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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FORM No.4
(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No. 330/04

Misc. Petition No.

Contempt petition No.

Review Application No.

Applicants:- Dulal Ch. Biswas

Respondents:- N. O. I. Govt.

Advocates for the Applicant:- A. Deb Roy

Advocates of the Respondents:- Railway Counsel

Notes of the Registry Date Order of the Tribunal

22.12.2004

Present: The Hon'ble Mr. K.V. Prahladan,
Member (A).

Heard Mr. A. Deb Roy, learned
counsel for the applicant as well as
Mr. J. L. Sarkar, learned counsel for the
Railways.

The application has been filed
against the action of the respondents
in withholding the increment for one
year and 10 months which subsequently
affected the amount of pension payable
to the applicant. The applicant has
submitted a Revision Petition dated
2.7.2003 to the General Manager, N.F.
Railway, Maligaon, Guwahati to that
effect, but the same has not yet been
disposed of.

Considering the facts and circum-
stances of the case, I am of the
opinion that ends of justice will be
met, if respondents are directed to
pass a reasoned and speaking order
to the aforesaid revision petition
dated 2.7.2003 within a period of
four months from the date of receipt
of this order.

The application stands disposed
of in aforesaid terms at the admi-
ssion stage itself. The matter be

Centd.

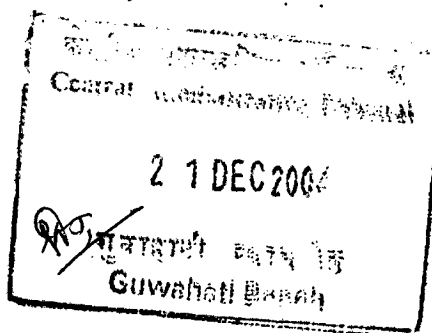
22.12.2004 listed on Board for compliance report
only to be filed by the Railways within
four months from receipt of this order.

27.12.04

Copy of the order
has been sent to the
Office for issuing the
same to the L/RD vacants
for the parties.

bb

K. V. Bhandari
Member



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI.

O.A. NO. 330 /2004

Shri Dulal Chandra Biswas

..... Applicant.

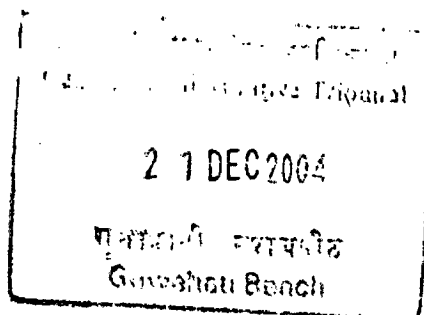
- Vs -

Union of India and others.

..... Respondents.

SYNOPSIS

The applicant was awarded penalty with holding the next increment of the applicant for one year and ten months by office order No. T/61/1/IM dated 11.10.2000 and it was effect from 1.7.2001 to 30.4.2003 and in consequence the applicant has been getting less pension every month. He submitted representations to the authorities and the last representation dated 2.7.2003 submitted to the General Manager, N.F. Railway, Maligaon, Guwahati-11 praying revision in term of proviso to sub-rule (5) of Rule 25 of R S (D&A) Rules, 1968. But the G. M. N.F.-Railway did not take any action on the representation dated 2.7.2003.



Filed by
Adel Not
Adressal
25/12/04
Ch Biswas
Dulal

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI

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

Title of the Case : O.A. No. /2004

Shri Dulal Chandra Biswas Applicant.

- Versus -

Union of India & Ors. Respondents.

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Date of filing :

Date Registration No:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : : : GUWAHATI

O.A. NO. 330 OF 2004

6
Dilal Ch Boro as

Shri Dulal Chandra Biswas

Retd. Sr. Passenger Guard, Lunding-
Division, Lunding.

C/O Shri M.K. Das

Harlongfar,

P.o. Lunding, Dist. Nagaon, Assam.

..... Applicant.

- Versus -

1. Union of India

Represented by the General Manager,
N.F. Railway, Maligaon,
Guwahati-11.

2. Divisional Railway Manager,

Lunding Division,

Lunding.

3. Chief Operating Manager,

Lunding Division, Lunding.

4. Sr. Divisional Operating Manager,

Lunding Division, Lunding.

..... Respondents.

DETAILS OF THE APPLICATION

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

This application is made against the impugned order issued under No. T/61/1/LM dated 18.2.2003 by the office of the DOM(O), Lunding and to set aside the order of penalty imposed by the Sr. DOM, Lunding under No. T/61/1/LM dated 11.10.2000.

2. Jurisdiction of the Tribunal.

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

3. Limitation

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

4. Facts of the Case

4.1. That your humble applicant is a Citizen of India and as such, he is entitled to all the rights and privileges and protection granted by the Constitution of India.

4.2. That the applicant was appointed on 28.6.1964 and after rendering 38 years and 10 months service he retired as Sr. Passenger Guard, Lunding Division on 31.5.2003.

Dulal Ch Biswas

4.3. That on 5.9.2000 the applicant was booked to work by 5811 Dn Bx-IMG while the applicant was getting out his quarters to go to station to pick up duties, he felt pain in his stomach and the condition compelled him to go to latrine and so he was late in picking up duties for about 10 to 15 minutes and thus the train suffered detention for about 25 minutes.

4.4. That Sr. DOM, Lunding issued charge memorandum No. T/61/1/IM dated 7.9.2000 to the applicant alleging gross negligence of duty for causing detention to 5811 Dn Barak Vellay Exp for 25 minutes.

Copy of Memorandum dated 7.9.2000 is annexed herewith and marked as Annexure -A.

4.5. That against the proposed action, the applicant submitted a representation to the Sr. DOM, Lunding (respondent No.4) on 30.9.2000 stating circumstances for which he could not pick up duty in time.

Copy of the representation dated 30.9.2002 is annexed hereto and marked as Annexure -B.

4.6. That on receipt of the representation the Sr. DOM, Lunding passed the cryptic order stating that the explanation of the applicant was not satisfactory and so the explanation was not accepted.

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Dulal Ch Bz was

-4-

4.7. That having rejected the representation the Sr. DOM, Lumding decided to with-hold the next increment (N.C.) of the applicant for one year and ten months vide No. T/61/1/LM dated 11.10.2000.

Copy of the order dated 11.10.2000 is annexed hereto and marked as Annexure -C.

4.8. That the normal date of increment of the applicant was on 1st of July. The penalty was imposed on 11.10.2000 and it was effective from 1.7.2001 to 30.4.2003 . The applicant's date of increment was on 31.5.2003. In terms of rules for calculation of pension (Rule 50 and Rule 69(2) of Railway Services (Pension) Rules, 1993) average emoluments for the purpose will be determined with reference to the emoluments drawn by a Railway servant during the last ten months of his service. Since due to imposition of penalty of with-holding of increments for one year and ten months w.e.f. 1.7.2001, the applicant could not draw increment on 1.7.2001 and 1.7.2002 and the penalty came to an end only on 30.4.2003. So average emoluments for the last 10 months were determined on the basis of pay at Rs.7550/- for 8 months and at Rs. 7850/- for one month and 8 days and at Rs. 8125/- as fixed on promotion to Sr. Passanger Guard w.e.f. 9.5.2003 for 23 days.

Contd.....

It is pertinent to mention here that with a view ~~af~~ to preventing loss of pension the President of India made the specific provision in sub-rule (2) in Rule 11 of RS (D&A) Rules, 1968 and the disciplinary authority, Sr. DOM/LMG violated the provisions of the said rule by imposing the penalty of withholding increments without obeying the mandate of sub-rule (2) in Rule II for holding an inquiry in the same manner as laid down in sub-rules (6) to (25) of Rule 9 of RS(D&A) Rules, 1968.

Had this penalty not been imposed the applicant would have got promotion to scale of Rs. 5500-9000/- on 9.10.2002 when his junior was promoted to this scale and then his average emoluments for calculation of pension would have been determined on the basis of his basic pay of Rs. 8125/-. Due to this penalty his pension has been fixed at Rs. 5875/- whereas it should have been fixed at Rs. 6255/-. Thus the applicant has been losing basic pension of Rs. 580/- per month. It was with intent to prevent such a loss of pension that the President made the specific provision in sub-rule (2) in Rule 11 of RS (D&A) Rules, 1968 and the disciplinary authority Sr. DOM/LMG of withholding increments without obeying the mandate of sub-rule(2) in Rule 11 of RS (D&A) Rules, 1968 for holding an inquiry in the same manner as laid down in sub-rules (6) to (25) of Rule 9 of RS (D&A) Rules, 1968. Therefore, Sr. DOM/LMG's order 11.10.2000 imposing the penalty of withholding of increments

for one year and ten months without holding inquiry is ultra vires the rules and on this ground also the order of the Sr. DOM/LMG is liable to be set aside and quashed.

4.9. That loss of monetary benefits in pension is illegal, unlawful and ultra vires Rule 22 of RS(D&A) Rules, 1968. The appellate authority has been vested with the duty to consider whether the procedure laid down in rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice. The disciplinary authority's order has resulted in violation of Rule 11(2) of RS(D&A) Rules 1968 and which has caused to the petitioner immense loss in determination of pension. Further, the loss in pension has resulted in violation of Articles 14, 16 and 21 of the Constitution of India.

4.10. That the applicant submitted an appeal dated 3.11.2000 to the DFM, Lunding against the penalty imposed stating the conditions and circumstances for which the applicant was late in picking up duties.

Copy of appeal petition dated 3.11.2000 is annexed hereto and marked as Annexure-D.

4.11. That the appellate authority i.e. DFM rejected, the appeal petition. The order of the appellate authority was conveyed by the DOM(O), Lunding under letter dated 5.12.2000, which read as follows :-

" I am surprised at his appeal. He is worried about his financial loss only, but not that he caused to the large number of passengers in the train and railways. He has offered no reasons for his appeal.

Punishment to stand ".

Copy of the order dated 5.12.2000 is annexed hereto and marked as Annexure-E .

4.12. That against the order of the appellate authority, the applicant filed a revision petition to the Chief Operating Manager, Maligaon, Guwahati in February, 2001.

Copy of represented dated February, 2001 is annexed hereto and marked as Annexure-F.

4.13. That the applicant again submitted remainder to the COM, Maligaon in the month of August, 2001 praying for consideration of the revision petition submitted to him in February, 2001.

4.14. That the applicant received order from the COM, Maligaon through the DEM(O) LMG vide No. T/61/1/LM dated 18.2.2003 on his revision petition rejecting the ~~petition~~ petition on limitation as follows :-

"Sr. DOM has mentioned in his ^{concerning} ~~concerning~~ letter that C.O. has failed to submit his remain petition in 45 days in the stipulated period. As per rule 25 Sub-rule 5(b)- No action under this rule shall be initiated by the revising authorities after more than one year after the date of order to be revised in case where it is proposed to reduce or cancel the penalty imposed or modify the order in favour ^{stage} of Railway servant no action is possible at this ^{stage} stage."

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Copy of order dated 18.2.2003 is annexed hereto and marked as Annexure-G.

4.15. That the applicant then submitted representation dated 2.7.2003 to the General Manager, N.P. Railway, Maligaon praying for revision of the punishment order. But the grievances of the applicant remained unattended .

Copy of the representation dated 2.7.2003 is annexed hereto and marked as Annexure-H.

4.16. That the applicant had received memorandum of charge for imposing minor penalty under Rule 11 of RS(D&A) Rules 1968. In terms of Sub-Rule (2) of Rule 11 of R S (D&A) Rules, 1968, if in a case it is proposed after considering the representation, if any, to with-hold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Railway servant, an enquiry shall be held in the manner laid down in Sub-rules (6) to (25) of Rule 9, before making any order imposing on the Railway servant any such penalty.

4.17. That the applicant begs to state that major penalty was imposed without having any enquiry. The disciplinary authority's order has resulted in violation of Rule 11(2) of RS (D&A) Rules, 1968 and which has caused immense loss in determination of pension and the loss in pension has resulted in violation of Articles 14, 16

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Dated Ch 20/2/03

Articles 14, 16 and 21 of the Constitution of India.

4.1g. That this application is made bonafide and for the cause of justice.

5. Grounds for relief (s) with legal -
Provisions-

5.1. For that due to reasons narrated above the action of the respondents is in prima facie illegal, malafide and arbitrary. Hence the order dated 11.10.2000 and dated 18.2.2003 may be set aside and quashed.

5.2. For that DDM/IMG's order regarding loss of monetary benefits in pension is illegal, unlawful and ultra vires Rule 22 of RS (D&A) Rules, 1968, in that, the appellate authority has been vested with the duty to consider whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice. Hence the disciplinary authority's order has resulted in violation of Rule 11(2) of RS (D&A) Rules, 1968.

5.3. For that the explanation below Sub-Rule(5) of Rule 25 of RS (D&A) Rules, 1968 states that in cases where original order has been upheld by the appellate authority, which it was in this case, the time limit shall be reckoned from the date of issue of the appellate orders. The appellate order was conveyed to the applicant

Bulal Ch Biswas 14

by letter dated 5.12.2000 and as such the time limit for consideration of revision petition should have been reckoned from 5.12.2000 and since the applicant filed the revision petition in August, 2001, so it was certainly within the time limit prescribed.

Should be BGS 2/05/15

5.4. For that in terms of Railway Board's letter No. E(D&A) 84 RG 6-44 dated 2.12.1986 the revisionary authority may entertain the revision petition after expiry of the limitation period if its satisfied that the petitioner had sufficient cause for not preferring the petition in time. Hence there is no absolute bar in delay submission of revision petition.

5.5. For that the applicant has been incurring financial loss every month for imposing penalty of withholding of increments for one year and ten months without holding inquiry is ultra vires the rules.

6. Details of remedies exhausted.

That the applicant declares that he has exhausted all the remedies available and there is no alternative remedy available to him.

7. Matter not previously filed or pending in any other Court.

The applicant further declares that he has not filed previously any application, writ petition or suit regarding the grievances in respect of which this application

- 11 -
- 9 -

is made before any other Court or any other Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

16
Dated 11.12.2018

8. Relief sought for :

Under the facts and circumstances stated above, the applicant most respectfully prays that the instant application be admitted, records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records be pleased to grant the following reliefs to the applicant :-

8.1. That the respondents be directed to revise and refix the pension by setting aside and quashing the order of penalty of withholding increments and to pay the arrear of pension with 18% interest on such arrear.

8.2. Any other relief/reliefs to which the applicant is entitled as deemed fit and proper.

8.3. Cost of the application.

9. Interim relief prayed for -

The Hon'ble Tribunal be pleased to direct the respondents that pendency of this application shall not be a bar for the respondents to extend the relief(s) prayed for, to the applicant.

10. That this application is filed through Advocate.

-12-
-10-

11. Details of the Indian Postal Order :

- i. Postal Order No: 206135910
- ii. Date of Issue : 20-12-2004
- iii. Issued from : Diphu Post Office,
Gulwahati - 781005
- iv. Payable at : Diphu Post Office.

12. Details of enclosures.

As stated in the Index.

Verification.....

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Dulal Ch Boro

- 13 -

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

I, Dulal Chandra Biswas son of Late Jadab Ch. -
Biswas, aged about 61 years Retd. Sr. Passenger Guard,
Lumding Division C/O Shri M.K. Das, Harlongfar, P.O.
Lumding, Dist. Nagaon, Assam, do hereby verify that the
statements made in paragraph 1, 4.3, 4.6, 4.8, 4.9, 4.13, 4.16 to 4.18
of the written statement are true to my knowledge, those
made in paragraphs 4.4, 4.5, 4.7, 4.10 to 4.12, 4.13, 4.15 being matter of
records are true to my information derived therefrom which
I believe to be true and those made in the rest are
humble submissions before the Hon'ble Tribunal. I have
not suppressed any material facts.

And I sign this verification on this 20th
day of Dec. 2004.

Dulal Ch Biswas
Deponent.

STANDARD FORM NO. 11

STANDARD FORM OF MEMORANDUM OF CHARGE FOR IMPOSING MINOR
PENALTIES RULES II OF RS (D) & (A) RULES- 1968.

N.F. RLY.

Place of issue- DIM(S)/ LMG's office.

Dt/- 7/9/2000

MEMORANDUM.

No. T/ 61/1/IM.

Shri . . . Dulal Ch. Mawra Designation. Guard(P)/LMG
(Office in which working) SS/LMG is hereby informed that
the undersigned propose(s) to take action against him under Rule-11
of the Rly. Service Servants (Discipline & Appeal) Rules 1968. A
statement of the imputations of misconduct or misbehaviour on which
action is proposed to be taken as mentioned above is enclosed/appended.

2. Shri Dulal Ch. Mawra is hereby given an opportunity to make such
representation as he may wish to make against the proposal. The represen-
tation, if any should be submitted to the undersigned within 10 days
on receipt of this Memorandum.

3. Shri Dulal Ch. Mawra fails to submit his representation
with the period specified in para-2, will be presumed that he has
no representation to make and will be liable to be passed against
Shri Dulal Ch. Mawra ex parte.

4. The receipt of this Memorandum should be acknowledged by
Shri Dulal Ch. Mawra

(M. P. Mehta)

Gen. Secy. RLY.

Divl. Operations Manager
Rly. Station
Competent Authority

To
Shri Dulal Ch. Mawra, Guard(P)/LMG.
Name & designation of Rly. Servant.

Thru: SS/LMG.STATEMENT OF ALLEGATION.

On 5.9.2K, while Shri D.C. Mawra, Gd(P)/LMG was booked to
work by 5811 Dn Ex.LMG he he failed to turn up duty in time,
resulting 5811 Dn could not start Ex.LMG in time and
suffered detention for 25" m at LMG station. Due to
negligence of duty the above train lost her punctuality.

As on duty Guard he is held responsible for detention
of above Mail/Exp. train which tantamount to gross neglect
of duty.

Hence, he is charged for violation of rule No. 3.1(11) & (111)
of Rly. Service conduct rule, 1966.

STC
Deliver with AD.

8/9

Attended
20/12/04
Adw

Sr. DOM/LMG.

Divl. Operations Manager
Rly. Station
Competent Authority

(15)

ANNEXURE - B

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To

The Sr. DOM/LMG
N.F. Railway,

Sub:-DEFENCE.

Ref:-Your Memorandum No: T/61/1/LM, dtd. 07.09.2000.

Sir,

In reference to your Memorandum No:-T/61/1/LM, dtd. 07.09.2000. I beg to lay before you the following few lines for your sympathetic consideration & favourable orders please.

That Sir, on 05.09.2k while I have been booked to work by 5811 DN Ex-LMG to LFC I could not attend duty in time because while I was ready to start to reach station for ^{Picking} ~~Lumping~~ up of duty I feel pain in my stomach and then and there I rushed to toilet for stool this is why I could not turn up duty in time and I have reached station by 25"mts Late which caused late. running of 5811 DN Ex-LMG on 05.09.2000.

Under the above circumstances I would request your honour to be kind enough to release me from the charge what you have brought against my favour as I have not done this carefully.

For the act of your kindness I shall remain ever-grateful to you.

Your's faithfully,

Dated, Lunding
The 30.11. Sept.../2000.

Attested
29/12/94
Adv.

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ANNEXURE - C

21

NOTICE OF IMPOSITION OF PENALTIES UNDER
RAILWAY SERVANTS DISCIPLINE & APPEAL RULES - 1968.

No.T/ 61/1/M.

Dt/- 11/10/2004.

From:- DDM(C) / LMG.

To Shri Pradi Ch. Mahapatra, General (P)/LMG.

Thro. SS/LMG.

With reference to your explanation to the Memorandum
No. T/61/1/M dtd. 7/2/04 you are hereby
informed that your explanation considered satisfactory, hence
not accepted.

Handwritten signature

Hence, I have decided to withhold your
next due increment for (10) years and
10 (Ten) months (H.C).

(M. J. MEHTA)

Signature Designation of the
Disciplinary Authority.

*When the Note is signed by an authority other than the disciplinary
authority here quote the authority passing the orders
*** Here quote the acceptance or rejection of explanation and the
penalty imposed.

Copy to:- ET/Cadre, ET/MLL, E/Pass Sec. at office & APO/GUY MLL office
for information & necessary action.

Copy to:- SS/SMS - for information.

INSTRUCTION:- (1) AN Appeal against this order lies to (Next) immediate
superior to the authority passing the orders ADM/LMG.

*57c
ensure delivery.*

*Attested
20/12/04
Adv*

Divl. Operations Manager
1. 1st Floor, Station
2. F. Railway, Lumding

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ANNEXURE-D

To

The Divisional Railway Manager,
N.F. Railway, Lumding.

Sub:- APPEAL AGAINST imposition of penalty
for stoppage of withheld my next in-
crement for 1(one) year (Ten) months.

Ref:- Sr. DOM/LMG's NIP No:- T/61/LM, dtd. 11.10.2000.

Respected sir,

In connection with the above I beg to prefer
to submit the subject appeal against the imposition of
penalty of withheld my next due increment for one year Ten
months on the grounds as under.

That sir, a minor memorandum bearing No. T/61/1/LM
dtd. 07.09.2000 had been issued by Sr. DOM/LMG on the alleged
allegation of neglect of duty.

That sir, the defence statement had been submit-
ed explaining the facts in detail on 30-09-2000 against the
allegation which has been brought against me.

That sir, on 05.09.2000 I could not turn up duty
in time as a result of which 5811 LN could not be started
in time Ex-Lumding and suffered detainment for 25 mts. at
Lumding Station. Cause for not turning up duty in time which
I have already been explained through my application dtd.
30-09-2000.

That sir, it is quite natural being a human being
I may suffer from any diseases at any time which is uncertain
and for that very moment I could not controlled myself caused
turn up duty by 25 mts late.

That sir, I am going to be retire from Rly. Service
w.e.f. 30.04.2003. So, the penalty which has been imposed
upon me caused a huge monetary loss being a poor paid
salaried employee by verge of retirement.

Under the above circumstances it is may appear
in your honour to consider me from the penalty which has been
brought against me with a view to verge of my retirement.

For the act of your kindness I shall remain
ever grateful to you.

Dated, Lumding

The 30.11.00.

Yours faithfully,

[Handwritten signature]
20/12/00
[Handwritten signature]

[Handwritten signature]
20/12/00

[Handwritten note]
mailed

[Handwritten note]
20/12/00
21.12.2000
21.12.2000

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ANNEXURE - E

N. F. MY.

No. T/61/1/LM.

Office of the
DM(O)/LMG.
Dt/- 8/12/2000.

To

Shri Dulai Ch. Mawas,
Guard(P)/LMG.

Thre. 88/LMG.

Sub:- An appeal against imposition of penalty.

...

Ref:- Your appeal No. Nil dtd. 16.11.2000
addressed to DM/LMG.

....

On going through your above appeal by DM/LMG he
has passed the order as under :-

"I am surprised at his appeal. He is worried
about his financial loss only but not that he
caused to the large no of passengers in the train
& milwys.

He has offered no reasons for his appeal. Punishment
to stand."

[Signature]
for DM(O)/LMG.

Copy to:- ET/Clare and ET/MLI at office for information.

[Signature]
for DM(O)/LMG.

*57c
ensure delivery*

[Signature] 26/12

*Attended
29/12
Adi*

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ANNEXURE - F

To

The Chief Operation Manager,
N.F. Railway, Maligaon.

Sub:--APPEAL AGAINST imposition of penalty for
stoppage of withheld my next increment for
one year 10(ten) months.

Ref:--Sr.DOM/LMG's NIP N: T/61/LM, dtd. 11.10.2000.

Sir,

With due respect I beg to lay before you the
following few lines for your sympathetic consideration &
favourable orders please.

That sir, on 05.09.2000 I could not turn up my
duty in time as a result of which 5811 DN BARAK VALLEY EXP
could not be started in time Ex-Lumding and suffered
detention for 25 mts. at Lumding Station.

That sir, a minor memorandum bearing N:--T/61/1/LM
dtd. 07.09.2000 had been issued by Sr.DOM/LMG on the alleged
allegation of neglect of duty.

That sir, the defence statement had been submitted
explaining the facts in detail on 30.09.2000 against the
allegation which has been brought against me. My defence was
that, "on 05.09.2000 while I have been booked towards by 5811
DN EX LMG TO LFG I could not attend duty in time because
while I was ready to start to reach station for picking up
of duty I fell pain in my stomach and then and there I
rushed to toilet for stool at my home which takes time and
this is why I could not turn up duty in time and I have reached
stn by 25 mts. late & caused late running of 5811 DN EX-LMG
to LFG. But, sorry to say you that my defence has not been
considered.

Under the above circumstances it is appeal to
your honour to consider me for this time and I am assured
that, this type of incident will not occur in future also
I am going to be retire from Rly. service shortly so, with a
view to verge of my retirement kindly consider me from the
penalty which has been brought against.

For which act of your kindness I shall remain
evergrateful to you.

Yours faithfully,

Dulal Ch Biswas

Dated, Lumding

The.....Feb/01

Forwarded

27/2/01

Adw

RECEIVED
1.10.2000
N.F. Railway
Maligaon

20

ANNEXURE - G

NF. RLY.

Office of the
DRM(O)/LMG.
Dt/- 18.2.03.

No. T/61/I/LM.

To

Shri Dilal Ch. Miswas,
Gd(P)/LMG.

Thro : SS/LMG.

SUB : Appeal to COM/NFR against NIP
Even No. dtd/- 11.10.02.

REF : Your appeal No. Nil, Dtd/- AUG/2001.

Reference above, on going through your above appeal by COM/NFR he has decided and pass the following orders as under :-

"Sr. DOM has mentioned in his concerning letter that the C.O has failed to submit has remain petition in 45 days, in the stipulated period. As per rule 25, sub-rule-5(-) No action under this rule shall be initiated by the revising authorities after more than one year after the date of order to be revised in cases where it is proposed to reduce or cancel the penalty imposed of modify the order in favour of Railway servant no action is possible at this stage."

In view of the above you may be can represent to President.

For DRM(O)/LMG.

COPY TO : DRM(D)/LMG through OS/ET-Cadre and
ET-cell at Office for information.

COPY TO : SS/LMG for information.

For DRM(O)/LMG.

Attested
20/12
Bdu

21 ANNEXURE-H Copy to Member Staff
Rly. Board
New Delhi

From: Dulal Ch. Biswas,
Retd. Guard/Pass./Lumding

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

Dated, 02-07-2003

Sub:- Revision petitione under proviso to sub-rule(5) of Rule 25 of RS(D&A) Rules, 1968, against imposition of penalty withholding of increment for one year and 10 months (NC) by Sr.DOM/LMG without following the procedure laid down under Rule 11(2) of RS(D&A) Rules, 1968.

Ref:- Sr.DOM/LMG's N.I.P. issued under No.T/61/1/LM dated 11-10-2000.

Sir,

Respectfully, I submit that being aggrieved by the order of Sr.DOM/LMG imposing the penalty and being aggrieved by the order of the appellate authority, DRM/LMG, rejecting the appeal, and COM/MLG's order decling to consider the revision petition, I am constrained to submit this revision petition to you in terms of proviso to sub-rule(5) of Rule 25 of RS(D&A) Rules, 1968, for your kind and judicious consideration and appropriate orders in order to mete out justice. I furnish below a brief history of the case, material statements and arguments relied upon and submissions.

However, before embarking upon the exercise, I wish to point out that this revision petition is maintainable under proviso to sub-rule(5) of Rule 25, ibid, which lays down that the General Manager of a Zonal Railway, amongst others, if he is higher than the appellate authority, can undertake revision without restriction of any time limit. Since the penalty has been imposed in violation of the mandatory provision of Rule 11(2) of RS(D&A) Rules, 1968, and since the penalty has resulted in huge loss in pensionary benefits, I pray that in the interest of justice and fair play you may kindly entertain this petition and decide the matter on merits.

A. Brief history of the case

1. I was appointed in the railway service on 28.6.1964 and after rendering 38 years and 10 months service I retired as a Guard/Passenger/Lumding on 31-05-2003.
2. That while I was employed as a Guard/Pass./LMG I was booked to work by 5811 Dn ex.LMG on 5.9.2000. Since I was having an upset stomach since the evening before, while I was getting out of my quarters to go to station to pick up duties I was delayed on account of this due to which the train suffered detention for 25 minutes.
3. That Sr.DOM/LMG issued charge memorandum No.T/61/1/LM dated 7-9-2000 alleging gross negligence of duty on my part for causing detention to 5811Dn for 25 minutes. In my ~~xxx~~ representation against the proposed action under Rule 11(1), ibid., I stated the fact that I could not attend the station in time due to fact that I felt pain in my stomach and only after relieving myself I could attend the station.
4. That on receipt of my representation, Sr.DOM/LMG, vide his N.I.P. dated 11.10.2000 passed the cryptic order stating that my explanation was not considered satisfactory, hence not accepted

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Attended
my 20/12
Adv.

and hence he decided to withhold my next due increment for one year and ten months (NC). No reasons were mentioned by the disciplinary authority in support of his decision.

5. That I submitted an appeal dated 03.11.2000 to Addl.DRM/Lumding citing the extenuating circumstances which caused me to attend to duty late by 25 minutes and prayed for consideration of my case as I was on the verge of a retirement and the penalty imposed caused me a huge monetary loss.

6. That under DRM(O)/LMG's letter dated 5-12-2000, the order of the appellate authority, DRM/LMG, was conveyed which read as follows:

"I am surprised at his appeal. He is worried about his financial loss only but not that he caused to the large no. of passengers in the train and railways.

He has offered no reasons for his appeal. Punishment to stand."

7. That, against the appellate order, I filed a revision petition to COM/MLG in Aug/2001. Under DRM(O)/LMG's letter dated 18.2.03, COM/MLG's order rejecting my petition on the ground of delay was conveyed. In the order COM/MLG stated that as per Rule 25, sub-rule(b) no action under this rule shall be initiated by the ~~xxx~~ revising authorities after more than one year after the date of order to be revised in cases where it is proposed to reduce or cancel the penalty imposed and no action is possible at this stage.

Hence, this revision petition on the following grounds.

B. Material statements and arguments relied upon to assail the order imposing penalty.

1. Sr.DOM/LMG had issued the charge memorandum under Rule 11 of RS(D&A) Rules, 1968, for imposition of minor penalty. In terms of sub-rule(2) of Rule 11 of RS(D&A) Rules, 1968, if in a case it is proposed ~~to~~ after ~~considering~~ considering the representation, if any, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Railway servant, an inquiry shall be held in the manner laid down in sub-rules (6) to (25) of Rule 9, before making any order imposing on the Railway servant any such penalty.

2. That my normal date of increment was on 1st of July. On ~~17~~ 1.7.2000 after adding the increment due on that my basic pay was Rs.7550/-. The penalty was imposed on 11.10.2000 and it was effective from 1.7.2001 to 30.4.2002. My date of retirement was on 31.5.2003. In terms of rules for calculation of pension (Rule 50 & Rule 69(2) of Railway Services (Pension) Rules, 1993) average emoluments for the purpose will be determined with reference to the emoluments drawn by a railway servant during the last ten months of his service. Since due to imposition of penalty of withholding of increments for one year and 10 months w.e.f 1.7.2001 I could not draw increment on 1.7.2001 and 1.7.2002 and the penalty came to an end only on 30.4.2003, average emoluments for the last 10 months were determined on the basis of my pay at Rs.7550/- for 8 months, and at Rs.7850/- for one month and 8 days, and at Rs.8125/- (fixed on promotion to Sr.Passenger Guard w.e.f 9.5.2003 on promotion) for 23 days. Had this penalty not been imposed I would have got promotion to scale Rs.5500-9000/- on 9-10-2002 when my junior was promoted to this scale and then my average emoluments for calculation of pension would have been determined on the basis of my basic pay of Rs.8125/-. Due to this penalty my pension has been fixed at Rs.5875/- whereas it should have been fixed at Rs. 6255/-. Thus, I

(Contd....3)

Handwritten signature and date 20/12

have been losing basic pension of Rs.380/- per month. It was with intent to prevent such a loss of pension that the President made the specific provision in sub-rule(2), as aforesaid, in Rule 11 of RS(D&A)Rules, 1968, and the disciplinary authority, Sr.DOM/LMG violated the provisions of the said rule by imposing the penalty of withholding increments without obeying the mandate of sub-rule(2), *ibid.*, for holding an inquiry in the same manner as laid down in sub-rules(6) to (25) of Rule 9, *ibid.* Therefore, Sr.DOM/LMG's order dated 11-10-2000 imposing the penalty of withholding of increments for one year and 10 months without holding inquiry is *ultra vires* the rules and on this ground alone the order of the Sr.DOM/LMG is liable to be set aside and quashed.

3. That DRM/LMG's order scoffing at my lament regarding loss of monetary benefits in pension is also illegal, unlawful and *ultra vires* Rule 22 of RS(D&A)Rules, 1968, in that, the appellate authority has been vested with the duty to consider whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice. As stated above, the disciplinary authority's order has resulted in violation of Rule 11(2), *ibid.*, and which has caused to me immense loss in determination of pension. Further, the loss in pension has resulted in violation of Articles 14, 16(1) and 21 of the Constitution.

4. That DRM/LMG's order is mechanical indicating a total non-application of mind, unreasonable and arbitrary and it is violative of Rule 22(2) of RS(D&A)Rules, 1968 as well as Articles 14, 16(1) and 21 of the Constitution and for these reasons the appellate order is liable to be set aside and quashed.

5. COM/MLG to whom I submitted a revision petition in Aug, 2001, that is, within one year (exactly 10 months) of the order dated 11-10-2000 which was to be revised by him. This revision petition was delayed at Sr.DOM/LMG's office. But COM/MLG declined to revise the order on the ground that the period of one year after the order to be revised has expired.

6. That the COM/MLG's reason for rejecting the revision petition on the ground of expiry of one year after the order to be revised is erroneous is evident from Explanation below proviso to sub-rule (5) of Rule 25, *ibid.*, which states that in cases where original order has been upheld by the appellate authority, which it was in this case, the time limit shall be reckoned from the date of issue of the appellate orders. The appellate order was conveyed to me vide SRMCO/LMG's letter dated 5.12.2000 and as such the time limit for consideration of revision petition should have been reckoned from 5.12.2000 and since my revision petition was filed in Aug/2001 it was certainly within the time limit prescribed.

7. That the time bar on account of delay in submission of revision petition is not an absolute bar. In terms of Rly.Board's letter No.E(D&A)84 RG6-44 dated 2-12-1986, the revisionary authority may entertain the revision petition after expiry of the limitation period if it is satisfied that the petitioner had sufficient cause for not preferring the petition in time.

8. That from the above, it is crystal clear that at every stage of the proceeding I have been denied justice which has resulted in violation of the provisions of RS(D&A) Rules, but also the provisions of the Constitution of India as discussed above. Therefore, it is a fit case for intervention by you in accordance with Rule 25(5) proviso, *ibid.*, and to set aside the order of disciplinary authority imposing the penalty of withholding of increments for one year and 10 months (NC) without following the procedure laid down in Rule 11(2) of the RS(D&A)Rules, 1968.

(Contd....4)

[Signature]
20/12
[Signature]

C. Submissions

1. That I submit that the order of the disciplinary authority, Sr.DOM/LMG, imposing the penalty of withholding of increments which ~~xx~~ resulted in adversely affecting my pension and other pensionary benefits is illegal, unlawful and ultra vires the Rule 11(2) of RS(D&A) Rules, 1968 and on this ground alone the penalty is liable to be set aside and quashed.
2. That the order of the appellate authority, DRM/LMG, rejecting the appeal without considering whether the procedure laid down in the RS(D&A) Rules, 1968, has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice, as ordained by Rule 22(2)(a) of RS(D&A) Rules, 1968, ~~xxxx~~ is cryptic, mechanical order indicating non-application of mind and that it is violative of Rule 22(2)(a), *ibid.*, and as such the appellate order is liable to be set aside and quashed.
3. That COM/MLG's order declining to exercise his power of revision in this matter is based on extraneous considerations and the same also suffers from non-application of mind.
4. That the injustice caused to me and the loss in the amount of pension by the order of Sr.DOM/LMG imposing the penalty without following the procedure laid down in Rule 11(2) of RS(D&A) Rules, 1968, are by itself sufficient grounds for your kind intervention in the matter by exercising power of revision under proviso to sub-rule (5) of Rule 25 of RS(D&A) Rules, 1968.
5. That in the light of the above submissions, it is prayed that the order of Sr.DOM/Lumding dated 11-10-2000 imposing the penalty of withholding of increment for one year and 10 months without cumulative effect, without following the procedure laid in Rule 11(2), *ibid.*, which has resulted in loss of pensionary amount and other pensionary benefits, may kindly be set aside and quashed. And for which I shall ever remain grateful.

Thanking you,

Yours faithfully,

(Dulal Ch. Biswas)
Retd. Sr. Passenger Guard/
Lumding.

Copy to Sr.DOM/LMG for his kind information and necessary action please.

*Attended
May 20/12
Dlu*

(Dulal Ch. Biswas)
Retd. Sr. Passenger Guard/
Lumding.