

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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Q2 2/11/17
SECTION OFFICER (Judl.)

FORM NO. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

O R D E R S H E E T

Original Application No. 189/05

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicant(s): Udhab chandrea kolkata

Respondent(s): W.O. 1 - Ferl

Advocate for the Applicant(s): K.K. Biswas

Advocate for the Respondent(s): Railway Counsel

Notes of the Registry	Date	Order of the Tribunal
Application is in form. is filed/C. P. A. R. I. S. (O) deposited vide P. R. D. No. 206/16614	19.7.2005	Heard Mr. K. K. Biswas, learned counsel for the applicant and Mr. S. Sarma, learned Railway counsel for the Respondents. Notice to the respondents to show cause as to why the application shall not be admitted. Post on 23.8.2005.
Dated 20.7.05 S. Chanda Dy. Registrar 18/7/05		Mr. Chanda Member
8 steps taken	bb	
fl. cause order dated 19.7.05	23.8.05.	Learned counsel for the parties seeks for adjournment. Post the matter on 26.9.05.
1m		
26.09.2005		Mr. M. Chanda, learned counsel submits that he has now entered appearance for the applicant. Dr. M. C. Sarma, learned counsel for the Railway submits that some time is required for filing written statement. Post on 16.11.2005.

Notice & Order
Sent to D/Section
for issuing to resp.
Nos. 1 to 7 by regd.
A/D post.
D/No. 1183/10
class 1189
25/7/05.
Dt = 27/7/05.

mb

Vice-Chairman
Vice-Chairman

Vice-Chairman
Vice-Chairman

Vice-Chairman

16.11.05. Heard Mr. S. Nath learned counsel for the applicant and Dr. M. C. Sarma learned Railway counsel appearing for the Respondents. Dr. Sarma counsel for the Railway seeks for two weeks time more to file written statement.

① Service report are still awaited.

② No reply has been filed.

By
22.8.05

Post the matter on 1.12.05.

G. J. Kapoor
Vice-Chairman

lm

01.12.2005 Dr. M. C. Sarma, learned Railway counsel submits that written statement has already been filed. Mr. S. Nath, learned counsel for the applicant seeks for time for filing rejoinder.

Post before the next Division Bench. Rejoinder, if any, in the meantime.

By
23.9.05

14-11-05

BSG
mb

G. J. Kapoor
Vice-Chairman

① Service report are still awaited.

② No reply has been filed.

By

Notice duly served on resp.

No. 3, 1

14/11/05

30-11-05

① Notice duly served on R. No. 3 & 1.

② No written statement has been filed.

By

Notes of the Registry

Date

2.12.05

10.3.2006

WTS submitted
by the Respondent.*PT*

9-3-06

No Rejoinder has
been filed.*3w*Rejoinder has been
filed by the applicant.NS
9.3.06

28-7-06

Ready for hearing.

bm

Recd. copy

WTS

28/08/2006

Mr. counsel

29.8.06

C. Copy of the order
has been collected by the
L/bdr. for applicant on 10.8.06
and a copy of the same has
been handed over to the
Adv. Standing counsel.When the matter came up for
hearing Mr. S. Nath, learned counsel for
the applicant submits that he is not
ready with the case and prays for an
adjournment.Post before the next Division
Bench.

Vice-Chairman(J)

Vice-Chairman(A)

bb

31.7.2006

Heard Mr. M. Chanda, learned
counsel for the applicant and Dr. M.
C. Sharma, learned Railway counsel.Hearing concludes. Reserved
for judgment.

Member(A)

Vice-Chairman

bb

07.08.2006

Judgment delivered in open
Court, kept in separate sheets.
The application is partly allowed
in terms of the order passed in
separate sheets. No order as to
costs.

Member

Vice-Chairman

mb

Mr. counsel

O.A. No. 189/105

Notes of the Registry	Date	Order of the Tribunal

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No. 189 of 2005

DATE OF DECISION 07.08.2006

Shri U.C.Kalita

.....Applicant/s

Mr.M.Chanda

.....Advocate for the
Applicant/s.

- Versus -

U.O.I. & Ors.

.....Respondent/s

Dr.M.C.Sharma, Railway Counsel

.....Advocate for the
Respondents

CORAM

THE HON'BLE MR. K.V. SACHIDANANDAN, VICE CHAIRMAN

THE HON'BLE MR. GAUTAM RAY, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether to be forwarded for including in the Digest Being complied at Jodhpur Bench? Yes/No
4. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No



Vice Chairman/Member (A)

8

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 189 of 2005.

Date of Order: This, the 7th day of August, 2006.

THE HON'BLE MR. K.V.SACHIDANANDAN, VICE CHAIRMAN

THE HON'BLE MR. GAUTAM RAY, ADMINISTRATIVE MEMBER

Shri Udhab Chandra Kalita
Asstt. Loco Pilot (DAD)/NGC
S/o Late Nripati Kalita
Rly. Qr. No.DS-A-613
Bamunimaidan Railway Colony
Guwahati - 781 021.

..... Applicant.

By Advocates S/Shri M. Chanda & S.Nath.

- Versus -

1. Union of India
Represented by General Manager
N.F.Railway, Maligaon
Guwahati-781011.
2. The Chief Mechanical Engineer
N.F.Railway, Maligaon
Guwahati-781 011.
3. The Chief Personal Officer
N.F.Railway, Maligaon
Guwahati- 781 011.
4. The Divisional Railway Manager
N.F.Railway, Lumding, P.O: Lumding
Dist: Nagaon, Assam.
5. The Additional Divisional Railway Manager
N.F.Railway, Lumding, P.O: Lumding
Dist: Nagaon, Assam.
6. The Senior Divisional Mechanical Engineer
N.F.Railway, Lumding, P.O: Lumding
Dist: Nagaon, Assam.

7. The Divisional Mechanical Engineer (Power)
 N.F.Railway, Lumding, P.O: Lumding
 Dist: Nagaon, Assam.

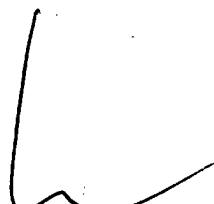
.....Respondents.

By Dr.M.C.Sharma, Railway Counsel.

O R D E R

SACHIDANANDAN, K.V., (V.C.):

The applicant, while working as Diesel Assistant Driver (DAD/NGC) in the pay scale of Rs.3050-4590/- in the Mechanical Department of N.F.Railway in Lumding Division, 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. According to him, the Driver all of a sudden started the train without the Line clear from the station authority disobeying the signal kept STARTER on position. The Driver of the said train and the applicant both were put under suspension. The Driver was taken under DAR and the applicant was also served with the memorandum of major penalty charges 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 Service Conduct Rules of Railway, 1966 vide Rule 3(i), (ii) & (iii)". He replied to the memorandum of charges on 8.1.2003 vide Annexure-C. The suspension order of the applicant was



revoked by the disciplinary authority vide Annexure-D and DAR proceeding was initiated and Enquiry Report was filed vide Annexure-E. In the findings of the Accident Committee Report it was stated that DAD was not responsible for overshooting the Signal but he was responsible for consumption of Liquor as per the Doctor's Report for which he was found responsible. The applicant had to undergo the Breath Analyser test at New Bongaigaon before putting to work in the said train as per prevailing system and found fit to work. The Forensic Expert's Report on consumption of alcohol also may be due to taking regular cough syrup, which contains certain percentage of alcohols. A negligible 0.025 percentage i.e. 1/40th fraction of a percent was found in applicant's blood which does not debar a person from doing his duty according to safety point of view. The disciplinary authority vide Annexure-I punished the applicant with "reduction of his pay to lower 2 (two) stages in Scale Rs. 3050-4590/- for 2 years with loss of seniority". Appeal was preferred. But surprisingly, a show cause notice dated 21.8.2003, was issued upon the applicant and the Driver as to why penalty of compulsory retirement would not be imposed upon them. The applicant replied to the aforesaid show cause notice on 27.8.2003. But vide order dated 12.12.2004 a higher punishment i.e. punishment of compulsory retirement from service with immediate effect was imposed upon the

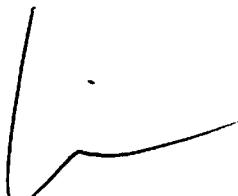
applicant by the appellate authority. He submitted representation (Annexure-N) and finally the Revisioning authority recommended the punishment "to reduce the compulsory retirement to reduction to lowest in the Grade of DAD" and "the pay and seniority of the applicant will be fixed as that of a new recruit DAD after completion of training" and disentitle him to "any back wages on his being reinstated on sympathetic grounds" and "the period of his removal till date of his reinstatement will be treated as dies-non". Being aggrieved, the applicant has filed this Original Application seeking the following reliefs:-

- "i. For quashing the orders of the Revisioning Authority to the extent of reduction to lowest in the Grade of DAD with the fixation of pay and seniority as that of a new recruit DAD and order for giving all the benefits which the Applicant had been enjoying prior to put under suspension order and enjoyed the benefit of his past service of 23 years along with the relief of reinstatement in service duly exonerating and setting aside all the charges and orders imposed by the earlier authorities in instant case.
- ii. To get all backwages from the period of his loosing the service till the date of reinstatement instead of treating the period as "dies-non" as ordered in the impugned letter and
- iii. Any other relief(s) as the Hon'ble Tribunal may deem fit and proper."

2. The respondents have filed a detailed reply statement contending that the applicant knows fully well



how grave the offence of passing the red signal at danger is from its potential for grave danger to the general public as well as technically from the provisions of the Railway Accident Manual. The action of the applicant is in serious breach of safety rules. The applicant himself admitted to have consumed liquor while doing running duty and the level of consumption was found to be excessive as per report of the Forensic Science Laboratory, which is a neutral agency. The report of the Accident Enquiry Committee also supported the findings of the Railway Doctors that the applicant was under influence of liquor while on running duty, a serious offence. The breath analyser test is not relevant in the matter in view of the clear finding of the Railway Doctor at Rangiyah. The blood sample revealed the level of alcohol at 25mg/100 ml which is dangerous even as per Railway Board circular dated 27.11.2001. However, the Revisional authority, on the strength of sympathetic consideration of the facts and circumstances of the case, applied his mind and modified the penalty upon him from "compulsory retirement" to that of "reduction to lowest in the grade of DAD with further orders to fix the pay and his seniority as that of a new recruited DAD after completion of training". Therefore, the O.A. will not stand to its legs and liable to be dismissed, respondents claimed.

A handwritten signature or mark, consisting of a vertical line with a horizontal stroke extending to the right, followed by a small horizontal line.

3. The applicant has filed a rejoinder reiterating the contentions made in the O.A. We have heard Mr. M. Chanda, learned counsel for the applicant and also Dr. M.C. Sharma, learned Railway counsel for the respondents. Mr. Chanda contends that the breath analyser test, to which he was subjected to before the joining duty, disclosed that he has consumed alcohol but the percentage of alcohol that was found in his blood was may be due to the fact that he had consumed cough syrup. Therefore, the punishment imposed even by the disciplinary authority is disproportionate to the gravity of the offence. Dr. Sharma, on the other hand, has taken us to the decision of the Revisional authority dated 22.4.2005 and submitted that the punishment was substantially reduced and therefore, the applicant should accept it.

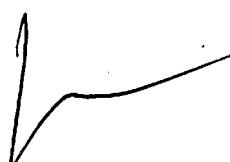
4. We have given due consideration to the arguments advanced by the counsel for the parties and the materials and evidence placed on record. Counsel for the applicant centered his arguments to the point that the punishment, awarded, is excessive, exorbitant and not proportionate to the gravity of the offence. He also submitted that the punishment that has been granted to the Driver was only reduction to the lower grade for 2 years and therefore, applicant's punishment is disproportionate. Counsel for the respondents, on the other hand, submitted that the punishments given to the Driver and the applicant are for

different offences. The charge of consumption of alcohol while on running duty was proved against the applicant; and therefore, the punishment is in tune with the gravity of the offence.

5. On going through the merits of the case as to the consumption of alcohol, it is averred that though 0.025% of alcohol was found in applicant's blood, that does not debar the applicant from doing his duty as per safety point of view in terms of the Railway Board's circular dated 20.7.2001. The Ministry of Railways, Railway Board has issued the revised policy on '**Drunkenness on duty**', the relevant provisions of which are reproduced herein below:-

"5 Deterrent Aspects of Revised Alcohol Policy:

- (iii) Post Accident medical examination will give employees involved the opportunity to proving that alcohol played no part in causing the accident.
- (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.

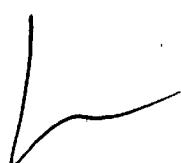


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(iii) Whether his state is due, wholly or partially, to a pathological condition, which causes symptoms similar to those of alcoholic intoxication, irrespective of the amount of alcohol consumed.

(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.

At Para 3.1.4 of the Brief (Annexure-G) duly signed by the defence counsel of the applicant it is stated "Had the Case been so the Forensic Report after Blood Testing could not have detected 0.025% but would have been at higher percentage." At 3.1.5 of the said brief it is stated as "This 0.025% can be analysed to be ONE FORTIETH FRACTION OF ONE PERCENT and that too was estimated by the Forensic Department". Counsel for the applicant submitted that thought the Revisional authority had reduced the applicant's punishment, his 23 years of service has been ruptured and he has been directed to be reinstated as fresh hand with new training thereby putting the applicant to great hardship, and therefore, the punishment is not proportionate to the gravity to the offence. He also submitted that the punishment of reduction to lower grade for two years that has been given to the Driver for his proved guilt was so meager compared to the punishment imposed upon the applicant even by the Revisional authority. The Revisional authority, while reducing the



punishment, has stated that the gravity of offence of the applicant is lesser than that of the Driver who was in command of the train and opined that the applicant deserves an opportunity to upgrade his alertness and skills and he may be given an opportunity to improve his performance and dedication to duty. Therefore, punishment imposed by Revisional authority is also on a higher side.

6. It is a well settled legal position that "if there are more than one delinquent against whom charges have been levelled, the authority should not have imposed different punishment against each of them". Even though the imputation of charges are slightly different in case of the Driver and the applicant, the Driver was found guilty and he was imposed a lesser punishment whereas the applicant was given severe punishment even as per the Revisional order. These different punishments shock the consciousness of this Tribunal. Considering the aspect of mild alcoholism and the findings of the Enquiry Officer that "Sri Kalita called out the Signal aspect and, as such, the charge for not calling out of signal aspect is not established" also supported by the findings of Accident Committee Report that "the DAD was not responsible for overshooting the Signal but he was responsible only for consumption of Liquor", and the observation of the Revisional authority that "The gravity of the offence of Shri Kalita is lesser than that of Shri

Borah who was the Driver in command of the train.", we are of the view that the punishment imposed upon the applicant is disproportionate to his gravity of offence and the applicant cannot be awarded a higher punishment than that of the Driver. Therefore, a punishment of reduction for two stages for one year without break in service with notional benefits, would be sufficient in the case.

7. Reliance is also made in a reported decision in the case of Dev Singh vs. Punjab Tourism Development Corporation and Another (2003) 8 SCC 9 relevant portion of which is reproduced below:-

"In such a situation to award the extreme punishment of dismissal according to the learned counsel would not only amount to a disproportionate punishment but also should disturb the conscience of this Court. The learned counsel in support of his argument, that it is open to the superior court to interfere with the quantum of punishment in a given set of facts, has relied upon the judgments of this Court in the case of *Bhagat Ram v. State of H.P.*¹, *Ranjit Thakur v. Union of India*² and *U.P. SRTC v. Mahesh Kumar Mishra*³.

6. A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment

with cogent reasons in support thereof. It is also clear from the abovenoted judgments of this Court, if the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case."

8. In the conspectus facts and circumstances of the case, we are of the considered opinion that the punishment imposed upon the applicant even by the Revisional authority is disproportionate to the gravity of the offence, and therefore, we direct the appellate authority to consider the case of the applicant afresh bearing in mind the above observations and pass appropriate orders within a time frame of three months from the date of receipt of the order.

The Original Application is partly allowed as above. In the circumstances there is no order as to costs.



(GAUTAM RAY)
ADMINISTRATIVE MEMBER



(K.V. SACHIDANANDAN)
VICE CHAIRMAN

18 JUL 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH, GUWAHATI.

189
O.A. No. 189 of 2005.

Sri Udhab Chandra Kalita.....Applicant.

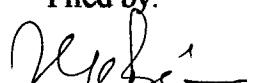
-VRS-

Union of India & Ors.Respondents.

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Filed by.

(K.K.Biswas)
Advocate.

Place : Guwahati.

Date 15-07-2005.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.
GUWAHATI.

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

O.A.No. 189 of 2005.

Sri Udhab Chandra Kalita.....Applicant.

-Vrs-

Union of India and Others.....Respondents.

Chronological Dates & SYNOPSIS.

Sl. No.	Date.	Particulars.	Annexure.	Page.
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1.	17.12.02.	Applicant booked to work in UP NGC/Cement with Loco No.14965 WDG 3 T/LD-101 X New Bongaigaon to New Guwahati with the Driver of Said Train Sri J.R.Bora, for his assistance.	-----	
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-nical Engineer, N.F.Railway, Maligaon,
for justice and redressal of the sufferings.
Filing of O.A.No.183/04. Annexure-N. 57

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22.

Joining Report on Annexure-R - 61
being Re-instated in Service

Place : Guwahati.

Date : 15.03.05.

Filed by :


(K.K.Biswas)
Advocate.

18 JUL 2005

Guwahati Bench

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

Filed by
Mr. B. Chakraborty
15/9/2005
Advocate

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

O.A.No. 189 of 2005.

Sri Udhab Chandra Kalita,
Asstt. Loco Pilot (DAD)/NGC
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. Nagaon, Assam.
5. The Addl. Divisional Railway Manager of N.F.Railway, Lumding, P.O. Lumding, Dist. Nagaon.
6. The Senior Divisional Mechanical Engineer, N.F.Railway, Lumding, Dist. Nagaon, Assam.
7. The Divisional Mechanical Engineer (Power), N.F.Railway, Lumding, Dist. Nagaon, Assam.

-----Opposite Parties.

Contd.....p/2.....Details.....

Ch. Kalita
B. Chakraborty

DETAILS OF APPLICATION:

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

The revisioning orders passed by the Chief Mechanical Engineer, N.F.Railway, Maligaon, the Respondent No.2, which was communicated by Senior Divisional Mechanical Engineer, N.F.Railway, Lumding, the Respondent No.6, vide his letter No. TP/3/LM/1-13/2002 (other) dated 22.4.05- impugned.

Copy of the above order is annexed as ANNEXURE-R/1

2. **Jurisdiction:**

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

3. **Limitation:**

The Applicant submits 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 has been working as Diesel Assistant Driver (DAD/NGC) in Scale Rs.3050-4590/- in the Mechanical Dep'tt. of NF.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.

Advocate
M. J. Sarker

Elonkab Ch. Kalia

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, and the Sr. Divisional Mechanical Engineer, Alipurduar Junction put both the Driver 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.Railway, 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 Service Conduct Rules of Railway, 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 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 undergo 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 ~~That is,~~ $0.025\% \text{ or } 1/40\%$ 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 Railway 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.

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

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NIP No. TP/3/LM/1-13/2002 (other) Dt. 15.5.2003 following a Show Cause Notice of even No. dt. 21.4.2003.

and NIP
Copies of the above Show Cause Notice are enclosed as **ANEXURE-H2I**

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-J**.

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 Safty 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-K**.

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

show cause Notice and thereby oblige this charged official.

Copy of the Interim Reply quoted above is submitted as **ANNEXURE-L**.

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 in to 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.

Copy of the above punishment order is enclosed as **ANNEXURE-M**.

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 was heard from the Chief Mechanical Engineer/ N.F.Railway/Maligaon, and, hence, an O.A. No. 183 of 2004 was filed before the Hon'ble Tribunal for justice.

Copy of the above representation is enclosed as **ANNEXURE-N**.

Contd.....p/8.....That during.....

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 Mr. *[Signature]* Advocate
 Mr. *[Signature]*
 M. Kalita
 M. Kalita

4.20. That during the pendency of the O.A.No.183/04 when the Hon'ble Tribunal was pleased to direct the Respondents for producing of relevant records(copy of the said order is annexed as **ANNEXURE-R/2**) to examine the merits of the case and adjudicate the matter, the Senior Divisional Mechanical Engineer, Lumding, the Respondent No.5, communicated the decision of the Revisioning order by the Chief Mechanical Engineer, N.F.Railway, the Respondent No.2, vide his letter No.TP/3/LM/1-13/2002(other) dated 22.4.05 recommended the punishment of the Applicant "to reduce the compulsory retirement to reduction to lowest in the Grade of DAD" and "the Pay and Seniority of the Applicant will be fixed as that of a new recruit DAD after completion of training" and disentitled him to any back wages on his being reinstated on sympathetic ground and the period of his removal till date of his reinstatement will be treated as dies-non, albeit, the Revisioning Authority in his recommendation and order has candidly mentioned "*the gravity of the offence of Sri Kalita is lesser than that of Sri Bora who was the Driver in Command of the Train. The punishment of compulsory retirement of Sri Kalita is, therefore, too severe in this case. As DAD, Sri Kalita in my opinion, deserves an opportunity to upgrade his alertness and the skills. Keeping this view in mind I consider that natural justice and development of one's employees to get the best out of them, dictate that Sri Kalita may be given an opportunity to improve his performance and dedication to duty.*" But at the same time recommended that his consideration was to give a reinstatement of Sri Kalita "as that of a new recruit DAD" and, that too, "after completion of training" and "*this reduction in punishment does not entitle him to any back wages.*"

Copy of the above mentioned letter containing the Chief Mechanical Engineer's Orders is annexed as **ANNEXURE-R/1**.

4.21. That it is humbly submitted that the impugned order of the Respondent No.2 is full of inconsistencies and has not been passed on after careful consideration of all aspects and with proper application of mind to reflect "*fairness of administrative action*" and for which reason the Applicant has to loss of his previous 23 years of sterling services culminated at the cause of the Administration with loss of

seniority, promotional prospect, fixation of pay and the wages for the period of his compulsory retirement made by the ADRM, the Respondent No.5, till such time the reinstatement of the Applicant in service was made.

4.22. That the Applicant with a view to save his family from the clutches of starvation and far reaching economic consequences of the family members including education and medical treatment of the children the Applicant joined his service on 5.5.05 on being reinstated by the Respondent No.2, the Revisioning Authority.

Copy of the joining letter of the Applicant is enclosed as ANNEXURE-

4.23. That the above order of the Revisioning Authority has given the severe punishment to the Applicant when the gravity of the offence of the Applicant was lesser than that of Sri Bora who was the Driver in Command of the train which was admitted by the Revisioning Authority himself in his recommendation as reflected in the aforementioned letter placed as ANNEXURE-R/1, it is respectfully submitted that the said Driver Sri Bora has not lost his seniority in service and backwages, but the Applicant, who was not at all held responsible by the Enquiry Committee and all other authorities save and except the ADRM i.e. the Respondent No.5, *who was influenced by the extraneous consideration of the Senior DSO of the Alipurduar Junction, which is highly prejudicial for causing procedural lapses and to vitiate the entire DAR Proceeding as per DAR, 1968, has been punished to lose his 23 years of service with loss of seniority, promotion, pay and backwages and to be treated as "a new recruit DAD" and that too "after completion of training", although the Applicant was ordered for reinstatement in service "on sympathetic ground", though not responsible equally with the Driver Sri J. Bora.* for the aforementioned cause of incident as opined by the Revisioning Authority himself.

4.24. That it is humbly submitted that the Applicant's punishment by the Respondent No.5 was for Compulsory Retirement but no "**Removal**" as reflected in the impugned letter. In this connection it is humbly submitted that there is a gulf of difference between the Compulsory Retirement and "**Removal**" within the ambit of Service Jurisprudence and the Revisioning authority knowing it fullywell

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has mentioned in his impugned order only to assert the gravity of punishment. This is highly painful to the Applicant to bear such grave and severe punishment in the name of re-instatement in service.

4.25. In this connection the Applicant begs to submit that the Applicant was not the Driver and as per prevailing system of the Railways and General Service Rules Rule 9.79, 9.80, 9.81, 9.89, 9.06/2, 9.06/3, 9.07 for operating under No..... a Diesel Assistant is only to assist the Driver at his requirement and act only as per his need and advice while running on a train. 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*". This aspect was also not perused by the Revisioning Authority. The Applicant has already detailed in the foregoing paras what has happened during the material date and time of the incident of the UP NGC Cement with Loco No.14965 W DG3T/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. There was no question of "safety of hundred passengers is involved" as stated by the Respondents earlier, and no casualty and no loss of whatever nature, whether man or materials, save and except detention of the train for about 2 hours. It is submitted herein that only for this reason one sincere and dedicated employee can not lose his job either by Compulsory Retirement and when reinstated can not lose his seniority and all other benefits of the past 23 years of his services rendered with credit and now to be treated ~~and expeditiously~~ as a new recruit to start career afresh as opined by the Revisioning Authority in the impugned letter with all humility, regards and gratefulness to the Revisioning Authority the Applicant feels it to be expedient and painful necessity that his order is not free from DISCRIMINATION, DISPROPORTIONATE, DISDAINFUL, DICHOTOMOUS AND DISDAINFUL.

4.26. That the Applicant begs to state that 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% i.e. 1/40th fraction of a percent in the blood of the Applicant by Forensic examination was found which might have been due to regular taking of cough syrup during winter season prescribed by his family Physician. The Respondents may be directed to produce

the report of the Enquiry Officer, Accident Committee report and the Forensic Expert Report before this Hon'ble Tribunal to take stock of the whole case and for unveiling the truth *so as to understand that the Applicant was exonerated of all liability for causing the said incident of disregarding the signal* 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 were not given to the Applicant and the punishment of Compulsory Retirement was done without supplying him the required documents and also on the "*interim reply*" Show Cause Notice issued to the Applicant on 28.8.03 by the Divisional Mechanical Engineer (P), N.F.Railway, Lumding, the Respondent No.7 in this OA. This was a sheer case of malfide and arbitrary action of unfair play of the Respondents at all levels 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, even the Revisioning Authority ie. Respondent No.2, while issuing the impugned letter has also not applied his mind properly and profoundly to test the veracity ^{of the} statement of the Applicant and examine the "totality of all records of past" of the Applicant before his recommendation for reinstatement in service from the punishment of Compulsory Retirement of the Applicant but as a new recruit DAD after training with the forfeiture of all his previous benefits, and that is after lapse of a year and, that too, during pendency of the earlier O.A. at its fag end only to put the Applicant in other troubles.

4.27. That in this connection it is reiterated that the decision of the Revisioning authority, ie. the Respondent No.2 in this O.A., was not only discriminating and disproportionate for the Applicant in comparison to the punishment imposed upon the Driver Sri J.R.Bora. The Revisioning Authority should have carefully gone through the Railway Board's Circulars in connection with the DAR Proceedings and other relevant Rules before recommending his decision for reinstatement of the Applicant in service as "*new recruit*" with loss of his 23 years of service and forfeiture of backwages for more than a year which had invited more severe punishment than that of the Driver Sri J.R.Bora.

4.28. That it is humbly submitted that the Railway Board vide their Circular E(D and A) 70 RG 6-41 dated 20.10.71 E(D and A) 78 RG 6-11 dated 3.3.78 and E(D and A) 78 RG 6-11 dated 16.10.80 repeatedly instructed and cautioned the Zonal

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Railways that the concerned authority involved in the DAR Proceeding should follow the Statutory instruction so that all reasonable opportunities are given to the charged official, and no bias is caused and no *Principle of Natural Justice* denied under any circumstances and at any cost and it can not be influenced by any *extraneous consideration* and/or pre-judgment of guilt before all opportunities to be availed of by the charged official for its defence. But the Appellate Authority, i.e. ADRM/Lumding, the Respondent No.5 in this O.A., was not only influenced with the "extraneous consideration" by taking advise from the Senior Divisional Safety Officer, Alipurduar Junction and the Memo issued by the Senior Divisional Mechanical Engineer, Alipurduar Junction, and with the advice of DRM/Alipurduar Junction and acted both as Appellate Authority and as Revisioning Authority. His orders as annexed as ANNEXURES-M,O are clear proof of such arbitrary and whimsical action in a DAR proceeding as reflected in the ANNEXURE-K and hence, liable to vitiate the entire DAR proceeding as per DAR,1968. It is astonishing and equally penetrating that the Chief Mechanical Enginner, N.F.Railway, the Respondent No.2, being the head of the Mechanical Department has also not gone through the records in details and in depth; rather, exercised his jurisdiction and power of Revisioning Authority only by seeing the apparent punishment order imposed upon the Applicant by the Disciplinary Authority and the Appellate Authority.

4.29. That the Applicant prayed before the Chief Mechanical Engineer vide his representation, as annexed under Annexure-L, that justice to be shown to the Applicant by the Revisioning Authority only after going and examining of the relevant records and considering the gravity of the case for the Applicant. But though he was kind to quash the punishment of Compulsory Retirement as imposed by the ADRM/Lumding, the Respondent No.5, but at the same time put him to be treated a new recruit and to forget about his past service of 23 years record with loss of seniority and backwages as mentioned in the impugned letter. This was not at all desirable from such a high echelon of service and the principal Head of the Department by a humble and dedicated employee who has culminated a sterling service of 23 years record at his credit and there had never such any occasion to allege any blame for his performance as a Railway employee in the

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capacity of a Diesel Assistant. *This* of the Revisioning Authority i.e. the Respondent No.2, as reflected in the impugned letter was not only appropriate but also is unfair, unjust and unkempt though he himself has appreciated in his said revision that the "*gravity of the offence of Sri Kalita is lesser than that of Sri Bora.*" In this connection it is reiterated and humbly submitted that Sri Bora being responsible for such overshooting of the "signal on starter position" was punished only for reduction to lower Grade only for 2 years and without losing anything of his seniority and past service whereas the Applicant has been victimized with "*lesser offence*" as opined by the Revisioning Authority, the Respondent No.2, to face dire consequences of everything inspite of his 23 years of service save and except only reinstatement in service and that too "*as a new recruit* ~~of DAD after completion of training~~".

4.30. That the Applicant had tried to highlight all those submissions mentioned in the foregoing paras before the Hon'ble Tribunal in his earlier O.A. when it came for hearing; but their Lordships were "**not inclined to afford**" any opportunity to the Applicant "**to amend the application**" but "**is free to challenge the order dated 20.04.2005 in separate OA**" for the "**fresh cause of action**" arisen because of the impugned letter. And hence this new O.A. is for justice of their Lordships.

Certified true copy of the Hon'ble CAT/Guwahati's order is annexed as R/3.

4.31. That it is humbly submitted that for the alleged one offence several punishments were given by several authorities right from the cause of incidence to the orders of the Revisioning Authority which can be summarized as under :-

(i) **Suspension.**

That immediately after the cause of the aforementioned incident the Applicant though under the control of the Divisional Railway Manager, Lumding, was put under suspension by Senior DME/APDJ and communicated by the Divisional Railway Manager, N.F.Railway, Alipurduar Junction vide his XXR Memo dated 17.12.02 although the incident caused at .50 hours on 18.12.02. It indicates that the DRM/APDJ prior to happening of the incident smelt its

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probability and that was why before hand issued the said XXR Memo.

Photo copy of the XXR Memo mentioned above is annexed as **Annexure A-B**

(ii). Charge Sheet.

Immediately after one day of issuing of the Suspension Order by a separate Division who had no official control over the Applicant as mentioned in the foregoing Para, the Divisional Mechanical Engineer (Power), NF.Railway, Lumding issued a Memorandum of Charge-Sheet vide his No. TP/3/LM/1-13/2002 (other) dated 19.12.02. without making any preliminary and fact-finding enquiry.

Photo copy of the said Charge-Sheet is annexed as **Annexure A**

(iii). Suspension period.

Though the Divisional Mechanical Engineer (Power), N.F.Railway, Lumding vide his letter of even No. Dt. 15.5.2003 informed the Applicant that the suspension period from 17.12.02 to 15.5.03 was treated as suspension, This is ridiculous that how the said period was regularized though in the subject of the said letter it was mentioned "regularization of suspension period ". Here again the Disciplinary Authority put the date as 17.12.02 instead of 18.12.02 i.e. one day ahead of the actual date of happening of the incident.

Photo copy of the said letter is annexed as **Annexure-D1.**

(iv). Findings of the Enquiry Report.

The Enquiry Officer though did not held the Applicant responsible for "the charge not calling of the signal aspect", came to conclusion that the Applicant consumed alcohol as per the blood report and as per Charge-

Sheet but he had not himself verified with all other aspect of Breath Analyser etc. which is required for examining the person put on duty in running a train, and not examined any material witnesses necessary as per DAR, 1968 to arrive at his conclusion that the Charged Official consumed alcohol. Herein it is submitted that the Hon'ble Apex Court in Hardwari Lal -Vs-State of UP and others, reported in AIR 2000 SC 277, held that "non examination of vital witnesses shall result in non-observances of Principles of Natural Justice.".

A photo copy of the Enquiry Report is annexed as **Annexure-E**.

(v). Notice of Imposition of Penalty for reduction to lower stage :

The lower stage of Rs.4430/- in scale Rs.3050-4590/- was ordered for 2 years with loss of seniority by the Divisional Mechanical Engineer (P)/Lumding being the Disciplinary Authority vide his order No.TP/3/LM/1-13/2002 (other) dated 15.5.03 without waiting for the decision of the Appellate Authority in the appellate stage though gave a chance for preferring an appeal within 45 days on receipt of the said letter, duly disagreeing with the findings of the Enquiry Officer. The Disciplinary Authority has not recorded the reasons for his disagreement with the Inquiry Officer which is required as per DAR, 1968. In this connection it is submitted that the Hon'ble Gauhati High Court in the case of Dinesh Singh-vs- S.P, Imphal West and others, reported in 2001 (3) GLT 172 held that " the Principles of Natural Justice as well as the Provision of reasonable opportunity is provided under Article 311(2) of the Constitution made it incumbent or Disciplinary Authority to indicate his reason to indicate his reason as to why he intended to differ from the findings of the Enquiry Officer, and as such opportunity had to be given before he took final view in the matter". In the said judgment it was further observed "the Disciplinary Authority must record reasons for his disagreeing with the findings of the Enquiry Officer". In the said judgment quoting the reference of Hon'ble Supreme Court in the case of State of Rajasthan-Vs- M.C.Saxena, it has been motioned there that "Where the

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Disciplinary Authority intends to differ from the findings of the Enquiry Officer, he has to undertake his tentative view when he intends to differ from the findings of the Enquiry Officer as well as Delinquent Officer so as to enable him to make a representation against such tentative view and a reason, and after considering such representation of the Delinquent Officer regarding his findings on the charge(s) against the Delinquent Officer either differing from the findings of the Enquiry Officer or agreeing with the Enquiry Officer.”

Photo copies of the said order for imposition of penalty is annexed as Annexure H, J following a Show Cause Notice dated 21.4.03.

(vi) **Appellate Stage.**

In the appellate stage Additional Divisional Railway Manager, Lumding suo motu acted both as Appellate and Revisioning Authority, although the Appeal was preferred to the Senior Divisional Mechanical Engineer/Lumding by the Applicant as he is the next higher authority after the Disciplinary Authority.

Copy of the Appeal is annexed as Annexure K, J

In the appellate stage the Appellate Authority who had acted as the Revisioning Authority arbitrarily and without following any Rules of DAR enhanced the punishment of **Compulsory Retirement** “as brought out by Senior DSO (APDJ) as per Railway Board’s norms” as “ the penalty imposed by Disciplinary Authority to Sri J.R.Bora, Driver (G)/NGC, Sri U.C.Kalita, DAD/NGC is not commensurate with act of omission/commission”

Here it is humbly submitted that Sri J.R.Bora, Driver has not lost his services where as the Applicant’s service was taken out by the Additional Revisional Railway Manager.N.F.Railway, Lumding who had acted both as Appellate and Revisioning Authority on his own accord and ,that too, without following the procedural laws for making Compulsory Retirement, only to victimize the Charged Official, herein the Applicant.

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Photo copy of the Notice of proposal to enhance penalty is annexed as **Annexure-L**.

(vii) **Revisioning Authority's order :**

The Applicant is very much grateful to the Revisioning Authority, i.e., the Respondent No.2, that at least he had realized the case and understand the injustice caused to the Applicant. But at the same time the Revisioning Authority's order passed by the Respondent No.2 duly communicated by Senior DME/Lumding (Divisional Railway Manager (M), N.F.Railway, Lumding) from the office of DRM(M)/LMG vide No.TP/3/LM/1-13/2002(other) dated 22.4.05 as impugned as **Annexure-R/1** is a colourable severe weapon in the name of "reinstatement of service" to snatch away everything of the Applicant, namely, loss of his previous 23 years service, to start a career as a new recruit DAD after completion of training, loss of seniority and promotional aspect, loss of backwages from the period of compulsory retirement till reinstatement, loss of pay and allowances by more than 50% every month at a time in the name of reinstatement in service by converting the punishment of compulsory retirement.

Copy of the above order is annexed as **Annexure-R/1**.

4.32. That to sum up the grievances of the Applicant, the following procedural lapses, inter-alia caused by the Respondents right from the Inquiry Officer to the Revisioning Authority in the DAR case of the Applicant, and in addition to denial of Natural Justice and violation of all statutory laws and Rules and the protection of Fundamental Rules within the ambit of service jurisprudence are furnished below:-

(i) According to the Rule of the DAR the list of witnesses to be examined are to be mentioned in the Memorandum of charges, but the Memorandum of charges issued to the Applicant (vide Annexure-B) has not indicated any categorical names of the witness to be examined. The Enquiry Officer though in his report at page 4 mentioned some of the names for taking evidence, but, in fact, it reveals that those persons' evidence were not

recorded save and except the evidence of the Applicant and his Defence Counsel. Thus the Charged Official, herein the Applicant could not get any chance in respect of the Statutory Provisionof DAR,1968 and thus the Public Services Inquiries Act,1850, Rule 10, 13 and 16 were violated. This was a serious procedural lapse in the Inquiry stage in addition to the Enquiry Officer's conclusion without seeing the Breath Analyser and Forensic Expert Report that the Charged Official, herein the Applicant, consumed alcohol during the material date and time of the cause of incident.

(ii) Since it was termed as "accident" there should have been a fact finding Enquiry Committee, a preliminary Enquiry Committee, and a Departmental Enquiry Committee as per provision SAR 213/3 Of the Railway Accident Manual. But the Charged Official, herein the Applicant, was not informed anything about the conducting of any fact finding or preliminary enquiry Committee before initiating the Departmental Proceeding for taking up the charged official as per DAR, 1968. This is another serious lapse so far the DAR Proceeding in regard to a train accident and, hence, to be bad in the eye of law and liable to vitiate the entire DAR Proceedings.

(iii) When the Disciplinary Authority is not Enquiring Authority and when it should render its own findings after the receipt of the report and findings of the Enquiring Authority it shall give every reasonable opportunities to the Railway Servant to make his representation, in other words to give him a reasonable opportunity to assail the findings of the Enquiring Committee " as opined by their Lordships in the High Court of Madras in Railway-Vs- Murugan and Alkondan's case reported in 1984 WLR 307 and reproduced in the Full Bench Judgment of CAT in the Volume containing 1986-89. Such a punishment, as reflected in the said order " will have to struck down as violative of Article 311 of the Constitution of India and thus " the entire proceeding against the Applicant from the stage of issue of Show Cause Notice stands vitiated." The instant case of the Applicant stands on the same footing of the said orders and, hence, are liable to vitiate the DAR Proceeding.

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(iv) The Respondent No.3 while communicating the Railway Board's directions under his No.DAC/389/E/74/C-PXII© dated 24-9/10-83 mandatorily instructed to all concerned that " it is the Statutory duty on the party of the Disciplinary Authority to follow the Prescribed Rules and Procedure while initiating action against the delinquent Railway Servant whether for major or minor penalty. Similarly while acting as an Enquiring Official the details of the Procedure prescribed in the Rules and various clarification from the Board should be scrupulously observed by them so that there is no scope of complaint on the ground of failure of Natural Justice or affording reasonable opportunities". The Railway Board in their Circular No E (D & A) 70 RG 6-41 dated 20.10.71 categorically mentioned that there should be "*examination and cross-examination of witnesses, where there is no Presenting Officer.*" It is submitted that in the instant case there was no Presenting officer and the Charged Official herein, the Applicant did not get any opportunity and/or scope to examine and cross examine the witnesses to find out the truth in the charges against his delinquency.

(v) In relation to an Accident's Case, as indicated in the provision *SAR 213/1 as per the by Accident Manual* there should be a Presenting/Presiding Officer. But in the instant case of the Applicant there was no Presenting Officer and hence there remains a serious lacuna in the Proceeding as per Rules 9(9)(c), 9(12), 9(20) & 9(22) of SAR Rules, 1968.

(vi) There is in all celebrated judgments of the Apex Court it is mentioned that there should be a preliminary enquiry before issuance of a charge-sheet particularly, where a memorandum of charges for major penalties was issued so as to ascertain whether a *prima-facie* case exists for issuing a formal chargesheet and holding a regular enquiry. But in the instant case there was no preliminary enquiry before the charge was issued to the delinquent, herein the Applicant.

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(vii) The Disciplinary Authority was influenced by the extraneous consideration of the Senior DME, Alipurduar Junction by seeing his XXR memo as mentioned above and without going any other details of the cases including the Enquiry Officer's report, Accident Committee Report, and Forensic Expert Committee's report and also the Railway Boards instructions in regard to the consumption of alcohol for taking up a Railway staff, had gone with his own decision and imposed the punishment of reduction to lower stage to the Applicant which he should not ought to have been without being convinced by his own analytical study of all records and examining them in details after careful application of his mind so as to arrest miscarriage of justice and or injustice and to denial of the principle of Natural Justice to a Charged Official while dealing with a Memorandum of Major Penalty Charges.

(vii) According to the Railway's Accident Manual the cause of interruption to traffic contract over one hour has to be treated as "Accident" as per Rule (2)(C) of 101 and thus the subject incidence would come under the purview of accident. And hence, in all accident cases there should be Joint and Departmental enquiries and the witnesses to be examined and their deposition recorded along with other essential requirements regarding day, time, description of the accident etc. in details so as to examine the loss or damages to the man and materials including disruption of the traffic, and an Accident Committee for the purpose should be formed to enquire, examine and submit a report to the concerned authorities to take appropriate measures according to the nature and gravity of all accident. In the Accident Committee report in the instant case the charged official, herein the Applicant, was not held responsible for the aforesaid cause of incidence. According to the said report there was only a detention of the said train for about a couple of hours, which is purely and certainly a minor offence. And for such minor cause of offence a sincere and dedicated employee can not lose his job or face major consequential advertcities from the concerned authorities in deciding his fate while dealing with DAR cases.

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(viii)(a) General Rules, 1976 for Indian Railways, Subsidiary Rules, which was updated by the North East Frontier Railways in 1982, which is in fact the Gita or the Bible or the Quaran of the Railway Officials who are directly involved in operating, controlling or running a Train. According to the said General Rules, Rule 3.79 says "The driver of a train shall be guided always by the indication of the STOP SIGNAL below which the Calling-ON SIGNAL is fixed. If this STOP SIGNAL is at "ON", he shall bring his train to a stop. If he finds that Calling-on Signal is taken "OFF", he shall, after bringing his train to a stop, draw ahead with caution and be prepared to stop sort of any obstruction."

(b) Rule 3.80 says "The Driver of a train shall not pass an Outer, a Home or a Rotating Signal that refers to him, when it is "ON" or defective".

(c) Rule 3.80(2), says "the Driver of a train while passing an "Outer, a Home or a Rotating Signal", when it is "ON" or defective, shall ensure that the speed of the train does not exceed 15 KMs. an hour.

(d) Rule 3.81 further stated the duties of a Driver when on departure STOP SIGNAL is "ON" or defective :-

(e)(i). "The Driver of a train shall not pass a departure STOP SIGNAL that refers to him, when it is "ON" or defective, unless his train has been brought to a stop at the Station where the defective Signal is situated and he is authorized to do so-

- a) By a written permission from the Station Master, or
- b) By taking "OFF" the Calling "ON" Signal, if provided under approved special instruction vide Sub-Rule (2) of Rule 3.13.

(ii) In the case of a Starter, or Advanced Starter protecting points, he shall not pass such signal, when "ON" or "Defective", unless he also receives a Proceed hand Signal from a duly authorized member of the Station Staff posted at the Signal.

iii) In the case of last Stop Signal, he shall not pass such Signal " when "ON" or Defective unless he is also in a position of a proper authority to proceed under the system of working."

Here on all those Rules, it is humbly submitted that the duties and responsibility of a Driver has been particularly and candidly mentioned and nowhere it could be found that a Crew or an Assistant of the Driver is to discharge of all those findings and be held responsible, as had had in the case of the Charged Official herein the Applicant. In this connection it is stated further and with humble submission that the Assistant of the Engine Crew regarding signal has been very candidly and meticulously mentioned under Rule S.R. 3.83 wherein, it has been stated that :-

- i) "The Driver and the First Fireman or the Assistant Driver as the case may be, shall identify each signal affecting the movement of the train as soon as it becomes visible. They shall call out the aspect ,of the Signal to each other.
- ii) The Assistant Driver or the Fireman shall, when not otherwise engaged ,assist the Driver in exchanging Signal, as required.
- iii) The provisions of Sub-Rules 1 and 2, shall, in no way, absolve the Driver of his responsibility in respect of observance and compliance with the Signal".

Despite the above categorical provision in respect of the responsibility of the Fireman who is now a Diesel Assistant Driver, the Charged Official, herein the Applicant, has been held responsible and punished more severely and seriously than that of the Driver whose prime duty and responsibility it was to operate the Train and control it when the Starter Signal was in "ON" position at Rangiyra at 0.50 hours on 18.12.02. Instead the Applicant has been repeatedly victimized right from the Enquiry Officer to the Revisioning Authority's decision which are, based on whimsical, arbitrary, unfair and extraneous consideration with the motive of pre-judgment guilt, which according to the Railway servant (Discipline and Appeal Rules), 1968 are liable to vitiate the entire DAR Proceeding and quash the orders of punishment at all levels.

Photo copy of the said General Rules is annexed as **Annexure-P.**

(viii) In regard to the violation to the Service Conduct Rules as mentioned in the Charge Sheet, it is submitted that Government of India's Department of Personnel and Training vide their Notification No.11013/6/85-Estt.(A), dated the 21st February, 1986 inserted the explanation of Rule 3 in the Service Conduct Rule that " A government servant who habitually fails to perform the task assigned to him within the time set for the period and with the quality of performance expected to him shall be deemed to be lacking in devotion to the duty within the meaning of (Clause-51) of Sub- Rule1" which is meant for " maintain devotion to duty".

(ix). Thus there remains to no violation of the observance of Government Policies in regard to the Service Conduct Rule as provided by the Disciplinary Authority in the aforementioned Charge Sheet and therefore remains to be no question of "unbecoming of a Government Servant". The Applicant's integrity and devotion to duty may kindly be verified and assessed from his past record and there remains to be no such lacuna which may level him for receiving such a Memorandum of major penalty charges from the Disciplinary Authority and ultimately lost his job on Compulsory Retirement by the Appellate Authority albeit it was nullified by the Revisioning Authority in the impugned order with the loss of all other service benefits in the contents of the said impugned letter.

(x). 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:

(xi) **Additional Divisional Railway Manager (herein after 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 Sri**

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DSO, as stated by himself in the punishment order, and thereby violated the mandatory provisions of DAR, 1968, and other prevailing statutory Rules.

(x) (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.

(x) (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.

(x) (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.

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(v) In respect of Para No.(x) 4.20(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 REGARDING 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.

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

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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 forwar4d 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.
copy of Medical Certificate is enclosed as Annexure Q.

(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.

4.33. 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/I-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 (Others) Dt.18.5.2004 are submitted as Annexure- K & O.

4.34. That the Railway Board in their Circular 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.

4.35. 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

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necessary steps on time. Thus the Driver was fully responsible in the instant case, as is evident from the findings of the enquiry Report, Accident Committee Report, Forensic Expert Report and records of the proceedings and as per Rules of the Railway's "General & Subsidiary Rules" mentioned above

4.36 In this connection it is humbly submitted that a personal hearing before disposing of the Appeal is required to be given as per Section 24 of the Railway Service (Discipline and Appeal) Rules, 1968, hereinafter be mentioned as DAR, 1968. But in the case of the Applicant there was no personal hearing given by any of the Disciplinary Authority at its any stage before imposition of their punishment order to be inflicted upon the Applicant.

4.37. It is submitted that to deny the copies of statements, as observed by their Lordships in the Hon'ble Supreme Court in case of Union of India-vs- Ravi Dutt, reported in 1973 (i) SLR 1222, would mean the denial of right to defend the Charged Official by effecting cross-examination by using the previous system and the system is defined to exercise the right to Article 311(2) of the Constitution of India and in lieu of which it would be tantamount to the violation of the Rules of Natural Justice and, therefore, are required to be followed by an Appellate Authority in dealing with a DAR case. This decision of the Hon'ble Apex Court has been reaffirmed and confirmed in the case of Divisional Personnel Officer-vs- T.R.Challappan reported in AIR 1975 SC 2216.

But it is really painful to note that in the order of the ADRM, who has acted both as Appellate and Revisioning Authority in his own accord, has categorically mentioned that the copies of documents as prayed for by the Charged Official, herein the Applicant in his interim reply Dated 27-8-03 (Annexure-L), was not necessary to supply to the Applicant and thereby proved his arbitrary and capricious action in passing the orders of the punishment to the Applicant in his Compulsory Retirement which, in fact according to the Disciplinary Appeal Rules and all statutory laws, Rules and Procedure are liable to violate the entire DAR proceeding and thereby quash his orders of punishment imposed upon the Applicant arbitrarily

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4.38. The Pre-matured Retirement or the Compulsory Retirement can only be initiated by the Appropriate Authority if it is in the "Public Interest" to do so, by giving an employee prior Notice in writing, to retire that employee on the date on which he completes 25 years of qualifying service or attains 58 years age or on any date thereafter to be specified in the Notice, and the period of such Notice shall not be less than 3 months- as observed by their Lordships in the Brijmohan Singh Chopra – Vs- State of Punjab, reported in (1987) 2 SCC 191.

(i) It is not understood as to what "Public Service" was caused for imposing the punishment of Compulsory Retirement to the Charged Official, herein the Applicant as mentioned in the foregoing Paras. This is completely a violation of Statutory Rule and the sheer example of Procedural lapse which is liable to vitiate the entire DAR Proceedings. Moreover in the said punishment order of Compulsory Retirement "the influence of extraneous matters" is apparently visible on the records itself and as committed by the Appellate Authority i.e. the Respondent No.5, for, any order of the Disciplinary Authorities(including Appellate and Revisional) which is influenced by the extraneous matters is also liable to vitiate the DAR Proceeding, as opined by their Lordships in the Supreme Court in the Case of Smti. S.R.VenkatRaman –Vs- Union of India and others, reported in 1979(1) SLR 130. In another case of K.Kandaswamy-Vs- Union of India and another, their Lordships in the SC, as reported in (1995) 6 SCC 162 opines that while imposing a punishment of Compulsory Retirement "the entire Service record or Character Roll or Confidential Report maintained would furnish the backdrop materials for consideration by the Government or the Review Committee or the Appropriate Authority. On consideration of the totality of the all facts and circumstances alone, the Government should form the opinion that the Government Officer needs to be Compulsory Retirement from service. But it is a painful necessity for the Applicant to mention here that no "totality of records of the service" of the Charged Official, herein the Applicant, were examined and adjudged the gravity of the offence of the Applicant by any of the Disciplinary Authorities. Hence, it tantamounts to be of violation of D.A Rules and therefore liable to vitiate the DAR Proceedings in all.

(iii) At the Revisioning stage, the Revisioning Authority, Respondent No.2, has also not gone into the depth of the case and examined the totality of the records on facts, circumstances and services of the Applicant. He has not properly and fairly applied his mind while setting aside the order of Compulsory Retirement imposed by the Appellate Authority and reinstated the Applicant with certain additional imposition of punishment. The Hon'ble Supreme Court in Hindustan Tin Works-Vs-The employees of Hindustan Tin works, reported in AIR 1979 SC 75, opines that "**the relief of reinstatement with the continuity of service can be granted where the termination of service was found to be invalid. It would mean that the employer had taken away illegally the right to work of the workman contrary, relevant law or any breach of contract and simultaneously deprived the workman of his earning. If the employer is found to be wrong as a result of which the workman is directed to be reinstatement, the employer could not shirk his responsibility of paying the wages which the workman has been deprived by the illegal or invalid action of the employer.**"

(iv) The Revisioning Authority should have seen as to why the Appellate Authority who is subordinate to him violated the establishment provision of Schedule of power and DA Rules and exercised both as Appellate Authority and the Revisioning Authority at the same time and in the same case of Applicant; whereas the case of Sri J.R. Bora, the Driver of the above mentioned Train, who was, according to all Statutory Rules of the Railways was responsible for the cause of incident of overshooting the signal of Starter-ON position was examined by the General Manager to exercise his Revisioning power and was punished only at the reduction of lower grade of the stage only for 2 years and without losing anything whereas all other adverse consequences were thrown upon the Applicant, even by the Revisioning Authority. This is a sheer castigation of discrimination and affording of disparity in punishment, this dis- parity and discrimination and the violation of all Procedural lapses and the Fundamental Rights of equality in the equal protection of laws and the right to employment with the right to live with its livelihood as enunciated under Articles 14,16(1), 21,inadditiontothe Articles 39(D), 41 and 43 of the Directive Principles

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and Act, 309, and the Protection of Art. 311(2) respectively of the Constitution of India were violated and thereby infringed the Fundamental Rights of the Applicant to impose punishment by all the Authorities in the instant case right from the Disciplinary Authority to the stage of Revisioning Authority. Their Lordships in another case of Bangalore Medical Trust -VS- B.S. Mudappa, reported in AIR 1991 SC 1902, the Hon'ble SC held that “ **action by non application of mind causes ultra vires and thereby vitiate the entire DAR Proceedings.**” The Revisioning Authority is not free from such flow of this “ **non application of mind**” and, therefore, his action also becomes a glaring example of Procedural lapse and thereby cause vitiating of the DAR Proceeding, and his orders, therefore likely to be reviewed to the extent of where it is not applicable for the reasons mentioned in the foregoing Paras. His action which has caused a discrimination between the two Charged Officials namely, the Applicant and the Driver Sri J.R.Bora is another glaring example causing ultra vires to the Article 14 of the Constitution of India, as per the Hon'ble Supreme Court in another celebrated case, State of Bihar - Vs-Bihar Distillery Ltd., reported in AIR 1997 SC 1511.

- (v) In another case of Collector, Allahabad -Vs-Raja Ram Joiswal, reported in (1985) 3 SCC 1, the Hon'ble Supreme Court opines “ **where power is exercised not in good faith and for extraneous or irrelevant consideration or reasons, it is unquestionable a colourable exercise of power or fraud of power and the such exercise of power is vitiated as it invites ‘malafides’, and ‘bad faith’ in a anatomy of ‘good faith’**”
- (vi) In this connection it is further reiterated that as per Rule 25(a) of the Railways Service (Discipline and Appeal) Rule, 1968- “**no order imposing or enhancing any penalty shall be made by any Revising Authority unless the Railway Servant has been given reasonable opportunity to make a representation against the penalty proposed.**” But the Revisioning Authority before recommending his case has neither called for the Applicant for his personal hearing nor for his any representation as per the said Rule and thereby by own decision and suitwill imposed the additional punishment while making

the reinstatement in service by converting and nullifying the order of Compulsory Retirement. By his order, it is humbly submitted that it would be clearly and apparently visible that the Revisioning Authority has given a struck of an axe to curtail his livelihood which has caused the infringement of Article-21 and under which there are series of decisions by the Hon'ble Apex Court and **all had gone against such unjustified and unlawful decisions.**

- (vii) This can be visible from the actions of the Authorities in the instant Disciplinary Proceedings and the actions of all the Authorities that fairness and equality of treatment were not held though all the 3 persons i.e. the Driver, the DAD i.e the applicant and the Guard of the said Train were put under suspension for the said cause of incidence, but the treatment was not done equally, rather, arbitrariness in the said action are apparently visible which is an essential element and therefore is enough to cause the infringement of Article 14 and therefore this apparent discrimination leads "**unjust**", "**unreasonable**" and "**unfavourable**" and "**bias action**" of the Authorities in the case of the Applicant for the reasons best known to them.
- (viii) The Action of the Revisioning Authority has caused "**the deprivation of right to livelihood**" according to Article 21 for causing loss of 23 years past service of the applicant with all other consequential benefits even "**the gravity of the offence of Sri Kalita is lesser than that of Sri Bora who was the Driver in command of the Train**" was admitted by the Revisioning Authority himself as reflected in the impugned letter vide Annexure-R/1.
- (ix) The Revisioning Authority, the Respondent No.2, before arriving at his conclusion in the instant case should have called for the documents and records which contained the Enquiry Officer's Report, Accident Committee's Report, Forensic Expert's Report, the circumstances and reasons for exonerating the charges of the Driver of the said Train Sri J.R.Bora and keeping him in service and making Compulsory Retirement of the Applicant

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by way of disproportionate and discriminating quantum of punishment for the alleged offence for which both the Applicant and the Driver were held responsible. The reasons with record/file to consider the case of the Driver of the said Train about the involvement of the said incident by the Driver Sri J.R.Bora and the responsibility of the Applicant during the material time and date of the incident, the reasons for not taking up the Guard Sri R.Tapno of the said train of incident though he was put under 'off-duty' but mysteriously ultimately deleted his name from the charge as has not been done to the Driver and the DAD of the said train, the Authority of Railway Board's norms as brought out by Senior DSO and reflected in the orders of the ADRM/Lumding in the Notice of Proposal of imposing punishment, communicated under No. TP/3/LM/1-13/2002 (other) dated 21.8.03, and all other material and relevant records which he could have thought and examined for and giving the impartial and fair judgment in order to keep once again to remind the Applicant and all of us that "**Daniel has come to the Judgment**".

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- (x) Once again it is humbly submitted that the Hon'ble Supreme Court in their celebrated judgment of E.P.Royappa -Vs- State of Tamilnadu, reported in (1974) 4 SCC 3, 38 gives glaring example of fairness of State action and equality of treatment by saying- "**Articles 14 and 16 strikes at arbitrariness in state action and in their fairness and equality of treatment. They require that state action must be based on valid relevant principle of applicable like to of similar situate and it must not be guided by any extraneous or irrelevant consideration because that would be denial of equality. Where the operative reasons for state action, as distinguished from motive inducing from the antichamber of the mind is not legitimate and relevant but is extraneous and outside the area of permissible consideration, it would amount to malafide exercise of power and that is hit by Articles 14 and 16**".
- (xi) That in absence of such "**non arbitrariness**" and "**brooding omni present**" of equality the denial "**Natural Justice**" would be there.

(xi) In another celebrated case of the Apex Court in Union of India-Vs- Tulsiram Patel reported in AIR 1985 Pt.II Supreme Court 1416, 1460, wherein it is stated"- the aim of both administrative enquiry as well as quasi Judicial inquiry is to arrive at a just decision and if a Rule of Natural Justice is calculated to secure justice, or to put it negatively to prevent miscarriage of justice, it is difficult to see why it should be applicable to quasi Judicial and not to administrative enquiry. It must logically apply to both. On what principle – distinction be made between one and the other ? Can it be said that the requirement of ' fair play in action' is any the less in an administrative enquiry than in a quasi-Judicial one ? sometimes an unjust decision in administrative enquiry may have fair more serious consequences than a decision in a quasi-Judicial enquiry and, hence, the Rules of Natural Justice must apply equally in an administrative enquiry which entail civil consequences"

(xii) It is humbly submitted that in the action of the Revisioning Authority the requirement of the above "fair play in action has not been found in dealing with case of the applicant and therefore his action has caused "**far more serious consequences**", and thereby deprived him of " the Rules of the Natural Justice".

(xiii) That it is humbly submitted that the castigating and discriminating policy the brazen decision and wanton attitude and action in deciding the fates of 2 employees under the similar circumstances mentioned in the foregoing Paras are candid, and, hence, leads the Fundamental Rights of the Constitution of India under Articles 14, 16, 21,39,41,43,309 and 311 (2) to cause ultra vires.

(xiv) That the fairness of administrative justice was not observed and Railway's own set of Rules flouted and violated and thereby caused "**bias**" and "**malafide**".

(xv) That the Principle of Natural Justice are denied in the case of the Applicant.

(xvi) That the Applicant craves leave of this Hon'ble Tribunal for filing additional Written Statement, Rejoinder, if necessary for the ends of Justice.

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5. Grounds for relief:

- 5.1. For that the impugned order (Annexure-R/1) of the Railway Authorities are malafide and bias and there was procedural lapses and with of inconsistencies and not according to law and Rules of service and the miscarriage of justice and non application of mind, discrimination and disproportionate punishment in the orders of the Revisioning Authority's impugned letter which is to be modified to the extent of giving full benefit as the Applicant had been enjoying prior to imposition of his penalty by the "reinstatement" of service as ordered.
- 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 impugned order was perversed on the face of it.
- 5.4. For that the impugned order was unreasonable, discriminating and with inconsistencies of decision and action.
- 5.5. For that there had been denial of administrative fairness.
- 5.6. For that procedural lapses are apparent which is liable to vitiate the entire DAR proceeding and this aspect was not taken into consideration by the Revisioning Authority while making his recommendation for reinstatement of service of the Applicant.
- 5.7. For that the impugned order and action of the Administration/Respondents more particularly the Respondent No.2 have violated the Fundamental Rights guaranteed to the Applicant under Articles, 14,16,21,39,41,43,309,310 and 311(2) of the Constitution of India.
- 5.8. For that the penalty imposed should be commensurate with the gravity of the offence alleged and there should not be any disproportionate punishment and discrimination of decision of administrative action.

Waliab Ch. Kalita

5.9. 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".

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

5.11. For that the quantum of punishment was totally and shockingly "disproportionate and discriminating" even by the Revisioning Authority as reflected in the impugned letter for the alleged offence for which both the Applicant and the Driver were held responsible, charge-sheeted, but one was faced only minor punishment for only 2 years loss of pay whereas the Applicant has been put to the dire consequences of his survival along with his members of his family by loosing more than 50% of his emoluments which according to Revisioning Authority's recommendation to be inflicted upon to start a career afresh "like a new recruit DAD" and with the forfeiture of backwages during the period of his loosing of his job till reinstatement in his service.

6. **Details of remedy exhausted:**

The Applicant declares that in the instant case he has availed of all the remedies available to him under the relevant service Rules to the best of his capability and without getting any proper relief as per law and settled principles of service Rules to his appeals and representations mentioned under the above Annexures and because of the fresh cause of action has been arisen by the impugned letter of the Revisioning Authority, and as ordered by the Hon'ble Tribunal to file a fresh O.A in the order dated 11.5.05 in the O.A. 183 of 2004 (AnnexureR/3) the Applicant 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 save and except the earlier O.A. No.183/04 which was disposed of by this Hon'ble Tribunal by the order dated 11.5.05 the

✓ Elhabs Ch. Kaliab

Applicant has not filed any other Application, Writ Petition or Suit regarding the subject matter of which this Application has been made before any other Court or any other Authority or any other Bench of the Tribunal nor any such petition, Writ petition, Suit, is pending before any Tribunal or Court in respect of subject matter of this application.

8. Relief Sought.

- i. For quashing the orders of the Revisioning Authority to the extent of reduction to lowest in the Grade of DAD with the fixation of pay and seniority as that of a new recruit DAD and order for giving all the benefits which the Applicant had been enjoying prior to put under suspension order and enjoyed the benefit of his past service of 23 years along with the relief of reinstatement in service duly exonerating and setting aside all the charges alleged and orders imposed by the earlier authorities in the instant case..
- ii. To get all backwages from the period of his loosing the service till the date of reinstatement instead of treating the period as "dies-non" as ordered in the impugned letter and
- 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 orders for payment of his backwages for the period of his Compulsory Retirement from service till the date of reinstatement along with his bonus, and all other pay and allowances as admissible from time to time and/or such order as deem fit and proper.

10. Particulars of Application Fee:

Indian Postal Order No. 20G116414 dated. 28.02.2005 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.

R/1,R/2,R/3, A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P,Q, R

VERIFICATION

I, Sri Udhab Kalita, son of Late Nripati Kalita, aged about years, a resident of Rly. No.DS-613-A at Bamunimaidan, Guwahati-21, do hereby solemnly affirm and verify that the contents of paragraphs 4.1 to 4.31 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 4.32 to 4.38 ^{with all the sub-paragraphs} are my humble and most respectful submission before this Hon'ble Tribunal.

And I sign this VERIFICATION on this 15th day of July, 2005.

Place : Guwahati.

Date : 15.7.2005

Sri Udhab Ch. Kalita

Signature of the Applicant.

To

The Deputy Registrar,
Central Administrative Tribunal,
Guwahati.

N. E. Railway

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

Office of the
DRM (M)/LMG,
Dated: 22/4/2005

To

Shri Udhab Chandra Kalita, Asstt. Loco Pilot (DAD)/NGC
Through SSE (Loco)/NGC

Sub: - Revisioning Orders in connection with the incident of Passing Signals at Danger at RNY in APDJ Division (now RNY Divn.) while working UP NGC/Cement on 17/12/2002.

Ref: - 1) Order of COMPULSORY RETIREMENT issued vide No.
TP/3/LM/1-13/2002(Other), Dt. 12/02/2004 and
2) Appeal to CME/MLG, next higher authority than the Appellate authority submitted on 15/3/2004.

CME/MLG, on exercising his revisioning power, has gone through your case along with all relevant documents, factors etc. including the appeal as submitted and after consideration of the same CME/MLG has passed his orders as under:

"Having gone through all documents of the case of Shri U. C. Kalita, DAD/NGC I consider that Shri Kalita was only assisting Shri Borah, Driver (Gds) in the footplate of the Loco working the train. He was not in charge of the train but only working as DAD. The offence for which Shri Kalita and Shri Baruah are charged is for passing the signal at danger.

Shri Borah's appeal for reduction of punishment from Compulsory Retirement to reduction to lower grade has already been sympathetically considered by GM. The gravity of the offence of Shri Kalita is lesser than that of Shri Borah who was the Driver in command of the train. The punishment of Compulsory Retirement of Shri Kalita is, therefore, too severe in this case. As DAD, Shri Kalita, in my opinion, deserves an opportunity to upgrade his alertness and skills.

Keeping this view in mind, I consider that natural justice and development of one's employees to get the best out of them, dictate that Shri Kalita may be given an opportunity to improve his performance and dedication to duty.

I, therefore, recommend that the punishment of Shri U. C. Kalita, DAD/NGC may be reduced from Compulsory Retirement to reduction to lowest in the grade of DAD. His pay and seniority will be fixed as that of a new recruit DAD after completion of training.

However, this reduction in punishment does not entitle him to any back wages as he is being reinstated on sympathetic grounds. The period of removal till date of reinstatement will be treated as dies- non".

Please note.


Sr.DME/LMG

Copy to: -(1) SSE (Loco)/NGC (2) DPO/IC/LMG (3) APO/GHY for information and implementation of the orders accordingly with immediate effect.


Sr.DME/LMG

*Filed
15/4/05
Advocate*

(SEE RULE 42)
 CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH

61

ORDER SHEET

Original Application No.

Misc. Petition No. 47/2005 (C.A. 183/04)

Contempt Petition No.

Review Application No.

Applicants: Sri Nabin Ch. Kalita

Respondents: UOI 3-026

Advocates for the Applicant: Mr. K.K. Biswas

Advocates of the Respondents: CGSC

Notes of the Registry Date: Order of the Tribunal

15.2.2005

Present: Hon'ble Shri M.K. Gupta,
Judicial MemberHon'ble Shri K.V. Prahladan,
Administrative Member.

By the present Misc., Petition the applicant seeks direction to the respondents to produce the records maintained in their office for the perusal of this Tribunal, which will be necessary for the complete adjudication of the issues raised in C.A.183/2004 wherein a penalty of compulsory retirement was imposed upon the applicant vide order dated 12.2.2004 after holding regular departmental proceedings under the rules in vogue.

On perusal of the M.P. as well as upon hearing the learned counsel for the parties, as respondents have no objection to produce the records, we allow the present M.P. by directing the



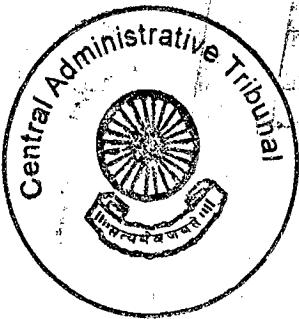
15.2.2005

respondents to produce the records as indicated in the said M.P.

The Misc. Petition stands disposed of.

Sd/ MEMBER (J)

Sd/ MEMBER (A)



TRUE COPY

refd/

W. Sonowal
26/3/05
Section Officer
C.A.T. GUWAHATI BANCH
Guwahati-781005

41
ANNEXURE
62

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 -


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)

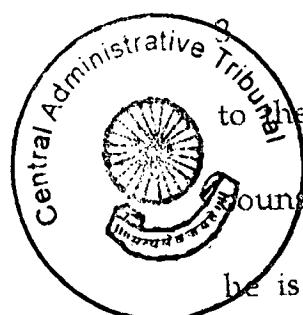
SIVARAJAN J. (V.C.)

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

92/

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.



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.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)

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Section Officer (J)
C.A.T. GUWAHATI BENCH
Guwahati-80005

20/15

ANNEXURE-B

(STANDARD FORM NO. 5.) 69

FORM OF CHARGESHEET.

(Rule: 9 of the Railway servants(Discipline and appeal rules 1968)
No. TP/3/UM/1-13/2002 (Other)URM(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 of 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.

1. * 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** UME(P)/LMG immediately on receipt of this Memorandum.

2. 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 N.F. Railway along with the nomination.

3. 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 -

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

4. 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 which articles of charge.

1/2
2/2
Advocate
15/12/02
Advocate

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 Rules 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. service 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 o. 1 (one)

M. DEY DME (P) / EMG

Signature

Name and designation

of the authority

or the Board

or the Railway Line

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.

1- 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 I.A.S. documents or who would be arranging for inspection of the documents to enable this authority being mentioned in the draft memorandum.

f 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.

10/10/05
15/7/05
Revised

contd - 3/

3.
N.F.RLY.

44/2
16

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 _____
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).

ANNEXURE: II.

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

---- As above ----

attested
R.M.B.
15/7/05
Advocate

----- 46 -----

44/3
19

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8 4 8

Annexure, III

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

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

19/12/05

20/12/05

Annexure, IV.

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

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

19/12/05

Abul
Rehman
15/12/05
Advocate

kg/892000

~~45~~
~~25~~
ANNEXURE - B

68

1) LIARY EXTRACT OF PRC LN DUTY/LMG DIVISIONAL CONTROL

LIARY ITEM NO.11, Dated: 16/12.12, 2002.

PRC/APDJ, Shri Ghosh informed that Loco No. 14965 of UP NGC/Cement, Loco-101/., Driver Shri J.R.Bora/NGC and CAG 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 attended and tested both driver and CAG 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 DRM/APDJ Division:

XXR

APUJ

17.12.2002

TO

DRM/LMG
C/CSU/MLG

NU. T2/AP/MISC/12/2002-03 (.) UP NGC CEMENT, BG. GOODS TRAIN,
LOCO NO.14966, TRAIN NO. 41-101, DRIVER SRI J.R.BORA, LAD
SRI U.C.KALITA BOTH NGC HQRS AND GUARD SRI R.TOPNU/NBR OVER
SHOT UP STARTER SIGNAL FOR LINE NO.2 AT RNY STATION AT ABOUT
00.48 HRS. ON 16/17.12.2002 (.) WHO/RNY EXAMINED DRIVER, LAD
AND GUARD BY BREATH ANALYSER MACHINE AND FOUND POSITIVE ON
DRIVER AND CAG (.) SR.LME/APUJ HAS PUT BOTH DRIVER AND CAG
UNDER SUSPENSION WITH INTIMATION TO SR.LME/IC/LMG TO ISSUE
FORMAL SUSPENSION ORDERS (.)

DRM/APUJ

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

allied
N.F.Railway
Alipurduar

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/La-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 DN Goods train Ex NGC to NBQ via GLFT 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 midnight while entering RNY L/2.

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,

Yours faithfully,

Sri Uddhab Ch. Kalita
 DAD - NGC

21-8-1-63

12/12/03
 नियंत्रण अधिकारी (लोको)
 Locomotive Engineer (Loco)
 श्री मोहन राम, न्यू गुवाहाटी
 N.F. Rly. New Guwahati

Advocate
 M. D. D.

Standard Form of order for revocation of suspension order

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

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

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

(Place of issue) LMG Dated 15.5.2003.

ORDER

Whereas an order placing Shri/Smt. U. C. Kalita, DAD/NGC (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 makes 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 (where the order is made by the President).

Shri/Smt. U. C. Kalita, DAD/NGC (name and designation of the suspended Railway Servant)

Copy to:- Sr. DPO/LMG, APO/CHY & SSE(Loco)/NGC for information and
n/a please ref. to this office order of even No. Dt:
17.12.2002.

A. M. D. Advocate

47/1
22

ANNEXURE - D/1

71

N. F. RAILWAY

NO. NP/3/LM/1-13/2002(Other)

Office of the
DME (P)/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 APDJ 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.

On 15.5.03
DME(P)/LMG

Copy to:- Sr. 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.

11
DME(P)/LMG

*Attisid
Reuben's
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

*Alleged
True facts
Actual facts
Actual facts
Actual facts*
(Same as appeared in annex – I)

Contd.....2.

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.

Abul
Khalid
Advocate

Contd.....3.

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

Advocate
for
Advocate

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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 Inquiry Report
in hand-written, hence,
this typed copy to submit
Mr. S. K. Datta
23/9/04
A. S. Datta

69² 28
GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

S.No.

70

No. 2001/Safety-1/23/4

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

Executive Director, Safety,
Railway Board.

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All Regions
Safety (A&R) Branch for processing the modification in the concerned G.R.
DG/RDSO for early standardization of State-of-Art Breathalyzers!
DG/Health for processing necessary changes in Medical manual
AM! Commercial for making necessary amendments in Railway Act

3.01.2001
Railway Board

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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 / Levermen/ Cabinmen/ Switchmen.
- (iv) 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.
- (v) 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.
- (vi) The Station /yard staff and other categories of staff will be subjected to Sample test / Surprise test by supervisors and officers carrying portable breathalysers.
- (vii) Officers should keep a list of all Senior Supervisors working under them who are habitual of drinking.
- (viii) Similarly, Senior Supervisors should keep a list of all staff working under them that is habitual of drinking.
- (ix) 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.
- (x) 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.

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(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.

*all set
Muhammad
Riaz
Advocate*

4.

Preventive Aspects of Revised Alcohol Policy:

- (i) While recruiting staff for safety critical posts of Asstt. 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.

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M. S. S.
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.

*After →
Rakesh
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 employee 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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Advice

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(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.

(iv)

~~He should not certify the case as drunk just because patient sings of alcohol. The quantity taken also is no guide, but the fact of impairment of the capacity to perform his duties has to be taken into account.~~
The program for recording particulars of suspected cases of drunkenness is annexed herewith.

ally
Medico
Advocate

~~50~~ ANNEXURE - G ~~35~~ ~~OK~~ 83

BRIEF SUBMITTED BY THE DEFENCE IN THE DISCIPLINARY & APPEAL RULES PROCEEDINGS DRAWN BY THE ENQUIRY OFFICER AGAINST SRI U.C. KALITA, DIESEL 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

Attel
Anto
Assent

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/APD] 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

Abul
2nd
Advocate

Abul
2nd
Advocate

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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.

26.3.03
SIGNATURE OF THE DEFENCE COUNSEL

Anil
Nitin
Paras

~~38-50/3~~

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Page: - 4

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)/NGC.

5.2. The CO started manipulating the EMERGENCY BRAKE.

5.3. The CO did not consuming Liquor during **DUTY HOURS**.

Received 2 copies

Received 2 copies
SIGNATURE OF THE DEFENCE COUNSEL.

Advocate

51st ~~HP~~ ANNEXURE-H 87

N. F. RAILWAY.

NO. 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. KALIKAYA, DAD/NGC

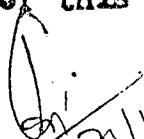
Through SSE(Loco)/NGC

Sub:- Show cause notice.

Ref:- SR-5 issued from this office vide NO. 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


DME(P)/LMG

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


DME(P)/LMG

*Address
Personal
Private*

ANNEXURE - 1

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. IP/3/LM/1-13/2002 (Other)

15.5.2003

Date.....

To.....
Name..... Shri Uday Chandra Kalita.

Father's Name..... Shri Norpati Kalita

Department.....

Mechanical

Designation..... DAD/NGC

Date of appointment..... 09.09.1981

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

Station..... NGC

08.01.2003

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:—

Charge (s)

..... on 17.12.2002, while working UP NGC/Coment with driver Shri J. R. Borah, NGC, the train passed through RNY station in AP DJ Divn. 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 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..... years with less 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(i)(ii)&(iii).

(P. T. O.)

After W.D. & Verified

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:- SP. DPC/LMG, APC/GHY & SSE(Loco)/NCC
for information and a/c
p 10000.

Signature.....DR. J. S. D. 3

Designation M. DEY, DME(P)/LMG

Station.....DR. J. S. D. 3

Divisional Mechanical Engineer
Divisional 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.....ADM/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.

*and P
not for 50 cent*

~~4/1~~ SPEAKING ORDERS OF DISCIPLINARY AUTHORITY: ~~5/1/2~~

" 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 papers 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/-"

Ch. 15/5/03

1. C. T. C. S. (S)

Divisional Mechanical Engineer
Railway. Lumding

*allied
Mechanic
D. M. C. S.*

53

9/

Annexure - E

ANNEXURE - J

To
Sr.DME/LMG
N.E. 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
Deviation
of Scale

53/1/2
92

6. It is very much significant that Forum's Report on my blood test detected the presence of 0.25% of alcohol while the proceeding 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,

Sri Uddhab Ch Kalita

(Sri Kalita U.C.)

Designation: - DAD

Attached to Sr.DME/

(Power) LMG

Uddhab
Ch.
Kalita
Advocate

54
ANNEXURE - K
93

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

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

Office: D.M.E. Office
Ludhiana

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

Dt. 21.06.2003

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 of Reduction of pay to lower 2 stages for 2 years with loss of seniority for 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) DMR (revising authority) considered that the gravity of your offence such as to warrant a severe form of punishment and the revising authority call upon you, therefore, to show cause in writing why enhanced penalty of COMPULSORY RETIREMENT should not be imposed upon you. (Also include the penalty proposed to be imposed as specified in clause (v) to (xx) of sub-rule (1) of rule 9 of DMR 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 subjoined.

DA: 1

Signature:

21.06.2003

Designation: DME (P) / LMG

1. Shri U.C.Kalita, DAD/NGC
2. General Mechanical Engineer
3. General Mechanical Engineer
4. General Mechanical Engineer

Shri U.C.Kalita, DAD/NGC

~~54/48~~
LETTERS OF APPEAL/NG, THE REVISIONING AUTHORITY.

I have gone through the case. Penalty imposed by DA to Shri J. R. Borah, Driver(G)/NCC, Shri U. C. Kalita, DAD/NCC 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)/NCC and Shri U. C. Kalita, DAD/NCC may be issued WITH CAUSE NOTICE as regards to why penalty of COMPULSORY RETIREMENT be not imposed upon them.

21.08.2003

REMOVAL-FROM SERVICE OR
COMPULSORY RETIREMENT
BY RAILWAY BOARD
R. J. P. RAILWAY

Abul
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 ..

*Attul
Kumar
Advocate*

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 (lx) 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
Delhi
Advocate

contd., 3., events.,

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 the ~~the corruption of~~ 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,
S/ Sh. Ch. Kalita
DAD/New Guwahati

C/O. S3E(Loco)/NGC, N.E.Rly.

28/08/03
Section Engineer (Loco)
S.E.Rly. New Guwahati

Abul B.
28/08/03
S.E.Rly.
New Guwahati

56

staff

ANNEXURE - A

A.F. RAILWAY

NOTICE OF IMPOSITION OF PENALTY OF COMPULSORY RETIREMENT

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

OFFICE OF THE
C.R.M (M)/LUMLING,
DATE: 31-02-2004

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 APD 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 NTP NO. TP/3/LM/1-13/2002 (Other), dt: 15-05-2003.

ADM/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, ADM/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) APD/GHY | action.
 3) SSE(Loc) /NGC |

Sr.DME/IC/LMG

*Ashok
Nath
Advocate*

To
The Chief Mechanical Engineer.
N.F.Railway, Maligaon

~~Annexure I~~

ANNEXURE - A

57

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. Drikab Ch. Kalita

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

*Advocate
Debbarma
Advocate*

N. E. RAILWAY.

MEMORANDUM.

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

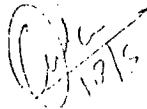
Ref:- 1) NIP issued from this office vide No. TP/3/LM/1-13/2002(Other), Dated: 12.02.04
2) Your appeal to GM/MLG, dated: 26.02.2004
Forwarded under SSE (Loco)/NGC's No. EM/1-13
Dt.: 02.03.04.
3) GM's letter No. TP/3/LM/1-13/2002, dated: 31.03.04

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/GIY for information and necessary action.

*Mr. D
D. K. D. S.
Advocate*



GENERAL RULES
1976
FOR
INDIAN RAILWAYS
(Open Lines)
WITH
SUBSIDIARY RULES
AND
APPENDICES
OF THE
NORTHEAST FRONTIER RAILWAY
(For Official Use Only)
(Edition 1982)

First
Revised
Revised
Revised

S91

be guided by the signals that he may receive or if no hand signal or other signals are at once visible to him, —

- (a) if it is day and he has a clear view of the line ahead, proceed very cautiously at such speed as will enable him to stop short of any obstruction,
- (b) if it is day and the view of the line is not clear or if it is night, or if the visibility is impaired on any account, proceed very cautiously on hand signals given by a member of the engine crew or the Guard who shall walk ahead of the train for this purpose,
- (c) after proceeding 1.5 kilometres from the place where the explosion occurred or where flare signal was burning, if he does not explode any more detonators or sees no other signals, he may then resume authorised speed, and,
- (d) report the incident to the next station or cabin.

(3) If in consequence of fog or storm or for any other reason, the view of the signals is obstructed, the Driver shall take every possible precaution, so as to have the train well under control.

(4) A Driver shall acquaint himself with the system of working, location of signals and other local conditions affecting the running of trains on a section or sections of the railway over which he is to work and if he is not so acquainted with any portion of the railway over which he is to work, obtain the services of a qualified railway servant who is conversant with it to assist him.

S.R.3.78/1 - The qualified railway servant referred to in Sub-rule 1 of General Rule 3.78 may be a Driver or a Shunter passed for relieving Driver.

S.R.3.78/2 - A Driver must be deemed to be not acquainted with any portion of the Railway, if a period of over three months has elapsed since he had last worked over that portion of the Railway and he must again learn the road for one trip to refresh his knowledge of the road before working in the section.

Note: 1. So far as the Badarpur-Lumding Hill section is concerned, two Up and two Down trips shall be given in case of a Driver not working on the section for over three months. In case of a completely new Driver, however, the learning road shall be for at least five Up and five Down trips.

2. On all other sections (except Lumding-Badarpur Hill section) a new Driver shall be given three round trips i.e. three Up and three Down trips for learning road.

S.R.3.78/3. - The First Firemen, Diesel Assistants and Assistant Drivers should also learn the road as in the case of Drivers, before they are required to work on a particular section.

3.79. Duties of Driver in respect of a Calling-on signal. — The Driver of a train shall be guided always by the indication of the Stop signal below which the Calling-on signal is fixed. If this Stop signal is at 'on', he shall bring his train to a stop. If he finds that the Calling-on signal is taken 'off', he shall, after bringing his train to a stop, draw ahead with caution and be prepared to stop short of any obstruction.

3.80 Duties of Driver when an approach Stop signal is 'on' or defective. —

(1) The Driver of a train shall not pass an Outer, a Home or a Routing signal that refers to him, when it is 'on' or defective, unless

(a) he has, at a previous station, received notice in specifying that the signal is out of order and unless receives a Proceed hand signal from a railway servant uniform at the foot of such signal; or

(b) after coming to a stand, he is either given a written authority by the Station Master to proceed past such signal authorised by a Calling-on signal in the 'off' position authorised by the Station Master over the signal post telephone in accordance with special instructions.

(2) The Driver of a train while passing an Outer, a Home or a Ro signal, when it is 'on' or defective, shall ensure that the speed of the train does not exceed 15 kilometres an hour.

S.R.3.80/1 - The written authority for defective signals shall be on Form OP/T-27 and in all cases when signal has to be passed at 'ON', Form OP/T-280 suitably endorsed should be issued.

S.R.3.80/2 - 'Previous station' referred to in Clause (1)(a) of G.R.3.80 means "Station in regular Nominated stations. Nominated stations are notified in the Working Time Table in force."

S.R.3.80/3 - At interlocked station, if "Home" is defective, the speed of the train over the following points, turn outs and cross over must not exceed 15 KMPH

3.81. Duties of Driver when a departure Stop signal is 'on' or defective.

(1) The Driver of a train shall not pass a departure Stop signal that refers to him, when it is 'on' or defective, unless his train has been brought to a stop at the station where the defective signal is situated and he is authorised to do so--

- by a written permission from the Station Master, or
- by taking 'off' the Calling-on signal, if provided under approved special instructions, vide sub-rule (2) of Rule 3.13.

(2) In the case of a Starter, or Advanced Starter protecting points, he shall not pass such signal, when 'on' or defective, unless he also receives a Proceed hand signal from a duly authorised member of the station staff posted at the signal.

(3) In the case of a last Stop signal, he shall not pass such signal, when 'on' or defective, unless he is also in possession of a proper authority to proceed under the system of working.

S.R.3.81/1 - If the Driver is required to pass a last Stop signal which is defective, Form OP/T-27 must be issued by the Station Master of the station where the signal is defective in accordance with S.R.3.70.1, after the train has been brought to a stand at the station. A hand signal will be exhibited for a Starter signal (even if it be the last Stop signal) by a Pointsman or other authorised railway servant, but no hand signal for Advanced Starter signal need be exhibited when such signal protects no connections. Hand signal from the foot of an Advanced Starter signal shall be exhibited when such signal protects any points.

S.R.3.81/2 - If it is required to pass a Starter signal or an Advanced Starter signal which is at danger in the course of shunting operation, Form OP/T-273 shall be issued.

S.R.3.81/3 - When Starters and Advanced Starters are both defective, hand signal need be displayed at the Starter signal only, provided that Advanced Starter does not protect any points. If Advanced Starter protects any points, showing of hand signal from the foot of Advanced Starter shall not be dispensed with.

received notice in writing of order and unless he has been given a signal; or

otherwise given a written authority to proceed past such signal or

signal in the 'off' position or

over the signal post telephone

in Outer, a Home or a Routine

all ensure that the speed of his

train on Form OP/T-27 and in all other

cases endorsed should be issued.

L.R. 1.80 means "Station in rear" or

Working Time Table in force.

speed of the train over the facing

signal is 'on' or defective. —

Departure Stop signal that

unless his train has been

the defective signal is

Signal Master, or

provided under approved

of Rule 3.13.

protecting points, he

is defective, unless he also

authorised member of

such signal, when

a proper authority

c. Form OP/T-27 must

be in accordance with

signal will be exhibited

or authorised railway

such signal protects

it be exhibited when

which is at danger in

need be displayed

in. It Advanced

inter shall not be

59/3

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Add the following as SR 3.83/2 after SR 3.83/1 appearing at page-95

SR 3.83/2 Calling out of signal aspects by engine crews— (a) The Driver and the first Fireman or Diesel Assistant or Assistant Driver, as the case may be, must identify, by shouting, the name of and pointing out, each signal affecting the movement of the train as soon as it becomes visible. In addition, they must call out the aspect of the signals.

(b) The Driver and the first Fireman or Diesel Assistant or Assistant Driver, as the case may be, shall call out as soon as they sight an Engineering Indicator Board. This serves as a reminder to the Driver that his train is approaching a speed restriction.

(C/Slip No. 1 dated 26/12/83 to G & S Rules Book- 1982)

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3.2. Permission before entering on or crossing a running line.—No Driver shall take his engine on or across any running line until he has obtained the permission of the Station Master and has satisfied himself that all the correct signals have been shown.

3.2/1. This permission shall be given by a hand signal. No engine or vehicle of any kind either by day or by night, shall be moved from one line to another, or over a pair of points until hand signalled by the Pointsman or other authorised person. A stationary signal, by itself, is not sufficient to authorise such move without hand signal.

3. Assistance of the engine crew regarding signals.—

- (1) The Driver and the first Fireman or the Assistant Driver, as the case may be, shall identify each signal affecting the movement of the train as soon as it becomes visible. They shall call out the aspects of the signals to each other.
- (2) The Assistant Driver or the Fireman shall, when not otherwise engaged, assist the Driver in exchanging signals as required.
- (3) The provisions of sub-rules (1) and (2) shall, in no way, absolve the Driver of his responsibility in respect of observance of and compliance with the signals.

S.R.3.83/1 - The duties of the Fireman or the Assistant Driver as specified in G.R.3.83 shall also devolve on the Diesel Assistant.

3.84. Duties of Drivers as to signals when two or more engines are attached to train.—When two or more engines are attached to a train, the Driver of the leading engine shall be responsible for the observance of and compliance with the signals and the Driver or Drivers of other engine or engines shall watch for and take signals from the Driver of the leading engine, except in cases where special instructions are issued to the contrary.

S.R.3.84/1(a) - Banking engines should be attached only in the rear of the trains on ascending gradients. On descending gradients assisting engines should be attached in front of the train only. Such engines should not be termed as "Banking engines."

Banking of trains should not be resorted to where the section consists of ascending and descending grades in quick succession. On such sections, if an assisting engine is required, it should be attached normally in the front of a train. If special conditions necessitate the use of banking engines on such a section, Board's prior approval should be obtained.

(b) On level sections worked on Automatic Block system on single line when an engine is required to be attached to a train, whether to assist or otherwise, it should except under special dispensation given by the Railway Board, be always attached in front of the train.

(c) On other level sections worked on Absolute Block System, assisting engine may be attached to a train either next to the train engine or in rear of the train, or work uncoupled behind the train.

S.R.3.84/2 - When starting a train worked by two engines the Driver of the leading engine will sound one long whistle which will be similarly acknowledged by the Driver of the assisting engine or engines. The leading Driver will then sound a short whistle to indicate his reception of the assisting engine's signal, and the Driver of the assisting engine will answer with a short whistle and simultaneously open steam. When stopping, the leading Driver will shut off steam first.

S.R.3.84/3 - Similarly when two engines are employed to work a train the Driver of the leading engine will be held responsible for the working of the automatic vacuum brake. The Driver of the

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second engine must, however, in case of an emergency, assist in stopping or reducing the train by applying the automatic or hand-brake as may be required, but he must maintain or recreate vacuum.

S.R.3.84/4 - When an additional engine is employed to push a train, the Driver thereof shall in any way, interfere with the working of the vacuum brake, which shall be under the control of the leading engine Driver as laid down in S.R.3.84/3 except in case of a run back when the engine Driver automatically becomes the leading Driver.

3.85. Reporting of defects in signals.—

- (1) Should a Driver or a Guard observe that a signal is rendered imperfectly visible by branches of trees or by any other cause so that a signal light is partially obscured or not burning brightly enough to give a clear aspect, he shall report the matter to the Station Master at the next station at which the train stops.
- (2) When such a report is made by a Driver or a Guard, the Station Master shall take immediate steps to advise the Station Master concerned who shall get it rectified.

S.R.3.85/1 - (a) Whenever any occurrence as detailed in G.R.3.85(1) is observed, the Driver or Guard shall report the matter to the Station Master giving detailed particulars of signals, name of stations and nature of defects/irregularities noticed and obtain an acknowledgement from the Station Master. On receipt of such information, the Station Master shall take immediate steps to inform all concerned for rectification. The particulars shall be recorded in the Signal Failure Register indicating date and time of rectification.

(b) The Driver on reaching Loco Shed shall also report the defects/irregularities noticed during the trip to Loco Foreman/Shed-in-Charge giving particulars of signals, name of stations, date, time and nature of defects/irregularities. Loco Foreman/Shed-in Charge shall also record these defects in the Signal Failure Register maintained in the Loco Shed and immediately inform D.S.T.E., D.O.S., D.S.O., D.M.E. and Control.

On receipt of the rectification message it shall be recorded in the Signal Failure Register indicating the date and time with the reference.

(c) The Guard shall make a note in his journal indicating the defects/irregularities noticed during the course of his journey.

(d) The Signal Failure Register shall be inspected frequently by the Signal, Traffic and Loco Inspector.

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stopped at the first Stop signal, check up that the tail board or tail lamp is correctly exhibited and shall maintain a vigilant attitude in rear of the train. After fifteen minutes or such less time as may be prescribed by special instructions, the Guard shall, irrespective of whether the cause is apparent or not, proceed to protect the rear of the train in accordance with instructions laid down in Rule 6.03. If in the meantime the signal is taken 'off', or the Driver receives the necessary authority to pass the signal in the 'on' position, he shall sound the prescribed code of whistle to recall the Guard and exchange hand signal with him before starting the train.

(2) In the case of a train not accompanied by a Guard, these duties shall devolve on the Driver.

S.R.4.44/1- The duties of a Fireman or an Assistant Driver as specified in G.R.4.44 shall be applicable to Diesel Assistant also.

4.45. Attracting attention of Driver.—

- (1) If any Guard sees reason to apprehend danger or considers it necessary for any reason to stop the train, he shall use his best endeavours to attract the attention of the Driver.
- (2) In the absence of other means of communications with the engine, a Guard desiring to attract the Driver's attention shall apply his hand brake sharply and as suddenly release it, and wherever possible, he shall reverse the side lamps to show red towards the engine.
- (3) When the attention of the Driver has been attracted, the necessary hand signals shall be shown.
- (4) If the train is fitted with continuous brake, the Guard may, in case of emergency, apply such brake gradually to stop the train.

S.R.4.45/1-(a) If the Guard of a fully vacuum-braked train desires to attract the Driver's attention, he should move the handle of the valve up and down four times and then hold it down. Care should be taken to see that not more than 15 to 20 centimetres of vacuum is destroyed at the first application.

(b) Should a Guard reverse one of the side lamps of his brake van, it will take signal for the Driver to stop immediately.

Note:- On D.H. Section, the portions of Subs. rule (2) and (4) of G.R. 4.45 are not applicable.

4.46. Assistance from Guard's hand brake.— When the Driver requires the assistance of Guard's hand brake, he shall sound the prescribed code of whistle, if necessary repeatedly, or, if a brake whistle is provided, sound such whistle, and shall also use other means of communication, if provided, between the Driver and the Guard.

4.47. Application of Guard's hand brake.—

- (1) When the Driver sounds the prescribed code of whistle or the brake whistle, the Guards shall immediately apply their hand brakes.

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4. Insert the following as SR 4.47/1 under GR 4.47 appearing at page 126/127 and renumber the existing SR 4.47/1 and SR 4.47/2 as SR 4.47/2 and SR 4.47/3 respectively—

“SR 4.47/1—Precautions when a train stops on the gradient—
(a) When, for any reason, a train is brought to a stand for a period longer than 15 (fifteen) minutes, the hand brake of the locomotive shall be applied in addition to the application of vacuum/air brake etc. If such stoppage happens to be of train having vehicles with roller bearings on a section with a grade of 1 in 150 and steeper and train having vehicles other than roller bearings on a section with a grade 1 in 100 and steeper, the precautions laid down below shall be taken to guard against run away.

(i) On trains carrying passengers, the Guard shall apply hand brakes in the brake-van and sprages or Wedges to the wheels of two vehicles nearer to the descending steep incline.

(ii) In the case of Goods train, the hand brakes of atleast one third of the wagons on the train or 10 (ten) wagons behind the engine and, 5 (five) wagons inside the brakevan, whichever is more, shall be pinned down. This precautions shall be in addition to the application of Guard's hand brake in the brake van. The Driver himself or under his direction, the Fireman or the Diesel Assistant Driver, shall be responsible for application and release of the hand brakes of the wagons behind the engine. The Guard shall be responsible for similar action in regard to the wagons inside the brake van.

(b) When the train is expected to start again, the Driver shall re-create proper Vacuum or recharge air pressure, as the case may be, and apply vacuum brake/air brake before the hand brakes are released and sprags/wedges removed. Thereafter the vacuum brake/air brake may be released to start the train.

(c) Considering the condition of the brake power on his train, the Driver may take the additional precautions as indicated above when the train stops on a section flatter than 1 in 150 or 1 in 100 to avoid run away.

(Correction slip 7 dt. 22/8/86 to G & S Rules Book, 1982)

MADAN M.L. SHARMA
Chief Operating Superintendent

Stop signal is a Manual Stop signal for an adequate distance beyond it.

(3) The adequate distance referred to in sub rules (1) and (2) shall never be less than 120 metres and 180 metres respectively, unless otherwise directed by approved special instructions. A sand trap of approved design, or subject to the sanction of the Commissioner of Railway Safety, a derailing switch shall be deemed to be an efficient substitute for the adequate distance referred to in rule (1).

S.R.9.06/1 - The assumption of the 'Off' aspect by the Starter signal ensures that all conditions necessary for granting line clear by the station in advance have been fulfilled.

S.R.9.06/2 - Procedure when Home signal is 'on' - (a) If a Driver finds a Home signal at 'on', he shall bring his train to a stop short of the signal and if there are no visible reasons for the signal being 'on', such as, shunting or reception of a train from the opposite direction, he shall contact the Centralised Traffic Control Operator on the telephone provided on or near the signal post and ask for instructions.

(b) If the Driver is not able to contact the Centralised Traffic Control Operator, he shall despatch the Fireman/Diesel Assistant to proceed to the station to inform the Station Master of the signal being 'ON'. If in the meantime the signal is taken 'Off', the Driver shall give a long whistle, exchange signals with the Guard and proceed slowly picking up the Fireman/Diesel Assistant on the way.

(c) The Station Master, on getting information about the Home signal being at 'On' from the Fireman/Diesel Assistant, shall inform the Centralised Traffic Control Operator about the signal being at 'On', and ask for instructions. If he fails to contact the Centralised Traffic Control Operator, he shall take over emergency control of the Station panel.

(d) The Centralised Traffic Control Operator, on being informed about the Home signal being 'On' by the Driver, or the Station Master, shall ascertain the cause and if the signal has not been taken 'off' by him, he shall advise the Driver to wait for the signal to assume 'off'. If the Centralised Traffic Control Operator finds that the signal has failed to come 'Off', he should authorise the Station Master concerned to take over emergency control of the Station Panel and arrange for the reception of the train by taking 'Off' the Home signal.

(e) After taking over emergency control, the Station Master shall try to take 'Off' the Home signal after setting and locking the points to the required line. If the signal comes 'off', the Driver shall proceed in the normal manner. If, however, the signal does not come 'Off' and the points are correctly indicated as set and locked on the Station Panel, he shall issue a written authority to the Driver to pass the signal at 'ON' on the authority of Form OP/T-27.

(f) If the points cannot be set and locked through the station panel and proper indication as to correct setting and locking is not available, the Station Master on duty shall personally operate the points by the crank handle provided for this purpose. After the points have been correctly set and locked (if the points are clamped and padlocked, signals shall be taken off for the reception of the train. If the signal does not come 'off', the train shall be received on OP/T-27.

(g) (i) Whenever the crank handle is taken out of the glazed box, for the purpose of setting the points to receive or despatch a train, it shall be the personal responsibility of the Station Master on duty to ensure that the crank handle is restored back in the glazed box and kept under lock and key before he clears the relevant reception or despatch signal, as the case may be.

(ii) Before the crank handle is made over to any of the official of the maintenance department, the Station Master shall take the emergency control of the station from the C.T.C. Operator, and only after this is done that the crank handle will be made over to the maintenance staff.

(iii) On taking over the emergency control of the station from the Centralised Traffic Control Operator, the Station Master shall, before handing over the crank handle to the maintenance staff, insert the lever stop plugs in the relevant lever stop bushing which will prevent the signal levers from being pulled on either side even in the case of inadvertence. As long as the crank handle remains in the custody of maintenance staff, the station shall be worked on the emergency control and the

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Master shall not clear any reception or despatch signal of his station for the purpose of making or starting a train at or from his station.

During the period the crank handle remains in the custody of the maintenance staff, the station is treated as non-interlocked for the purpose of reception and/or despatch of trains. Trains received at or despatched from the station after having set all the relevant facing and trailing locking all the relevant facing points. In this circumstances, trains may be received at the station in the form OP/T-27 and despatched from the station after handing over an authority to the Driver on the prescribed line clear ticket along with an authority on the prescribed T-27 for the Driver to pass the relevant Starter signal at danger.

If the crank handle is made over to/taken back from any official of the maintenance staff, the details of the transactions of making over and taking over shall be entered in a register maintained for the purpose at each station in the following proforma :-

FORM FOR HANDING OVER TRANSACTION

Date	Time	Made over to (name and designation of the official taking the crank handle)	Initial of the official taking the crank handle	Initial of the Station Master	Remarks

FORM FOR TAKING OVER TRANSACTION

Date	Time	Name and designation of the official making over the crank handle	Initial of Station Master on Duty	Initial of the official making over crank handle	Remarks

S.R.9.06/3 - Procedure when Starter signal is 'ON' :- (a) If a Driver finds a Starter signal at 'ON' he shall bring his train to a stop short of the signal and if there are no visible reasons for the signal at 'ON', he shall contact the Centralised Traffic Control Operator on the telephone fixed on or near the main Starter signal post and in case he is not able to contact the Centralised Traffic Control Operator, he shall depute a Fireman/Diesel Assistant to inform the Station Master.

(b) The Station Master, on getting information about the Starter signal being at 'ON' from the Fireman/Diesel Assistant, shall inform the Centralised Traffic Control Operator about the same and ask for instructions. If he fails to contact the Centralised Traffic Control Operator, he shall take over Emergency Control of the station panel.

(c) The Centralised Traffic Control Operator, on being informed about the Starter signal being at 'ON' by the Driver, or the Station Master, shall ascertain the cause. If the signal has not been taken 'OFF' by him, he shall advise the Driver to wait for the signal to assume 'OFF'.

(d) If the Centralised Traffic Control operator is unable to take 'OFF' the Starter signal, he shall advise the Station Master to take over Emergency Control and take 'OFF' the relevant Starter signal. The Station Master shall then take 'OFF' the Starter signal to allow the train to proceed as per S.R.9.06/1. In cases where the Station Master is unable to contact the Centralised Traffic Control Operator and takes over the Emergency Control on his own accord, he shall, prior to starting a train of the station in advance, in such cases, should contact Centralised Traffic Control Operator, if available on telephone, regarding train regulation.

Note:- The consultation with the Station Master of the station in advance as referred to in this para will be only for the purpose of regulating trains and not an enquiry as to grant of 'Line Clear'.

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(e) If after having taken over the Emergency Control, the Station Master is unable to take the Starter signal, he shall ensure that the relevant points are set and locked by seeing the indicator on the Station Panel. If there is no indication, he shall arrange for operating the points by the handle provided for the purpose and shall ensure, by his personal inspection, that the points have been correctly set, then he shall personally clamp and pad-lock the facing point, retain the Key(s) of such pad-lock(s) in his possession. He shall ask line clear from the Station Master of the Block station in advance in accordance with the procedure prescribed in chapter VIII and XIV and will then hand over to the Driver a paper line clear ticket along with OP/T-27 for the Starter signal at 'ON' position. The paper line clear will be the authority for entering the Block section with his train.

On receipt of such authorities the Driver shall personally ensure that proceed hand signal required by G.R. 3.81 and relevant S.R. thereto is shown by a station staff at the defective Starter signal and the line before him is clear of visible obstructions and that the Guard has given signal to start the train.

The Driver of the train on entering the Block section, shall proceed strictly observing the aspects shown by the Automatic Stop signals enroute and if the signals are at 'ON' pass them in accordance with G.R. 9.07 and S.R. thereto. If failure of the Starter signal continues, subsequent trains shall be worked in accordance with S.R. 9.06/4 below.

(I) Station Master of the station in advance, before granting 'Line Clear' as referred in para (II) above, consult the Centralised Traffic Control Operator (for the purposes of train regulation) available on telephone and then grant 'Line Clear' in accordance with G.R.9.03 except that section should be clear of all trains not only upto the Home signal but for an adequate distance beyond even if there are 'Automatic Stop signals' in between and relevant procedure prescribed in Chapters VIII and XIV.

S.R.9.06/4 - If the failure of the Starter signal continues after the first train has left the station in accordance with S.R.9.06/3 (e) & (f) subsequent trains shall also be run as per S.R.9.06/3 (e) & (f) except that Drivers of these trains shall be given an authority in the prescribed form to pass the Automatic Stop signals enroute at 'ON' but be prepared to stop at the Home signal if it is at 'ON'.

S.R.9.06/5 - **Procedure during total failure of communication :-**
When there is total failure of communications between the Station Master and Centralised Traffic Control Operator and also with the Station Master of the station at the other end of the block section, trains shall be worked in accordance with S.R.6.02/4.

9.07. Duties of Driver and Guard when an Automatic Stop signal on single line is to be passed at 'on'. —

- (1) When a Driver finds an Automatic Stop signal with an 'A' marker at 'on', he shall bring his train to a stop in rear of that signal and wait there for one minute by day and two minutes by night.
- (2) If after waiting for this period the signal continues to remain at 'on', and if telephone communication is provided near the signal, the Driver shall contact the Station Master of the next block station or the Centralised Traffic Control Operator of the section where Centralised Traffic Control is provided, and obtain his instructions. The Station Master or the Centralised Traffic Control Operator, as the case may be, shall, after ascertaining that there is no train ahead upto the next signal and that it is otherwise safe for the Driver to proceed so far as is known, give permission to the Driver to pass the signal in the 'on' position and proceed upto the next signal, as may be provided under special instructions.

Medical Practitioner
Regd. No. 9529 (AMC)

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

For,

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W. H. C. T. K. L. R.

Date: 04.08.02

Day: (Sunday)

Constitution: weak

Age: 30 = 120/40

Height:

Weight: 60 kg.

Food: - milk & curd

1. Cough:

by: strong cold (2 days & 3 days)

2. Malaria:

by: 2 days (fever only)

3. Malaria:

by: 3 days of fever warm
weather twice only
before meal & 5 hours

Dr
04.08.02

Alfred
Newton
Advocate

To
The Sr. Div. Mech. Engineer
Lumding , N.F.Railway

(Through proper channel)

Sir ,

Sub : Resumption of duty.

Ref : Your letter no. TP/3/LM/1-13/2002 (Other) Dated 22-04-2005

In acknowledging the receipt of your letter under reference on date i.e. 05-05-05 , I beg to resume my duty to-day in the forenoon.

In this connection, Sir, further I beg to state that the acceptance of your letter and thereby my resumption to duty, as ordered, are subject to outcome of my court-case pending in the Hon'ble Central Administrative Tribunal , Guwahati , in O.A No. 183 of 2004.

With regards,

Yours faithfully,

Udhab Ch. Kalita

Dated , The 5th May'2005

(Udhab Chandra Kalita)
Asstt. Loco Pilot (DAD)
New Guwahati, N.F.Railway

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI...

IN THE MATTER OF

O.A.189/2005

Shri U.C.Kalita

Applicant

Versus

Union of India & Others ...

Respondents

AND

IN THE MATTER OF

Written statement on behalf of Respondents:

The answering respondents respectfully SHEWETH :

1. That they have gone through the copy of the

application filed and have understood the contents thereof.

Save and except the statements which have been specifically admitted hereinbelow or those which are borne on records all other averments/allegations as made in the application are hereby emphatically denied and the applicant is put to the strictest proof thereof.

2. That for the sake of brevity meticulous denial of each and every allegation/statement made in the application has been avoided. However, the answering respondents have confined their replies to those points/allegations/averments of the applicant which are found relevant for enabling a proper decision on the matter.

3. That the application suffers from want of a valid cause of action as will be clear from the submissions made in the relevant paragraphs below. The applicant knows fully well how grave the offence of passing the red signal at danger is from its potential for grave danger to the general public as well as technically from the provisions of the Railway Accident Manual. Yet the applicant expects the respondents to ignore the serious breach of the safety rule and leave him without any punishment. The applicant has also questioned his suspension by Alipurduar Division though he is a staff of Lumding Division. He is apparently ignorant of the basic concepts of Railway's D & A Rules which permits such action. The respondents beg to state that for want of a valid cause of action the application merits dismissal.

4. That the application suffers from wrong representation and lack of understanding of the basic principles followed in the matter as will be clear from submissions made hereunder.

Copy m/o K
per. Chanda

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24/11/05

Mr. S. Naini
Advocate

प्रधान कार्यालय
रेलवे/संसदीय
Div. Personnel Officer/1C
N. P. Rly, Lumding

5. That the application has ignored the fact that he was found with symptoms and signs which are due to alcohol in the medical examination by Senior DMO, Rangiya after the accident of passing of signal at danger was reported. The Senior DMO, Rangiya's report was corroborated by the report of the Director-cum-Chemical Examiner, Forensic Science Laboratory, Govt. of Assam, Guwahati, stating that the blood sample of the applicant "gave positive tests for Ethyl Alcohol. The applicant knows fully well that consuming alcohol in the course of performing running duty is a very serious offence, worse than that of driving a car under the influence of liquor due to implications of public safety of a more extensive potential. The feeble attempt to defend the weakness both at the level of the DAR enquiry as well in the application can at best be termed as vainglorious obfuscation.

6. Parawise comments.

6.1. That the respondents beg to refer to paras 4.1 to 4.3 of the application and state that they have no comments to offer except that the applicant is put to the strictest proof of his claim in these paras.

6.2. As regards the statement made in para 4.4, the respondents state that passing of a signal at danger, which the applicant admits, is an accident of a grave nature as per Railway's Accident Manual. In Railway's working the responsibility for such an accident is to be shared by the Driver as well as the Diesel Assistant. Moreover, the position was made worse by the fact that both the Driver and the Diesel Assistant were found by the Railway Doctor to have been under influence of liquor after the accident. It is fortunate that the accident of passing the signal at danger did not lead to a collision or knocking of a vehicle at the level crossing as the train was stopped by the Guard's action short of the level crossing. The attempt of the applicant to make light of the grave nature of the accident by stating that "there was no accident, no casualty except detention to the train for about 2 hours" is therefore considered devoid of any merit. Moreover, the financial implications of detaining a train of 100 wagons (containing approximately 2,500 tonnes of essential commodities) for two hours without any justification is substantial and calls for punitive action.

6.3. That as regards para 4.5, the respondents state that suspension of the applicant was as per provisions

of the Railway's Disciplinary and Appeals Rules which have statutory sanction. There was no irregularity in the matter.

6.4. That as regards paras 4.6 to 4.9, the respondents state that the ~~are~~ iterations of the DAR action taken against the applicant and that the DAR action was technically quite correct. It is stated here that in conducting the DAR enquiry due care was taken to render to the charged official all the reasonable opportunity to defend himself and it was also ensured that natural justice was done to him.

6.5. That as regards para 4.10 the respondents state that the applicant himself has admitted to having consumed liquor while doing running duty and the level of consumption was found to be excessive as per report of the Forensic Science laboratory, which is a neutral agency. The report of the accident enquiry committee also supported the Railway Doctor's finding that the applicant was under influence of liquor while on running duty, a serious offence.

6.6. That as regards para 4.11, the respondents state that the breathanalyser test report of Bongaigaon is not relevant in the matter in view of the clear finding of the Railway Doctor at Rangiyia. It is stated that the applicant is confusing the issue by bringing into the picture this irrelevant report as officials at Bongaigaon could not know what happened between Bongaigaon and Rangiyia, a distance of over 150 kilometres.

6.7. That as regards para 4.12, the respondents state that the calculation given by the applicant is wrong as the blood sample revealed level of etyl alcohol at 25mg/100 ml. which is dangerous even as per Railway Board's circular dated 27.11.2001 quoted by the applicant.

6.8. That as regards para 4.13 the respondents state that the brief submitted by the Defence counsel was duly examined and considered by the Enquiry Officer.

6.9. That as regards para 4.14, the respondents state that the order of the Disciplinary authority was based on consideration of the findings of the Enquiry Officer and the circumstances of the case.

6.10. That as regards para 4.14, the respondents state that the notice of imposition of penalty (Annexure H-I of the Application at p.52) clearly stated that "An appeal against these orders lies to ADRM/LMG". In spite of this the appeal

was wrongly addressed to the Senior Divisional Mechanical Engineer who forwarded the same for consideration by the ADHM, the correct appellate authority. The intention of the Senior DME was to ensure that justice was done to the appeal.

6.11. That as regards paras 4.15 to 4.18, the respondents state that Divisional Mechanical Engineer, Lumding acted as Disciplinary authority as per schedule of power under D & A Rules. As per rule, appeal against orders of the disciplinary authority lies with the next immediate superior, namely ADRM/Lmg, as clearly stated at the bottom of the N.I.P. and the appeal was therefore considered by the ADRM/LMG. A decision on the appeal is to be considered on the basis of the reply to the show cause notice and the material on record. There is no scope for further probe into the DAR records and there is no system of supplying clarifications and documents at the appeal stage.

It would be noticed that the applicant was given full opportunities to represent his case in the DAR enquiry in the interest of natural justice. For an appeal, there is no provision for interim reply against show cause notice. The prayer for documents made in the reply to the show cause notice was not considered relevant. The ADRM/Lumding, being the appellate authority, went through the reply dated 27.8.2003 and passed the speaking order enhancing the penalty to that of compulsory retirement. There was no technical fault in the order.

6.12. That as regards paras 4.19 to 4.21, the respondents state that the Chief Mechanical Engineer, Maligaon considered the representation dated 15.03.2004 submitted by the applicant, as the revisioning authority. On a sympathetic consideration of the facts and circumstances of the case, the Chief Mechanical Engineer applied his mind and modified the penalty on the applicant from "Compulsory retirement" to that of "Reduction to lowest in the grade of DAD with further orders to fix the pay and his seniority as that of a new recruited DAD after completion of training", which was communicated to the applicant vide Annexure R of the O.A.

6.13. That as regards para 4.22, the respondents state that the applicant, apparently being satisfied by the order of the Chief Mechanical Engineer as the revising authority, joined service at the level ordered. The applicant should have been satisfied with the order of the revisioning

authority as his offence of consuming liquor during running duty hours was quite serious and as his punishment of compulsory retirement was reduced and made lighter by the order. His action appears to have deprived him of any valid cause of action.

6.14. That as regards paras 4.23, 4.24 and 4.25, the respondents state that each DAR case has to be dealt with on the merits of the case and the case of Driver Shri J.R. Bora had no direct relationship with that of the applicant. The applicant was found to have been under the influence of liquor by the Forensic Science laboratory on the basis of blood sample taken by the Railway Doctor after the incident. (incidentally, the Driver's blood sample gave a negative result in the laboratory test.). Thus the revisioning authority had taken all the records of the case into account and, after due application of mind, passed the order reducing the punishment.

The order of the revisioning authority was based on a sympathetic consideration of the facts of the case as revealed by the records and the same was clear in stating that "The punishment of Shri U.C.Kalita, DAD/NGC may be reduced from Compulsory Retirement to reduction to lowest in the grade of DAD." The averment made in para 4.24 is therefore not relevant. The respondents also reject the claim of the applicant made in para 4.25 that the order of the revisioning authority was "not free from discrimination, disproportionate, disdainful, dichotomous" etc.

A copy of the order of the revisioning authority conveyed by Sr.DME/LMG vide his letter dated 22.4.2005 is annexed herewith, and marked as ANNEXURE R-1.

6.15. As regards para 4.26, the respondents deny the averments made in the and state that there was no malafide and arbitrary action by the disciplinary and appellate as well as the revisioning authority at any stage of the proceeding against the applicant. The respondents also deny that there was no application of mind at any stage..

6.16. That as regards para 4.27, the respondents state that the order of the revisioning authority, the Chief Mechanical Engineer, was fair and non-discriminatory and was based on the records of the case.

6.17. That as regards para 4.28, the respondents state that the DAR proceedings were conducted as per standard procedure at every stage in order to ensure that due opportunity was given to the charged official, especially

in respect of his defence and it was ensured that natural justice was done to the charged official. The disciplinary authority, the enquiry official, the appellate authority and the revisionary authority were never influenced by any extraneous consideration, as alleged and that all of them based their orders strictly on the merit of the case as revealed by the records of the case.

6.18. That as regards para 4.29, the respondents ~~state~~ deny that the order of the respondent No.2, the Chief Mechanical Engineer, as the revisionary authority, was unfair or unjust. On the other hand, the order was considerate, fair and just as the punishment of compulsory retirement was reduced to lowering of grade, a much lighter punishment based on humanitarian aspect of the case.

6.19. That as regards para 4.30, the respondents have no remarks to offer as the facts are part of the Hon'ble Tribunal's records.

6.20. That as regards para 4.31, the respondents deny that at any stage of the DAR proceedings there was any irregularity, as alleged. The suspension of the applicant was as per rule, the charge sheet was proper and correct, the enquiry proceedings were conducted properly, imposition of penalty was technically correct by the proper authority, the appeal was dealt with by the appropriate authority, the revisionary authority considered the case on merit and passed appropriate order on the revision petition and at every stage fairness and justice was ensured.

6.21. That as regards para 4.32, the respondents deny that there was any procedural lapse on the part of the enquiry officer, the appellant authority or the revisioning authority. It is further asserted on behalf of the respondents that there was at any stage any denial of natural justice to the charged official or violation of statutory laws and rules.

As regards ~~the~~ sub-paras (i) to (xii) from page 17 to page 27 of the O.A. the respondents ~~state~~ that the applicant's reading and interpretation of the various provisions of the Railway's Disciplinary and Appeal Rules as applied in his case is wrong and based on wrong understanding of the true meaning of the rules which are meant to protect the interests of both the employed and the employer without prejudice.

6.22. That as regards sub-para 4.32(i) the respondents deny the allegation that the list of witnesses was not given. The list was clearly given in Annexure IV of the major memo issued to the applicant on 19.12.2002 which was duly acknowledged. These witnesses were duly examined in course of the DAR enquiry.

6.23. That as regards para 4.32(ii), the respondents state that the DAR enquiry had nothing to do with the other departmental safety or other related enquiries in order to ensure neutrality. The respondents deny that there was any lapse on the matter.

6.24. That as regards para 4.32(iii), the respondents state that the applicant was given all possible opportunities to defend his case as per procedure laid down. The major memorandum was issued on 19.12.2002 and the applicant had submitted his defence on 8.01.2003, that is after 19 days against 10 days prescribed in the D & AR, 1968.

6.25. That as regards paras 4.32(iv) and (v) the respondents state that Rule 9 of the D & A Rules, 1968 contains provision for presenting officer in the enquiry and the Disciplinary authority can appoint him, if he is considered necessary. Neither the charged official nor the defence counsel had asked for appointment of a presenting officer and the disciplinary authority also did not feel it necessary to appoint a presenting officer. Moreover, the applicant, the charged official, had been given full opportunity for appearing before the enquiry officer in course of the DAR enquiry and avail of the opportunity to examine witnesses with the help of the defence counsel. Since the charged official did not avail of this opportunity he cannot now turn around and say that this was a serious lacuna. The allegation made in these paras has no basis at all.

6.26. That as regards para 4.32(vi) the respondents state that the records of the case, namely the involvement of the charged official in the incident at Rangiya, including the substantiated report of his involvement in consumption of liquor in course of running duty was sufficient basis for departmental proceedings against him. This was equivalent to preliminary enquiry, if the same is considered a technical necessity. There was no lapse on this account.

6.27. That with regard to paras 4.32(vii) of page 20 of the O.A. (Both marked by the same number), the respondents state that the disciplinary authority dealt with the DAR case on its merits, without being influenced by extraneous circumstances, as alleged.

6.28. That as regards para 4.32(viii), the respondents state that the applicant could not be absolved of his failure under the General Rules, 1976 quoted by him in the context of the fact that under those Rules he was expected to assist the Driver in the course of the movement of the train; but he could not do so as he was under the influence of alcohol of a prohibitive level, thus committing a grave misconduct.

6.29. That with regard to para 4.32(ix) to (xii), the respondents refer to the statements made in the foregoing paragraphs of this written statement which has extensively rebutted the averments/allegations made in the application. Moreover the respondents crave the leave of the Hon'ble Tribunal to refer to these at the time of the hearing.

In the circumstances, the respondents beg to state in conclusion that the application lacks merit as there is no valid cause of action and in view of the fact that the revisioning authority has sympathetically considered the matter and reduced his punishment substantially, the application be dismissed with costs.

And for this act of kindness, as in duty bound, the respondents shall ever pray.

....

...P.9.....

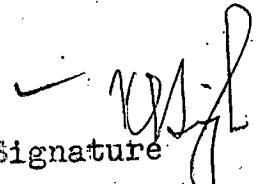
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(9)

VERIFICATION.

I, Shri K. P. Singh, son of KH. DINAMANJIT SINGH, aged about 33 years, at present working as Div. Personnel Clerk, N.F.Railway, do hereby solemnly affirm and verify that the statements made in paragraphs 1 to 6 are true to the best of my knowledge and the rest are my humble submissions before the Hon'ble Tribunal, and I sign this verification on this the _____ day of November, 2005.

✓ 
Signature

Div. Personnel Clerk
Designation
कांप अधिकारी
प्र० सो० रेलवे/लामडिंग
Div. Personnel Officer / 10
N. F. Rly., Lumding

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

Office of the
DRM (M)/LMG.
Dated: 22/4/2005

To
Shri Udhab Chandra Kalita, Asstt. Loco Pilot (DAD)/NGC
Through SSE (Loco)/NGC

Sub:- Revisioning Orders in connection with the incident of Passing Signals at Danger at RNY in APDJ Division (now RNY Divn.) while working UP NGC/Cement on 17/12/2002.

Ref:- 1) Order of COMPULSORY RETIREMENT issued vide No.
TP/3/LM/1-13/2002(Other), Dt. 12/02/2004 and
2) Appeal to CME/MLG, next higher authority than the Appellate authority submitted on 15/3/2004.

CME/MLG, on exercising his revisioning power, has gone through your case along with all relevant documents, factors etc. including the appeal as submitted and after consideration of the same CME/MLG has passed his orders as under:

"Having gone through all documents of the case of Shri U. C. Kalita, DAD/NGC I consider that Shri Kalita was only assisting Shri Borah, Driver (Gds) in the footplate of the Loco working the train. He was not in charge of the train but only working as DAD. The offence for which Shri Kalita and Shri Baruah are charged is for passing the signal at danger.

Shri Borah's appeal for reduction of punishment from Compulsory Retirement to reduction to lower grade has already been sympathetically considered by GM. The gravity of the offence of Shri Kalita is lesser than that of Shri Borah who was the Driver in command of the train. The punishment of Compulsory Retirement of Shri Kalita is, therefore, too severe in this case. As DAD, Shri Kalita, in my opinion, deserves an opportunity to upgrade his alertness and skills.

Keeping this view in mind, I consider that natural justice and development of one's employees to get the best out of them, dictate that Shri Kalita may be given an opportunity to improve his performance and dedication to duty.

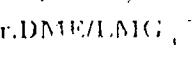
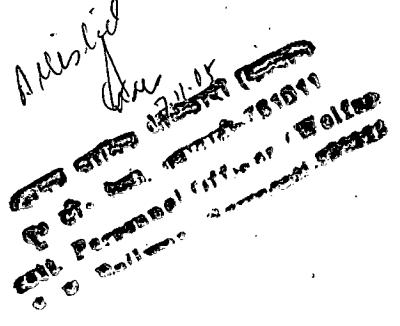
I, therefore, recommend that the punishment of Shri U. C. Kalita, DAD/NGC may be reduced from Compulsory Retirement to reduction to lowest in the grade of DAD. His pay and seniority will be fixed as that of a new recruit DAD after completion of training.

However, this reduction in punishment does not entitle him to any back wages as he is being reinstated on sympathetic grounds. The period of removal till date of reinstatement will be treated as *dies- non*".

Please note.


Sr.DME/LMG

Copy to:- (1) SSE (Loco)/NGC (2) DPO/IC/LMG (3) APO/GHY for information and implementation of the orders accordingly with immediate effect.


Sr.DME/LMG


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केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal	MAR 2005
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL गुवाहाटी बैठकाल GUWAHATI BENCH, GUWAHATI	

filed by the applicant
through: Subrata Nath
Advocate,
09.03.06.

In the matter of:

O.A. No. 189/2005

Shri Uddhab Chandra Kalita

-Vs-

Union of India & Ors.

-AND-

In the matter of:

Rejoinder submitted by the applicant in reply
to the written statement submitted by the
Respondents.

The applicant above named most humbly and respectfully begs to state as
under: -

1. That the applicant categorically denies the statement made in paragraphs 1, 2, 3, 4, and 5 of the written statement and begs to submit that the application has been filed on bonafide and valid cause of action which has been explained in the application and which is apparent on the face of the records and the action of the respondents thereto. The application also does not suffer from wrong representation and lack of understanding of the basic principles in any way as contended by the respondents.

Further, the applicant was declared fit by the competent Authority before starting for his duty and even thereafter, i.e. after the final examination following the commission of the alleged offence, the applicant was not found unfit for his duties. The findings of the Enquiry

also could not establish the guilt of the applicant. The Forensic Expert's report confirms that the alcohol contents found in the blood of the applicant was only 0.025% which is well within the permissible limit and does not disqualify a person from safety point of view as per Railway Board's Circular No. 2001/Safety-1/23/4 dated 27.11.2001 [Para- 2 (xi)]. The alleged alcoholic contents was also due to medicinal effects only which was caused by consumption of cough syrup and other medicines taken by the applicant as prescribed by the Doctor for his ailments, and not due to liquor as contented by the respondents. There were absolutely no alcoholic symptoms which impaired his capacity to perform his duties. The Fact finding committee's report and Accident Committee's report also have not found anything against the applicant.

2. That the applicant categorically denies the statements made in Para 6.2, 6.5, 6.6, 6.7, 6.13, 6.14, 6.26 and 6.28 of the written statements and further begs to state that the applicant's duty in the capacity of Diesel Assistant was only to assist the Driver in command and as such he was not at all responsible for passing of a signal or overshooting the signal. The Accident committee in it's report vide item No. D (V) has clearly held that the applicant was not responsible for overshooting the signal. It is relevant to mention here that in the Engine, the place of the Diesel Asslt. was at the right side of the Engine and the seat of the Driver was at the left side i.e. the side in which the signal was situated. As such it was not possible for the applicant to see the signal or to see what the Driver was doing about. But even then, the moment the applicant could notice the incidence, he told the Driver to apply the emergency brake which the Driver refused. However, the train was some how brought back to it's original position without any mishap whatsoever.

Further, as regards the influence of liquor as averred by the respondents, the matter has been distorted and the statement of the respondents are far from the factual position which is misleading.

3. That the applicant emphatically denies the statements made in paragraph 6.3, 6.4, 6.8, 6.9, 6.10, 6.11, 6.12, 6.15, 6.16, 6.17, 6.18, 6.20, 6.21, 6.22, 6.23, 6.24, 6.25, 6.27 and 6.29 of the written statement and most respectfully begs to state that the contentions of the respondents are not sustainable in the eye of law in as much as that the entire Disciplinary proceeding conducted in the instant case is vitiated by infirmities and irregularities and is not in conformity with Disciplinary and Appeal Rules (DAR) of the Railway and the procedures established by law.

Following the alleged incidence of passing of signal, the applicant was placed under suspension by the Sr. DME, Alipurduar Junction who was not his controlling officer whereas the applicant was working under DME (P), Lumding only. The Sr. DME, Alipurduar did so under the instructions dated 17.12.2002 (Annexure- B to this O.A) of the Divisional Railway Manager, Alipurduar. Further, the Appellate Authority's power was exercised suo-motu by ADRM, Lumding as the Revisioning Authority being his excess jurisdiction which he did at the instance of the Sr. DAO, Lumding and DRM, Alipurduar junction, which is malafide, unfair and arbitrary.

The enquiry officer in his report clearly stated that the charge for not calling out of signal aspect against the applicant is not established but only mentioned about the consumption of liquor by the applicant as revealed from the Blood report. The Forensic Science Laboratory's report also held that the liquor content in the Blood sample of the applicant was also to the extent of 0.025% only which was well within the permissible limit and does not attract any punishment under the policy rules framed by the Railways. The Accident Committee in it's report under item No. D (v) also held that the applicant was not responsible for overshooting the signal. The fact finding committee could not find anything against the applicant. But surprisingly, the Disciplinary Authority lost sight of all those reports and imposed the penalty arbitrarily with malafide intention and unfair play. The respondents may therefore be asked to produce all

relevant records/documents, particularly (1) The Breath Analyser Report of Rly. Doctor, Bongaigaon, (2) Fact-finding committee's report, (3) Accident Committee's report, (4) Forensic Science Laboratory's report, (5) Original DAR Proceedings etc. before this Hon'ble Tribunal for proper assessment of facts.

This apart, the respondents in their written statement under para 6.2 have fairly admitted that both the Driver and Diesel Assistant (the applicant) were found to have been under influence of liquor by the Railway Doctor. The Sr. DME, Lumding in his order dated 22.04.2005 (Annexure- R/1 to this O.A) has also stated the offence of the applicant (Shri Kalita) is lesser than that of Shri Borah who was the Driver in command of the train. But even thereafter, Shri Borah has been given a lighter punishment whereas the applicant has been victimized with the major penalty of compulsory retirement. This clearly reflects the mindset and attitude of the Disciplinary Authority. Even thereafter, the vindictive attitude of the respondents continued which is evident from the fact that following the imposition of penalty, both Shri Borah (Driver) and the applicant submitted representations to the Revisioning Authority. But curiously, the representation of the Driver was sent to the General Manager and the representation of the applicant was sent to the Chief Mechanical Engineer, whereas the General Manager was not Revisioning Authority but it was the CME in the instant case. Thus the applicant was meted with an utter discriminatory attitude which is unfair and opposed to law and principles of natural justice.

Further, vide the impugned revisioning order dated 22.04.2005, the penalty of "compulsory retirement" imposed on the applicant has been reduced to "reduction to lowest in the grade of DAD, fixing his pay and seniority as that of a new recruit DAD after completion of training". The said order also clarifies that this reduction in punishment does not entitle him to any back wages as he is being reinstated on sympathetic grounds.

Needless to say that the reduced penalty stated above, has got far more serious implications on the applicant in as much as that in the name of reduction of penalty and reinstatement of the applicant, he is being treated as a new recruit thereby wiping out his services, seniority and all other benefits for the last 23 years. This is in fact a far more serious penalty in disguise which would cause irreparable loss and utter disaster to the applicant.

The applicant further begs to submit that the appellate authority acting in excess of his jurisdiction and being led by extraneous considerations, inflicted the penalty without giving reasonable opportunity for defence to the applicant and without supplying him the documents demanded by him. The Revisionary Authority also acted without application of mind and decided most casually. Such action is malafide, arbitrary, unfair and violative of the DAR of Railways and all other procedures established by law.

From the facts above stated it is evident that the DAR Proceeding was vitiated by irregularities and the actions of the Disciplinary Authority, the Appellate Authority and the Revisionary Authority were not based on facts and laws and as such are malafide, arbitrary, unfair, illegal, unreasonable, violative of the procedures established by law and also opposed to the principles of natural justice.

4. That in the facts and circumstances stated above, the application deserves to be allowed with costs.

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VERIFICATION

I, Shri Udhab Ch. Kalita, son of Late Nripati Kalita, aged about _____ years, resident of Railway Quarter No. DS-613-A at Ramunimaidan, Guwahati- 21, do hereby verify that the statements made in Paragraph 1 to 4 of the rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 8th day of March 2006.

Udhab Ch. Kalita