

100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No.....141/2003.....

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet O.A-141/2003..... Pg..... 1 to 9
2. Judgment/Order dtd. 05/08/03..... Pg. N.A. Separated order. Please.....
3. Judgment & Order dtd..... Received from H.C/Supreme Court
4. O.A..... 141/2003..... Pg..... 1 to 1.5
5. E.P/M.P..... Pg..... to.....
6. R.A/C.P..... Pg..... to.....
7. W.S..... Pg..... to.....
8. Rejoinder..... Pg..... to.....
9. Reply..... Pg..... to.....
10. Any other Papers..... Pg..... to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

2
SECTION OFFICER (Judl.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: 141/03

Misc Petition No: /

Contempt Petition No: /

Review Application No: /

Applicants: - D.K. Datta

Respondents: - U.O.I. FOMS

Advocate for the Applicants: - A. Chakrabarty

Advocate for the Respondents: - C.G.S.

Notes of the Registry	Date	File	Order of the Tribunal
This application is in form but not in time Conciliation Petition is filed / Pet. No. C.P. for Rs. 5/- is disposed vide IPO Reg. No. 86/488039 Dated <u>20.6.03</u>	<u>25.6.2003</u>		Heard Mr. A. Chakrabarty, learned counsel for the applicant. Issue notice to show cause as to why the application shall not be admitted. List again on 29.7.2003 for admission.
<i>He is not present D. N. Datta P.A.</i>			<i>Vice-Chairman</i>
<i>Steps taken along with envelope</i>	<u>29.7.2003</u>		Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman. The Hon'ble Mr. N.D. Dayal, Administrative Member. None appears for the applicant. List again on 5.8.2003 for admission.
<i>D.P.</i>			<i>Vice-Chairman</i>
<i>for conveyance order dated 25-6-03</i>	<u>25/6/03</u>		<i>Member</i>
<i>RS</i>			<i>Vice-Chairman</i>

Notice received & sent to DMS
for my client respondent Mitali
by Legal. A.P. - 1381 to 1384
D/No 3076103

2
No. Reply has been
filed.

28.7.2003 5.8.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.
The Hon'ble Mr. N.D. Dayal, Administrative Member.

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant basically has assailed the order imposing penalty of withholding of increment for one year non-cumulative vide order dated 3.8.2001.

We have heard Mr. A. Chakrabarty, learned counsel for the applicant and also Mr. J.L. Sarkar, learned Standing counsel for the respondents at length.

Admittedly, the applicant preferred an appeal before the competent authority. Mr. A. Chakrabarty, learned counsel for the applicant contended that the applicant also preferred a representation. Mr. J.L. Sarkar, learned Standing counsel for the Railway stated that if the applicant ^{had} already submitted appeal, for the fitness of thing the department need to allow to dispose of the appeal.

Considering the facts and circumstances of the case, we are of opinion that the appeal need to be disposed. Accordingly, the respondents are directed to dispose of the appeal as per law if not already disposed, within two months from the date of receipt of the order.

A copy of the order be furnished to Mr. J.L. Sarkar, learned Standing counsel for the Railway for taking necessary action.

Subject to the observation made above the application is disposed of. No order as to costs.

Member

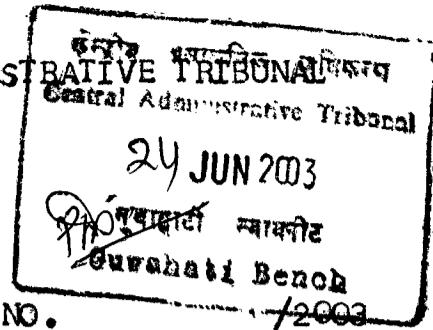
mb

Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Central Administrative Tribunal

GUWAHATI



Sri D. K. Datta

-vs-

U.O.I & Ors

D. K. Datta

LIST OF DATES & SYNOPSIS OF THE APPLICATION

21.6.2001 Memorandum of Charges issued

22.7.2001 Memo dated 21.6.2001 received by the applicant

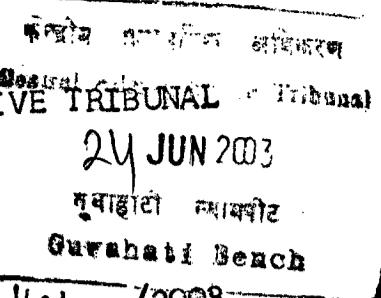
22.7.2001 Applicant submitted his reply

3.8.2001 Order dated 3.8.2001 passed imposing penalty of withholding of increment for one year non-cumulative.

9.8.2001 The applicant preferred appeal under the Rules.

4.11.2002 The applicant submitted representation for disposing the above appeal dated 9.8.2001 and requested to waive punishment imposed.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI



OA NO. 141 /2003

Sri D.K.Datta

vs
U.O.I & Ors

INDEX

1.	Application	1 - 6
2.	Verification	7
3.	Memo dated 21.6.20001	8
4.	Letter dated 22.7.2001	9
5.	Letter Dated 19.1.1999	10
6.	Order Dated 3.8.2001	11
7.	Appeal Dated 9.8.2001	12 - 13
8.	Representation dated 4.11.2002	14 - 15

Filed By

Anupam Chakraborty
Anupam Chakraborty 24/6/03

ADVOCATE

In The Central Administrative Tribunal

Guwahati Bench :: Guwahati.

6

O.A. No. 141 /2003

Shri Dilip Kr. Datta

son of Late Sarat Ch. Datta

Quarter No. 179A, B.G. Colony,

New Bongaigaon, Assam.

.....Applicant

Vs.

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

2. The Senior Divisional
Operations Manager, N.F.
Railway, Alipurduar Jn.

3. Divisional Railway Manager,
N.F. Railway, Alipurduar Jn.

4. The Chief Operations
Manager, N.F. Railway,
Maligaon, Guwahati-11.

.....Respondents

Details of the Application :

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

The application is made against impugned order No.
T/200/TR/AP dated 3.8.2001, and for setting aside and
quashing the said order.

Filed by the respondent
Brought by Shri Saroj D. Chakraborty
24/6/03

2. Jurisdiction:

The Applicant declares that the subject matter of the application is within the jurisdiction of the hon'ble tribunal.

3. Limitation:

The applicant declares that the application is within the period of limitation under section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the case:

4.1 That the applicant is a citizen of India and as such is entitled to the rights and privileges guaranteed by the constitution of India.

4.2 That the applicant was appointed as Goods Guard in N.F.Railway w.e.f. 26.2.1989 and thereafter he was promoted as Senior Goods Guard. At present he is posted at New Bongaigaon.

4.3 That the applicant was issued a memorandum of charges for imposition of minor penalties under Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968 by Memo No. T/200/TR/AP dated 21.6.2001. The said Memorandum was received by the applicant on 22.7.2001. It was alleged in the statement of imputation that the applicant while performing his duty as train working guard by 4055 DN Ex. (an express train and not a goods train) from New Bongaigaon to New Jalpaiguri he did not provide pad lock to rear second class luggage and break van No. 98709 as a result of which four bags of supari was found short.

Copy of the Memorandum dated 21.6.2001 is enclosed as Annexure-'A'.

2
Dilip Kumar Datta

Dilip Kumar Datta

4.4 That the applicant begs to state that due to shortage of pad locks the general practice in N.F.Railway is that the parcels are kept in the luggage van in a seal condition. It is also stated that no pad lock was ever provided to the applicant by the respondents. It is further stated that luggage van is loaded and sealed by parcel clerk (Commercial Department) and charge of parcels are not handed over to a Guard nor the guard is the custodian of luggage van. It is stated that no list of parcel/commodities was handed over to the applicant nor any charge was handed over to him.

4.5 That the applicant submitted his reply on 22.7.2001 to the respondent No.2 where he has mentioned that no pad lock was ever supplied to him inspite of his requisite attempts to get the same.

Copy of the letter dated
22.7.2001 is enclosed as
Annexure-'B'.

Copy of the letter dated
19.1.1999 is enclosed as
Annexure-'C'.

4.6 That after receipt of the said reply dated 22.7.2001 the respondent No.2 has mechanically passed the order dated 3.8.2001 imposing penalty of withholding of increment for one year non-cumulative. It is respectfully submitted that the disciplinary authority (respondent No.2) took the explanation of the applicant as 'unsatisfactory' without any ground/reason. No reason has been given nor any basis has been cited by the respondent No.2 for drawing his conclusion of unsatisfactory explanation. It is submitted

that the respondent No.2 has not applied his mind and gave any reasoned order and the conclusion formed by the respondent no.2 is only a subjective one. It is further submitted that in the facts and circumstances of the case the penalty imposed is unwarranted and not called for.

Copy of the Order dated
3.8.2001 is enclosed as
Annexure-'D'.

4.7 That the applicant preferred an appeal on 9.8.2001 to the respondent No.3 against the said impugned order dated 3.8.2001 without any favorable reply. He has also represented before the respondent No.4 by letter dated 4.11.2002 without any result. It is stated that a period of more than 1 year 11 months has expired since the appeal dated 9.8.2001 but no favorable result has yet been received by the applicant.

Copy of the appeal dated
9.8.2001 is enclosed as
Annexure-'E'.

Copy of the representation
dated 4.11.2002 is enclosed as
Annexure-'F'.

4.8 That the impugned order dated 3.8.2001 has been passed without applying mind and giving any reason for the conclusion. This has been prompted by reasons known to the respondents and such reasons are extraneous to the cause of justice. Moreover, this order is not a speaking order and it has been passed violating all the administrative norms. Malice in law is patent in the facts and circumstances of the case.

4.9 That the applicant demanded justice but the same has been denied to him and this application is filed bonafide for the cause of justice.

5. **Ground for reliefs with legal provisions.**

5.1 For that respondents have failed to pass any speaking order.

5.2 For that the non-application of mind in passing the impugned order is patent.

5.3 For that the respondents have passed the impugned order mechanically and failed to give any reason for the conclusion drawn.

5.4 For that the penalty imposed is unwarranted and not called for.

5.5 For that the respondents have passed the impugned order arbitrarily, whimsically and capriciously which offends Article 14 of the Constitution of India.

5.6 For that the respondents have failed to dispose of the appeal of the applicant even after expiry of long period of 1 year 11 months.

5.7 For that in view of the matter the applicant is entitled to the reliefs sought for.

6. **Details of the remedies exhausted**

The applicant declares that he has preferred an appeal without any result and there is no other efficacious remedies under any Rule and this Hon'ble Tribunal is the only forum to adjudicate the subject matter.

Philip Krueger

Silpi Kr Datta

11.6.03

7. **Matters not previously file or pending with any other court**

The applicant declares that he has not filed any case against the impugned order before any court, forum or any other institution. However, he has preferred an appeal before the appellate authority.

8. **Reliefs sought for**

Under the above facts and circumstances the applicant prays for the following reliefs :

8.1 The impugned order dated 3.8.2001 (Annexure-D) be set aside and quashed.

8.2 Any other relief or reliefs as the Hon'ble Tribunal deem fit and proper.

The above reliefs are prayed for on the ground stated in para 5 above.

9. **Interim Relief**

As the Hon'ble Tribunal deem fit and proper.

10. This application is filed through the Advocate.

11. **Particulars of Postal Order:**

i) IPO No : 86-488093

ii) Date of Issue : 20-6-03

iii) Issued from : B.P.O.

iv) Payable at : Gauhati

12. **List of Enclosures**

As per Index.

..... Verification

Verification

I, Dilip Kr. Datta, son of Late Sarat Ch. Datta, aged about 45 years, working as Senior Goods Guard in N.F.Rly, a resident of New Bongaigaon do hereby verify that the statements made in the paragraphs 1,4,6 to 12 are true to my knowledge and statements in para 2,3 and 5 are true to my legal advice and that I have not suppressed any material fact.

And I, sign this verification on this 16th day of June, 2003.

Dilip Kr Datta

Standard Form of minor memorandum of charges for imposition
of minor penalties (rule 11 of 130 C. Rules, 1958).

No. 7/200/TR/AD

Dated 21/06/2001

N.E. Railway/ADMT

(Name of Railway Administration)

ADMT.

(Place of issue)

Shri D.K.Dutta

Office in which working NBO is hereby informed that the undersigned proposes to take action against him under rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1958. A statement of Imputations of misconduct or misbehaviour of which action is proposed to be taken as mentioned above is given below:-

Shri D.K.Dutta

representation as he may wish to make against the proposal. The representation, if any should be submitted to the undersigned through proper channel within 10 (ten) days from the date of receipt of this memorandum.

If Shri D.K.Dutta

fails to submit his representation within the period as specified in para 2, it will be presumed that he has no representation to make and order will be liable to be passed against Shri D.K.Dutta. The receipt of this memorandum should be acknowledged by Shri D.K.Dutta

Signature & Designation of the
competent authority.

Shri D.K.Dutta
Manager
M. O. Operations
G. M. B. T. B. M. G. P. &
M. O. Bellary/Alpandur Jt.

This on 09.02.2000 the said Shri D.K.Dutta, GM/Goods NBO while performing his duty as train working guard by 4056 on N.W. NBO to NJR no did not provide pad lock to R/MLR No. 90709 which is a clear violation of extent joint circular of M.G. As a result 4 (Four) bags of sugar was found short.

In duty wise, amounts to misconduct.

After Feed
Chulaboy

Shri D.K.Dutta
Manager
G. M. B. T. B. M. G. P. &
M. O. Bellary/Alpandur Jt

To, Sr. Divisional Operations Manager
 NTF Railway, Alipurduar Jn.
 Through proper channel
 Dated N.B.G the 22nd July /2001

Sub:- Defence

Ref: Your memorandum no. T/2001/TR/AP/CL
 21.7.2001 and no T/2001/TR/AP/CL 20.07.2001

Sir, with reference to the above mentioned letters cited above which is to my hand on date at 11.00 HRS I like to lay down the following clarification for your information and kind Justice please:

That Sir, no padlock is supplied to me from any corner since joining in my service as goods guard in N.B.G although requisite attempts have been taken by me to get the same in several time. Under this circumstances I shall not be blame-worthy for non-pad locking in the SLR as per claim which may be kindly noted please.

22.7.2001
 Affected
 N.B.G.

Yours faithfully
 S. K. Datta
 Sr. Goods Guard / N.B.G
 Dt 22.7.2001 at 16.00 Hrs

To. The Divisional Railway Manager (Safety)
N.F. Railway, Alappadukal Junction
Through proper channel
Date at NBC the 19th January 1999

Sub:- Working of trains without proper
Safety equipments

Sir,

I have the honor to inform you that due of shortage of Mail/Express/Passenger guard I have to work Mail/Express/Passenger train as per my seniority and Vacancy. But sorry to inform you that there is insufficient "pool" equipments to provide me. Under this circumstances I like to say that in case of any loss suffered by Rly. Administration & and or to face any criticism due to shortage any safety equipments I shall not be blamed off which please may be noted.

This is for your information and necessary arrangement please.

Yours faithfully

Philip K. S. Pillai
Guard/Boarding

Copy forwarded of Dr. S.R. DOM/APDS for information please

..... Affected
Nambiar

Philip K. Pillai

117
Anand/112

16

N.F. Railway

Notice of Imposition of penalties under Rule 11 of DAR-1968.

No. T/200/TA/AP

Date 21.03.2001

To: Shri Chirayu Kumar Datta, Sr. GM/Goods/IN-03

Thro: SS/NBQ

Sub: SF-II, dt 21.6.2001

With reference to your reply dated 22.7.2001 to the chargesheet of even No. dated 21.6.2001 you are hereby informed that your explanation is not satisfactory and that the Int'l. Sgn. has passed the following orders:-

cc

Explanation given is unsatisfactory
WIT for 1 (one) year (N/C) is imposed.

Your appeal, if any, against the orders lies with DRM/APD provided it is preferred within 45 (Forty Five) days from the date of receipt of this letter.

Copy to: 1. DRM(P)/Cader/APDJ

✓ 2. ET/ Bill/APD for necessary action.
✓ 3. Staff concerned

Chirayu
Int'l. Sgn.
Mr. Divl. Operations Manager
Int'l. Sgn.
B. P. Mathematics/Algebraic
B. P. Mathematics/Algebraic

Chirayu
Int'l. Sgn.
Mr. Divl. Operations Manager
Int'l. Sgn.
B. P. Mathematics/Algebraic

117
Anand/112
16
Handed over
S. K. Datta
117

Chirayu
Anand

TO,

Divisional Railway Manager

North East Frontier Railway, Alipurduar Jn

Through Proper Channel

Dated NBG the 9th August 2001

Sub:- Irregular punishment by SR.DDM/APDJ

Ref:- SR.DDM/APDJ'S punishment letter NO

T/2001/TR/AP dt 03/08/2001

SIR, with reference to the above mentioned letter cited above I have the honour to inform you that SR.DDM APDJ has punished me with stoppage of increment for 1(one) year for non-provision of padlock to the Front Compt. of RISLR of 4055 on of 8/2/2000 which is due to non supply of padlock to me by the Railway Administration after my best effort (COPY enclosed for information)

Moreover he fails to show any cause of "unsatisfactory" defence/reply in the punishment letter which blocked the scope of proper appeal with proper points to you.

So, I like to request him through you to disclose the real cause of "unsatisfactory" so that I may forward proper appeal with proper point/points by first earliest

(Please furnish)

Convenience:

More the decision violates the honorable CAT/GHYIS Verdict (Case No 01/143/94 Dilip Kr Datta vs Union of India = COPY enclosed) regarding the procedure to be followed before ~~awa~~ imposing punishment to a staff.

This is for your information and necessary action please.

yours faithfully

Dilip Kr Datta
9/8/2001

S.R. GOODS GUARD

NBCP

1
Furnitur
S/2
arbitrator
1999
1999
1999

The chief operations manager
NFR Railways - Maligaon - GIIY-11
Through proper channels
Dated NBIP the 4th November/2002

Sub:- Appeal against Appellate Authority for
remaining silence for reconsideration of
punishment

Sir, I have the honour to inform you that on
8.2.2000 I have been booked to work MG
BRPL C/F 13:30 HRS. But sorry to inform you
that after turn up and take over charges
the on duty DY SS called through public
Address system to his chamber and request
me to work 4055 DN B.P.MAIL EXP N.B.G to NJP
as the train remains unmanned due to
shortage of mail/express guard upto that time.
At the end of the journey it is found that the
left side seal of front compartment of the
Rear SLR is missing but the door is closed.

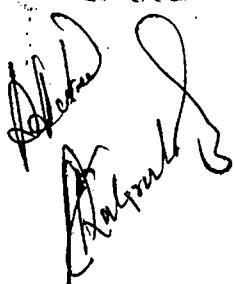
The SR. Dom/APD has awarded punishment
to me on the plea that 1 (one) bag
supari has been lost due to my negligence
to provide padlock on the said compartment.

An appeal of waiver of punishment
has been forwarded to DRM/APD The
Appellate Authority but no response is
received till this date

Under this circumstances I like to request
you to consider the matter for withdrawal
of my punishment on the plea that:-

- 1) NO padlock is supplied to me till this
date the 4th Nov/2002 although necessary
attempt has been taken by me daily in
due time.

(P.T.O)


R. Patankar

2) A Goods Guard is required to watch only the Goods train in which it is not necessary to be equipped with passenger Guard's Safety equipments whereas the Mail/Express/Passenger Guard runs with deficient safety equipments. Even knowing this the DY SS/ATBGP book the Express train for which it will (not) shall not be blame worthy.

3. The report of enquiry officer is in my favour as per remark mentioned in the Safety Equipment Register kept in the office of the SS/ATBGP

So, I request you kindly to waive my punishment within the prescribed time limit failing which I will be forced to file suit in the Court of Law in which no pleader's notice/ attorney's letter/ information will be required/ given which may kindly be noted or please...

Encl:- 5 (five) in 6 (six)
short

Yours faithfully

Philip K. ^{9/10/2011}
Gundel (ATBGP)

Albert
Kundal