

1600

**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. OA-141/2003.....Pg.....1.....to.....2.....
2. Judgment/Order dtd. 05/08/03.....Pg. N.A. separate order response.....
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....141/2003.....Pg.....1.....to.....15.....
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.....

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-Dutta

Respondants: - U.O.I Poms

Advocate for the Applicants: - A-Chakrabarty

Advocate for the Respondants: - CG S.C.

Notes of the Registry	Date	File	Order of the Tribunal
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This application is in  
form but not in time  
Condonation Petition is  
filed / not in time  
for Rs. 500 deposited  
vide IPO No. 86488039  
Dated 20.6.03

25.6.2003

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.

By Registrar.  
for

[Signature]  
Vice-Chairman

mb

Steps taken  
along with envelope

29.7.2003

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.

Member

[Signature]  
Vice-Chairman

mb

for comply order  
dated 25.6.03

NS

Notice received & sent to MS  
for filing the request No. 104  
by Legel. AID-1384 to 1384  
D/No 3076103

No reply has been  
biked.

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 <sup>had</sup> already submitted  
appeal, for the fitness of thing the depart-  
ment need to allow to dispose of the appeal.

Considering the facts and circum-  
stances 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

Vice-Chairman

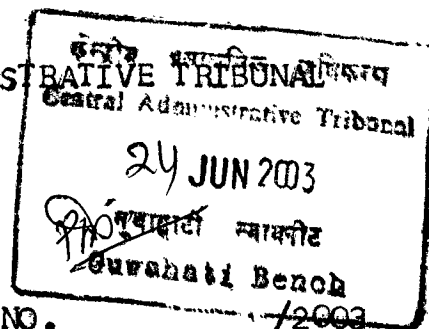
mb

11.8.2003

Copy of the order  
has been sent to  
The Secy. for Railway  
The Secy. to the L/A  
for the parh's.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI



OA NO.

Sri D. K. Datta

- Vs -

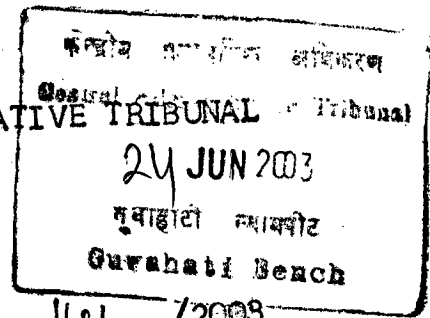
U.O.I & Ors

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.

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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.	'A' Memo dated 21.6.2000	8
4.	'B' Letter dated 22.7.2001	9
5.	'C' Letter Dated 19.1.1999	10
6.	'D' Order Dated 3.8.2001	11
7.	'E' Appeal Dated 9.8.2001	12-13
8.	'F' Representation dated 4.11.2002	14-15

Filed By

Anupam Chakraborty

ADVOCATE

6

In The Central Administrative Tribunal  
Guwahati Bench :: Guwahati.

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 applicant  
through A. Chakraborty  
24/6/03  
Dilip K Datta*

**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 K. Datta

8  
Ditipmanta

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.

9  
Dilip Kumar Datta

*Silip Kr Datta*

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.

Tipik ur Data

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 : Guaranteed

12. List of Enclosures

As per Index.

## Verification

12

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 R.S. & Rules, 1968).

No. T/200/TR/A2

Dated 2/10/2001

N.F. Railway/ADPT

(Name of Rly. Administration)

ADPT.

(Place of issue)

MEMORANDUM

Shri D.K. Dutta

Designation GS/Goods/NBQ

Office in which working NBQ is hereby informed that the under-  
signed proposes to take action against him under rule 11 of the Railway  
Servants (Discipline and Appeal) Rules, 1968. A statement of lapses/  
ions of misconduct of misbehaviour of which action is proposed to be  
taken as mentioned above is given below:-

Shri D.K. Dutta

is hereby given an opportunity to make  
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.

To

Shri D.K. Dutta, GS/Goods/NBQ

(Name, designation & office of the Rly. Servant)

Through: GS/NBQ

Implement of Implementation

Sanjay Singh  
Sr. Civil Operations Officer  
N. F. Railway/Allpurdahar

That on 03.02.2000 the said Shri D.K. Dutta, GS/Goods  
NBQ while performing his duty as train working guard by 4055 BN BK.  
NBQ to NJR he did not provide pad lock to R/SIR No. 90709 which is a  
clear violation of extent joint circular of M.O. As a result 4 (Four)  
bags of sugar was found short.

So, Shri D.K. Dutta is charged with gross negligence  
in duty which amounts to misconduct.

Affected  
Chandrabong

Sanjay Singh  
Sr. Civil Operations Officer  
N. F. Railway/Allpurdahar

RECORDED

To, SR. Divisional Operations Manager  
N.F. Railway, Alipurduar Jn.  
Through Proper Channel  
Dated NBG the 22nd July/2001

Sub:- Defence

Ref. your memorandum NO. T/200/TR/AP dt  
21.7.2001 and NO T/200/TR/AP dt 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-padlocking in the SLR as per  
claim which may be kindly noted please.

22/7/2001

Affected  
Koulm S.

Yours faithfully  
Dilip Kr. Datta  
SR. Goods Guard/NBGP  
dt 22.7.2001 at 16.00 Hrs

To. The Divisional Railway Manager (Safety)  
N.F. Railway, Alapad Junction  
Through Proper Channel  
Dated NBCs the 19th January 1999

Subj: - Working of Trains without Proper  
Safety equipments

Sir,

I have the honour to inform you that  
due of shortage of Mail/Express/Passenger  
guard I have to work Mail/Express/Pass-  
enger train as per my Seniority and  
vacancy. But sorry to inform you  
that there is no sufficient "pool" equipments  
to provide me. Under this circumstances  
I like to say that in case of any loss  
suffered by Rly. Administration and on  
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

Vilip K. Datta  
Guard/Goodby/req

Copy forwarded to SR. DOM/APWS for information please

Affected  
Alapad

Vilip K. Datta

-11-      Answered      16

N.F. Railway

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

No. T/200/TR/AP

Date 21.03.2001

To: Shri. L. K. Kumar Dutta, Sr. Gd/Goods/100

Thro: SS/NBA

Sub: SF-11 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 Under Signed 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/APDJ provided it is preferred within 45 (Forty Five) days from the date of receipt of this letter.

Amr  
Mr. Div. Operations Manager  
N.F. Railway, Aligarh

Copy to: 1. DRM(P)/Cader/APDJ  
2. ET/Bill/APDJ for necessary action.  
3. Staff concerned

Amr  
Mr. Div. Operations Manager  
N.F. Railway, Aligarh

57c  
forwarded to  
Mr. D.K. Dutta  
1/10  
9

Amr  
Mr. Div. Operations Manager  
N.F. Railway, Aligarh



TO, Divisional Railway Manager

North East Frontier Railway, Alipurduar Jm  
Through Proper Channel  
Dated NBG the 9th August 2001

Sub:- Irregular punishment by SR.DOM/APDJ

Ref:- SR.DOM/APDJ'S punishment letter NO  
T/200/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.DOM APDJ has punished me with stoppage of increment for 1(one) year for non-provision of padlock to the Front Compt. of R/SR of 4055 DN 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)

More over he fails to show any cause of "unsatisfactory defence/reply" in the punishment letter which blocked the scope of proper appeal with proper point/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 ~~fast~~ earliest

(please turnover)

Affected  
Signature

Convenience:

More the decision violates the  
honourable CAT/GHYIS Verdict  
(Case NO OA 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

NBQ

P  
Signature  
9/8

RECEIVED  
OFFICE OF THE  
DIRECTOR GENERAL  
OF CUSTOMS  
AND EXCISE  
CENTRAL  
BANGALORE

14-

Annexure F

19

The Chief operations manager  
NF Railway - Maligaon - GHY-II  
Through Proper Channels

Dated NB of the 4th November/2002

Subj:- Appeal against Appellate Authority for  
remaining Silence for reconsideration of  
punishment

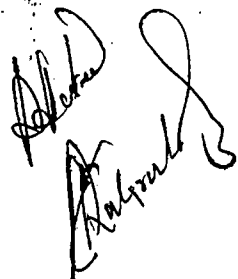
Sir, I have the honour to inform you that on  
8.2.2000 I have been booked to work MG  
BRPL C/F 13.30 HRS but sorry to inform you  
that after turn up and take over charges  
the on duty DY SS call me through Public  
Address system to his chamber and request  
me to work 4055DN BPMail EX NBG to NIP  
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 seat of front Compartment & the  
Rear SLR is missing in ~~the~~ but the door is closed.

The SR. DOM/APDJ has awarded punishment  
to me on the plea that 4 (four) bags  
supari has been lost due to my negligence  
to provide pad lock on the said compartment.

An appeal of Waiver of punishment  
has been forwarded to DRM/APDJ 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 pad lock is supplied to me till this  
date the 4th NOV/2002 although necessary  
attempt has been taken by me duly in  
due time.



(PTO)

6) A Goods Guard is required to work only on Goods trains such it is not necessary to be equipped with Passenger Guards Safety equipments whereas the Mail/Express/Passenger Guard runs with deficient Safety equipments. Even knowing this the DY SS / NRBG book me Express train for which I will (not shall) not be blame worthy.

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

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

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

Yours faithfully

Delip K. Galla  
Guard / NRBG

Received

01/12/2019  
10:31 AM  
10/12/2019  
10:31 AM

Accepted  
[Signature]