The copy of the above punishment order is enclosed as Annexure - L.

Gopal Ch. Narkha

4.19 That against such whimsical and unlawful order of the Additional Divisional Railway Manager, N.F.Railway, Lumding the Applicant has made a representation dt. 15-3-04 to the Chief Mechanical Engineer, N.F.Railway, Maligaon, the Principal Head of the Mechanical Department of this Railway, for bestowing justice and redressal of the sufferings of this humble Applicant. But even after lapse of 5 (five) long months nothing has been heard from the chief Mechanical Engineer/N.F.Railway/Maligaon, and, hence, this Application is before this Hon'ble Tribunal for justice.

Copy of the above representation is enclosed as Annexure - M.

4.20 That in the above context of imposition of Penalty order the Applicant with the most placid and suave submission furnishing the following for favour of kind perusal of the Lordships of this Hon'ble Tribunal :

(i) Additional Divisional Railway Manager (hereinafter be mentioned as ADRM) exercised suo motu his excess jurisdiction of Revisioning Authority before finalizing the Appellate Jurisdiction and imposed punishment arbitrarily by enhancing the penalty given by the Disciplinary Authority being influenced by Sr. DSO, as stated by himself in the punishment order, and thereby violated the mandatory provisions of DAR, 1968, and other prevailing statutory Rules.

(ii) ADRM/LMG while passing his observations stated as under (Ref :- TP/2/LM/1-13/2002(Other) dated 12-12-2004) :-

(a) **The Sr. DSO/LMG had pointed out the punishment earlier imposed by DME (power)/LMG was not incommensurate with the norms laid down by the Railway Board for passing the signal on danger.**

(b) **DAD was under the influence of alcohol.**

(c) **Show Cause Notice was to be served for compulsory retirement.**

(d) **Vide letter No. TP/3/LM/1-13/2002(Other) dated 21.08.2003, the show cause notice was issued wherein the ADRM/LMG was shown clearly as Revisioning Authority when he could have had the power of Enhancing Authority and not as Revisioning Authority.**

(iii) In reference to the Show Cause Notice, an interim reply was submitted on 21.08.2003 seeking the detail norms laid down by the Railway Board, which warranted imposition of the proposed punishment of Compulsory Retirement.

(iv) ADRM/LMG finally imposed the penalty of Compulsory Retirement and while passing the speaking order he stated as under:-

(a) Supply Rule – 6 of disciplinary & Appeal Rules, 1968 was not relevant.

(b) ADRM/LMG had gone through the reply against the Show Cause Notice and did not find any new points for consideration.

(v) In respect of Para No. (iv) (a) above, in the Show Cause Notice, Rule – 6 was not mentioned but instead the said Authority had relied upon the norms laid down by the Railway Board and that too was pointed out by Sr.DSO/LMG. This clearly says that ADRM/LMG did not act on his own counsel rather he was influenced by others, Had the ADRM/LMG mentioned Rule – 6 of Disciplinary & Appeal Rules/1968, the Applicant would have the opportunity to defend accordingly and by such act the denial, the Natural Justice was denied.

(vi) In the Rule – 6 of Disciplinary & Appeal Rules, 1968 it has been stated that the nature of punishment in various degrees from VIII to IX would be imposed when there is a cause of collision and or there would have been a collision. Had there been no collision or there was a chance of collision, the nature of punishment to be imposed from v to ix. The ADRM/LMG while applying his mind omitted the following points for consideration :-

(a) The Applicant was not found guilty for DIS REGADING the signal aspect at RNY station in this instant case. In the Accident Enquiry Committee and the Enquiry Officer, came to the conclusion vide item No. D(V) of the Enquiry Report that the Applicant was not responsible for overshooting the signal and similarly the Enquiry officer in his FINDINGS dated 04.04.2003 stated that the charge of disregarding signal not established against the Charged Official.

(b) In regard to Para :- (IV) (b), the reply was on interim one and not a final reply. The ADRM/LMG treated the interim reply as a final one. But the ADRM/LMG acted on the INTERIM REPLY AND AS SUCH AGAIN VIOLATED THE DAR rules, 1968.

Advocate
- 23/09/04
Advocate

Ullahab Ch. Kalika

Further in regard to the said Para, it is stated that in the appeal to Sr.DME/IC/LMG against the punishment imposed by DME (Power)/LMG the Applicant stated the circumstances and consequence of detection of 0.025% alcohol in his blood on Forensic Examination and also he had enclosed the Policy circulated by the Railway Board on Revised Policy on Drunkenness on Duty vide Board's letter No. 2001/Safety – 1/23/4 dated 27.11.2001 (Copy enclosed for his ready reference), item No. 2 (XI) but the ADRM/LMG while imposing penalty did not give any weightage with the Board's directives by which the Enhancing Authority has violated himself the norms laid down by the Railway Board.

(vii) *ADRM/LMG had not taken into consideration the FINDINGS of the Accident Enquiry Committee and that of the Enquiry Officer in the Disciplinary & Appeal Rules case, which is evident from the fact that nowhere in his observation he mentioned the existence of above two findings, although the disciplinary Authority while imposing penalty accepted these findings.*

(viii) **The Enhancing Authority has the full power to enhance punishment but it is necessary for him to go through in details the proceedings drawn by the Accident Enquiry Committee & Enquiry Officer of the whole case and forward definite reasons for not agreeing with the findings.**

(ix) In such circumstances, it is an accepted fact that ADRM/LMG also had accepted the Findings drawn by the Accident Enquiry Committee & Enquiry Officer since the Enhancing Officer remained silent in such matters and as such took contradictory decision in the matter of imposing penalty of Compulsory Retirement on the Applicant.

(x) *The Applicant had denied that he took any Alcohol and presence of alcohol to the tune of below 0.025% in his blood on Forensic Examination was due to his regular taking of Cough Syrup during the Winter Season and the Cough Syrup has the composition of Alcohol.*

(xi) ADRM/LMG did not counter the submission by making available any reasonable grounds for not accepting his contention.

(xii) It may not be out of place to mention that during the Applicant's long 23 (Twenty three) years of service there was no occasion of his being found under the influence of Alcohol.

4.21 That it is humbly submitted that though both the Applicant and the Driver – Sri J. R. Borah were chargesheeted and served show cause Notice before imposing punishment for the same cause of incident, yet it fails to understand as to how Sri Borah was relieved of the charges and the penalty of **COMPULSORY RETIREMENT** was modified to be of **REDUCTION TO LOWER GRADE** of DAD in scale Rs. 3050-4590/- for TWO (2) years and the other, the Applicant was made "**COMPULSORY RETIREMENT**" **FROM SERVICE**.

This is sheer castigating and discriminating.

Copies of the show cause NOTICE NO. TP/3/LM/1-13/2002 (Other) Dt. 21-4-2003 and the Memorandum for reinstatement of service of Sri J.R.Borah, Driver (Goods) No. TP/2/LM/1-13/2002 (Other) Dt. 18-5-2004 are submitted as **Annexure – N & O**.

4.22 That the Railway Board in their Circulated No. 2001/Safety-1/23/4 dt. 27-11-2001 on the Revised Policy on "Drunkenness on duty" categorically emphasized the punishment norms under provision 6 of the said Circular and according to the said norms the Applicant does not come under the ambience of any punishment at all. Moreover, during the long span of 23 years of service there was no such taint on the background of the Applicant.

Copy of Railway Board's aforementioned circular has been placed under **Annexure – F**.

4.23 That it is submitted that in the subject incident of overshooting the signal, the signal was on Driver's side and it was his prime duty to regard the signal and take necessary steps on time. Thus, the Driver was fully responsible in the instant case, as is evident from the findings of the enquiry Report and records of the proceedings.

4.24 That this applicant humbly submits that the principles of equality in respect of the Government policy as to conditions of service is vitiated by " reason of arbitrariness, malafides, importation of extraneous factors."

4.25 That it is humbly submitted that in all service matters "the deciding authority will be presumed to make an honest effort to carry out its obligation to decide fairly and will be mindful to examine the record with particular care; "but in the case of the Applicant the deciding authority dealt with the case in a most casual way and did not apply their mind and care at all and thus infringed constitutional safeguards in respect of right to equality and right to employment guaranteed under Arts. 14 & 16 of the Constitution.

4.27 That above all, fairness of administrative justice was not at all observed and principles of Natural Justice denied to cause bias and malafide.

4.28 That the procedural lapses are apparent and on the face of the records which warrants that the entire DAR proceedings are vitiated.

4.29 That the castigating and discriminating Policy, brazen decision and wanton attitude and action in deciding the facts of two employees under the similar circumstances are candid, and, hence, hits the Arts. 14, 16 & 21 of the constitution of India.

4.30 Principles of Natural Justice are totally evaded in the case of the Applicant.

4.31 Fairness of Administrative Justice was not observed and Railways own set of Rules flouted and violated and thereby caused "Bias" and "Malafide."

4.32 That the Applicant craves leave of this Hon'ble Tribunal for filling additional Written statement, Rejoinder, if necessary, for the ends of justice.

5. **Grounds for Relief :**

5.1 For that the impugned orders (Annexures) of the Railway Authority are "Malafides" and "bias" and not according to law & Rules of the service – matters, and hence, liable to be quashed.

5.2 For that the case of the Applicant has not been examined with proper application of mind and care and, hence, caused "miscarriage of justice."

5.3 For that the Railway authority have flouted their own set of Rules & System in respect of imposing punishment of **COMPULSORY RETIREMENT** from service when his half of the service-life is yet to be spent.

5.4 For that the impugned order was perversed on the face of it.

5.5 For that the impugned orders were unreasonable, arbitrary and/or malafide.

5.6 For that there had been denial of Administrative Fairness.

5.7 For that procedural lapses are apparent and for which the entire DAR proceedings are liable to be vitiated.

5.8 For that the impugned orders and actions of the Administration have violated the Fundamental rights guaranteed to the Applicant under Articles 14,16,21 and 309 of the Constitution of India.

5.9 For that the penalty imposed should be commensurate with the gravity of the offence alleged;

5.10 For that all Authorities in the DAR proceedings of the Applicant violated the Railway's own DAR, 1968 Rules and all other statutory Rules and orders of the service jurisprudence for conducting DAR and acted arbitrarily according to their whims and caprices in most unfair, unlawful and inhuman way by non-application of "proper mind" and "equitable justice."

5.11 For that the cardinal principles of Natural Justice were totally denied by the Respondents.

5.12 For that the *quantum of punishment was totally and shockingly "disproportionate" and "discriminating"* for that alleged offence for which both the Applicant and the Driver were held responsible, charge sheeted, but one was freed completely from all charges and the other was victimized for losing his job and put the family into starvation and ruins due to compulsory retirement from service.

6. Details of remedy exhausted :

The Applicant declares that he has availed of all the remedies available to him under relevant service rules to the best of his capabilities and without getting any relief to his appeals and representations mentioned under the above ANNEXURES he has come to this Hon'ble Tribunal for having justice.

7. Matters not previously filed or pending with any other Court :

The Applicant most humbly submits that he has not filed any other application, writ petition or suit regarding the matter in respect of which this application has been made before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any Tribunal or Court in respect of the subject matter of this application.

8. Relief Sought :

In the circumstances stated above the applicant humbly prays that the Lordships of this Hon'ble Tribunal may be pleased to administer justice by calling upon the records and witnesses, if necessary, and issue orders –

- (i) For quashing the miscarriage of justice caused by the Respondents by issuing the impugned orders/letters/Memorandum.
- (ii) For reinstatement in service with his existing Pay, Scale, capacity, allowances, Seniority and other benefits admissible with all back wages as per extant rules for the punishing period and with no loss of seniority for the said period;
- (iii) Any other relief(s) as the Hon'ble Tribunal may deem fit and proper.

9. Interim Relief :

Pending finalisation of this Application Your Lordships may be pleased to pass such order as deem fit and proper.

10. Particulars of Application Fee :

Indian Postal Order No. 20G112268 dated 26.7.2004 amounting to Rs. 50.00 (Rupees Fifty only) to be drawn in the Head Post Office, Guwahati is enclosed.

11. Details of Index :

An Index in duplicate containing the details of the documents to be relied upon is enclosed.

12. List of ANNEXURES :

A, B, C, D, E, F, G, H, I, J, K, L, M, N, O.

Relief Sought
- 23/8/04
Advocate

Utkarsh Ch. Kalita

VERIFICATION

Nehru
23/8/04
Advocate

I, Sri Udhab Kalita, son of Late Nripati Kalita, aged about 43 years, a resident of Rly. Qr. No. DS-613-A at Bamunimaidan, Guwahati-21, do hereby solemnly affirm and verify that the contents of paragraphs 4.1 to 4.19 are the facts of the case and true to my knowledge, information and belief and that I have not suppressed any material facts and paras 4.20 to 4.32 are my humble and most respectful submission before this Hon'ble Tribunal.

And I sign this VERIFICATION on this 23 day of August, 2004.

Place : Guwahati.

Date 23.08.2004

Sri Udhab Ch Kalita

Signature of the Applicant.

To

The Deputy Registrar,
Central Administrative Tribunal,
Guwahati.

16
N.F.Rly
ANNEXURE-B

(STANDARD FORM NO. 5.)

FORM OF CHARGESHEET

(Rule 9 of the Railway servants(Discipline and appeal rules 1968)
TP/3/LM/1-13/2002 (Other))No. DRM(M)'s Office (Name of Railway Administration)
Place of issue) LMG Dated 19.12.2002

MEMORANDUM.

The President/Railway Board/undersigned propose(s) to hold an inquiry against Shri U.C.KALITA, DAD/NGC under rules 9 of the Railway servants (Discipline and appeal) Rules, 1968. The substance of the imputations of misconduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement or articles of charge(Annexure: I). A statement of the imputations of misconduct or mis-behaviour in support of each articles of charge is enclosed(Annexure: II) A list of documents by which and a list of witnessed by whom, the articles of the charge are proposed to be sustained are also enclosed(Annexure: III and IV). Further, copies of documents mentioned in the list of documents as per Annexure: III are enclosed.

2. * Shri U.C.KALITA is hereby informed that he 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 10(ten) days of receipt of this Memorandum for this purpose he should contact** DME(P)/LMG immediately on receipt of this Memorandum.

3. Shri U.C.KALITA is further informed that he may if, he so desired, take the assistance of any other Rly. servant an official or Rly. Trade Union (who satisfied the requirements of Rule:9(13) of the Rly. servants(Discipline and Appeal) Rules, 1968 and Note:1 and / or Note:2 there under as the case may be) for inspecting the documents and assisting him in presenting his case before the inquiring authority in the 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 Rly. servant of Rly. Trade Union Official(s) Shri U.C.KALITA should obtain an undertaking from the nominate(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. The undertaking should be furnished to the undersigned/General Manager-Railway along with the nomination.

4. Shri U.C.KALITA is hereby directed to submit to undersigned (through General Manager SSE(Loco)/NGC Railway) for a written statement of his defence (which should reach the said General Manager, within 10 days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of his defence and within ten days after completion of inspection of documents if he desires to inspect documents, and also -

- To state whether he wishes to be heard in person and
- To furnish the names and addresses of the witness if any whom he wishes to call in support of his defence.

5. Shri U.C.KALITA is informed that an inquiry will be held only in respect of these articles of charge as are not admitted. He should, therefore, specifically admit or/each articles of charge.

contd--2/-

allied
M.L.S.
23/12/04
Parole

: 2 :

6. Shri U.C.KALITA is further informed that if he does not submit his written statement of defence within the period specified in para 2 or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 9 of the Rly. servants Discipline and Appeal rule 1968 or the order/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry ex parte.

7. The attention of Shri U.C.KALITA is invited to Rule 20 of the Rly. services conduct Rules 1966, under which no Rly. servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceeding, it will be presumed that Shri U.C.KALITA is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the Rly. services (conduct) Rules 1966.

8. The receipt of this Memorandum may be acknowledged.

Encl. 1 (one)

~~For or to and in the case of
the president~~

~~M.D.EY, DME (P) / LMG
Signature
Name and designation
of the authority
Divisional Mechanical Engineer
Rly. Board, Lumbini~~

To:

Shri U.C.KALITA,

Designation and place DAD/NGC

@ Copy to Shri SSE(Loco)/NGC (name and designation of the loading 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 should 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 documents or who would be arranging for inspection of the documents to enable this authority being mentioned in the draft memorandum.

£ Where the president is the Disciplinary authority.

X To be retained wherever president or the Rly. Board is the or the Rly. Board is the competent authority.

To be used wherever applicable see Rule 16(3) of the RS(DA) Rules 1968. Not to be inserted in the copy sent to the Rly. servant.

*Allesbd
Advocate
23/7/74
contd - 3/-*

N. F. R. L. Y.

ANNEXURE TO STANDARD FORM NO. 5.

Memorandum of chargesheet under rule:9 of the RS(D&A)Rules:1968.

ANNEXURE: I.

Statement of articles of charge framed against Shri U.C.KALITA,
DAD/NGC

ARTICLES: I.

That the Said Shri _____ while functioning as _____ during the period _____ (here enter definite and distinct articles of charge)

On 17.12.2002, while working UP NGC/Cement with driver Shri J.R.Bora/NGC, the train passed through RNY Station in APDJ Division without LC and disregarded signal at danger on L/NO.2.

Being the Assistant of the working driver you failed to exchange proper signals with driver while on duty for which he disregarded signal at danger passing through the station without proper authority.

Moreover, you were found alcoholic on duty for which another DAD had to be booked for working the train ex-RNY which caused heavy detention to the same.

Hence, you are charged for failure to exchange proper signal with driver in "extreme emergency" and being intoxicated with liquor during duty which shows your gross negligence on duty as well as violation of SCR of RIy., 1966 vide Rule-3(1)(ii) & (iii).

31-10-1911
Prin. Mech. ANNEXURE: II.
Railway.

Statement of imputation of misconduct, or misbehavior in support of the articles of charge framed against Shri U.C.KALITA, DAD/NGC.

—+— As above —+—

Alles b. d.
Melford
23/8/04
Advocate

4

Annexure. III

List of documents by which the articles of charge framed against Shri U.G.KALITA, DAD/NGC are proposed to be sustained.

- 1) Diary Extract of PRC on duty, Divisional Control/LMG
- 2) Message of DRM/APDJ Division.

Annexure, IV.

List of witnesses by whom the articles of charge framed against Shri H. LAKALIA, DAD/NGC are proposed to be sustained.

- 1) Guard of the train, UP NGC/Cement on 16/17.12.2002.
- 2) SS on duty of RNY Station on 16/17.12.2002.

1971/2
1972/3

attested
Nelson
23/8/04
Advocate

20
ANNEXURE - A

1) DIARY EXTRACT OF PRC ON DUTY/LMG DIVISIONAL CONTROL

DIARY ITEM NO.11, Dated: 16/12/2002.

PRC/APDJ, Shri Ghosh informed that Loco No. 14965 of UP NGC/Coment, Loco-101/2, Driver Shri J.R.Bora/NGC and DAD Shri U.C.Kalita of NGC passed through GDE at 0.44 hrs and then passed through RNY without LC on Line No.2. Guard applied vacuum brake and then the train pushed back to RNY at 1.30 hrs. Doctor attendant and tested both driver and DAD wherein found positive alcoholic. Fresh crew was called at once. Train left RNY at 3.30 hrs with fresh crew.

2) COPY OF THE MESSAGE OF DRIV/APDJ DIVISIONS

XXR

APDJ

17.12.2002

TO

DRIV/LMG
C/CSO/MLG

NO. T2/AP/MISC/12/2002-03 (.) UP NGC CEMENT, BG GOODS TRAIN, LOCO NO.14965, TRAIN LUGS-44-101, DRIVER SRI J.R.BORA, DAD SRI U.C.KALITA BOTH NGC HRS AND GUARD SRI R.TOPNO/NBQ OVER SHOT UP STARTER SIGNAL FOR LINE NO.2 AT RNY STATION AT ABOUT 00.48 HRS. ON 16/17.12.2002 (.) GM/RNY EXAMINED DRIVER, DAD AND GUARD BY BREATH ANALYSER MACHINE AND FOUND POSITIVE ON DRIVER AND DAD (.) DR.LME/APDJ HAS PUT BOTH DRIVER AND DAD UNDER SUSPENSION WITH INTIMATION TO SR.LME/IC/LMG TO ISSUE FORMAL SUSPENSION ORDERS (.)

DRIV/APDJ

Sd/-
DIVISIONAL RAILWAY MANAGER
N.F.RAILWAY/ ALIPURDUAR JN.

21/12/2002, DRIV
Divisional Mechanical Engineer
N.F. Railway, Lansdowne

allied
Metawar
23/12/04
Advocate

2/

ANNEXURE - C

3/

To,

The Divisional Mechanical Engineer, (P)
N.F. Railway/Lumding,
(Through Proper Channel)

Sub :- Memorandum of Chargesheet.

Ref :- Your SF/5 NO-TP/3/LM/1-13/2002 (Other) dt. 19.12.2002.

Dear Sir,

In connection to the above mentioned chargesheet brought against me on the following allegation subject to your kind consideration please.

That Sir, on 17.12.02 while working UPNGC/Cement with Loco No-14965 WDG3 T/Ld-101 Ex-NBQ to NGC at about 00/50 Hrs. at the time of entering on L/2 RNY Station intendent to stop suddenly failed to control the loco at starter signal on position due to poor visibility caused by thick foggy weather, while overshooted starter signal on position (I awakend from the sleeping tendency) & immediately could get control the loco & stop there.

The fact is that Sir, on 15.12.02 I worked IN Goods train Ex NGC to NBQ via GLPT CF 18/00 Hr arrived NBQ at 5/50 of 6/20 16.12.02 performing whole night duty. I could not avail sound sleep rest at Running room/NBQ during my Out Station rest hours. Again I have been called for at 20/15 by this Up train on 16.12.02 & performed night duty, tendency at

That Sir, the allegation brought against me that I was found intoxicated with alcohol while on duty as examined by Doctor through Breath analyser machine is totally incorrect.

Because of the breath analyser machine sometimes shows wrong detection even taking of battle nut, tobacco. It is very true that I was not intoxicated with alcohol on 16/17-12-02 while on duty Beside this, there was no indication of applying air brake by Guard found in the loco while passing L/2 RNY. However, the Loco get stopped just after passing up starter of L/2 & push back to same line within Fouling mark limit to avoid further incident, as per advice of ASM/RNY on duty.

In the light of above circumstances I earnestly request your honour to look into my case and exonerate me from the above charge for the first time considering the foggy weather, what was happened quite unwanted from my side & obliged thereby.

Thanking You,

R.
S. Sengupta
3/10/03
Section Engineer (Loco)
पु. सो. रेलवे, न्यु गुवाहाटी
N. F. Rly. New Guwahati

Advocate
23/9/04

Yours faithfully,
Sri Dabhab Ch. Kalita
DAD - NGC
Dt - 8-1-03

STANDARD FORM NO. 4

N. F. RAILWAY

G. 1968

Standard form of order for revocation of suspension order

(Rules 5 (5) (c) of RS (D&A) Rules 1968)

TP/3/LM/1-13/2002 (Other)
No.

DRM(M)'s office (Name of the Administration)

LMG (Place of issue) LMG Dated 15.5.2003.

ORDER

Whereas an order placing Shri/Smt. U. C. Kalita, DAD/NCC (name and designation of Railway Servant) under suspension was made/was deemed to have been made by DME(P) /LMG on 17.12.2002.

Now, therefore, the President, Railway Board/the undersigned (the authority which made or is deemed to have made the order of suspension or any other authority to which that authority is subordinate) in exercise of the power conferred by clause (c) of sub-rule (5) of rule 5 of the RS (D&A) Rules 1968 hereby revokes the said order of suspension with immediate effect/with effect from 16.5.2003.

(By order and in the name of the President)

(Signature).....

(Name)..... M. DEY, DME(P) /LMG

Designation of the authority making this order
Divisional Mechanical Engineer
N. F. Railway, Lumding

(Secretary, Railway Board, where the order is made by the Railway Board) -

Designation of the officer authorised under article 77(2) of the Constitution to authenticate the order by the President (where the order is made by the President).

Shri/Smt. U. C. Kalita, DAD/NCC (name and designation of the suspended Railway Servant)
Copy to:- Sr. DPO/LMG, APD/CHY & SSE(Loco)/NCC for information and
n/a please refer to this office order of even No. Dt:
17.12.2002,

allied
Advocate
Advocate

N.E. RAILWAY

No. TP/3/LM/1-13/2002(Other)

Office of the
DRM(M)/LMG, Dated: 15.5.2003

TO

Shri U.C. Kalita, DAD/NGC
Through SSE(Loco)/NGC

Sub:- Regularisation of suspension period in connection with incident of passing of signals at danger at RNY in APDU Divn by UP NGC/Cement on 17.12.2002.

Ref:- 1) Suspension orders issued vide even No. of this letter, Dt: 17.12.2002.

2) Revocation orders issued on 15.5.2003.

Please refer to the above and note that in connection with the above accident case, your suspension period from 17.12.2002 to 15.5.2003 is treated as suspension.

DME(P)/LMG

Copy to:- SF, DPO/LMG, APO/GHY & SSE(Loco)/NGC for information and necessary action please in ref. to the orders of Suspension & Revocation issued vide even No. of this letter, Dated: 17.12.2002 & 15.5.2003 respectively.

DME(P)/LMG

22/5/03
Advocate

Report of enquiry in connection with the Major Case No. : TP/3/LM/1-13/2002 issued against Shri U. C. Kalita, DAD/NGC for passing signal danger at RNY station by UP NGC cement on 17-12-02.

A major memorandum was issued against Shri U. C. Kalita, DAD/NGC by DME (Power)/LMG vide No. : TP/3/LM/1-13/2002 (other) dated 19-12-2002 (SN - 09 to 12).

The undersigned was appointed as Enquiry Officer by DME/P/LMG vide SF/7 No. : TP/3/LM/1-13/2002 (other) dated 15-1-03. (SN - 43).

Shri Kalita has been put under suspension w.e.f. 17.12.02 vide No. : TP/3/LM/1-13/02 (other) dated 17-12-02.

The article of charge is as follows :

Articles-I

Annexure-I

“On 17-12-02, while working UP NGC/Cement with driver Shri J.R.Bora/NGC, the train passed through RNY station in APDJ Division without L.C. and disregarded signal at danger on L/No.: 2.

Being the Assistant of the working driver you failed to exchange proper signals with driver while on duty for which he disregarded signal at danger passing through the station without proper authority.

Moreover, you were found alcoholic on duty for which another DAD had to be booked for working the train ex-RNY which caused heavy detention to the same.

Hence, you are charged for failure to exchange proper Signal with driver in extreme emergency and being intoxicated with liquor during duty which shows your gross negligence on duty as well as violation of SCR of Rly., 1966 vide Rule – 3 (i), (ii) & (iii).”

Annexure-II

(Same as appeared in annex – I)

The crux of the charge against Shri U. C. Kalita vide article-I of the Major memorandum is that Shri Kalita did not exchange proper signal with driver in extreme emergency and being intoxicated with liquor during duty which leads the deriver for disregarding signal at RNY.

The charge has been framed on the strength of the report of the committee that conducted enquiry into the disregarding of Home Signal/RNY by UP NGC cement on 17-12-02. The witness by whom the articles of charge framed against Shri Kalita, DAD/NGC were –

1. Shri Rober Topno, on duty award of UP NGC cement
2. Shri Bhagaban Nath, ASM/RNY on duty.

In reply to the chargesheet Shri Kalita submitted his defence on 08-1-03 (SN – 22) wherein Shri Kalita stated the thick foggy weather obstructed the normal vision and the sleeping tendency contributed the cause of overshooting the Home Signal/RNY by UP NGC cement.

In course of preliminary DAR enquiry Shri Kalita denied the charge which has been brought against him vide Major Memorandum No. : TP/3/LM/1-13/2002 (other) dated 19-12-02.

However, Shri Kalita availed the opportunity to nominate his defence counsel and accordingly Shri A.K.Ganguly, Retd. CTTI/HQrs acted as Defence counsel of Shri Kalita. Shri Kalita also availed the opportunity to submit his final submission in writing.

The following dates of enquiry were fixed by the E.O.

List of evidence produced by the Charged Officer.

- i) Shri Kalita in his deposition stated that he noticed the UP Starter Signal/RNY though the same was in Driver's side and also saw the Adv. Starter position and accordingly acknowledged the same with Driver Shri Borah. Shri Borah also confirmed in course of cross-examination (SN – 34 Ans. To Q. No. – 4).
- ii) The incident of disregarding of Signal was occurred at about 0-30 hrs. i.e. after the night meal. The situation was foggy and cold at that time which contributed Shri Kalita to become a little bit drowsy for the moment but did not loose his alertness. Shri Kalita also stated that he wanted to stop UP NGC cement by application of Emergency brake but the Driver advised him not to do so as he had already started for applying the concerned A/9 brake.

2/6

36

iii) Sr. DMO/RNY revealed on the sign and symptoms that Shri Kalita was under influence of liquor whereas he Shri (Kalita) was allowed to work the aforesaid train at NBQ after necessary breathalyzer test and the result was OK.

Assessment of evidence of both the parties –

i) It is revealed from the enquiry that Shri Kalita called out Signal aspect (UP Starter Signal)/RNY which has further been confessed by the Driver Shri Borah. It has become clear that Shri Kalita called out that signal aspect when the aforesaid train was about to passing UP Starter Signal/RNY. It is also evident from the speed of the train that Shri Kalita was not sufficiently alert well before the 'distant signal' otherwise he could have reduced the speed by application of emergency brake as already provided to him.

<u>Sl.No.</u>	<u>Date of Enq.</u>	<u>Persons called to attend the enquiry</u>	<u>Persons attended</u>	<u>Remarks</u>
1.	01-2-03	Shri U.C.Kalita, DE	Attended	Enquiry held.
2.	28-2-03	Shri U.C.Kalita, DE Shri A.K.Ganguly, DC Shri B.Nath, ASM/RNY Shri R. Topno, Guard/NBQ	All attended but enquiry could not held	E.O. was not available at NGC. Enquiry postponed.
3.	04-3-03	Shri U.C.Kalita, DE Shri A.K.Ganguly, DC Shri B.Nath, ASM/RNY Shri R. Topno, Guard/NBQ	All attended except Shri B.Nath	Enquiry held.
4.	05-3-03	Shri U.C.Kalita, DE Shri A.K.Ganguly, DC Shri B.Nath, ASM/RNY	All Attended	Enquiry held.
5.	13-3-03	Shri U.C.Kalita, DE Shri A.K.Ganguly, DC	Attended	Enquiry held

List of evidence produced by the management –

Brief history of the accident case findings of the enquiry and fixing up of responsibility by Enquiry committee have been the main documentary evidence produced by the management against the charged officer.

Sr. DMO/RNY examined Shri Kalita just after the incident of disregarding of Signal and found that he (Shri Kalita) was under influence of liquor.

The concerned train i.e. UP NGC cement also suffered detention for arranging of another fresh crew at RNY to reach the train upto destination.

It is found that Shri Kalita did not exchange proper signal aspect with the driver as and when UP NGC cement was about to disregard Starter Signal of RNY.

2) The blood report of Shri U. C. Kalita found to be 'positive' as per Forensic Science Laboratory. Also Sr. DMO/RNY declared that Shri Kalita was under influence of alcohol. So there is no doubt that Shri Kalita consumed liquor before the incident of disregarding of Signal occurred and the same cannot be ruled out from the safety point of view.

Findings –

Considering all the relevant facts revealed through the evidence produced in favour of and against the charge it has reasonably appeared that Shri Kalita called out the signal aspect and, as such, the charge for not calling out of Signal aspect is not established. But at the same time, Shri Kalita consumed alcohol as per the blood report and the charge brought against him vide Major memorandum No. : TP/3/LM/1-13/2002 (Other) for consuming of liquor is established.

No. : AME/NGC/DA/7-Pt-II

Dated – 04/4/03.

(S. K. Datta)

E. O.

Asstt. Divl. Mech. Engr.

New Guwahati.

Original Enquiry Report
is handwritten, in photo
copy of which is placed
below, hence, this typed
copy is submitted.
Advocate
- 23/8/04

Report of enquiry in connection with the Major case no: T.P/3/Lm/1-13/2002
joined against Shri V.C. Kalita, DAD/ACC for passing Signal at danger
at Rax station by UP ACC cement on 14-12-02. 86

A Major memorandum was issued against Shri V.C. Kalita
DAD/ACC by DMC (Person) / LMG vide no: T.P/3/Lm/1-13/2002 (Other)
dated 19-12-2002 (SN-09 to 12).

The undersigned was appointed as Enquiry Officer by
DMC/P/LMG vide SF/1/20: T.P/3/Lm/1-13/2002 (Other) dated 15-1-03.
(SN-43)

Shri Kalita has been put under suspension w.e.f 17-12-02
vide no: T.P/3/Lm/1-13/02 (Other) dated 17-12-02.

The article of charge is as follows:-

Article I

Annexure - I

"On 14-12-02, while working UP ACC cement with driver
Shri J. R. Deka/ACC, the train passed through Rax station in APDZ
division without L.C. and disregarded Signal at danger on 14-12-02.

Being the Assistant of the working driver you failed to exchange
proper Signals with driver while on duty for which he disregarded signal
at danger passing through the station without proper authority.

Moreover, you were found alcoholic on duty for which
another DAD had to be booked for working the train ex- Rax which caused
heavy detention to the same.

Here, you are charged for failure to exchange proper Signal
with driver in extreme emergency and being intoxicated with liquor
during duty which shows your gross negligence on duty as well as violation
of Sec of Ry, 1966 vide Rule - 3 (i) (ii) & (iii)."

(Same as appeared in annex-I)

Annexure - I

Attestd
N. N. N. N.
23/8/04
Advocate

contd - 2

The crux of the charge against Shri V.C. Kalita vide article I of the Major memorandum is that Shri Kalita did not exchange proper signal with driver in extreme emergency and being intoxicated with liquor during duty which leads the driver for disregarding signal at RNY.

The charge has been framed on the strength of the report of the committee that conducted enquiry into the disregarding of Stone Signal/RNY by UP NCC cement on 14-12-02. The members by whom the articles of charge framed against Shri Kalita; D.A.D./NCC were -

1. Shri Robert Topno, on duty guard of UP NCC cement.
2. Shri Ashagabon Nath, Asst RNY on duty.

In reply to the charge sheet Shri Kalita submitted his defence on 08-1-03 (SN-22) wherein Shri Kalita stated the thick foggy weather obstructed the normal vision and the sleeping tendency contributed the cause of overshooting the Stone Signal/RNY by UP NCC cement.

In course of preliminary D.A.R. enquiry Shri Kalita denied the charge which has been brought against him vide Major Memorandum no. T.P/3/Lmy/1-13/2002 (Other) dated - 19-12-02.

However, Shri Kalita availed the opportunity to nominate his defence counsel and accordingly Shri A. K. Ganguly, Retd. C.T.T.I./PQR acted as defence counsel of Shri Kalita. Shri Kalita also availed the opportunity to submit his final submission in writing.

The following dates of enquiry were fixed by the S.O.

1. 23/1/04
2. 23/2/04
Advocate

contd - 3

First of evidence produced by the charged officer.

i) Shri Kalita in his deposition stated that he noticed the UP Starter Signal/RN, though the same was in advance mode and also saw the Adv. Starter position and accordingly acknowledged the same with Driver Shri Borah. Shri Borah also confirmed in course of cross-examination. (SN - 34, Amt to Q no - 4).

ii) The incident of disregarding of Signal was occurred at about 0-30 hrs i.e., after the night meal. The situation was foggy and cold at that time which contributed Shri Kalita to become a little bit drowsy for the moment but did not loose his alertness. Shri Kalita also stated that he wanted to stop up rice cement by application of Emergency brake but the Driver advised him not to do so as he had already started for applying the concerned N/9 brake.

iii) Sr. Dmo/ RN revealed on the signs and symptoms that Shri Kalita was under influence of liquor whereas the (Shri Kalita) was allowed to work the aforesaid train at NBL after necessary breathalyser test and the result was OK.

Assessment of evidence of both the parties -

1) It is revealed from the enquiry that Shri Kalita called out Signal aspect (UP Starter Signal)/ RN which has further been confirmed by the Driver Shri Borah. It became clear that Shri Kalita called out the Signal aspect when the aforesaid train was about to pass the UP Starter Signal/RN. It is also evident from the speed of the train that Shri Kalita was not sufficiently alert well before the 'obstacle' Signal otherwise he could have reduced the speed by application of Emergency brake as already provided to him.

Collected
22/04/2004
Subj. 22/04
Affidate

Page. 5

W.D. Ver.
04.4.03

S. No	Date of Enq.	Persons called to attend the enquiry	Persons attended	Remarks
1.	01-2-03.	Shri U.C. Kalita, D.E.	Attended	Enquiry held
2.	28-2-03.	Shri U.C. Kalita, D.E. -v- A.K. Ganguly, D.C. -v- B. Nath, Asst/RM -v- R. Topra, Guard/RM	All attended but enquiry could not held	E.O. was not available at place. Enquiry postponed.
3.	04-3-03.	Shri U.C. Kalita, D.E. -v- A.K. Ganguly, D.C. -v- B. Nath, Asst/RM -v- R. Topra, Guard/RM	All attended except Shri B. Nath.	Enquiry held
4.	05-3-03.	Shri U.C. Kalita, D.E. -v- B. Nath, Asst/RM -v- A.K. Ganguly, D.C.	All attended	Enquiry held
5.	13-3-03.	Shri U.C. Kalita, D.E. -v- A.K. Ganguly, D.C.	Attended	Enquiry held

list of evidences produced by the management -

Brief history of the accident case, findings of the enquiry and fixing up of responsibility by Enquiry committee have been the main documentary evidence produced by the management against the charged officer.

Sr. Dmo/RM examined Shri Kalita just after the incident of disregarding of signal and found that he (Shri Kalita) was under influence of liquor.

The concerned train, up rice cement also suffered detention for arranging of another fresh train at Ruyi to reach the train upto destination.

It is found that Shri Kalita did not exchange proper signal aspect with the driver as and when up rice cement was about to disregard Starter Signal of Ruyi.

Collected
M. L. Bhowmik
23/3/04
Advocate

Contd-1

2) The blood report of Shri. U.C. Kalita found to be 'positive' as per Forensic Science Laboratory. Also Sr. Dm/RN declared that Shri Kalita was under influence of alcohol. So there is no doubt that Shri. Kalita consumed liquor before the incident of disengaging of Signal occurred and the same cannot be ruled out from the safety point of view.

Findings -

Considering all the relevant facts revealed through the evidence produced in favour of and against the charge it has reasonably appeared that Shri. Kalita called out the signal aspect and, as such, the charge for not calling out of Signal aspect is not established. But at the same time, Shri. Kalita consumed alcohol as per the blood report and the charge brought against him vide Major memorandum no: TP/3/Lm/1-13/2002 (Other) for example consuming of liquor is established.

No: App/NAc/2A/14-8t-11
Dated - 04/11/03

W222
(H. 4.03.)
(S. K. Datta)
(E.O.)
Asstt. Divt. Mech. Engr.
New Currahola.

alleged
Niksen
23/8/04
Advocate

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. 2001/Safety-I/23/4

New Delhi-110001
27th November 2001.

The General Manager (Safety),
All Indian Railways.

Sub: Revised Policy on "Drunkenness on duty".

Board has approved the revised policy on drunkenness in order to make it more effective for controlling drunkenness amongst staff, particularly safety categories. Revised Policy is sent herewith as annexure. Railways are directed to get these policy booklets printed and implement the revised policy on their system.

Necessary changes in concerned manuals shall be made by Ministry of Railways and will be advised in due course.

Please acknowledge the receipt.

Indra Ghosh
(Indra Ghosh)

Executive Director, Safety,
Railway Board.

*Attested
Mr. D. S. S.
23/9/04
Advocate*

11/11/04

2/11/04

3/11/04
S. S. S.
2004
Anil Bhawan

1. Cc to all Federations, AIRF, 41st Mile Entry Road, NFIR, 3, Chelmesford Road, IRPCF, 265
2. Safety(A&R) Branch for processing the modification in the concerned G.R.
3. DG/RDSO for early standardization of State-of-Art Breathalyzers
4. DG/Health for processing necessary changes in Medical manual
5. AM Commercial for making necessary amendments in Railway Act
6. AM Staff

DRUNKENNESS ON DUTY - A SAFETY HAZARD

(Revised Alcohol Policy for Indian Railways)

1. Aim of the Revised Policy:

- (i) Ensuring that staffs who are having a drinking problem are identified.
- (ii) Protect the health and welfare of staff by offering counselling and rehabilitation to those with alcohol related problems.
- (iii) Prevent risks to staff, passengers and the general public from abuses of alcohol by staff in Safety critical posts.
- (iv) Prevent the damaging effects of alcohol on optimum operational efficiency.
- (v) Take up with staff who are incorrigible and are a danger both to themselves as also to the system.

2. General Aspects of Revised Alcohol Policy:

- (i) A booklet should be got printed by all Zonal Railways briefly explaining the revised alcohol policy of Indian Railways, its aims and objectives, along with its benefits both for the staff as also for the organisation as a whole.
- (ii) It should be made applicable to all categories of Staff. However, for the present, for overcoming logistic problems, it is proposed to introduce it only for those categories of staff connected with train running.
- (iii) The train running staff who would be covered under the Revised Alcohol Policy in Phase-I are as follows:
 - (a) Drivers/Motormen/Asst. Driver/Guards.
 - (b) ASMs/SMs.
 - (c) Pointsmen / Leverman/ Cabinmen/ Switchmen.
 However in first phase it is to be introduced for the running staff as they are directly involved in train running and their mistake may cause a serious accident which is detrimental to safe running of passengers.
- (iv) The running staff viz driver, Asstt Driver shall undergo breathalyser test both at the time of signing-on and Signing off as per Railway Board instructions.
- (v) The Station /yard staff and other categories of staff will be subjected to Sample test / Surprise test by supervisors and officers carrying portable breathalysers.
- (vi) Officers should keep a list of all Senior Supervisors working under them who are habitual of drinking.
- (vii) Similarly, Senior Supervisors should keep a list of all staff working under them that is habitual of drinking.
- (viii) All such staff who is short-listed would now form the target population. They must be divided into two categories as Chronic or Habitual depending on the severity of their drinking habits.
- (ix) The idea is that each level 'N' must keep a watch on level 'N-1' immediately below. For example, LI should keep a watch on all short listed drivers attached with him; Crew Controller should keep a watch on all such Asstt. Drivers, and similarly Station Master should keep a watch on the staff posted at his station.

*Attested
M. D. S. S.
23/10/01
Advocate*

(xi) For Indian conditions, the following Safety limits are laid down for the presence of alcohol in blood and urine:

- Between 01- 20 mg/100 ml, the person concerned will not be allowed to perform duty.
- Between 21 - 40 mg/100 ml of blood is dangerous.
- Between 41 - 70 mg/100 ml of blood is very dangerous.
- Beyond 70 mg/100 ml of blood requires immediate action.

3. Reformative Aspects of Revised Alcohol Policy:

- The following reformative action is to be taken for the staff short-listed as either chronic or habitual.
- Counselling of staff during initial/promotional training courses and periodical medical examination. Employees should be told about hazards of drinking as also about the short and long-term effects of drinking. They should be counselled for:
 - Not drinking alcohol eight hours before going on duty.
 - Should not have smell of alcohol on their breath while on duty.
 - Should not drink alcohol while on duty.
- The railways may either decide to organise de-addiction camps within their own resources on the same pattern as Southern Railway.
- Alternatively, NGOs should be identified at Zonal Head quarters and preferably at each divisional Head quarters also for organising rehabilitation programmes for de-addiction.
- Organising of these camps at regular intervals must be a continuous process and should not be given up after a one-time exercise. The modalities for organising such de-addiction camps may be worked out with each NGO on a long-term basis.
- It can be decided as a policy that in case some expenditure is incurred by the railway by way of payment to NGOs, then 50% of the same may borne by the railway and 50% by the staff concerned.
- The staff that has been categorised as habitual should be sent first, on priority, for undergoing rehabilitation programme for de-addiction at the nominated centre in preference to staff who have been categorised as chronic.
- Staff who go for the de-addiction camp and successfully complete it will be kept under watch for a further period of 6 months and thereafter taken off the list.
- Staff who undergo the rehabilitation programme but are unsuccessful in their first attempt will be given a second chance for undergoing the de-addiction camp.
- Staff who is unsuccessful a second time will be medically decategorised and taken off Safety critical posts.
- Staff who refuse to go will be dealt with as follows:
 - No further promotion.
 - Special check to be kept on their working with particular reference to frequent and surprise breathalyser tests and blood/urine samples.
 - Any lapses on their part will be dealt with as laid down under item no. 5.

Attest
M. P. Rao
23/10/04
Advocate

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4. Preventive Aspects of Revised Alcohol Policy:

- (i) While recruiting staff for safety critical posts of Asslt. Driver or Lever man or ASM, each candidate must be screened for alcohol content in their blood. Alcohol level of any amount will render the candidate unsuitable for recruitment.
- (ii) Each staff should be held responsible for ensuring that they do not hand over/take charge from another staff who is under the influence of Alcohol. Failure to do so will make them liable for disciplinary action.
- (iii) Each staff should be held responsible for ensuring that they report all cases of any of their co-workers who is under the influence of Alcohol on duty. Failure to do so will make them liable for disciplinary action.
- (iv) All Driver's and Guard's Lobbies must be provided with heavy-duty breathalysers, which are capable of indicating the blood alcohol level from breathalyser test alone. A stand by breathalyser may also be made available.
- (v) All Running/Operating Officers/Inspectors must be provided with portable breathalysers for conducting surprise checks especially with regard to those staff who have been categorised as either chronic or habitual.
- (vi) No Running staff will be allowed to sign on for duty without undergoing the breathalyser test. The readings of the breathalyser test must be entered in the signing on register.
- (vii) In case the result of the breathalyser test is positive then a printout of the readings must be obtained for further action.
- (viii) In case the staff concerned refuses to co-operate in undergoing the breathalyser test, he should be taken up under D&AR.

5. Deterrent Aspects of Revised Alcohol Policy:

- (i) Immediate supervisors of staff should be used as auditing agency for purposes of conducting surprise checks etc.
- (ii) Post Accident medical examination of all the involved staff should invariably be resorted to immediately. This should be irrespective of whether the staff concerned is prima facie responsible for the accident or not.
- (iii) Post Accident medical examination will give employees involved the opportunity of proving that alcohol played no part in causing the accident.
- (iv) The employee should be removed from safety critical post while waiting for the results of the Post Accident medical examination.
- (v) In case results of the alcohol test are positive then the staff concerned should be taken up under D&AR.
- (vi) Random surprise checks should be carried out on the staff. If they refuse for test the following action must be taken:
 - (a) Will not be considered for promotion.
 - (b) To be taken up under D&AR proceedings.
- (vii) If a Supervisor/Officer has a reasonable cause to suspect the fitness on duty.
 - (a) Relieve from duty, until tested.
 - (b) Remove from safety critical duties while waiting for results.
- (viii) If the result of the random medical check turns out to be positive, then the staff concerned should be taken up under D&AR.

Drinking

28 November 2001

11:05

Page No 3

Attested
N. D. D.
23/8/04
Advocate

6.

Punishment Norms:

- (i) Staff who is found with alcohol level of between 01 – 20 mg/100 ml of blood will not be permitted to perform duty.
- (ii) Staff who is found with alcohol level of between 21 – 40 mg/100 ml of blood will be issued a minor penalty in each case.
- (iii) Staff who is found with alcohol level of between 41 – 70 mg/100 ml of blood will be issued a major penalty in each case.
- (iv) Staff who is found with alcohol level of beyond 70-mg/100 ml of blood will be placed under suspension and disciplinary proceedings initiated against him for reversion from the safety critical post.
- (v) For repeated detection of 3 times, irrespective of the level of alcohol detected, disciplinary proceedings will be initiated against the staff concerned for reversion from the safety critical post.

State of Art Breathalyser equipment capable of giving exact level of Alcohol content in the blood including print outs need to be introduced. These breathalysers should necessarily have the memory function so as in case of suspect a print out can be taken at a convenient location. Traffic Directorate of RDSO will standardise specifications of Fuel cell sensor based breathalysers.

7.

Changes required in Manuals and Rule Books:

The revised alcohol policy for the Indian Railway will necessitate the following:

- (i) Amendment in the Indian Railway Act.
- (ii) Amendment in the Medical Manual.
- (iii) Inclusion of a Chapter in the General and Subsidiary Rules.
- (iv) The above amendments can only be carried out after holding discussions with organised labour unions.

The Directorate concerned of Railway Board will amend the rules as per the above policy.

*checked
revised
23/8/04
Advocate*

564. All drunkenness cases be examined carefully:-

(1) Every case of drunkenness is a potential medico-legal case and the Railway doctor called upon to certify such a case should make a careful examination and should note down every important particular.

(2) Railway doctors may also have to issue drunkenness certificates to persons produced by police at places where there are no civil hospitals or dispensaries and only a Railway hospital or health unit exists.

(3) In places where prohibition is in force, it is an offence even if one has imbibed alcohol, let alone getting drunk. When a case is brought, the Railway doctor should carefully examine the case and certify as to whether:

(a) The person has imbibed alcohol but not drunk or that

(b) The person is actually drunk i.e. under the influence of alcohol.

(1) The Performa for recording particulars of a suspected case of drunkenness is given in Annexure-XIX to this chapter. This form should always be kept handy as the Railway doctor may be called upon to certify drunkenness at any moment and sometimes away from his headquarters.

(2) It is desirable that a Railway doctor, when certifying cases of drunkenness, should base his opinion on the following consideration: -

(i) Whether the person concerned has recently consumed alcohol.

(ii) Whether the person concerned is so much under the influence of alcohol as to have lost control of his faculties to such an extent as to render him unable to execute safely the occupation on which he was engaged at the material time.

(iii) Whether his state is due, wholly or partially, to a pathological condition, which causes symptoms similar to those of alcoholic intoxication, irrespective of the amount of alcohol consumed.

(1) He should not certify the case a drunk just because the patient smells of alcohol. The quantity taken is also no guide, but the fact of impairment of his capacity to perform his duties has to be taken into account.

565. Instructions regarding issue of certificates for drunkenness

(1) When a Railway doctor is called upon to certify a case of drunkenness in a Railway employee, he should after careful examination immediately report by a telegram or urgent letter his opinion to the immediate superior or Divisional Officer of the employee concerned intimating whether the employees should be put off duty or not.

(2) When a Railway doctor is asked to certify the crew of a running locomotive and if on examination he finds a member of the same under the influence of alcohol, he should immediately issue a memo to the authority concerned, putting the person off duty.

(3) As far as possible, the Senior Assistant Divisional Medical Officer themselves should undertake to examine such cases of drunkenness rather than depot their juniors, and in case of doubt, should refer the case to the Divisional Medical Officer or Assistant Divisional Medical Officer in charge of his section.

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Reverend
23/9/01
Advocate

(c) Whether his state is due, wholly or partially, to a pathological condition which causes symptoms similar to those of an alcoholic intoxication, irrespective of the amount of alcohol consumed.

(iii) He should not certify the case as drunk just because patient smells of alcohol. The quantity taken also is no guide, but the fact of impairment of his capacity to perform his duties has to be taken into account.

(iv) The program for recording particulars of suspected cases of drunkenness is annexed herewith.

*allied
met
23/8/04
Advocate*

BRIEF SUBMITTED BY THE DEFENCE IN THE DISCIPLINARY & APPEAL RULES PROCEEDINGS DRAWN BY THE ENQUIRY OFFICER AGAINST SRI U.C. KALITA, DIESEAL ASSISTANT DRIVER (GOODS) /NGC UNDER DME/ POWER/ LMG IN REFERENCE TO THE MEMORANDUM NO: - TP/3/LM/1 - 13/2002 (OTHER) DATED. 19.12.2002.

(A) BACKGROUNDS OF THE CHARGE SHEET: -

1. Sri U.C. Kalita, DAD (Goods)/NGC here after will be named as the CO was working UP NGC/Cement with LOCO No. 14965 WDG2 on 17th/18th December, 2002, Ex- NBQ to NGC. The Guard of the subject train was Sri Robin Topno, Guard (Goods)/NBQ and the Driver (Goods)/NGC work with him was Sri J.R. Borah.
2. This subject Train, disobeying the **SIGNAL** at RNY Station, the **UP STARTER** on position, Sri Kalita was served with **MAJOR PENALTY CHARGE SHEET** vide No. TP/3/LM/1 - 13/2002 (OTHER) DATED. 19.12.2002 by DME (Power)/LMG, N.F. Railway.

(B) THE ARTICLE OF CHARGE: -

1. Single Article of Charge framed against the CO Vide Annexure -I, the DME (Power)/LMG, the Disciplinary Authority here after will be mentioned as DA, alleged the following charges: -

1.1. He alleged to have failed to exchange the proper Signal with the Driver(Goods) in the extreme emergency.

1.2. He was intoxicated with the Liquor during his Duty Hours.

2. For establishing such alleged charges the DA relied upon the documentary evidences pertaining to: -

2.1. The Diary extract of PRC on Duty at Divisional Control Office, LMG, N.F. Railway.

2.3. The Message of the DRM/APDJ Division.

3. However, during enquiry, the following documentary evidences were made available in addition to the above :-

3.1. The Findings of the Accident Enquiry Report.

3.2. The Forensic Report in the matter of the alcoholic influence found on the CO.

4. The DA also relied upon the Oral evidences of the following: -

4.3. The Guard of the subject Train.

SIGNATURE OF THE DEFENCE COUNSEL

Received on 25/3/03
By _____
For _____
Name _____
Designation _____
Date _____

24/3/03
Amit Kumar
Advocate

4.4. The ASM on Duty at RNY.

(C) DISCUSSION OF THE EVIDENCES: -1. 1st DOCUMENTARY EVIDENCES: -

1.1. This particular document states that the Train passed through RNY Station Platform without Line Clear on Line No. 2 and the Guard applied the Vacuum & then the Train was pushed back to RNY at 01:30 hours. The Railway Doctor at RNY was called on and the Driver (G) and the CO was found to be under the influence of Alcohol on being examined by the concerned Doctor.

1.2. This piece of evidence does say that on the initiative of the Guard (G) in the matter of application of the Vacuum Brake by the Guard (G), the Train was stopped & pushed back. But it has been established with the evidence of the Guard (G) that he started pressing the Vacuum only after when the Train was passing through the Platform area. The recorded evidence may be seen at Page: - 4 vide Question No. 3.

1.3. The Verbatative statement of the Guard (G) came as under: -

"I was going on applying the Brake before I heard the hue & cry of the staff on the Station Platform (RNY), when I came out on my Brake and found on duty staff showing me red lamps and then & there I applied the Brake as an emergent situation" (Question No. 3 put by the Defence).

1.4. In the above statement of the Guard (G) it is established that the on Duty Guard (G) started applying the Vacuum Brake only after, he heard the hue & cry and not prior to that & as such the assumption that the Train was stopped only on initiative of the Guard is not established.

2. The documentary evidence (1) was prepared depending on the factual information conveyed by the DRM/APDJ where in no such initiative by the Guard (G) was mentioned and as such the prosecution invented/ cooked up the imaginary evidences while framing the Charges against the CO.

3. The purpose of the Defence to take the cognizance of such irregularities is that the Driver (Goods) after passing the UP STARTER ON POSITION at RNY Station stopped the Train at his own without receiving any Signal Communication from the on Duty Guard (G).

(D) DISCUSSION OF THE ADDITIONAL DOCUMENTARY EVIDENCES: -1. ACCIDENT COMMITTEE REPORT.

1.1. In the Findings of the Accident Committee Report vide item No. D (v), it was stated that the DAD was not responsible for Over Shooting the Signal but he was responsible only for consumption of Liquor as per the Doctor's Report for which he was found responsible Secondary.

SIGNATURE OF THE DEFENCE COUNSEL

Allesd
M. M. Nelson
22/04/04
Advocate

5

1.2. This Accident Report was the basis of Charges framed against the CO by the DA but without disagreeing with the comments of the Accident Committee in a speaking manner incorporated a Charge reading as FAILURE OF THE EXCHANGE OF THE PROPER SIGNAL with the Driver (Goods) in the extreme emergency.

1.3. It may be seen from the Statement of the Driver (Goods) deposed in the Enquiry that the CO shouted at him when he noticed the Advance Starter on Position to stop the Train immediately after passing the Starter on Position and also at the same time he was handling the Emergency Brake to stop the Train but the Driver (Goods) asked him not to apply the Brake since he has already applied the A-9 (another provision for applying the Brake) and as such this Charge of Failure of exchange of proper Signal with the Driver (Goods) does not stand.

1.4. In the matter of his alertness, it is proved by the evidence forwarded by the Driver (Goods) that the Engine passed about 300 meters beyond the UP STARTER and this was noticed by the CO immediately after passing of the UP STARTER ON POSITION which was in Driver's side and naturally when the CO noticed the Advance Starter On Position he took the following actions: -

1.4.1. Shouted at the Driver (Goods) of the UP STARTER being ON POSITION.

1.4.2. Engaged himself to apply the Emergency Brake.

2. The CO did not violate any actions reasonably to be taken by him.

3. CONSUMPTION OF ALCOHOL BY THE CO.

3.1. In the matter of 2nd allegations of the CO's being under intoxication with the Liquor while on Duty, it is not established from the evidences as follows :-

3.1.1. The CO was subjected to Breath Analyzer Test which was conducted at NBQ prior, he was allowed to work the Train before being under the influence of the Alcohol.

3.1.2. The subjected Train departed from NBQ at about 21:00 hours and reached RNY Station at about 00: 50 hours, the gap being round about 4 hours.

3.1.3. It is apparent that the CO was not found under the influence of the Liquor at NBQ but was found under the influence of the Liquor at RNY Station, which he would have consumed in between 4 hours of the running of the Train for being detected at RNY under the influence of the Liquor.

3.1.4. Had the Case been so the Forensic Report after Blood Testing could not have detected 0.025% but would have been at higher percentage.

SIGNATURE OF THE DEFENCE COUNSEL

26.3.09
Allied
Advocate
23/8/04
Advocate

3.1.5. This 0.025% can be analyzed to be **ONE FORTIETH FRACTION OF ONE PERCENT** and that too was estimated by the Forensic Department.

3.1.6. Had the CO consumed Liquor in between run of the subject Train between NBQ & RNY Blood Test by the Forensic Examination would have detected much and much higher percentage of Alcohol in the blood.

3.1.7. It may also be stated that from the Medical point of view that a person consuming Alcohol 48 hours ago from time of blood taken for Test shall have indications of lower percentage of the Alcohol in the blood but Alcohol consume within 3 to 4 hours will indicate higher percentage of the Alcohol in the blood (The Opinion from the Medical Department may be sought for in this respect).

3.1.8. The Railway Doctor at RNY who made the Breath Analyzer Test definitely had made wrong conclusion, since it is established from the evidence that the Guard (Goods) & ASM/RNY on Duty at RNY did not get any Alcoholic Smell from the Breathing / Mouth of the CO.

4. The 2nd allegation is not established i.e. the CO could not have been intoxicated with the Liquor during Duty Hours.

5. It is, therefore, reasonably concluded that :-

- 5.1. The CO exchanged Signal with the Driver (Goods)/NCC.
- 5.2. The CO started manipulating the EMERGENCY BRAKE.
- 5.3. The CO did not consuming Liquor during **DUTY HOURS**.

Received 2 copies

SIGNATURE OF THE DEFENCE COUNSEL.

*Allesd. d.
M. M. D.
23/5/04
A. Advocate*

ANNEXURE-H.

NORTHEAST FRONTIER RAILWAY

N. F.G.—174 J.

Notice of imposition of penalty of reduction to a lower service, grade or post or to a lower time scale, or to a lower stage in a time scale for specified period.

(Ref : SR-21 under Rule 1715-RI)

No. TP/3/LM/1-13/2002 (Other)

39
Date 15.5.2003

To
Name..... Shri Uday Chandra Kalita

Father's Name..... Shri Norpatti Kalita

Department..... Mechanical

Designation..... DAD/NGC Date of appointment 09.09.1981

Ticket No. X Scale of pay..... Rs. 3050/-4530/-

Station..... NGC

1. Your explanation dated..... 08.01.2003 to the charge sheet dated..... 19.12.2002 has not been accepted by..... DME(P)/LMG..... Your reply dated..... 10.5.2003 to the "Show Cause Notice" dated..... 21.04.2003 has also been considered by..... DME(P)/LMG..... and the following charge (s) has/have been held to be proved against you:

On 17.12.2002, while working UP NGC/Conent with driver Shri J. R. Borah, NGC, the train passed through RNY Station in APDJ Divn. without LC and disregarded signal at danger on L/N^o. 2. Being the assistant of the working driver, you failed to exchange ~~xx~~ proper signals with driver while on duty for which he disregarded signal at danger passing through the station without proper authority.

Moreover, you were found alcoholic on duty for which another DAD had to be booked for working the train ex-RNY which caused heavy detention to the same. Hence, you are charged for failure to exchange proper signals with driver in extreme emergency and being intoxicated with liquor during duty which shows your gross negligence on duty as well as violation of ***

2. You are hereby informed that in accordance with the orders passed by..... DME(P)/LMG....., you are reduced to:

* The lower post of..... in scale of Rs.....

* The lower grade of Rs.....

* The lower stage of Rs..... 4430/- in your existing scale of pay of Rs. 3050/-4530/- for a period of..... 2^(two) years with loss of months @ until you are found fit, after a period of..... seniority. years..... months from the date of this order to be restored to the higher post/grade of..... in scale of Rs.....

3. The above penalty shall not operate to postpone your future increment on restoration to your former *post/service/scale of pay/stage in the existing scale of pay.

*** Rules of SCR of Rly., 1966 vide rule 3(1)(ii)&(iii).

(P. T. O.)

Giles & Mello
Advocate
22/5/04

4. £ You are also informed that on restoration to your former * post/grade/time scale, your seniority will be refixed as follows:—

- (a) If the reduction is not to operate to postpone future increments, your seniority will be fixed in the higher service, grade or post or the higher time scale at what it would have been but for your reduction.
- (b) If the reduction is to operate to postpone future increments your seniority will be fixed by giving credit for the period of service rendered by you in the higher service, grade or post or higher time scale prior to your reduction.

5. @@ Your pay will be fixed at Rs. 4430/- on and from the date of your reduction.

DA/1

Copy to:— Sr. DPG/LMG, APO/GRY & SSB(Loco)/NCC
for information and a/c
please. *[Signature]*

Designation: M. DRY, DME(P)/LMG

Station: M. DRY, DME(P)/LMG

Divisional Mechanical Engineer
J. F. Railway, Lumding

Score out whichever is inapplicable.

- % This is applicable when restoration is automatic.
- @ This is applicable when restoration is not automatic.
- @@ This is not applicable in cases of reduction to a lower stage in a time-scale of pay.
- £ This is not applicable in cases of reduction to a lower stage in a time-scale.

N. B.:—Please note the instructions below:

1. An appeal against these orders lies to:.... APO/LMG (next immediate superior to the authority passing the order) within 45 days of receipt of this letter.

2. The appeal may be withheld by an authority not lower than the authority from whose order it is preferred if,

- (a) It is a case in which no appeal lies under the rules.
- (b) It is not preferred within three months of the date on which the appellant was informed of the order appealed against and no reasonable cause is shown for the delay.
- (c) It does not comply with the various provisions and limitations stipulated in the rules.

*giles
releas
23/9/64
Advocate*

41

SPEAKING ORDERS OF DISCIPLINARY AUTHORITY:

" I have carefully gone through the cases of Shri J. R. Borah, Driver(G)/NGC and Shri U. C. Kalita, DAD/NGC along with all relevant documents, factors etc. including the DAR proceedings/findings wherein it is proved and established the charges of disregarding of UP Starter signal of RNY Station without proper authority while working UP NGC/CEMENT on 17.12.2002, as brought against them. So, the lapses done by both driver & DAD cannot be ruled out.

No new points could be raised by Shri Kalita, DAD/NGC in reply to the Show Cause Notice issued on 21.4.2003 to consider his case any way. The cause which is claimed by him is not accepted.

He is awarded the punishment with reduction of his pay to lower 2(two) stages in scale Rs.3050/-4590/- for 2 years with loss of seniority. His pay is fixed at Rs.4430/-"

On 15/5/03
Anil Kumar Sahoo (SJKR)

(SI Class, Grade)

Divisional Mechanical Engineer
E. Railway, Lumding

Attended
Anil Kumar Sahoo
Advocate

42 Annexure - I 5

ANNEXURE - I

To
Sr.DME/LMG
N.F. Railway

(Through proper channel)

Sub: - Appeal against punishment imposed by DME/Power/LMG

Ref: - Memorandum of Charge Sheet no. TP/3/LM/1-13/2002 (other) dated. 19.12.2002 & Show Cause Notice no. TP/3/LM/1-13/2002 (other) dated. 21.04.2003 both issued by DME/Power/LMG.

Sir,

1. Most respectfully, I beg to place the following for kind perusal against the punishment imposed by the DME/Power/LMG as a Disciplinary Authority in reference to the Memorandum as mentioned above.

2. That the punishment imposed was to the tune of: -

(i) Reduction of two stages of pay in the time scale (Cumulative).

(ii) Loss of seniority to tune of 2 years.

3. In the said imposition of penalty no speaking order was passed in the matter of justifying such imposition as much as:

(a) The Article of Charge was framed in reference to findings of the Accident Committee, which reads as vide Para no. D (iv) of Page: -2

"During answering of question no. 1 DAD said, The Signal was at the side of Driver end, moreover from the receiving Signal aspect it was presumed that the train had to stopped at RNY but when I found that speed was not control before Starter Signal then and there I remained the Driver when the Train speed was not control. Then and there on duty Driver had applied A9 brake for which application of Emergency Brake did not arise. From the above it is reveled that DAD was not responsible for overshooting but if he consumed liquor as per doctor report then he is also responsible secondary".

(b) The Enquiry Committee further commented that: -

(i) No FORENSIC REPORT was since not available, the said committee had to depend on certification of the Sr.DMO/RNY who was of the opinion that I was in drunken condition for which I was not a fit person to perform duties from Ex- RNY to the destination of the Train.

(ii) The Enquiry Committee pending the result of the FORENSIC REPORT had no authority to declare me to be in drunken condition.

4. The Enquiry Committee came to the conclusions that I was not held responsible for disregarding the SIGNAL but held me responsible for consumption of alcohol and in drunken condition and as such responsible secondary.

5. It is therefore, can be logically/reasonably concluded that I was held responsible for taking liquor during duty hours and as such this is the basic fact based on which the Disciplinary Authority can take Disciplinary Action.

Contd. Page: -2

alleged
relied
23/5/04
Advocate

290X91114

43

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Page:-2

6. It is very much significant that Forensic Report on my blood test detected the presence of 0.25% of alcohol while the proceedings under Disciplinary And Appeal Rules was in progress, the Defence did not have readily available the policy decision in the matter of fitness of the Engine Crew to drive the train if consumption of liquor is found/detected.

7. In pursuance to the above, the Defence Counsel in his Brief requested the Disciplinary Authority to find out the norm from the Railway Medical Department but I am sorry to say that the Disciplinary Authority did not consider the matter although prior to imposition of the penalty, I had handed over a copy of the circular to him for perusal. I am taking the indulgence to endorse herewith the photocopy of the same for favour of your kind attention please.

8. The Railway Board has fixed the norms that the presence of alcohol to the extent of 1 to 20 milliliter in the blood will not disqualify an Engine Crew to work the Train. In my case it was 0.25% i.e. one fortieth of 1 milliliter.

9. In view of the circumstances stated above, your good office will surely appreciate that I was not in drunken condition and I declare without reservation that I never consumed alcohol prior and during working of the trains but due to heavy cold I took some cough syrup — as a preventing measure to save myself from such troubles. As I believe — such cough syrup has the composition of certain percentage of alcohol.

10. In this connection, I am enclosing herewith the Revised Policy on "Drunkenness on duty" circulated by Ministry of Railways (Government of India) having no. 2001/Safety. — 1/23/4 dated. 27.11.2001 for your perusal please.

11. In view of such circumstances your good office surely review the punishment unjustly imposed on me and cancels the same.

DA: - As stated above.

Thanking you,

Yours faithfully,

Sridhak Ch Kalita
(Sri Kalita U.C.)

Designation: - DAD
Attached to Sr.DME/
(Power) LMG

*Attested
Sridhak Ch Kalita
23/3/04
Advocate*

44

ANNEXURE-J

N. F. RAILWAY.

N.O. TP/3/LM/L-13/2002(Other)

Office of the
DRM(M)/LMG, Dated: 21.04.2003

TO

Shri J. R. Borah, Driver (G)/NGC

Shri U. C. Kalita, DAD/NGC

Through SSE(Loco)/NGC

Sub:- Show cause notice.

Ref:- SR-5 issued from this office vide N.O. TP/3/LM/L-13/2002(Other), Dated: 19.12.2002.

The report of the Inquiry Officer is enclosed. The Disciplinary authority will take suitable decision after considering the report. If you wish to make any representation or submission, if any, you may do so in writing to the disciplinary authority within 15 days of receipt of this letter.

DA/ As above in

Encl/4
DME(P)/LMG

Copy to:- SSE(Loco)/NGC for information and necessary action.

DME(P)/LMG

*Attested
23/04/04
Advocate*

ANNEXURE - K

NOTICE OF PROPOSAL TO ENHANCE A PENALED ALREADY AWARDED
EITHER ON AN APPEAL OR OTHERWISE.

No. TP/3/LM/1-13/2002 (Other)

Office, DME (P) Office,
Lumding.

45

6

Shri U.C.Kalita, DAD/NGC
(thru: SSE (Loco)/NGC)

Dt. 21.08.2003

1) In accordance with the orders passed by TP/3/LM/1-13/2002 (Other), Dt: 15.5.2003 under this letter No. _____ dt. _____ the penalty Reduction of pay to lower 2 stages for 2 years with loss of seniority. the offence of failure to exchange proper signals with driver in extreme emergency and being intoxicated with liquor during duty. (and you have appealed to me against this order).

2) ADDM (revisioning authority) considered that the gravity of your offence such as to warrant a severe form of punishment and the revisioning authority call upon you, therefore, to show cause in writing why enhanced penalty of COMPULSORY RETIREMENT should not be imposed upon you (not include the penalty proposed to be imposed as specified in clause (v), (ix) or sub-clause (I) of rule 6 of DA(R 1968)).

3) your defence is required to be submitted to my office through your immediate superior not later than the end of 10 days from the date of receipt of this notice by you.

4) If you do not submit your defence within the specified time the case will be dealt with on the basis of information available.

5) You are required to acknowledge receipt of this notice on the form suo jornered.

DA: 1

Signature:

21.08.2003

Designation: DME (P) / LAG

বাস কর্তৃপক্ষ বাস পরিবহন
বাস বিদ্যুৎ প্রযোজন
Divisional Mechanical Engineer (DME)
Divisional Lumding

Allesed
M. D. B.
23/8/03
Address

CROOKS OF ADM/LNG, THE REVISIONING AUTHORITY,

" I have gone through the case. Penalty imposed by DA to Shri J. R. Borah, Driver(G)/NGC, Shri U.C. Kalita, DAD/NGC is not commensurate with act of omission/commission. As brought out above by Sr. DSO as per Railway Board's Norms, penalty to Driver should have been " REMOVAL FROM SERVICE OR COMPULSORY RETIREMENT". It had been established that DAD was under the influence of alcohol as blood test has shown positive alcoholism.

Hence, Shri J. R. Borah, Driver(G)/NGC and Shri U.C. Kalita, DAD/NGC may be issued SHOW CAUSE NOTICE as " QUERY to why PENALTY OF COMPULSORY RETIREMENT be not imposed upon them."

21.08.2003

21.08.2003
TEN OFFICE STAFF (PSTW)
P. O. Box. 1016

21.08.2003
Divisional Mechanical Engineers (DME)
R. F. Railway, Lumding

*allied
Mr. D. K. Deka
23/8/04
Advocate*

To

The Divisional Mechanical Engineer (P),
N.F.Railway, Lumding.

Thro: Proper Channel

Sir,

Interim
Sub: Reply to the Show Cause Notice.

Ref: Your Notice No: TP/3/LM/1-13/2002 (other)
dated 21-08-2003.

In acknowledging the receipt of your Notice under reference I beg lay the following submission for favour of your kind perusal and clarifying the following issues and supplying the documents for enabling this charged Official to reply to the Show cause Notice under reference:-

- 1) That it is not understood as to how without deciding my appeal against the orders of the Disciplinary authority communicated vide No: TP/3/LM/1- 13/2002(Other) dt: 15-5-2003 the matter went up to the Revisioning authority and orders passed by two different Officers on the same issue, namely, ADRM/LMG and Sr.DSO/LMG, as it appears from the item (2) of the Notice and its enclosure issued to me vide Reference above. However, if there be any such provision that bypassing the Appellate Authority's decision, the Revisional Authority's jurisdiction can be exercised as per DAR, 1968, a copy of the same may kindly be supplied to me, duly showing that two individual Authorities' decision and

contd..2..orders ..

*Attested
M. D. S. 23/8/04
Adro. etc.*

orders can be passed on the same issue simultaneously and communicated to the charged official for his reply.

2) That to the best of my knowledge, information and belief there is no such provision of " Railway Board's norms" , as brought out by Sr. DSO and inserted in the enclosure of the Notice under reference, as it appears. However, if there be any, a copy of the said "Railway Board's Norms" may kindly be communicated to me so as to enable for my reply to the Show Cause Notice under Reference.

3) That the words " here include the penalty proposed to be imposed as specified in clause (v) to (ix) of sub-rule (1) of Rule, o of DAR, 1968 " as inserted under item (2) of Notice under reference are also not understood by me. The same may please be clarified and an extract of the said rule furnished so that a reply to the show cause Notice can be suitably drafted and submitted by me for your kind perusal and consideration.

4) That at every stage of a disciplinary case under Discipline and Appeal Rules the Authority is to act quasi-judicially and act fairly, reasonably with open mind and without being bias or malice to cause victimisation, unfair labour practice, basic error, perverse finding and violation of principles of Natural Justice so that there should not be any preconceived motif and/or pre-determined idea of punishment to be inflicted upon the charged official.

5) That the Authority vested with the power has to pay attention to, or taken into account, circumstances,

allied
NLP 500
23/10/04
Advocate
Contd., 3., events..

- 3 -

events or matters or matters wholly or partially extraneous to the purpose for which the power was vested, or whether the proceedings have been initiated mala fide for satisfying any authority, individual or being influenced by any uncalled for or irrelevant rule so as not to vitiate the entire proceedings.

6) That from the magnitude of the Notice under reference with its enclosure it is evinced that the Authorities dealing with my case is " pre-determined guilt & punishment" to cause my victimisation with the proposal of enhancement of penalty, without considering and replying to my appeal already prayed for.

7) That in my humble submission it is further mentioned that a wrong interpretation of rule by a domestic tribunal or any quasi-judicial authority is usurping of jurisdiction to hit the principles of Natural Justice, and thereby correct discernment of the case on its true perspective of all considerations is denied.

In the premises above, I would, therefore, fervently pray that you would be gracious enough to disseminate justice by supplying me the clarifications and documents required above for submission of reply to the Show Cause Notice under reference and thereby oblige this charged employee.

With all humility and regards,

Dated, the 28th August/2003.
New Guwahati.

(U.C. Kalita)
Yours faithfully,
Dr. Uchch Ch. Kalita
DAD/New Guwahati

C/O. SSE(Loco)/NGC, N.P.Rly.

R
28/08/03
Section Engineer (Loco)
S.E. B.I.V. New Guwahati

Attest
M.D.
27/08/04
Advocate

NOTICE OF IMPOSITION OF PENALTY OR COMPULSORY RETIREMENT.

No. TP/3/LM/1-13/2002 (Other)

OFFICE OF THE
D.R.M (M)/LUMDING,
DATED: 12-02-2004

TO

Name of the staff	SHRI UDHAB CHANDRA KALITA.
Father's Name	: Shri. Narpati Kalita.
Department	: Mechanical (P)
Designation	: DAD
Date of appointment	: 09.09.1981.
Scale of Pay	: Rs.3050-4590/-
Present Pay	: Rs.4590 + PP Rs.80/-
Station	: NEW GUWAHATI.

In connection with passing signals at DANGER at RNY, Station in APOJ Division by UP NGC/Cement on 17.12.2002, the then DME(P)/LMG, the Disciplinary Authority imposed a penalty of REDUCTION OF YOUR PAY BY LOWERING 2 STAGES IN EXISTING TIME SCALE OF PAY Rs.3050-4590/- FOR A PERIOD OF 2 YEARS WITH LOSS OF YOUR SENIORITY (vide JNP No. TP/3/LM/1-13/2002 (Other), dt: 15-05-2003).

ADRM/LMG, being the Appellate Authority has exercised his revisioning power in the same case and on going through the case alongwith your appeal to the SHOW CAUSE NOTICE of 21.08.03, ADRM/LMG has considered to enhance the penalty with the order for COMPULSORY RETIREMENT FROM SERVICE WITH IMMEDIATE EFFECT.

In this connection, the orders as passed by the competent authority may be noted as under:

"I have carefully considered the reply of Show Cause Notice issued to Shri. U.C.Kalita, DAD/NGC, Dated: 21.8.03 and has not found any new points which will justify imposition of lesser penalty. Supply of Rule 6 of RS (D&AR) 1968 is not relevant.

Hence, to meet the end of justice and without prejudice, I impose penalty of "COMPULSORY RETIREMENT" of Shri. U.C.Kalita, DAD/NGC from service with immediate effect."

Sr. DME/IC/LMG

Copy to:- 1) Sr.DPO/LMG For kind information and necessary
2) APO/GHY action.
3) SSE(Loco)/NGC

Sr. DME/IC/LMG

allied
Nelson
22/2/04
Advocate

To
The Chief Mechanical Engineer.
R.Railway, Maligaon

~~Answare~~ 7

ANNEXURE-A

51

Thro:- Proper channel.
Sub:- Revision petition.

Sir,

With due respect I beg to submit the following for your kind consideration please.

That Sir, on 17/12/02 I was working as DAD with Sri J.R. Bora, Driver/NGC by up NGC/Cement Ex.NBQ and passed through RNY station and disregarded up starter signal on Line No.2 and I had charged to fail exchange proper signal with driver. But the signal was in the side of driver and while passing the starter my self shouted and try to apply emergency brake then driver told me not to apply as he has already applied A-9 which was also stated by the driver at the time of enquiry. The Accident Committee has also mentioned in their report vide item 'D' (V) The DAD was not responsible for over shooting the signal but he was responsible only for consumption of liquor as per doctors.

That Sir, at the time of on duty Breath Analyzer test was conducted by on duty C.C./NBQ and allowed to work the train being I was not under the influence of Alcohol. After overshooting of signal doctor took blood for testing and after testing the report of DMO/RNY & Forensic report was deducted on 0.025% i.e. less than 1% (one) only.

That Sir, from signing on to overshooting signal at RNY the gap lying round about 4 hrs. and if I would have consumed in between 4 hrs. then the percentage would have been at higher but DME/P/LMG has awarded me punishment. With reduction of pay to lower two stages for 2 years with loss of seniority vide No.TP/3/LM/1-13/2002 (other) of 21-8-03. But reviewing authority ADRM/LMG enhance the penalty with the order for compulsory retirement from service with immediate effect vide No.TP/3/LM/1-13/2002 (other) dated 12/02/2004 which acknowledged by me on 14/02/04.

That Sir, the punishment has become a burden to me and the punishment is unjust. I performed my duty always sincerely, therefore exempt me from the punishment and this act of your kindness, I will be grateful to you.

Date, NGC
The 15/03/04

Yours faithfully

Sri Adhab Ch. Kalita

Ex.DAD under
SSE/Loco/NGC.
Date of birth- 30-30-60
Date of appt.-09-9-81.

*allied
Advocate
23/3/04
Advocate*

52

✓

N. E. RAILWAY.

MEMORANDUM.

Sub:- Revisioning action of GM in connection with the accident of passing signals at DANGER at RNY in APDJ Division by the Train UP NGC/Cement on 17.12.2002.

Ref:- 1) NIP issued from this office vide No. TP/3/LM/1-13/2002(Other), Dated: 12.02.04
2) Your appeal to GiA/MLG, dated: 26.02.2004
Forwarded under SSE (Loco)/NGC's No. EM/1-Misc Dt: 02.03.04.
3) GM's letter No. TP/3/LM/1-13/2002, dated: 31.03.04

In terms of GM's order vide the letter under reference, Shri Jona Ram Bora, Ex Driver (G)/NGC has been reinstated in service with modification of the penalty of COMPULSORY RETIREMENT to that of REDUCTION TO LOWER GRADE OF DAD in scale of Rs. 3050 - 4590/- for TWO (2) years.

His pay to be fixed considering his pay as DAD had he not been promoted to the grade of Goods Driver.

He shall not be entitled to any back wages as he is reinstated on sympathetic grounds.

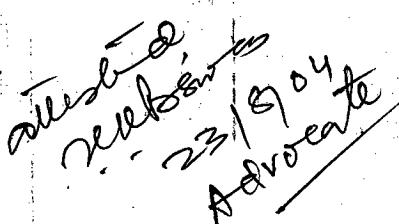
The period of removal till the date of reinstatement will be treated as dies- non.

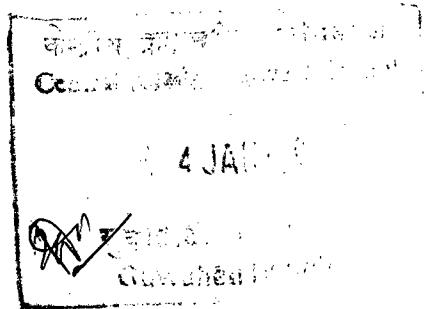


Sr. DME/LMG.

NO. TP/3/LM/1-13/2002(Other), Dated: - 18/5/2004.

Copy:- 1) Sr. DPO/LMG for information and further necessary action.
✓ 2) Shri J R Bora for information with a copy of GM's letter in 2
3) SSE (Loco)/NGC for information and necessary action.
4) ADME/NGC for information.
5) APO/GHY for information and necessary action.


Date 22/5/04
Rebawal
Advocate



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. NO 183/84

Sri. U.C.Kalita.

... 45 ...

Union Of India & ors.

IN THE MATTER OF:

Written Statement filed by
the respondents.

1. That a copy of the O.A has been served on the respondents and the respondents have gone through the copy of the O.A filed by the applicant and have understood the contents thereof.

2. That save and except the statements which are specifically admitted hereinbelow, other statements made in the D.A. are categorically denied. Further the statements which are not borne on records are also denied and the applicant is put to the strictest proof thereof.

3 That with regard to the statement made in para 1
to 3 of the D.A the answering respondent does not admit
anything contrary to the relevant records of the case.

4 That with regard to the statement made in para
4.1, 4.2. & 4.3. of the Q.A the answering respondent does
not admit anything contrary to the relevant records of the
case.

1

6. That with regard to the statement made in para 4.4 of the O.A the answering respondent, begs to state that the very fact that a signal as danger (RED), implies 'that the section ahead is occupied and if the Driver disregards it, it can lead to a collision. In case of any disregard to safety signal by any Driver, punishment has to be similar irrespective of whether the collision has taken place or not. Because even the fault of the Driver is not causing the collision but passing the signal at danger and when safety of hundreds of passenger is involved. Rly Administration cannot allow the disaster to happen before taking action.

7. That with regard to the statement made in para 4.5 of the O.A the answering respondent begs to state that though the applicant and the Driver under the exclusive control of Divisional Mechanical Engineer (Power), N.F.Rly, Lumding, but incidence of starting without line clearance happened at Rangia Division the territorial jurisdiction of which comes under the Alipurduwar division. Accordingly, Divisional Medical officer/Rangiya examined the Driver and the Applicant with Breath Analyzer Machine and detected the fact of consummation of liquor by them. The applicant who is holding such a responsible job consumed liquor during the course of duty hours and same may lead to serious accident causing collision etc. In this situation, Sr. Divisional Mechanical Engineer/Alipurduwar put them under suspension and Divisional Railway Manager/Alipurduwar sent a message to Divisional Railway Manager/Lumding intimating the above facts with a request to issue formal suspension order.

8. That with regard to the statement made in para 4.6 of the O.A the answering respondent begs to state that a formal suspension order was issued by Divisional Mechanical Engineer (Power)/Lumding against both of the Driver & the applicant of New Guwahati on receipt of the message from Divisional Railway Manager/Alipurduwar on the basis of the Diary item No.11, dated 16/17-12-2002 of Power Controller/Lumding. Thereafter a major penalty charge sheet vide Memorandum was issued vide No.TP/3/LM/1-13/02(Others), dated 19/12/02 on the basis of the above report/Message of Divisional Railway Manager/Alipurduwar as well as on Diary Extract of Power Controller/Lumding.

9 That with regard to the statement made in para 4.7
of the O.A the answering respondent begs to state that the
applicant virtually admitted that fact that he was feeling
drowsy and he was found in an intoxicated state at the time
of examination done through breath analyzer machine. The
fact has been narrated in the Annexure-3. representation.
Having the reply satisfactory, the concerned authority took
a decision for holding an enquiry in to the allegation.

19 That with regard to the statement made in para 4.8
and 4.9. of the O.A the answering respondent begs to state
that the consummation of liquor was proved during the
enquiry in terms of the doctor report, blood report, and his
statements etc. It is stated that the enquiry was conducted
fairly providing the applicant all the reasonable
opportunity of hearing and the report of the enquiry officer
was submitted with a copy to the applicant.

11. That with regard to the statement made in para 4.9 to 4.13 of the O.A the answering respondent denies the correctness of the same and begs to state that the applicant has admitted the fact of his intoxication and same has been proved. The accident committee report as well as the forensic report also clarifies that the applicant consumed liquor.

12. That with regard to the statement made in para 4.14 of the O.A the answering respondent begs to state that the applicant consumed liquor. The misconduct is a serious one where the lives of thousands of Passengers are involved. Accordingly, the punishment was imposed upon him indicating that an appeal against the said punishment lies to the Additional Divisional railway Manager/Lumding.

13. That with regard to the statements made in para 4.15 the answering respondent while denying the contentions made therein begs to state that the applicant preferred an appeal, Dt.Nil to Sr.Divisional Mechanical Engineer/Lumding instead of Additional Divisional Railway Manager/Lumding.

14. That with regard to the statements made in para 4.16 the answering respondent begs to state that the Additional Divisional Railway Manager/Lumding proposed to enhance the penalty by way of Compulsory Retirement and accordingly, a Show Cause Notice, dated 21.8.83 (Annexure-K to OA) was issued to the applicant.

15. That with regard to the statements made in para 4.17 the answering respondent begs to state that the applicant submitted an interim reply on 27.8.03 to the Show Cause Notice, dated 21.8.03. His prayer for the documents in the interim Show Cause reply was not found relevant and had no basis at the appeal stage as because all the reasonable opportunities had been provided to him at the time of enquiry. Apart from that he never made any such prayer during the currency of the enquiry.

16. That with regard to the statements made in para 4.18 the answering respondent begs to state that the Additional Divisional Railway Manager/Lumding, being the Appellate Authority went through the show cause reply, dated 27.8.03 and passed the speaking order enhancing the penalty to that of Compulsory Retirement with immediate effect.

17. That with regard to the statements made in para 4.19 the answering respondent begs to state that the applicant made an appeal, dated 15.8.03.04 before the Chief Mechanical Engineer, N.F.Railway/Maligaon. The matter is now under his consideration. The Chief Mechanical Engineer will pass appropriate speaking order in this case. That the applicant has filed this case before the Hon'ble Tribunal without exhausting remedies available to him. Hence, the OA is not maintainable and deserves to be dismissed with cost.

18. That with regard to the statements made in para 4.20 (i) to (xii) the answering respondent begs to state that the penalty of Compulsory Retirement from service was

imposed upon the applicant considering the gravity of the misconduct after providing him all the reasonable opportunities. The points raised by the applicant in these paragraphs have got no basis at all.

19. That with regard to the statements made in para 4.21 the answering respondent begs to state that the punishment of Compulsory Retirement which was imposed upon J.R.Bora, Driver/New Guwahati was modified to that of reduction to lower grade of DAD as each case is decided on its own merits.

20. That with regard to the statements made in para 4.22 the answering respondent begs to state that the punishment was imposed keeping in view of the safety aspects of the Railway Transportation System.

21. That with regard to the statements made in para 4.23 the answering respondent begs to state that the misconduct of Driver was judged on its own merits. Hence, averment of the applicant herein this paragraph is denied.

22. That with regard to the statements made in para 4.24 to 4.31 the answering respondent begs to state that the allegations herein these paragraphs are denied.

23. That the answering respondent begs to state that under the facts and circumstances stated above the OA deserves to be dismissed with cost.

X

VERIFICATION

I Shri KHWAIKAPAM PRATAP SINGH..., aged about 33... years, son of KHWAIKAPAM DINAPALI SINGH..., resident of Lumding presently working as Divisional personnel officer (G/C), Lumding N.F. Railway, do hereby verify and state that the statement made in paragraphs 1, 2, 3 & 23 are true to my knowledge and those made in paragraph 4 to 22 being ^{4 to 22} and rest matters of records are true to my information derived therefrom, which I believe to be true and the rest of my humble submissions before this Hon'ble Tribunal. I am also authorised and competent to sign this verification on behalf of all the Respondents.

And I sign this verification on this 30th day of Dec., 2004.


Deponent

का. का. अधिकारी/आई. सी.
पू. सी. रेलवे, बामडि
Divisional Personnel Officer/IC
N. F. Rly., Lumding

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH, GUWAHATI.

O.A. No. 183/2004.
Guwahati P. O.

Sri Uday Ch Kalita.....Applicant.

-VRS-

Union of India and Others.....Respondents/Opposite Parties.

File No:-
Date:- 07/05/05
Advocate

IN THE MATTER OF

RE-JOINDER BY THE APPLICANT TO THE WRITTEN STATEMENT FILED BY THE RESPONDENTS.

Most respectfully shweth:

1. That the Applicant humbly submits that he has nothing to comment against the statements made by the Respondents/Opposite Parties in respect of their statement under Paras-1,2,3 and 4 in the Written Statement.
2. That with regard to the statement under Para-6 of the Written Statement submitted by the Respondent/Opposite Parties this is humbly submitted that the off-shooting of the signals at Rangiya Railway Station on the relevant date and time and train mentioned in the O.A by the applicant, the Applicant was not the Driver, he was only an Assistant to help the Driver as and when the Driver needed as per the Prevailing System of the Railways. The responsibility of the applicant in the instant case was neither proved by the Enquiry Officer nor admitted by the accident Committee report. The signal was ^{not} in danger position it was only kept "starter on position". The Applicant has already submitted at Para-4.4 what had happened during the material time of the incident on the material date under Para-4.4 of his submission in the Original Application. Moreover, it was ^{not} a passenger train and hence, there was no question of "safety of hundreds of passengers is involved", as stated by the Respondents in their statement under Para-6 of their Written Statement. It is reiterated that there was no disaster in the said incident of the signal kept "starter on position", no causality and no loss whatever nature, whether man or materials, save and except detention of the train for about 2 hours. The Respondents may be directed to produce the relevant records of the said cause of accident before this Hon'ble Tribunal to adjudicate what had happened on 18.12.02 at 00.50 hours of the Up NGC Cement with Loco Number 14965 WDG 3 T/LG-101 meant for New Bongaigaon to New Guwahati, for which the Driver was Sri J.R.Bora and Applicant was a Diesel Assistant only to help him in running the train.
3. That with regard to the statement made in Para-7 of the Written Statement filed by the Answering Respondents, the Applicant begs to submit that the Respondents have made camouflage the matter so as to cover up from wrong action taken against the Applicant who is under the exclusive control of the Lumding

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Division to be put under suspension by a Senior Division Mechanical Engineer of Alipore Dumper Division, which is absolutely a separate Division to maintain the Administrative policy and as well as the interest of the employees for which the separate establishments are maintained. To initiate any DAR action against an employee as per DAR, 1968, and other Statutory Rules, any kind of Disciplinary action should have been brought and to be initiated and/or imposed only by the Employer/Controlling Officer/Disciplinary Authority of the charged officials. But here in the case of Applicant the Senior Divisional Mechanical Engineer, Alipore Dumper influenced the Divisional Mechanical Engineer, Lumding Division to take appropriate Disciplinary Action against the applicant and after ~~realising~~ ^{realising} the action wrongly done by the Divisional Mechanical Engineer, Lumding Division on being influenced on the extraneous consideration of the Senior Divisional Mechanical Engineer, Alipore Dumper Division, the suspension order of the Applicant was revoked by the Respondents. So far consumption of liquor, as stated by the Respondents in their written statement, is concerned, the Applicant begs to reiterate that before taking the charge of the said train by the Applicant from the starting Station of the aforementioned train he was examined by the Breath Analyzer and given a "fit" certificate for performing the duties in running the said train. The Respondents may be directed to put the records of the material date and time of taking the breathe Analyzer and other Medical Test of the Applicant while he was put on duty to assist the Driver of the said train as diesel Assistant. The incident of starting the train without the line clearance was never denied by the Applicant, but that was not initiated by the Applicant at all, rather, the Applicant insisting the Driver on duty of the said train during the material date and time to apply the emergency devices by pulling the emergency brake for making the train halt, the Driver Sri Bora of course had told him that he had already applied the A-9 (another position for applying the brake), and hence applying an emergency devices of emergency brake may cause adverse of the situation and then both of them pushed back the train on its original position. Thus if the whole situation is realized by the Respondents/Opposite Party applying their mind of profound attention and without being biased or any malafide attitude for the Applicant the whole matter will come up to the picture and become clandestine so much, so that there ^{would be} no confusion and/or any little doubt for liability and responsibility of the Applicant in the said case of ~~incident~~ ^{incident} of over shooting the signals for which the aforementioned train caused only delay for about 2 hours.

4. That with regard to the statement made in Para-8 of the Written Statement filed by the Respondents the applicant makes no comment as those are matters of records and the applicant begs to state that those may be put before this Hon'ble Tribunal by the Respondents so as to unveil the truth under the sun.

5. That with regard to the statement made under Para-9 of the Written Statement by the

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Respondents, the Applicant begs to state that the Respondents have misrepresented the fact than that what he had stated in his reply to the Memorandum of Charge-sheet dated 9.1.03 as stated in the Annexure-C with the O.A.No.183/04. The Applicant had never mentioned in that reply that he had consumed alcohol at any time while he was on duty and it was never proved during the whole span of his service life. What he had stated ,that the Applicant was almost ~~on~~ ^{proper} continuous duty without having any rest, which ~~may tell upon anybody's~~ ^{health in these cold weather days}, and for doing continuous duty right from 15.12.02 to 18.12.02 mid-night,i.e. still the time of cause of action happened, he had been performing duties, including night duties and as a human being and without having an extra ordinary stature or capacity for bearing the inhuman strength and ~~tremacity~~ any human being like the Applicant may and/or might feel uneasy specially at mid-night of December when the night remains chilly cold and with bad weather. The Respondent should have considered not to book the Applicant in the said train for performing duty when it was known to them that he was in continuous duty for more than 24 hours and was not allowed by the Administration/Respondents to get time to sleep ~~and~~ ^{and} after performing the strenuous duty of a Diesel Assistant of goods train. The statement of the Respondents in this para ~~clearly exhibits~~ a citation of unsympathetic attitude to put a dedicated and sincere employee to the catastrophe.

6. That the Applicant begs to deny the relevancy and sufficiency of the statement made by the Respondents/Opposite Parties under Para-10 of their Written Statement. The Enquiry Officer and the Accident Committee no where mentioned in their Reports the responsibility of the Applicant in the said cause of incidence. It was only in the Forensic Expert Report a negligible percentage of alcohol to the tune below 0.025% in his blood of Forensic examination was found which might have been due to regular taking of cough syrup during winter season by his family Physician. The Respondents may be directed to produce the reports of the Enquiry Officer, Accident Committee Report and the Forensic Expert Report before this Hon'ble Tribunal for unveiling the truth so as to understand that the Applicant was exonerated of all liability for causing the said incident of disregarding the signals by the said train at Rangiya Railway Station on 18.12.02 at 0.50 hours. It is also submitted in this connection that all opportunities of hearing, as stated by the Respondents in the said Paragraph were not given to the Applicant; the punishment of Compulsory Retirement was done without supplying him the required documents and also on the "interim reply" to the Show Cause Notice submitted by the Applicant dated 28.8.03 to the Divisional Mechanical Engineer(P),N.F.Railway,Lumding, the Respondent No.5 in the O.A. ~~as~~ This is a sheer case of malafide and arbitrary action of unfair play of the Respondent to victimize the Applicant for no fault of his own when he was only an Assistant to assist the Driver of the aforementioned Train at the material date and time. The Respondents while imposing the punishment to the Applicant have not

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applied their mind at all rather on being biased and with influence by the extraneous consideration and advise of another Divisional Officer and also of the Safety Officer of the Lumding Division, which is absolutely and altogether contrary to the DAR, 1968 Rules and all Statutory Laws and Rules, and thereby put the Applicant victimized with the maximum punishment of a Compulsory Retirement and that too, by the Additional Divisional Railway Manager, N.F.Railways, Lumding when the Appeal of the Applicant was kept pending before his Controlling Officer, Divisional Mechanical Engineer, Lumding, the Respondent No.5. The copy of the said Interim Reply has been annexed as Annexure-L ~~with~~ the instant O.A for kind perusal of this Hon'ble Tribunal, denying all reasonable opportunities and giving natural justice to a charged official is ^{undoubtedly} and definitely a clear proof of arbitrary and malafide action of any Disciplinary Authority and that had happened in the case of the Applicant.

7.. That with regard to the statement made in Para-11 of the Written Statement filed by the Respondents the Applicant begs to reiterate his submission what he has stated in his Original Application as well as in the foregoing Paras of this Re-joinder.

8. That in regard to Para-12 of the Written Statement submitted by the Respondents the Applicant begs to state that it fails to understand as to why the question of "lives of thousands of passengers are involved", how comes in the instant case when the Train was a Goods Train and the incident was only disregarding for a signal which was kept starter on position and the Train pushed only a few meter and that too by the Driver of the said train, ^{that} and the Applicant on which an Assistant. It is once again humbly reiterated, ^{as} and there was no loss of life or materials and/or any kind loss to the articles, save and except only detention of the Train for about 2 hours. Thus the incidence and the Role of the Applicant in the said event can not be termed as "misconduct" for the Applicant, as stated by the Respondents in their Written Statement, and there can not be any sort of punishment likely to be imposed to the Applicant, and that too, when the reports submitted by the Enquiry Officer, Accident Enquiry Committee and the Forensic Expert Committee are clearly candid the matter wherein the responsibility of the Applicant was completely denied save and except the negligible percentage of alcohol found in the blood, which, according to the Railway Board's direction in their Circular mentioned and filed in the Annexure-F, and annexed at page-28 of the Original Application is not a bar for not performing the duties of a running staff from the exclusive point of safety views. As per Railway Board's, said directives mere smells of alcohol is not a guiding factor to decide that the employee was drunk and unable to perform his duties; "the fact of impairment of his capacity to perform his duties" has to be taken in to account as observed by the Railway Board in the said Circular categorically instructing that "staff who is found that alcohol level of between 01-20 mg/100 ml. of blood will not be

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permitted to perform duty" and if found he is liable to be punished; but in the case of the Applicant the percentage of alcohol was so negligible as examined by the Forensic Expert Committee that he was not made liable for this said cause of incident of disregarding and over-shooting of the signal on the date of occurrence mentioned above

9. That with regard to the Statement under Para-13 of the Written Statement filed by the Respondents it is humbly submitted that the plea taken by them is a vague one. The Applicant being a running staff was not fully conversant with the powers of the various authorities of DAR Proceeding and might have ^{un-} knowingly submitted his Appeal to the Senior Divisional Mechanical Engineer, Lumding, instead of Additional Divisional Railway Manager, Lumding. Had this was not within the jurisdiction and power of the Senior Divisional Mechanical Engineer, he should have referred the matter and forwarded the Appeal of the charged officials (Applicant) to the Competent Authority, herein the Additional Divisional Railway Manager, Lumding as observed by the Respondents, on good faith and action. But instead of doing the simple matter which any human being of ordinary prudence will understand and be satiated, but for taking up the Applicant as was done by the Respondents. The very technicality of the plea of submitting Appeal to the Senior Divisional Mechanical Engineer instead of the Additional Divisional Railway Manager, as opined by the Respondents should not have been so much stressed in the eye of cardinal principles of natural justice and even on the legal prudence to decide ^{the} factor in a Disciplinary case. Moreover, the Notice Imposition of penalty of ~~reduction~~ to lower ~~stage~~, Grade, or Post or to lower time scale, or to a lower stage in a time scale for specified period was issued by the Divisional Mechanical Engineer (P), N.F.Railway, Lumding vide his No. TP/3/LM/1-13/2002(other) dated 15.5.03, A copy of which has been submitted by the Applicant as Annexure-H in the instant O.A, who is a Senior Scale Officer and by overlooking the Clause, of the said NIP to file Appeal against this said order to ADRM, Lumding it was thought by the Charged Official/Applicant that the next Higher Authority in the DAR case would necessarily be an Administrative Officer of J.A-Grade i.e. Senior Divisional Mechanical Engineer in the instant case and that was why the Appeal was preferred to the Senior Divisional Mechanical Engineer instead of the Additional Divisional Railway Manager as pointed out by the Respondents in their Written Statement.

10. That with regard to the statement made in Para-14 of the Answering Respondents it is humbly submitted that the Additional Divisional Railway Manager proposed to enhance the penalty without going in to the depth of the case and observing the relevant Rules of DAR, 1968, rather, acted arbitrarily and with the pre-ponderance of bias attitude and being influenced by 3rd party and with extraneous consideration, being advised by the Divisional Railway Manager, Alipur Digha Junction and the Safety Officer of the Lumding Division as reflected in his orders communicated by the Divisional Mechanical Engineer (P)

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N.F.Railway,Lumding vide his No.TP/3/LM/1-13/2002(other) dated 21.8.03 ,in its enclosures, the copy of which have been submitted in Annexure-K in the Original Application.

11. That with regard to the statement made under Para-15 of the Written Statement by the Answering Respondents this is humbly submitted by the Applicant that taking action of an "Interim Reply" is not covered by any Statutory Rules or even in the Railway's own set of Rules under DAR,68 and that too without supplying the Charged Official the necessary documents for his defence, this indicates the clear proof of arbitrary action and malice of the Disciplinary Authorities to impose punishment to the Charged Official without caring for the categorical caution of the Railway's own Rules made by its Apex Body i.e. Railway Board. The records of the entire DAR Proceeding till imposition of punishment of the Compulsory Retirement of the Charged Official/Applicant would clearly reveal and prove that "all the reasonable opportunities" were not provided to him, specially on the post-stage imposition of penalty, moreover, the question of "prayer" as stated by the Respondents in their statement, comes only in the stage of imposition of punishment apart from the currency of the Enquiry; but this was denied altogether both by the Disciplinary Authority and the Appellate Authority.

12. That with regard to the statement made in Para-16 of the Written Statement of the Respondents, the Applicant has nothing to add further than what he had said in the foregoing Paras, for brevity and clarity of the case.

13. That with regard to the statement made in Para-17 from the Written Statement of the Respondents this is humbly submitted that the very fact of preferring an Appeal dated 15.3.04 to the Head of the Mechanical Department,i.e.Chief Mechanical Engineer,N.F.Railway,Maligaon ~~in the case~~ it is understood that almost 11 months have already been elapsed and the matter is still under the consideration of the Chief Mechanical Engineer,N.F.Railway,Maligaon, as stated by the Respondents, which is also admitted by the Applicant. But this is humbly submitted that the Applicant, being made Compulsory Retired by the arbitrary and whimsical action of the Respondents specially by the Respondents No.4 and 5 and thereby put the Applicant and his family to the irony of fate to face hunger and ruin, the Applicant after waiting for reasonable period of more than 6 months has come to this Tribunal for justice, and it is verily believed that any man as in the pathetic condition of this humble employee should have committed any more undesired and adverse things than to coming of the Court of Law for having justice. There are countless evidences and Reports in the dailies and all medias that the persons as in the case of this Applicant committed suicide or do many undesired things for himself than to face hunger and starvation and the dire

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of his families. It is for the Haven's sake that the Applicant has ~~endured~~ ^{endured} all such sufferings till date and proved his indomitable spirit and tenacity, though it is not known to him how long he could continue in such state of affairs.

14. That with regard to the Paragraphs-18 of the Respondents in the Written Statement the Applicant ^{humbly} reiterates his submission made earlier both in the Original Application and this Re-joinder for the brevity and clarity of the case.

15. That with regard to the Statement made under Para-19, the Applicant humbly submits that the reasons and the findings of modification of punishment of the Driver Sri J.R.Bora as mentioned by the Respondents that "each case is decided on its own merits", ^{the Respondents} ~~what~~ to prove that the case of the Applicant was different altogether though the starting of the Train was made by the Driver Sri J.R.Bora and though both of them were held responsible, put under suspension and charge-sheeted and imposed upon the punishment of reduction to the lower stages initially. The Applicant in this connection submits that the Railways' own set of Rules containing under G and S.R, the responsibility and liability in such of cases have been categorically and candidly mentioned about the Driver itself and the Diesel Assistant Driver or the Fire Man while running on a train is nothing but a mere Assistant to the Driver and to carry out his instructions. But it is an irony of fate for the Applicant that even being an Assistant to the said Driver and even the consequences of disregarding of the signals kept, started on position by starting of the aforementioned Train on the date of 18.12.02 at 0.50 hours at Rangiya Railway Station the Driver was freed from maximum punishment of Major penalty charges but the Applicant has been victimized to face the Compulsory Retirement.

16. That with regard to the statement made under Paras 20, 21, 22 and 23 of the Written Statement of the Respondents, the Applicant humbly submits for brevity and clarity of the case that he has already detailed under what condition he was put to ^{on} on the material date and time of the cause of incident mentioned above and he is reiterating of his earlier submission made in the Original Application and also in the foregoing Paras of this Re-joinder in reply to the Rudimentary statements of the Respondents which postulates to be of evading of their responsibility in this case both in the Trial stage of Disciplinary Proceeding and also in imposing the punishment and even on Appellate and Revisioning stages, the reasons of which are not known to this Applicant who ^{has} culminated sterling services at the ^{cause} of this Railway being a dedicated, sincere, ~~inert~~, ^{and} ~~faithful~~ Railway Employe and still have his faith on discharging his performances in/for the cause of the Railway as he had done during the long span of his 23 years of services with the entire satisfaction of his all Superiors save and except, as irony of fate, the present incidence.

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17. That in this case the Applicant most humbly submits that the ADRM,Lumding , was already in pre-conceived mind of punishing the C.O,he did neither care for Enquiry Officer's Report,nor the Defence Counsel's "Brief", nor the C.O's repeated submissions and not being convinced with the explanations forwarded by the C.O,went on his own analysis and imposed punishment of Compulsory Retirement.

18. That it is humbly submitted that the Disciplinary Authority has violated all norms of Laws,Rules & Proceedings of the DAR proceedings and imposed the above punishment arbitrarily and being Bias to cause malafide & miscarriage of justice and thereby denied the cardinal principles of Natural Justice.

19. That it is humbly submitted that the Railway Board vide their circular Nos.E(D & A) 70RG6-41 dated 20.10.71,E(D&A)78RG6-11 dated 3.3.78 and E(D&A)78RG6-11 dated 16.10.80 repeatedly instructed and cautioned the Zonal Railways that the concerned authorities involved in the DAR proceedings should follow the statutory instructions so that all reasonable opportunities are given to the charged official, and no bias is caused and no Principles of Natural Justice denied under any circumstances and at any cost and it cannot be influenced by any extraneous considerations and/or pre-judgment of guilt before all opportunities to be availed of ^{by} the charged official for its defence.

20. That under the facts and circumstances, therefore, this Petition is submitted to your magnanimity for correct discernment of the case, by calling upon all official records, if necessary, and administer justice to the humble employee by exonerating him of all charges and setting aside the punishment mentioned above and thereby oblige by reinstatement in service.

-VERIFICATION-

I,Sri Uddhab Ch.Kalita,s/o Late Nripati Kalita,aged about 44,years,a resident of Railway Quarter No.DS-613-A at Bamunidaidan,Guwahati-21 do hereby solemnly affirm and verify that the contents of paragraphs 1 to 6 are the facts of the case and true to my knowledge and information and belief and that I have not suppressed any material facts and Paras 7 and 8 are my humble and most respectful submission before this Hon'ble Tribunal.

And I,sign this VERIFICATION on this ..8th... day of ...February 2005.

Place :Guwahati.

Date: 08/02/05

Uddhab Ch. Kalita

SIGNATURE OF THE APPLICANT.

ANNEXURE - R/1

Dr. A. Sharma M.B.B.S. M.U. (Guru)
Medical Practitioner
Regd. No. 9529 (AMC)

WEST JYOTINAGAR
GUWAHATI
Phone : 2558469 (R)
2551752 (C)

For

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