

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Bahli
01/11/2017

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET
APPLICATION NO.

02/2005 OF 199

Applicant(s) *Shri Biprajit Dutta*

Respondent(s) *UOI & IRS*

Advocate for Applicant(s) *MR. K. Paul*

Advocate for Respondent(s) *Rly Counsel.*

Notes of the Registry	Date	Order of the Tribunal
<p>application is in form is filed/C. F. Rs. 50/- deposited vide IPC/BD No. <i>119 412353</i> Dated <i>3/1/05</i> <i>[Signature]</i> Dy. Registrar</p> <p><i>Steps taken</i></p> <p><i>Notice & order</i> <i>sent to D/section</i> <i>for issuing to</i> <i>resp. Nos. 1 to 6</i> <i>by regd. AID post.</i> <i>25/01/05 D/No = 179 to</i> <i>184</i> <i>DT = 1/02/05.</i></p>	<p>5.1.2005</p> <p>mb</p> <p>7.2.2005</p>	<p>Heard Mr. K. Paul, learned counsel for the applicant and also Ms. U. Das, learned counsel for the Railway.</p> <p>The application is admitted, call for the records, returnable within four weeks.</p> <p>List on 07.02.2005 for orders.</p> <p><i>[Signature]</i> Member (A)</p> <p>Present: The Hon'ble Mr. M. K. Gupta, Judicial Member.</p> <p>It is contended by the learned counsel for the applicant Mr. K. Paul that a DPC was held on 7.4.1998 to consider the promotion to the post of Executive Engineer (Senior Scale) on adhoc basis</p>

Contd.

Notes of the Registry	Date	Order of the Tribunal
<p><i>4-2-05</i></p> <p><i>S/R awaited</i></p> <p><i>Received</i></p> <p><i>Usha Das</i></p> <p><i>Advocate</i></p> <p><i>For. S. Sarma</i></p> <p><i>S.E. Rly.</i></p> <p><i>10/2/05</i></p>	<p>Contd.</p> <p>7.2.2005</p>	<p>and various officers, including some juniors to him, were promoted to the said post on adhoc basis on 17.4.1998, ignoring the applicant's legitimate claim. It is further contended that only reason for such action could be that disciplinary proceeding against the applicant ^{was pending} which was culminated into imposition of penalty of reduction to a lower stage in the time scale of pay for a period of one year vide order dated 30.11.1999/21.2.2000. The aforesaid penalty was challenged before this Tribunal in O.A.No.310/2001 and the said penalty was quashed and set aside vide order dated 9.5.2002. The Writ petition filed by the Union of India, Ministry of Railway against the aforesaid ^{Tribunal} order, was dismissed vide order dated 8.1.2004.</p> <p>In the above background it is contended that respondents should have promoted the applicant to the said post.</p> <p>The relief sought in the present O.A. is to direct the respondents to open the sealed cover and to give promotion to the applicant to the post of Executive Engineer (Senior Scale) from the date his juniors were promoted with all consequential benefits.</p> <p>Ms.U.Das, learned counsel appearing on behalf of the respondents, states that she has no instruction from the Railway as to whether the sealed cover procedure was followed and the officers, promoted on 17.4.1998, were regularised or not. Accordingly, she prays for time to seek instruction.</p> <p>Adjourned to 11.2.2005.</p> <p><i>[Signature]</i> Member (J)</p>

3
OA. 2/2005

Notes of the Registry

Date 11.2.2005

Order of the Tribunal

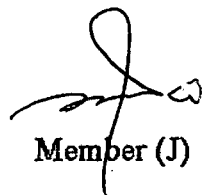
Present: The Hon'ble Mr. M. K. Gupta,
Member (J).

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

It is stated by Ms. U. Das, learned counsel appearing for the Railways that she has received instruction from the department to the effect that the sealed cover procedure was adopted by the respondents while considering applicant's juniors to the post of Executive Engineer (Sr. scale) and his exoneration on the charges in the disciplinary proceedings, would, not entitled him to promotion to the said post as he had not been recommended by the said DPC. Accordingly, she states that she requires two weeks time to file affidavit to this effect. Such being the case, we find that it is necessary for respondent to place their version on record. Let the applicant decide whether he would like to prosecute the matter or not, particularly in view of the above contentions.

Adjourned to 28.02.2005.


Member (A)


Member (J)

28.02.2005

Present : The Hon'ble Mr. K.V. Prahladan,
Administrative Member.

^{to be listed}
The application is admitted. List
along with MP 60/05
on 06.04.2005 for orders.


Member (A)

mb

Notice duly served
on resp. Nos. 1, 2, 3,
5 & 6.

14/2/05.

Order dt. 11/2/05
sent to D/section
for issuing to
both the parties.

17/2/05.

5-4-05

NO. 615 Ho - 6040 Biled.

O.A.2/2005

6.4.2005

This is a Division Bench matter.
Post on 11.4.2005.

Vice-Chairman

bb
11.4.05.

List the matter on 11.5.05
alongwith M.P.No.61 of 05.

Member

Vice-Chairman

lm

11.5.05

Ms.B.Devi learned counsel appea-
ring on behalf of Mr.S.Sarma learned
Railway counsel submits that some more
time is required to file written state-
ment. Post the matter on 26.5.05.

Member

Vice-Chairman

lm

26.5.2005

Learned counsel for the respondents
submitted that written statement is file
today. List the case for hearing on
17.7.2005. In the meanwhile rejoinder,
any, shall be filed.

Member

bb

7.7.05

none of the parties
advised to come on 8.7.05

8.7.2005

Mr K. Paul, learned counsel for
the applicant is present. Mr S. Sarma,
learned Railway Counsel is absent
with notice. Post on 1.8.05.

Member

Vice-Chairman

nkM

10-5-05

No W/S has been filed

lm

25.5.05

No written stat.
has been filed so far.
lm.

27.5.05

W/S filed by the
Respondents.

21.6.05

Rejoinder filed
by the Applicant.

lm

The case is ready
for hearing.

20
6.7.05

5-10-05

The case is ready
for hearing as
regard W/S and
Rejoinder.

mb

06.10.2005 Mr. K..Paul, learned counsel
for the applicant is present. Mr.
S. Sarma, learned counsel for the
respondents submits that some more
time is required. Post on 8.11.2005

Member

Vice-Chairman

mb

8.11.2005 Post before the next Division
Bench.

The case is ready
for hearing.

mb
7.11.05

mb

Vice-Chairman

5.1.06 Mr K.Paul, learned counsel for
the applicant is present. Miss U.^{as},
on behalf of Mr S.Sarma, learned
Railway counsel sought for adjournment.
Post before next Division Bench.

Additional W/S has
been filed by the
Respondents.

2.1.06

Member

Vice-Chairman

pg

6.3.2006 Present Hon'ble Shri B.N. Som,
Vice-Chairman (A)
Hon'ble Shri K.V.Sachidanandan,
Vice-Chairman (J).

The case is ready
for hearing.

mb
2.1.06

Heard Mr K. Paul, learned
counsel for the applicant and Mr S.
Sarma, learned Railway Counsel.
Hearing concluded. Judgment
delivered in open court, kept in
separate sheets. The application is
disposed of. M.P.No.61/2005. also stands
disposed of. No order as to costs.

3-3-06

The case is ready
for hearing.

mb

Vice-Chairman (J) Vice-Chairman (A)

nkm

17.3.06

C. Copy has been
collected by the ~~adv.~~
applicant and a copy
of the same has been
sent to the office for
issuing forth Rly. Pkdt
counsel. etc.

ap
dt.

01.08.2005

post on 02.08.2005.

Member

Vice-Chairman

mb

The case is ready
for hearing.

2.8.2005

Post on 12.8.2005.

Member

Vice-Chairman

mb

30
16.8.05

12.8.2005

~~xxx~~ Heard Mr.K.Paul, learned counsel for the applicant and Mr.S. Sarma, learned Railway counsel in part. In para 7 of the written statement filed by the respondents it is stated that a vigilance case is instituted at the instance of S.P., C.B.I. ⁱⁿ disproportionate assets case. The applicant in the reply affidavit has stated that only a minor penalty proceeding was instituted by memo dated 10.5.2004 in the disproportionate assets case. The applicant has now stated that there is no criminal case instituted against him as averred in para 7 of the written statement. The respondents have also mentioned the nature and number of the criminal case and the place where the criminal case was instituted in the written statement. It is absolutely necessary to find out as to whether any criminal case is pending against the applicant in disproportionate assets case as averred by the respondents. The applicant and the respondents are directed to file their respective affidavits in this regard within two weeks from today.

Post before the next Division Bench.

Member

Vice-Chairman

bb

Order dated 12/8/05
received on 18/8/05
Bd 28/8/05

26.8.05

affidavit filed by the
applicant in terms of order
12.8.05.

Prm

A
23.8.05
for respondents
Dandana Devi
Advocate

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

.....

2 of 2005

O.A. No.

06.03.2006

DATE OF DECISION

Sri Biprajit Dutta

..... Applicant/s

Mr. K. Paul

..... Advocate for the
applicant/s.

- Versus -

Union of India & Ors.

..... Respondent/s

Mr. S. Sarma, Railway Counsel

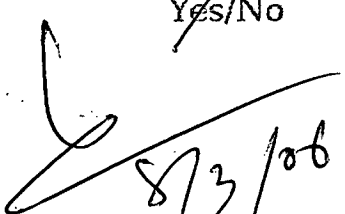
..... Advocate for the
respondents

CORAM

THE HON'BLE SRI B.N. SOM, VICE CHAIRMAN (A)

THE HON'BLE SHRI K.V. SACHIDANANDAN, VICE CHAIRMAN (J)

- | | | |
|----|--|--------|
| 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 compiled at Jodhpur Bench ? | Yes/No |
| 4. | Whether their Lordships wish to see the fair copy
of the Judgment ? | Yes/No |


8/3/06
Vice-Chairman (J)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.2 of 2005

Date of decision: This the 6th day of March 2006

Hon'ble Shri B.N. Som, Vice-Chairman (A)

Hon'ble Shri K.V. Sachidanandan, Vice-Chairman (J)

Shri Biprajit Dutta
Assistant Executive Engineer/Pl-2
General Manager/Con's Office
N.F. Railway, Maligaon,
Guwahati - 781 011.

.....Applicant

By Advocate Sri K. Paul.

- Versus -

1. The Union of India,
Represented through the General Manager,
N.F. Railway, Maligaon,
Guwahati - 781 011.
2. The General Manager/Con,
N.F. Railway, Maligaon,
Guwahati - 781 011.
3. Principal Chief Engineer
N.F. Railway, Maligaon,
Guwahati - 781 011.
4. Chief Personnel Officer,
N.F. Railway, Maligaon,
Guwahati - 781 011.
5. Chief Engineer (Con-2),
N.F. Railway, Maligaon,
Guwahati - 781 011.
6. Dy. Chief Personnel Officer (Con),
N.F. Railway, Maligaon,
Guwahati - 781 011.

.....Respondents

By Advocate Mr S. Sarma, Railway Counsel.


.....

L

ORDER (ORAL)SACHIDANANDAN, VICE-CHAIRMAN (I)

The applicant is working as Assistant Executive Engineer, under the respondents' establishment. He was issued with a memorandum of charges on 28.6.1997. The DPC for promotion of the applicant as Executive Engineer was held on 17.4.1998. It is also averred in the O.A. that some juniors of the applicant were also promoted as Executive Engineer. However, the respondents had adopted the sealed cover procedure in the case of the applicant. The grievance of the applicant is that the applicant was fully exonerated from the charges by this Tribunal by order dated 9.5.2002 passed in O.A.No.310 of 2001 and therefore the applicant is entitled for promotion to the post of Executive Engineer. Being aggrieved by the inaction of the respondents the applicant has filed the present O.A. seeking the following reliefs:

"In the premises aforesaid, it is therefore, prayed for that the Lordships of this Hon'ble Tribunal may be pleased to admit this application, call for the records and after hearing the parties and upon perusal of the records be pleased to direct the respondents to open the sealed cover in respect of the applicant and to give him promotion in 1998 along with all other consequential benefits and/or be pleased to pass any such further or other order/orders as your Lordships may deem fit and proper."

2. The respondents have filed a detailed written statement contending that the currency of the panel in the said DPC expired before the completion of the disciplinary proceedings initiated against the applicant and therefore the sealed cover was not opened. The
- 

applicant was considered for promotion in the subsequent DPCs held in 2000, 2001, 2002 and 2003 but the applicant was not found fit for promotion due to below bench marking and the vigilance case instituted at the instance of the S.P., CBI. Therefore, the sealed cover of the applicant could not be opened.

3. Mr K. Paul, learned counsel for the applicant and Mr S. Sarma, learned Railway Counsel are present. The learned counsel for the parties have taken us to various pleadings and materials placed on record.

4. We have heard the learned counsel for the parties and their arguments and given due consideration. The crux point to be considered is regarding "opening of the sealed cover adopted in the DPC held in the year 1998" and this Tribunal by order dated 9.5.2002 in O.A.No.310/2001 had exonerated the applicant from the said charges. It will be profitable to quote here the operative portion of the order dated 9.5.2002:

"..... We have already indicated the full text of the purported disagreement, which is no disagreement at all. The materials on record also otherwise did not establish the guilt of the charged official. In the circumstances the order of penalty imposed on the applicant is wholly unjustified. The imposition of penalty vide order dated 10.11.1999/21.2.2000 since has been withdrawn, no order is necessary from this Tribunal. We, however, set aside and quash the order of penalty dated 8.11.2001."

5. The matter was taken up before the Hon'ble Gauhati High Court in Writ Petition (C) No.7809 of 2002 and by order dated 8.1.2004 the Hon'ble High Court has also upheld the decision of this Tribunal and the order dated 9.5.2002 in O.A.No.310/2001 has become

L

final. The operative portion of the order of the Hon'ble Gauhati High Court is worth quoting:

"..... In the present case exercise of jurisdiction by the Tribunal in entertaining the petition filed by the respondent cannot be said to be an exercise beyond the competence of the Tribunal, when the Tribunal has entertained the petition and we do not find any infirmity in the order passed by the Central Administrative Tribunal. We cannot say that exercise of jurisdiction by the Tribunal is not a proper exercise of the discretion by the Tribunal in the facts and circumstances of the present case.

In view of the above, the petition stands disposed of. However, there shall be no order as to costs."

6. The contention of the respondents is that there are subsequent proceedings against the applicant and therefore, the sealed cover could not be opened. We are of the view that it is not in conformity of the legal position since the cloud that was prevailing prior to 1998 when the DPC was held and the applicant's selection was withheld and kept in sealed cover it has to be opened since the applicant was exonerated and the benefit has to be granted to the applicant if he is otherwise fit for promotion. The Hon'ble Supreme Court in Anand Kumar Vs. Prem Singh and others, 2001 SCC (L&S) 742 and S.N. Dhingra and others Vs. Union of India and others, (2001) 3 SCC 125, has held that the DPC at the relevant time has to be considered since if at the relevant time the applicant was eligible he would have been promoted at that point of time and therefore the sealed cover procedure is being adopted. The benefit of this should be given to the applicant.

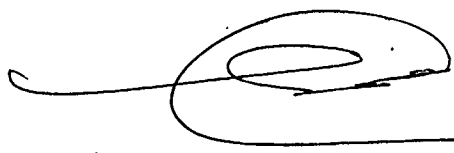
7. Therefore, we are of the considered view that in the facts and circumstances of the case the sealed cover has to be opened and the applicant has to be promoted if he is otherwise found fit by

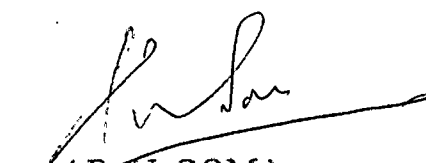


holding a Review DPC within a time stipulation of three months from the date of receipt of a copy of this order.

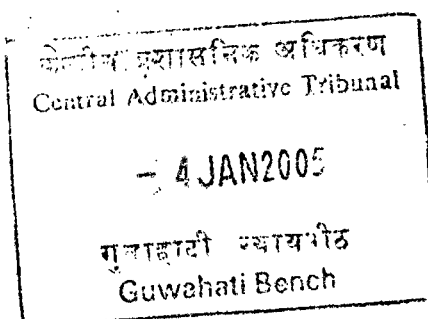
8. ✓ We then ^{for} direct the respondents to open the sealed cover ^{Promote him} and if found eligible hold a Review DPC within a time frame of three months from the date of receipt of a copy of this order and communicate/report the same to the applicant.

The O.A. is accordingly disposed of. No order as to costs.


(K. V. SACHIDANANDAN)
VICE-CHAIRMAN (J)


(B. N. SOM)
VICE-CHAIRMAN (A)

nkmm



**IN THE CENTRAL ADMINISTRATIVE
TRIBUNAL**

GUWAHATI BENCH :: GUWAHATI

ORIGINAL APPLICATION NO. 02 OF 2005.

Shri Biprajit Dutta Applicant

- VERSUS -

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

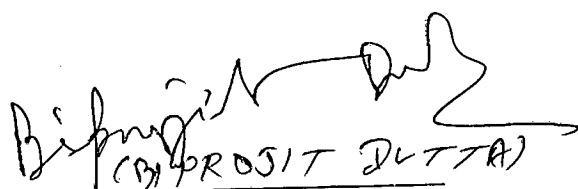
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4.	Judgment and Order dated 09.05.2002 passed by this Hon'ble Tribunal in O.A. No. 310/2001	A/3	19- 27
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10	Reminder dated 09.08.2004	A/9	44


(BIPINJIT DUTTA)
Signature of the Applicant.

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**IN THE CENTRAL ADMINISTRATIVE
TRIBUNAL**

GUWAHATI BENCH :: GUWAHATI

ORIGINAL APPLICATION NO. _____ OF 2005.

Shri Biprajit Dutta Applicant

- VERSUS -

The Union of India and Others Respondents

LIST OF DATES

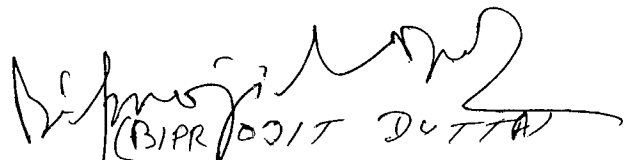
Date	Description	Paragraphs	Annexure	Page No.
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:- 2 -:

Date	Description	Paragraphs	Annexure	Page No.
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08.01.2004	Judgment and Order passed by the Hon'ble Gauhati High Court in WP(C) No. 7809/2002, upholding the order dated 09.05.2002 passed by this Hon'ble Tribunal in O.A. No. 310/2001	4.10	A/8	40-43
09.08.2004	Reminder submitted by the applicant with reference to his representation dated 03.06.2002	4.11	A/9	44


(BIPRAJIT DUTTA)
Signature of the Applicant

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH GUWAHATI

(An Application under section 19 of the
Administrative Tribunals Act, 1985)

ORIGINAL APPLICATION NO. 2 OF 2005

Shri Biprajit Dutta,
Assistant Executive Engineer/P1-2 ✓
General Manager/Con's Office,
N.F.Railway, Maligaon,
Guwahati – 781 011

..... APPLICANT

- VERSUS -

1. The Union of India,
Represented through the General Manager,
N.F.Railway, Maligaon, Guwahati – 781011
2. The General Manager/Con,
N.F.Railway, Maligaon, Guwahati – 781011
3. Principal Chief Engineer,
N.F.Railway, Maligaon, Guwahati – 781011
4. Chief Personnel Officer,
N.F.Railway, Maligaon, Guwahati – 781 011
5. Chief Engineer (Con-2),
N.F.Railway, Maligaon, Guwahtai – 781 011
6. Dy. Chief Personnel Officer (Con),
N.F.Railway, Maligaon, Guwahati – 781 011

..... RESPONDENTS

Filed by,

through,

18
Biprajit Dutta
CBIPRODIT DUTTA
Krishendu Paul, Advocate
04-01-2005.

198

13/11/2001
Bipinjit Datta
(BIPROBIT DUTTA)

DETAILS OF APPLICATION :

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

The applicant is aggrieved by the depriving and delaying attitude of the Railway Administration for Non-consideration of his case for promotion to senior Scale in the post of Executive Engineer (Group – B), even after the order of imposing Major penalty dated 08.11.2001, was set aside and quashed by this Hon'ble Tribunal vide Judgment and Order dated 09.05.2002 in Original Application No. 310 of 2001.

2. Jurisdiction of the Tribunal

The applicant declares that the Hon'ble Tribunal has jurisdiction over the subject matter as well as territorial jurisdiction in respect of the application.

3. Limitation

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

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Bijoyjit
(BIPROJIT 2077A)

4. Facts of the Case

- 4.1 That, the applicant is a citizen of India and is entitled to all the rights and privileges guaranteed by the Constitution of India and the laws framed thereunder.
- 4.2 That, the applicant is working as Assistant Executive Engineer, a gazetted post, and is posted in the office of the General Manager (CON), N.F.Railway, Maligaon. Prior to his posting in the office of the General Manager (CON), N.F.Railway, Maligaon, the applicant was working as Assistant Executive Engineer/CON, N.F.Railway, Ambassa.
- 4.3 That, prior to his posting at Ambassa, the applicant was working as Assistant Engineer/CON, N.F.Railway, Dimapur. In the year 1994-95, the applicant checked and passed stacks of ballast measuring to 1739.373 Cubic Metre, supplied to the railway administration. The ballast were passed after proper sieve analysis as per Clauses provided in the Contract Agreement No. CON/LD/8. After the passing of the stacks of ballast by the applicant a CBI check was made without observing, the norms of sieve analysis prescribed in the said contract agreement. Thereafter, a chargesheet for major penalty was issued by the General Manager/Con, N.F.Railway, Maligaon on 28-6.97 and an inquiry was conducted by appointing an inquiry officer. The Inquiry Officer in his report/Finding inter - alia, held that checks conducted by the CBI officials were not as per the the

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Highlights
(BIPRODIT DUTTA)

norms specified in the contract agreement and that the charge framed against the applicant was not established & fully exonerated the applicant (C.O.) undoubtedly. The General Manager/Con, N.F. Railway Maligaon (Disciplinary authority), disagreed with the Inquiry Officer and after serving a notice of disagreement on the applicant, imposed the major penalty of reduction to a lower stage of the time scale of pay for a period of one year with cumulative effect which will not have the effect of postponing the future increment, vide No. Z/SSs/CON/DA/GAZ(BD) dated 30.11.99/21.02.2000.

A copy of the memorandum imposing the major penalty dated 30.11.99/21.2.2000 is annexed as ANNEXURE - A/1

4.4.I. That, the applicant preferred an appeal before the Railway Board against the penalty imposed but no relief was given to the applicant and the applicant had to move this Hon'ble Tribunal by filing O.A. No. 310/2001 for setting aside and quashing the illegal and unjustified punishment imposed upon him, being an innocent Railway employee. During the pendency of the O.A. No. 310/2001, the General Manager/Con, N.F. Railway, Maligaon vide Memorandum dated 16.10.2001, withdrawn the penalty imposed on the applicant on 30.11.99/21.2.2000 reserving the right to issue a fresh notice of imposition of penalty. Accordingly, a fresh penalty of reduction of pay by one stage in the same time scale for a period of one year with cumulative effect of postponing future increments, was imposed on the applicant

22/11/01
Bifurcated
(BIPROFIT DATA)

vide No. Z/SS/CON/DA/GAZ(BD) dated 08.11.2001 by the General Manager/Con, N.F. Railway Maligaon. This repeated order for imposing fresh penalty beyond the competency of GM/CON was also challenged before the Hon'ble Tribunal as the matter was "sub-judice".

A copy of the order imposing the fresh penalty dated 08.11.2001 is annexed as ANNEXURE- A/2. alongwith a letter of applicant dated :12.11.2001

4.5. That the Hon'ble Tribunal by Judgment and order dated 09.05.2002 was pleased to allow the O.A. No. 310/2001. The Hon'ble Tribunal observed that the Inquiry Officer on evaluation of the materials exonerated the applicant and although the Disciplinary Authority purported to disagree with the Inquiry Officer, in fact no disagreement is discernible. Besides, the disagreement memo is also not in conformity with Rule 10 of the Railway Servants (Discipline and Appeal) Rules 1968. According to the Hon'ble Tribunal, the material on record also otherwise did not establish the fault of the charged official/applicant, and in the circumstances, the order of penalty imposed on the applicant is wholly unjustified. The Hon'ble Tribunal held that, since the imposition of penalty vide order dated 30.11.99/21.2.2000 has been withdrawn, no order is necessary. However, the Hon'ble Tribunal was pleased to set aside and quash the order of penalty dated 08.11.2001.

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deprojet
(B) PROJET DUTTA

A copy of the Judgment ~~of~~ Order dated 09.05.2002 passed by this Hon'ble Tribunal in the O.A. No. 310/2001 is annexed as ANNEXURE – A/3.

4.6. That, in the disciplinary proceedings against the applicant chargesheet was issued on 28.06.1997 and penalty was imposed on 08.11.2001 by the disciplinary authority, which was, however, set aside and quashed by this Hon'ble Tribunal vide Judgment and Order dated 09.05.2002 in O.A. 310/2001. During the pendency of the disciplinary proceeding, a number of persons including some junior to the applicant as Assistant Executive Engineer/Group-B have been considered for promotion by the Departmental Promotion Committee (DPC) and they were promoted to Senior Scale as Executive Engineer and Divisional Engineer in the year 1998. vide Office Order No. 08/1998 under letter referred No. E/283/31/Pt.XVIII(()) dated 17.04.1998. These persons are namely S/Shri G.C. Sarkar, 2) M.K. Pandey, 3) Anil Kumar and 4) U. N. Sonowal. Thereafter, two more panels of AEN/Group-B, Junior to the applicant, were recommended by the DPC in the ^{month of} January, 2001 and in February, 2002 for promotion to Senior Scale. The applicant was not informed about his case for promotion to Senior Scale because of the pendency of the disciplinary proceedings. The penalty imposed on him after conclusion of the disciplinary proceedings vide order dated 08.11.2001 was ultimately set aside and quashed by this Hon'ble Tribunal on 09.05.2002.

A copy of the Office order dated 17.04.1998 along with the seniority list of Group – B Officers of Civil

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highlights
(BIPROFIT D477A)

Engineering Department are annexed as ANNEXURE-A/4 and A/5.

4.7 That as stated in the foregoing paragraph in the year 2001 and 2002 fresh batch of AEN/Group-B were considered by DPC for promotion to Senior Scale and although the applicant was in the zone of consideration he was not promoted as he was under going forcefully punishment imposed illegally by the General Manager/CON, vide order No. Z/SS/CONDA/GAZ/(BD) dated 30.12.99/21.02.200 Annexure A-1 which was subsequently withdrawn and the fresh order of penalty which was reimposed vide Order No. Z/SS/CON/DA/GAZ(BD) dated 08.11.2001, Annexure – A/2, was quashed and set aside by the Hon'ble Tribunal by the Judgment and Order dated 09.05.2002 in O.A. No. 319/2001.

4.8. That under Railway Boards letter.No. E(D&A)92 RG 6 – 149 (B) dated 22.01.93, in the case of a Group A and Group-B Railway servant against whom a Chargesheet has been issued and disciplinary proceedings is pending, the Departmental Promotion Committee (DPC) shall assess the suitability of the Railway servant concerned along with other illegible candidates without taking into consideration the disciplinary proceeding pending and the assessment so made shall be kept in a sealed cover to be opened on the conclusion of disciplinary proceedings which results in dropping of all allegation against the Railway Servant. In case the Railway Servant is completely exonerated the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed

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BIPROJIT DUTTA
(BIPROJIT DUTTA)

cover and with reference to the date of promotion of his next junior on the basis of such position. The Railway servant may be promoted, if necessary, by reverting the junior- most officiating person.

A copy of the Railway Board's letter dated 22.01.1993 is annexed as ANNEXURE – A/6

4.9. That, after the penalty imposed on the applicant at the conclusion of the disciplinary proceedings against him, was set aside and quashed by this Hon'ble Tribunal on 09.05.2002, it was the responsibility of the respondents to open the sealed cover and to give promotion to the applicant from the date (17.04.98 as cut of date) his next junior was promoted. Since that was not done, the applicant submitted a representation dated 03.06.2002 addressed to the General Manager (P), N.F.Railway, Maligaon through proper channel, highlighting the afore mentioned facts and praying for opening the sealed cover and promote him to the Senior Scale with effect from the date his juniors were promoted in the junior were promoted in the year 1998 w.e.f. 17.04.1998.

A copy of the said representation dated 03.06.2002 is annexed as ANNEXURE – A/7.

4.10. That, the aforementioned representation dated 03.06.2002 was not responded by the respondents. Instead, the respondents approached the Hon'ble Gauhati High Court by way of filing a writ petition, being WP(C) No. 7809/2002, wherein prayer was made for quashing the Order dated 09.05.2002 passed by the Hon'ble Tribunal in O.A. No. 310/2001. The Hon'ble High Court by Judgment and Order dated 08.01.2004 declined to interfere with the order dated 09.05.2002 passed by this Hon'ble Tribunal in O.A.

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(BIPROGAT 26/7/11)

No. 310/2001 as no infirmity was found in the said order and the judgment of Hon'ble CAT/GHY was upheld.

A copy of the Judgment and Order dated 08.01.2004 passed by the Hon'ble Gauhati High Court in WP (C) No. 7809/2002 is annexed as ANNEXURE - A/8.

4.11. That, the order dated 09.05.2002 passed by this Hon'ble Tribunal in O.A. No. 310/2001, where by the penalty imposed on the applicant was set aside and quashed, has been upheld by the Hon'ble High Court vide Judgment and Order dated 08.01.2004 In WP(C)) NO. 7809/2002. The applicant stood completely exonerated from all charges undoubtedly and as a natural corollary the sealed cover in respect of the applicant has to be opened and promotion to be given from the date his juniors were promoted. However, the respondent authority failed to initiate any step in this regard adding to the worst suffering and woes of the applicant. The applicant submitted a reminder dated 09.08.2004 with reference to his earlier representation dated 03.06.2002 addressed to the General Manager, N. F. Railway, Maligaon through proper channel. The applicant requested the respondent authority for opening the sealed cover in respect of D.P.C. recommendation in 1998 in the matter of his promotion to Senior Scale and for implementation of the same. However, the said representation dated 03.06.2002 as well as the reminder, failed to evoke any response from the side of the respondents.

A copy of the said reminder dated 09.08.2004 is annexed as ANNEXURE - A/9.

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Bijoyjit
(BIPROST DUTTA)

5. Ground for relief with legal provisions :-

5.1 That, the sealed cover procedure is mandatory and is to be adopted when an employee is due for promotion but disciplinary proceedings are pending against him at the relevant time and hence, the finding of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over. Consideration of case of an employee for promotion cannot be withheld merely on ground of any disciplinary proceedings, against him. The sealed cover procedure is to be resorted to only after the charge – memo is issued to the employee in a disciplinary proceeding, when disciplinary proceeding is initiated against the employee. The sealed cover is to be opened in case of complete exoneration of the employee from all charges and promotion to be given from the date his juniors were promoted. The benefit of the salary of the higher post along with the other benefits has to be given from the date on which he would have normally been promoted but for the disciplinary proceeding. This is the law laid down by the Hon'ble Supreme Court in K.V. Jankiraman case and the said principle is codified in various Government of India (Department of Personnel and Training) Office Memoranda as well as the letters from the Railway Board No. E (D&A) 92 RG6 – 149 (B) dated 22.01.1993 and No. E (D&E) 2003 RG – 6/15 dated 07.05.2004.

5.2 That, the applicant stood completely exonerated from all charges undoubtedly by I.O. in the disciplinary proceedings against him even after, the order of penalty dated 08.11.2001 re-imposed on him, was set aside and quashed by this Hon'ble Tribunal vide Judgment and Order dated 09.05.2002 in O.A. 310/2001 and which

Signature of
(BIPRODIT DUTTA)

was also upheld by the Hon'ble Gauhati High Court in WP(C) No. 7809/2002 vide Judgment and Order dated 08.01.2004. Therefore, the respondents in all fairness ought to ^{have} opened the sealed cover in respect of the recommendation made by the Departmental Promotion Committee (D.P.C.) which met from time to time during pendency of the disciplinary proceedings against the applicant and the applicant be given promotion to the Senior Scale from the date his juniors were promoted w.e.f. 17.04.1998. However, no such step has been initiated by the respondents, which is clear contravention of the law laid down by the Apex Court as well as the Government Circulars.

5.3 That, the non-consideration of the case of the applicant for promotion to Senior Scale from Group B Assistant Executive Engineer by opening the sealed cover has violated the fundamental and other legal rights of the applicant.

5.4 That, the denial of promotion to the applicant after being completely exonerated from all charges in the disciplinary proceedings cannot be justified in any view of the matter. Persons who are junior to the applicant as AXEN/ Group- B have already been promoted to the Senior Scale way back in the year 1998 whereas the applicant is deprived from due promotion till date because of a Faulty charge sheet based on false & base less allegation even after imposing repeated forceful punishment to an Innocent Railway Employee and prolong intentional delay of Disciplinary proceedings by the respondent. The impugned action of the respondents suffers from the vice of discrimination and is hit by Article 14 of the Constitution of India.

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highly
(BIPROJIT DUTTA)

5.5 That, the applicant is suffering great loss in terms of money and humiliation because all his juniors have superseded him by now whereas the applicant is stagnating in the same post without being considered for promotion even after complete exoneration from all charge in the disciplinary proceedings. The respondents have committed undue delay in finalisation of disciplinary proceedings. The alleged incident to which the charge relate took place during 1994-95. The charge memo was served on the applicant on 28.06.1997. Thereafter, inquiry was held and the Inquiry Officer in his report dated 25.02.1999 recorded the finding that the charges were not substantiated against the applicant. The disciplinary authority did not agree with the Inquiry Report and penalty was re-imposed on the applicant vide order dated 08.11.2001 which was, however, set aside and quashed by the Hon'ble Tribunal on 09.05.2002 in O.A. No. 310/2001. The respondents further carried the matter to the Hon'ble Gauhati High Court but the Hon'ble Court refused to interfere, finding no infirmity in the order passed by this Hon'ble Tribunal.

5.6 That, the respondents are causing great delay in opening the sealed cover in respect of the applicant. The disciplinary proceedings against the applicant was initiated on 28.06.1997 with the issuance of the charge memo and during pendency of the said proceedings, the D.P.C. met in the year 1998 and recommended the names of persons who are junior to the applicant for promotion the Senior Scale. In respect of the applicant, the recommendation of the D.P.C. ought to have been kept in sealed cover due to pendency of the disciplinary proceedings. But, after complete exoneration of the applicant from the charges, the sealed cover ought to be opened and the applicant to be given promotion from the date his juniors were promoted. The inaction/delay on the part

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Bipinjit Datta
(BIPROBIT DUTTA)

of the respondents in opening the sealed cover is causing tremendous hardship and mental agony to the applicant, who has been made to suffer for the last almost 10 years for no fault of his.

6. Details of the Remedies Exhausted :-

That, the applicant filed ~~reminder~~ on 09.08.2004 but the same has not been considered by the respondents.

7. Matters not Previously Filed or Pending with any Other Court.

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Reliefs Sought :-

In the premises aforesaid, it is therefore, prayed that the Lordships of this Hon'ble Tribunal may be pleased to admit this application, call for the records and after hearing the parties and upon perusal of the records be pleased to direct the respondents to open the sealed cover in respect of the applicant and to give him promotion to the Senior Scale from the date his Juniors were promoted in 1998 along with all other consequential benefits and/or be pleased to pass any such further or other order/orders as your Lordships may deem fit and proper.

Biprajit Das
(BIPROJIT DATTA)

And for this act of kindness, the humble applicant as in dutybound,
shall ever pray.

9. Interim Order, if any Prayed for :-

Nil.

10. Particulars of Postal Order Filed in Respect of the
Application.

I.P.O. No. 412353

Dated 3-1-2005.

PayableGummati.....

11. List of Enclosures :

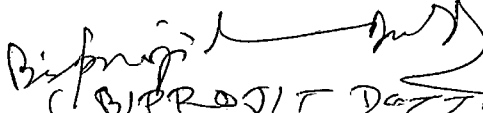
As in Index.

VERIFICATION

I, Shri Biprajit Dutta, Son of Late B.C. Dutta, aged about 46 years, working as Assistant Executive Engineer, N.F.Railway, Construction (Planning), residing in Railway Bungalow No. 294/D, Sarada Colony, Maligaon, Guwahti - 781 011, do hereby verify that the contents of paragraphs 4.1 to 4.11 are true to my personal knowledge and paragraphs 5.1 to 5.6 are believed to be true on legal advice and that I have not suppressed any material fact.

Date : 04-01-2005.

Place : Guwahati.


(BIPRAJIT DUTTA)
Signature of the Applicant

MEMORANDUM

I have gone through the charges framed against Shri Biprajit Dutta, AEN/Con/DMV now AEN/Con/KUGT vide Memorandum of even number dated 28.6.97, the Inquiry Report, representation of Charged Officer dated 3.11.99 on the Inquiry Report and all other relevant facts and circumstances of the case.

The representation of the C.O has been carefully considered. I feel that ends of justice would be met with by imposition of Major Penalty of 'Reduction to a lower stage in the time scale of pay' for a period of one year with cumulative effect which will not have the effect of postponing the future increment of his pay.

Shri B. Dutta has the right to appeal to the President within 45 days, under Railway Servants (D & A) Rules, 1968.

राज ल मलिक

(R. L. Malik)

General Manager/Con
N.F. Railway, Maligaon.

✓ To

Sri Biprajit Dutta,
AEN/Con/KUGT

No: Z/SS/Con/DA/GAZ(BD)

Dt: 30-11-99

21-02-2000

Copy forwarded for information to :-

1. FA & CAO/C/MLG
2. CVO/MLG
3. OS(P)/GAZ
4. Copy for P/Case.

Certified to be true copy.
Krishnendu Paul
Advocate

for General Manager/Con

MEMORANDUM

I have gone through the case of Major Penalty against Shri Biprajit Dutta. Notice for Imposition of punishment was issued vide No. Z/SS/Con/DA/GAZ(BD) dt. 30-11-1999/2.2.2000. However, it was found that the NIP issued as above was defective because of the following reasons :

- (i) The terms "Cumulative effect" and also "will not have the effect of postponing his future increments" are mutually exclusive.
- (ii) It has been stated in the NIP that appeal lies to the President of India. However, since Shri Dutta is Group - B officer, in terms of Schedule-III to RS(D&A) Rules, 1968, appeal against the order of General Manager, shall lie to the Railway Board.

In view of this the NIP issued vide No. Z/SS/Con/DA/GAZ(BD) dt. 30-11-1999/2.2.2000 was cancelled, without prejudice to issue of fresh orders. Vide No. Z/SS/Con/DA/GAZ(BD) dated 16.10.2001.

I have carefully gone through the charge-sheet issued vide No. Z/SS/Con/DA/GAZ(BD) dated. 28-6-97, the enquiry report and the representation of C.O. on the disagreement memo and all other documents, related to the case.

Shri Dutta has represented that the main reasons for undersize ballast beyond permissible limit had been (i) non-representative sample, (ii) accumulation of dust at the mid of stack, (iii) screening effect of hand panja and kata kodai during digging activity and (iv) accumulation of dust particles at the mid of stack due to rain.

The points raised by the CO., do not explain the high variation found in sample to the tune of 21.43% (in one sample). Any error in sampling would have evened out and would not have resulted in undersized ballast exceeding permissible limit of 5% in all the stacks in which joint surprise check was done. In view of this Shri Dutta is responsible for causing financial loss to the Railway by passing and accepting undersize stone ballast. I hold Shri Dutta guilty of misconduct under Rule 3.1 (ii) of Railway Servants (Conduct) Rules, 1966. I feel the ends of justice would be met with if a penalty of reduction of pay by one stage in the same time scale for a period of one year is imposed. This will have the cumulative effect of postponing his future increments.

An appeal against the above order lies to the Railway Board, the next higher authority, which may be submitted within 45 days of the receipt of this letter.

(G. R. Madan)
General Manager/Con,
N. R. Railway, Maligaon

To
Shri Biprajit Dutta,
AEN/Con/KUGT

No. Z/SS/Con/DA/GAZ(BD)

Dated, 3rd November 2001.

Certified to be true copy.
K. Paul
Advocate

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Annexure A/2 Cont'd

Confidential

Dt. - 12/11/2001

From
BIPRAJIT DUTTA
AEN / CON / KUGT
at Ambassa

The General Manager
Construction N.F. Railway
Maligoan, Guwahati - 11

Through Dy. CE / Con / KUGT
at Agartala

Sub. - Memorandum of Punishment Communicate Through Letter No. --
Z/SS/CON/DA/GAZ (BD) Dt. - 16th Oct. 2001 Recommunicated by Dy. CE/
Con / KUGT Through his letter no. - E/74/Con/K-A/850 dt. - 08-11-2001.

Respected Sir,

~~With reference to the above subject matter I beg to state that the D.A.~~
(Disciplinary Authority) completed his job as soon as final order issued. As such the question of
issuing further order on the same D.A. proceeding does not arise.

Any modification on the final order can only be made by the Appellate authority
only.

Besides the matter is Sub.- judge before the Honble. CAT, Guwahati vide case
no.-310/2001.

Therefore, U/S 19(4) of the Tribunal Act, No order can be issued without
permission from the said Honble. CAT.

As such any further order issued by the DA would be not only without jurisdiction
but also amount to CONTEMPT of COURT.

With Regards.

Certified to be true copy.
K. Paul
Advocate

(B. Dutta)
Asstt. Executive Engr. / Con/ KUGT
at Ambassa

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: 13/11/2002 GUWAHATI.

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DESPATCH NO. CAT/CHY/JUDL.

DATED, GUWAHATI, THE

ORIGINAL APPLICATION NO. : 310/2001
MISC. PETITION NO. :
CONTEMP. PETITION NO. :
REVIEW APPLICATION NO. :
TRANSFER APPLICATION NO. :

Shri B. Dutta

APPLICANT(S)

VERSUS

Union of Engineers & Ors

RESPONDENT(S)

To

Mr. R. Dutta

Advocate

Camruti High court.

Camruti

Please find herewith a copy of Judgment/Order dated
9/5/2002 passed by the Bench of this Hon'ble Tribunal
comprising of Hon'ble Justice Shri D. N. S. Chowdhury
Vice-Chairman and Hon'ble Shri K. K. Thakur
Member, Administrative in the above noted case for information
and necessary action, if any.

Please acknowledge receipt of the same.

Encls : As stated above.

BY ORDER

20/5/02

DEPUTY REGISTRAR.

Certified to be true copy.
K. Paul
Advocate -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.310 of 2001

Date of decision: This the 9th day of May 2002

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Biprajit Dutta,
Assistant Engineer/Con,
N.F. Railway, Kumerghat,
Tripura.

By Advocate Mr R. Dutta.

.....Applicant

- versus -

1. The Union of India, represented by
The Secretary, Railway Board,
Rail Bhawan, New Delhi.

2. The Chairman, Railway Board,
Rail Bhawan, New Delhi.

3. The General Manager/Con.,
N.F. Railway, Maligaon,
Assam.

4. The Deputy Chief Personnel Officer/Con,
N.F. Railway, Maligaon,
Assam.

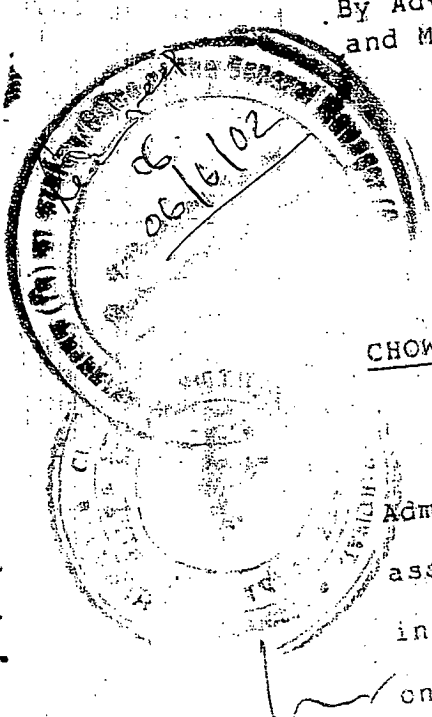
By Advocate Mr B.K. Sharma, Railway Counsel,
and Mr S. Sarma.

.....Respondents

ORDER (ORAL)

CHOWDHURY.J. (V.C.)

In this application under Section 19 of the Administrative Tribunals Act, 1985 the applicant has assailed the legitimacy of the action of the respondents in imposing a major penalty thereby reducing his pay by one stage in the time scale of pay in the following circumstances:



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The applicant is working for gain under the respondents as Assistant Engineer. While he was so serving he was served with a memorandum dated 28.6.1997 containing the statement of articles of charge accompanied by the statement of imputations of misconduct or misbehaviour in support of the articles of charge. The articles of charge alleged against the applicant are as follows:

"That, Shri Biprajit Dutta while posted and functioning as Assistant Engineer (Construction) N.F. Railway, Dimapur since 1993, committed gross misconduct in as much as that he had received and accepted undersized stone ballast for a quantity of 193.800 cu.m. from M/s Dhirumal, Contractor of Dholdoli-Bokajan Sector, Assam during the year 1994-95 in pursuance of the contract agreement vide No.CON/L-D/8 dt. 5.2.94 without performing any proper sieve analysis as per contract agreement and thereafter shown received the correct sized stone ballast of 193.800 cu.m. in stack No.KL-1, KHKT-1C, K-1, KB-1 and DMV-2 and later on, passed the bill of Rs.1,02,549.00 for payment to the said contractor for the said quantity of undersized stone ballast by causing undue financial loss to the Railway Department and corresponding gain to the said contractor.

The aforesaid acts of omission and commission on the part of said Shri Biprajit Dutta, AEN, N.F. Railway, tantamounts to the violation of the conduct Rule 3(1) (i), (ii) & (iii) of Railway Service Conduct Rule/1966."

2. The applicant submitted his written statement of defence denying and disputing the allegations mentioned in the chargesheet. In the written statement the applicant stated that the sieve analysis by the applicant was done in strict adherence to the clauses mentioned in the contract agreement. He referred to the clauses mentioned in the contract agreement and specifically stated that in the joint surprise check conducted at Dimapur by the Central Bureau of Investigation (CBI for short) with the association of the RSO, the said authority took samples from one stack with the help of spade/shovel and performed the sieve analysis without following the procedure prescribed and hence there was a difference of result.

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The authority conducted an enquiry and examined witnesses. The Executive Engineer Incharge was examined and the Inquiry Officer examined the said officer as a Technical Officer and asked questions as to how samples were to be taken from each stack. The Executive Engineer made the following statement before the Inquiry Officer:

"For every 50 cu.m. of Ballast a sample of point 0.028 cu.m. has to be collected from different parts of a stack selected at random to make a representative sample of the ballast stack. AS a technical man AEN/CON supposed to know the sieve analysis process.

"At the very beginning of the check I made Mr G.P. Jaiswal and Mr. D.B. Singh understand that a Qnty. of one bow of sample = 0.028 cu.m./0.03 cu.m. of Ballast is to be taken at random from different parts of the stack for each 50 cu m. of Ballast Qnty.

But at the site Mr D.B. Singh stated that due to shortage of time he will collect only one or two sample from each stack of Ballast. Considering that Shri D.B. Singh had special power I did not further insisted for more sample."

The Executive Engineer was specifically asked by the Inquiry Officer whether he was satisfied with the Sieve analysis by the CBI officer. His answer was as follows:

"I was not satisfy with the sample collection. Samples were collected by two Constables of the CBI branch and our khalashi were not permitted to draw the samples. They have not collected required no. of samples at random."

One Shri Pallab Kanti Das, EX IOW/CON/DMV was also examined on behalf of the Railway Authority, who made the following statement:

"That Sir, on 31.3.95 I had been asked by my superior official Mr B. Datta, AEN/C/DMV to attend site on 1.4.95 to accompany the investing Official. Accordingly I attended site first at KHKT and DMV along with my superiors.

That Sir,

Shri D.B. Singh inspector/CBI/ Silchar had taken leading part with the help of Sri J.P. Jaiswal RSO/TSK and they made a team with Shri B.N. Parial EX-XEN/C/DMV, B. Dutta EX-AEN/C/DmV, Suresh Kumar authorised representative of contractor M/s DAicumal and with myself.

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instruction That Sir, Shri D.B. Singh inspector CBI/Silchar instructed to dig the Ballast stacks at least middle part of stacks for performing sieve analysis accordingly as per his/ the contractor, site representative dig out the ballast with the help of kata. Rodal and hand punja in one location. Shri D.B. Singh asked his man, a constable (Name not known) for taking sample with the help of spade and Belcha-from the middle part of the stacks.

That Sir, as per his advise his man collected the samples each from one stacks except stack no KL-1 from a particular one location. I along with my XEN, AEN/CON and contracts representative has pointed out that the process of collecting the sample is not as per CA clause, but the investing Officials did not heard our request and collected the sample saying that they had no time.

After collecting the sample they asked us for seive analysis and accordingly we had done the seive analysis with the help of no screening boxes 0.305X0.305X0.305 mtr. sample, 0.20X0.20X0.20 cum. for ballast retained on 50 mm. 2 mesh and 0.10X0.10X0.14 cum for

Ballast past through 20mm² mesh and the result was calculated by XEN/CON/DMV and placed on memorandum as prepared by Shri D.B. Singh, Inspector CBI/Silchar.

Sir, Since the samples are not collected properly and the results are showing beyond permissible limit, I personally along with my AEN/C/DMV had given a representation justifying the reasons for maximum undersize Ballast to Shri Singh inspector CBI/Silchar though his acknowledgement and requested him again for proper calculation of sample but they did not need our request."

The concerned officer Shri G.P. Jaiswal RSO/CBI/DBRT was also examined by the Inquiry Officer. He was specifically asked, as to the procedure of conducting the sieve analysis. The officer answered that "it was left upon the choice of the technical officers (Parial, Executive Engineer and B. Dutta) where from samples would be drawn and I believe being experienced officers they have acted as per rules." The charged official was also examined. On conclusion of the enquiry, the Inquiry Officer submitted his report and on evaluation of the materials on record exonerated the officer. On receipt of the report a copy of

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the same was sent to the applicant for information vide letter dated 23.9.1999. The said letter also communicated the disagreement memo of the Disciplinary Authority. The full text of the disagreement memo of the Disciplinary Authority is reproduced below:

"DISAGREEMENT MEMO OF THE DISCIPLINARY AUTHORITY."

The Inquiry Officer has concluded that charges against Shri B. Dutta, AEN/CON/KUGT were not established.

In this regard, I do not agree with the findings of the I.O. My reasons for not agreeing with the findings are as under :-

- i) It has been said that samples taken for surprise check were not as per norms specified in para 1.7-2.2 of Railways agreement, as per which one sample for each 50 Cum volume of ballast stack should have been taken. For the total quantity of ballast of 1739.973 Cum, roughly 35 samples should have been taken, as against 6 samples of surprise check.

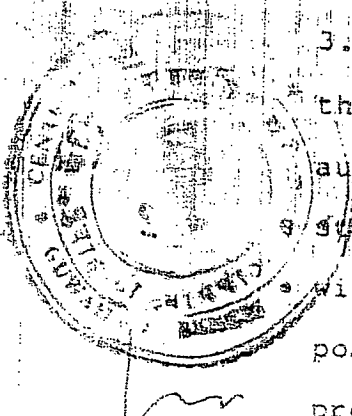
The sampling provided in the Contract Agreement is basically for the Officer/Supervisor to test check the ballast including sieve analysis and not for surprise checks, conducted by the Vigilance.

- ii) All the 6 samples show variation for specifications in regard to under size ballast, which is as high as 21.43% in one sample.

It is however, conceded that if the samples taken were more, the results would have been different and gravity of charge might have come down. This observation is based on the fact that stacks varied in size from 66 Cum to 706 Cum, which is a very wide variation."

3. The applicant submitted his representation and thereafter by order dated 30.11.1999/21.02.2000 the authority imposed a major penalty of reduction to a lower stage in the time scale of pay for a period of one year with cumulative effect which will not have the effect of postponing the future increment of his pay. The applicant preferred an appeal before the President of India, which was subsequently, at the instance of the respondents

addressed.....



addressed to the Railway Board and the appeal preferred before the Railway Board on 2.2.2001 is yet to be disposed of. The applicant thereafter moved this Tribunal by way of the present O.A. While the matter was pending, the penalty order was withdrawn vide memo dated 16.10.2001. In the said memo it was specifically indicated that the order of penalty of reduction to a lower stage for a period of one year with cumulative effect which would not have the effect of postponing the future increment of his pay was incorrect and accordingly the same was withdrawn without prejudice. Subsequently, vide order dated 8.11.2001 the respondents imposed the penalty of reduction of pay by one stage in the same time scale for a period of one year. It also indicated that reduction of pay would have cumulative effect of postponing his future increments. The applicant amended his application thereafter questioning the legitimacy of the penalty imposed.

4. The respondents submitted their written statement denying and disputing the contentions of the applicant.

5. We have heard Mr R. Dutta, learned counsel for the applicant and Mr R.K. Sharma, learned Sr. counsel assisted by Mr S. Sarma, Advocate, representing the respondents at length. We have already indicated the nature of the materials in support of the allegations. The main allegation that the applicant without performing the above analysis as per the contract agreement leading to the payment of bills was not proved and established. The commission and commission alleged against the applicant was not established in the enquiry proceeding. The Inquiry Officer in his report, on evaluation of the evidence, clearly found that the samples drawn from the stacks for

sieve analysis on 1.4.1995 were far from norms specified in para 1.7-2.2 of the Railway's contract agreement No.CON/I-D/6 dated 5.2.1994. The charge for acceptance of 193.734 cum undersized ballast was not established on the basis of the result of the surprise check. The Inquiry Officer found that another field check eliminated the controversy. On analysis, the Inquiry Officer held that the charges were not established. It may be mentioned that though there was one charge, the Inquiry Officer for the purpose of his convenience split the charge into two articles and on evaluation of the materials he exonerated the applicant from the charge. The Disciplinary Authority purported to disagree with the Inquiry Officer though no disagreement is discernible. On analysis of the entire evidence on record the Disciplinary Authority itself in its disagreement note conceded that if the samples were more the results would have been different and the gravity of the charge might have come down. Under Rule 10 the Disciplinary Authority having regard to the findings of the Inquiry Officer is to independently act upon the matter. He is free to differ from the report of the Inquiry Officer by citing reasons in writing and thereafter he may remand the case to the Inquiry Officer for further enquiry or he may on the basis of the materials on record give his own finding on the charge and pass appropriate order. We have already indicated the full text of the purported disagreement, which is no disagreement at all. The materials on record also otherwise did not establish the guilt of the charged official. In the circumstances, the order of penalty imposed on the applicant is wholly unjustified. The imposition of penalty vide order dated 30.11.1999/

: 8 :

21.02.2000 since has been withdrawn, no order is necessary from this Tribunal. We, however, set aside and quash the order of penalty dated 8.11.2001.

6. The application is accordingly allowed. There shall, however, be no order as to costs.

Sd/VICE CHAIRMAN
Sd/ MEMBER (A)



TRUE COPY
নকল

(Signature)
Section Officer (A)

অধ্যক্ষ (অতিরিক্ত সিনিয়র)
কেন্দ্রীয় প্রশাসনিক ট্রিবিয়াল
কলকাতা প্রশাসনিক অধিদপ্তর
কলকাতা বেন্চ, কলকাতা-১
কলকাতা-৭০০০০১

NORTHEAST FRONTIER RAILWAY

OFFICE ORDER NO.08/98(Engg)

On being empanelled for promotion to Sr. Scale on ad-hoc basis the following J.S./Gr. B Officers of Civil Engineering Department are promoted to Sr. Scale on ad-hoc basis and posted as under :-

SN	Name & Designation	Promoted and posted as
1.	Sri K. Jha, AEN/NCB -	Sr.AEN/NCB by utilizing the sr. scale element of SEN/SL/MLG.
2.	" M.N.Nadge, AEN/JID -	Sr.AEN/JID by utilizing the sr. scale element of SEN/LM/MLG.
3.	" N.S.Singh, AEN/GE&C/MLG	SEN/Computer/ MLG.
4.	" A.K.Das, AEN/III/LMG -	SR.AEN/III/LMG by utilizing the sr. scale post provided by GM/Con chargeable to LMG-DMV Gauge Conversion.
5.	" K.Paul, AEN/ZTS/APDJ -	SEN/ZTS/APDJ
6.	" G.C.Sarkar, AEN/Con/ -	XEN under GM/Con.
7.	" M.K.Pandey, AEN/INBO -	Sr.AEN/INBO by utilizing the sr. scale post provided by GM/Con chargeable to construction projects.
8.	" Anil Kumar, AEN/Con -	XEN under GM/Con.
9.	" U.N.Sonowal(ST), AEN/Con -	XEB under GM/Con.

S/Shri K.Jha and M.N.Nadge will draw charge allowance till completion of their four year services as per rule.

This issues with the approval of competent authority.

Sd/-

(A.K.Roy)

Asstt. Personnel Officer(Gaz)

For General Manager(P)/Maligaon

Maligaon, dated 17.04.1998

No.E/283/31/Pt.XVIII(O)

Copy for information & necessary action to :-

- | | |
|-------------------------------|--------------------------------|
| 1. GM/Con/MLG | 2. CE, CTE, CGE, CPDE, CVO/MLG |
| 3. CE/Con/MLG | 4. FA&CAO/MLG, |
| 5. FA&CAO/Con/MLG | 6. DRM/APDJ, KIR, LMG, TSK |
| 7. Sr.DEN/APDJ, KIR, LMG, TSK | 8. DAO/APDJ, KIR, LMG, TSK |
| 9. PS to GM/MLG | 10. PA to CE/MLG |
| 11. OS/Bill | 12. Officer concerned. |

Sd/-

(A.K.Roy)

Asstt. Personnel Officer(Gaz)

For General Manager(P)/Maligaon

Certified to be true copy.
K. Paul
Advocate.

1. The following is a list of the names of the persons who have been appointed to the position of Judge of the Court of Appeals for the District of Columbia, and the date of their appointment:

Source and Destination

2097 25 25

- | | |
|-----------------------------|--|
| 1. Sr. A. N. Singh, AEN/ | Sr. AEN/IMG by utilising the Sr. scale element of SEN/IMG. |
| 2. Sr. A. N. Singh, AEN/IMG | Sr. AEN/IMG by utilising the Sr. scale element of SEN/IMG/IMG. |
| 3. Sr. A. N. Singh, AEN/IMG | SEN/Computer/IMG. |
| 4. Sr. A. N. Singh, AEN/IMG | Sr. AEN/IMG/IMG by utilising the Sr. Scale post provided by GM/CIN chargeable to IMG-Dimapur Gauge conversion. |
| 5. Sr. B. K. Singh, AEN/IMG | SEN/ETS/AEN/IMG. |
| 6. Sr. G. C. Singh, AEN/CIN | XEN under GM/CIN |
| 7. Sr. H. K. Singh, AEN/IMG | Sr. AEN/IMG by utilising the Sr. Scale post provided by GM/CIN chargeable to Cons-projects. |
| 8. Sr. A. N. Singh, AEN/CIN | XEN under GM/CIN. |
| 9. Sr. U. N. Singh, AEN/CIN | XEN under GM/CIN. |

5. If a member is on leave, he will draw charge allowance till completion of his 4 years service as per rule.

in the approval of competent authority

Asst. Personnel Officer (see)

Latimer, de 17-1-1995.

1. The first step is to identify the problem. This involves understanding the symptoms and the context in which they are occurring.

(A.K. Roy)-
Asstt. Personnel Officer (Genl)
for General Manager (A) Natl. Ind.

U.S.

Certified to be true copy
K. Paul
Advocate

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Sl. No.	NAME	COMPONENT	DATE OF BIRTH	DATE OF APPT. TO SERVICE	DATE OF PROMOTION TO GR. 'B' SERVICE	REMARKS
1	SRI A.K. SEN	GEN/CON	06-01-49	07-10-74	05-01-81	WORKING IN GR. SCALE ON AD-HOC BASIS.
2	SRI A.K. SENAPATI	GEN/CON	01-09-50	06-09-77	12-06-85	WORKING IN SR. SCALE ON AD-HOC BASIS.
3	SRI A.K. MAHARAJ	GEN/CON	17-11-52	17-05-59	01-07-86	DO
4	SRI A.K. MAHARAJ	GEN/CON	01-01-59	08-06-59	05-05-90	DO
5	SRI S.K. SINGH	GEN/CON	01-05-40	12-07-61	24-07-86	DO
6	SRI J. SENGUPTA	GEN/CON	18-09-70	11-07-83	29-07-86	DO
7	SRI H. GHOSH ROY	GEN/CON	01-03-49	09-06-73	22-11-89	DO
8	SRI S.P. SETH	GEN/CON	01-01-59	11-07-59	11-11-83	DO
9	SRI H. CHAKRABORTY	GEN/CON	01-01-59	22-07-61	03-01-89	WORKING IN GR-B SCALE
10	SRI DIPAK SAHA	GEN/CON	01-07-40	22-10-72	21-05-90	WORKING IN SR. SCALE ON AD-HOC BASIS
11	SRI S. BANJA	EX-GEN/SAFETY	05-08-49	18-06-73	05-01-90	WORKING IN GR-C SCALE TEMP. ON REVERSION
12	SRI J.N. SARKAR	GEN/CON	12-07-39	11-01-61	05-01-90	WORKING IN SR. SCALE ON AD-HOC BASIS
13	SRI P.K. BANOPADHAY	GEN/CON	01-01-59	11-01-61	05-01-90	DO
14	SRI S.K. MAHDI	GEN/CON	01-01-59	11-01-61	05-01-90	DO
15	SRI J.K. SAMANTA	GEN/CON	15-01-49	15-01-73	05-01-90	DO
16	SRI MOHDI MOHA	GEN/CON	01-07-46	10-03-77	26-04-90	DO (NOW RESIGNED).
17	SRI T. DEY	GEN/CON	01-11-50	13-05-76	18-04-90	WORKING IN SR. SCALE ON AD-HOC BASIS.
18	SRI K.K. DAS	GEN/CON	01-01-59	01-01-81	04-05-90	WORKING IN SR. SCALE ON AD-HOC BASIS
19	SRI A. CHAKRABORTY	GEN/CON	01-01-59	11-07-61	12-04-90	DO
20	SRI S.K. CHAKRABORTY	GEN/CON	01-01-59	11-07-61	05-01-90	DO
21	SRI A. SENGUPTA	GEN/CON	01-01-59	11-07-61	16-03-90	DO
22	SRI S.K. MOHANTY	GEN/CON	01-01-59	11-07-61	05-01-90	DO
23	SRI S. SARKAR	GEN/CON	01-01-59	11-07-61	09-06-90	DO
24	SRI S. MOHANTY	GEN/CON	01-01-59	11-07-61	14-10-90	DO
25	SRI S. SARKAR	GEN/CON	01-01-59	11-07-61	14-04-90	DO
26	SRI S. SARKAR	GEN/CON	01-01-59	11-07-61	04-08-90	DO
27	SRI S. SARKAR	GEN/CON	01-01-59	11-07-61	04-08-90	DO

Certified to be true copy.
K. Paul
Advocate.

18

NAME OF THE OFFICER		DATE OF BIRTH	DATE OF COMMISSION	DATE OF PROMOTION	DATE OF RESIGNATION
1	MR. T. M. DABHIVAN	01-01-51	06-01-75	14-09-90	00
2	MR. P. J. DODIA	15-03-52	03-02-79	14-12-79	00
3	MR. S. K. DODIA	20-01-50	09-07-77	11-01-82	00
4	MR. T. D. DODIA	01-12-55	29-01-86	11-04-97	00
5	MR. H. DODIA	29-10-52	01-01-77	13-04-92	00
6	MR. S. DODIA	16-07-67	15-09-97	18-04-92	00
7	MR. J. K. DODIA	02-03-62	25-01-86	07-04-92	00
8	MR. S. R. DODIA	10-12-49	05-06-72	10-06-92	00
9	MR. S. K. DODIA	29-11-46	29-05-72	21-04-92	00
10	MR. S. K. DODIA	01-08-47	10-06-72	04-05-92	00
11	MR. P. K. DODIA	21-06-49	11-06-72	17-05-92	00
12	MR. D. K. DODIA	24-05-52	30-08-73	06-04-92	00
13	MR. S. C. DODIA	30-06-51	03-06-77	21-04-92	WORKING IN SR. SCALE ON AD-HOC BASIS.
14	MR. H. D. DODIA	01-01-58	13-05-80	11-05-92	
15	MR. P. K. DODIA	31-05-54	27-01-80	21-04-92	
16	MR. P. K. DODIA	31-12-54	27-10-77	07-06-93	
17	MR. P. K. DODIA	07-03-59	28-07-79	10-06-93	
18	MR. P. K. DODIA	01-01-58	13-01-84	09-07-93	
19	MR. P. K. DODIA	02-10-52	10-11-81	31-05-93	
20	MR. P. K. DODIA	12-01-85	23-05-91	09-07-93	
21	MR. P. K. DODIA	01-05-48	12-06-77	01-06-94	
22	MR. P. K. DODIA	11-04-49	11-06-73	10-01-96	PROMOTED AFTER FINALISATION OF DAR CASE.
23	MR. P. K. DODIA	01-11-50	07-04-77	10-09-94	
24	MR. P. K. DODIA	10-05-51	25-07-77	26-12-94	
25	MR. P. K. DODIA	1-01-43	07-02-71	21-06-94	
26	MR. P. K. DODIA	01-01-50	01-07-77	20-10-94	

NOTICE OF SENIORITY LIST OF OFFICERS OF THE POST OFFICE
AS ON 31.12.96

Sl. No.	NAME	DESIGNATION	DOY	DATE OF BIRTH	DATE OF APPT. TO SERVICE	DATE OF PROMOTION TO GR. 'B' SERVICE	REMARKS
45	SRI S. HANDEH	ACN/MLG		18-10-54	16-02-76	19-08-94	
46	SRI C. BANDOPADHYAY	ACN/PHY		10-03-49	10-05-77	10-10-94	
47	SRI H.C. GUSMANI	ACN/TP/MG		01-01-50	17-09-92	11-11-94	
48	SRI B. K. BISE	ACN/I/BBB		17-12-40	26-11-73	12-09-94	
49	SRI S. L. HAZUNDER	ACN/MLG		02-01-49	10-11-72	10-11-94	
50	SRI R. K. DAS	ACN/ACN		01-01-47	01-12-68	11-10-94	
51	SRI C. PRASAD	ACN/XIP		09-05-58	10-12-89	24-08-94	
52	SRI ANIL KUMAR	ACN/ACN		11-04-55	11-12-86	20-06-95	
53	SRI SURJIT SINGH	ACN/TT/MLG		14-05-59	20-04-79	16-08-95	
54	SRI RANJIT DAS	ACN/ACN		01-03-61	14-07-86	09-06-95	
55	SRI RAVINDRA KUMAR	ACN/BBB		15-01-64	03-06-87	19-06-95	
56	SRI Y. T. BHUTIA	ACN/W/ACN		08-07-62	01-08-84	11-06-95	
57	SRI H. C. SINGH	ACN/ACN		01-01-60	27-10-84	17-06-95	
58	SRI K. N. TALUKDAR	ACN/ACN		01-01-60	26-06-84	22-06-95	
59	SRI SURESH PRASAD	ACN/MLG		10-01-63	15-08-87	14-07-95	
60	SRI AVIJIT HAZUNDER	ACN/ACN		06-08-64	11-12-89	10-06-95	
61	SRI ASHOK MITTA	ACN/ACN		10-10-61	10-01-84	10-06-95	
62	SRI JYOTI KUMAR	ACN/ACN		08-11-58	05-08-85	07-06-95	

No. E/167/2/110

for GENERAL MANAGER(P)/MLG

Date: 9.12.96.

Copy forwarded for information and necessary action to:-

1. CH/CON/MLG.
2. CH/ACN, CH/BBB, CH/PHY, CH/MLG.
3. CH/ACN, CH/BBB, CH/PHY, CH/MLG's Office.
4. CH/ACN, CH/BBB, CH/PHY, CH/MLG's Office.
5. CH/ACN, CH/BBB, CH/PHY, CH/MLG's Office.
6. CH/ACN, CH/BBB, CH/PHY, CH/MLG's Office.

He is requested to intimate any of the within one month of publication
of this list if any discrepancy is found in the seniority list.

for GENERAL MANAGER(P)/MLG

9.12.96

9/12/96
a/b

R.B.E. No. 14/93

Subject : Promotion from Group 'B' to Group 'A' and within Group 'A' of Railway Officers against whom disciplinary/Court proceedings are pending – Procedure and guidelines to be followed.

No. E(D&A) 92RG6-149(B), dated : 22.1.1993

In supersession of all instructions contained in Board's letter No. E(D&A)88RG6-21, dated 21.9.1988 [Bahri's RBO 1988-II, 244 (RBE 211/88) & 2.7.1990 on the above subject, the procedure and guidelines laid down below shall be followed in the matter of promotion from Group 'B' to Group 'A' and with in Group 'A' of Railway Officers against whom disciplinary/Court proceedings are pending.

2. *Cases of Govt. to whom Sealed Cover Procedure will be applicable*
- At the time of consideration of the cases of Government servants for empanelment, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee :-

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom a charge-sheet has been issued and the disciplinary proceedings are pending;
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.

2.1 *Procedure to be followed by DPC in respect of Govt. Servants under cloud* – The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC including 'Unfit for Promotion' and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed. Findings regarding suitability for promotion to the grade/post of in respect of Shri (name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri "The proceedings of the DPC need only contain the note "The findings are contained in the attached sealed cover". The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the

Certified to be true copy.
K. Paul
Advocate

findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

2.2 *Procedure by subsequent DPCs* – The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.

3. *Action after completion of disciplinary case/criminal prosecution* – On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegation against the Government servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior-most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the Railway servant who has been promoted, as mentioned above will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution, where the authority denies arrears of salary or part of it, it will record the reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denial of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings whether disciplinary or criminal, are, for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to acts attributable to the employee etc. These are only some of the circumstances where such denial can be justified.

3.1 If any major penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

3.2 However, in the case of *ad-hoc* promotions from Group 'B' to Group 'A' and promotions within Group 'A' (Upto and including promotions to SA Grade) those imposed with the minor penalties censure, stoppage of passes/PTOs, recovery from pay and withholding of increments may also be promoted prospectively in their turn with

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reference to their position in the earlier panel(s) of the DPC. In the case of those imposed with the penalty of withholding increment, however, they cannot be promoted before expiry of the penalty. The pay on promotion in all these cases should be fixed under the normal rules with reference to the date of actual promotion.

3.3 It is also clarified that in a case where disciplinary proceedings have been held under the relevant disciplinary rules, 'warning' should not be issued as a result of such proceedings. If it is found, as a result of the proceedings, that some blame attaches to the Government servant, at least the penalty of censure should be imposed.

4. *Six monthly review of "Sealed Cover" cases* - It is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalise expeditiously the proceedings should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. It has, therefore, been decided that the appointing authorities concerned should review comprehensively the cases of Government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of 6 months from the date of convening the first Departmental Promotion Committee which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be done subsequently also every six months. The review should, inter alia, cover the progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite their completion.

5. *Procedure for ad hoc promotion* - In spite of the six-monthly review referred to in para 4 above, there may be some cases, where the disciplinary case/criminal prosecution against the Government servant are not concluded even after the expiry of two years from the date of meeting of first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him *ad-hoc* promotion keeping in view of the following aspects :-

- (a) whether the promotion of the officer will be against public interest;
- (b) whether the charges are grave enough to warrant continued denial of promotion;
- (c) whether there is no likelihood of the case coming to a conclusion in the near future;

- (d) Whether the delay in the finalisation of proceedings, departmental or in a court of law is not directly or indirectly attributable to the Government servant concerned.
- (e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after *ad-hoc* promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

5.1 In case the appointing authority comes to a conclusion that it would not be against the public-interest to allow *ad-hoc* promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two years period to decide whether the officer is suitable for promotion on *ad-hoc* basis. Where the Government servant is considered for *ad-hoc* promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him.

5.2 After a decision is taken to promote a Government servant on an *Ad-hoc* basis, an order of promotion may be issued making it clear in the order itself that:-

- (i) the promotion is being made on purely *ad-hoc* basis and the *ad-hoc* promotion will not confer any right for regular promotion; and
- (ii) the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel the *ad-hoc* promotion and revert at any time the Government servant to the post from which he was promoted.

5.3 If the Government servant concerned is acquitted in the criminal prosecution on the merits of the case or is fully exonerated in the departmental proceedings, the *ad-hoc* promotion already made may be confirmed and the promotion treated as regular from the date of the *ad-hoc* promotion with all attendant benefits. In case, the Government servant could have normally got his regular promotion from a date prior to the date of his *ad-hoc* promotion with reference to his placement in the DPC

proceedings kept in the sealed cover(s) and/or the actual date of promotion of the person ranked immediately junior to him by the same DPC, he would also be allowed his due seniority and benefit of notional promotion as envisaged in *para 5* above.

However, in cases of promotion from Group 'B' to Group 'A' and within Group 'A' (upto and including promotions to SA Grade), if the Railway Officer is given *ad hoc* promotion as envisaged in para 5.2 above, and is finally imposed any of the minor penalties of Censure, Stoppage of Passes/PTOs, Recovery from pay and withholding of increment, such Railway Officer should be deemed as regularly promoted from the date of *adhoc* promotion duly retaining the position assigned to him in earlier panel(s).

5.4 If the Government servant is not acquitted on merits on the criminal prosecution but purely on technical ground and Government either proposes to take up the matter to a higher court or to proceed against him departmentally or if the Government servant is imposed a penalty other than those mentioned in the preceding paragraph in the departmental proceedings, the *ad-hoc* promotion granted to him should be brought to an end.

6. *Sealed Cover applicable to Officers coming under cloud before promotion* - A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a Sealed Cover by the Departmental Promotion Committee. He shall not be promoted until the conclusion of disciplinary case/criminal proceedings and the provisions contained in this letter will be applicable in his case also.

7. *Sealed Cover Procedure for confirmation* - The procedure outlined in the preceding paras should also be followed in considering the claim for confirmation of an officer under suspension, etc. A permanent vacancy should be reserved for such an officer when his case is placed in a Sealed Cover by the Departmental Promotion Committee.

- 38 -

Annexure A/7

To,

The General Manager, (P)
N.F. Railway,
Maligaon, Ghy-11.

Through proper channel.

Sir,

Sub. : Promotion to Sr. scale in Engineering Department.

I have the honour to state the followings for your kind consideration and necessary order please.

That Sir, I am a qualified Engineer possess AMIE (INDIA) from the Institution of Engineers (India) and working as Assistant Executive Engineer group-B posted at K-A project under kind control of G.M. Construction, N.F. Railway.

That Sir, in the year 1994-95 I conducted the sieve test and accepted some quantity of ballast while working as AEN/CON, Dimapur. Thereafter a surprise check was conducted by CB/Silchar by taking non-representative sample from the middle of the stack and on that basis a Charge Sheet was served to me and an enquiry was conducted by appointing an Enquiry Officer who, INTER-ALIA, held that charges against me were not established. However the G.M./CON, N.F. Railway was kind to disagree with the Enquiry Officer's finding and imposed a punishment of reduction of pay by one stage in the time scale for a period of one year vide dt. 21.2.2002. I preferred an appeal against this. But the appeal was not disposed off. After waiting about one year I filed O.A-310 of 2001 before hon'ble CAT, Guwahati. During the pendency of the said O.A. before the CAT, Guwahati, my punishment dt. 21.2.2002 was withdrawn and a fresh punishment of reduction of pay by one stage with cumulative effect was issued under GM/CON, N.F. Railway order dt. 8.11.2001. Hon'ble CAT, Guwahati vide judgement and order dt. 9.5.2002 SET-ASIDE the order of the punishment of the GM/CON dt. 8.11.2001.

That Sir, during the pendency of the DAR proceeding DPC was held and a panel was made for promotion AEN/group-B to the Sr. scale and a number of my juniors namely S/Sri (1) G.C. Sarkar, (2) M.K. Pandey, (3) Anil Kumar and (4) U.N. Sonwal were promoted to Sr. scale in the year 1998.

Certified to be true copy
K. Paul
Advocate

Contd P2

That Sir, under Railway Boards letter No. E (D & A) 92 RG 6-149 (B) dt.22.01.93 the Board issued instruction to the effect that a Railway servant against whom a Charge Sheet has been issued and Disciplinary proceedings is pending the Departmental promotion Committee shall ASSESS the suitability of the Railway servant concerned along with other illegible candidate without taking in to consideration the disciplinary proceeding pending and the Assessment so made shall be kept in a SEAL COVER to be opened on the conclusion of disciplinary proceeding resulting the dropping of allegation against the Railway servant and the Railway servant shall be assigned his promotion with reference to the date of promotion of his next junior.

That Sir, not only the promotion of the junior in the year 1998 there were two further panel of AEN/group-B junior to me recommended by the DPC in the year Jan/2001 and Feb/2002 for promotion to Sr. scale where my name was not considered due to the punishment dt. 21.02.2002 (which was subsequently withdrawn on 8.11.2001 by DA and Set-Aside by the hon'ble CAT, Guwahati).

That Sir, The circumstances as stands now, I stand EXONERATED from the charge as a result of setting aside of the punishment order by the hon'ble CAT, Guwahati and as a result I am to be assigned my position in the panel formulated by DPC in the year 1998 for promotion to the Sr. scale. In case my case was not consider in the year 1998 and SEAL COVER procedure was not adopted then a review DPC has to be held and in case for any reason I am not empanelled than my case is to be consider a fresh on review DPC for the year 2001 or 2002.

Under the circumstances I humbly pray that your honour would be kind enough to issue directives for my promotions with reference to my junior as mentioned earlier and for act of this kindness I shall remain ever grateful to you.

Yours faithfully,

[Signature]

(BIPROJIT DUTTA)

Asst. Executive Engineer,
Ambasa/K-A project,
Construction N.F. Railway.

Date : 3rd June/2002

16/2002
16/2002
RECEIVED
N.F. RLY

प्रतिनिधि के लिए आवेदन की तिथि Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की निश्चित तिथि Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तिथि Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिनिधि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिनिधि देने की तिथि Date of making over the copy to the applicant.
22/1/04	22/1/04	22/1/04	22/1/04	22/1/04

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA,
MIZORAM AND ARUNACHAL PRADESH)

WRIT PETITION (C) NO.7809/2002

PETITIONERS

1. Union of India
2. The Chairman,
Railway Board, Rail Bhawan,
New Delhi
3. The General Manager/Construction,
NF Railway, Maligaon, Guwahati-11, Assam
4. The Deputy Chief Personnel Officer/Construction,
NF Railway, Maligaon, Guwahati-11, Assam

By advocates : Mr S Sharma,
Mr DK Sarmah,

RESPONDENT

Biprajit Dutta, Assistant Engineer/Construction,
NF Railway, Kumerghat, Tripura

By advocates : Mr R Dutta,
Mr K Paul,
Mr JP Chouhan,
Mr A Sarma,
Mr DK Dey,

BEFORE
HON'BLE THE CHIEF JUSTICE MR PP NAOLEKAR
HON'BLE MR JUSTICE AM SAIKIA

Date of hearing/ judgement.
And order

: 08-01-2004

*Certified to be true copy.
K. Paul
Advocate.*

ATTESTED
K. Paul
18/03/04

Asst. Personnel Officer/Gen
NF Railway/Guwahati-781000

JUDGEMENT AND ORDER (ORAL)

(Naolekar, CJ)

Heard Mr S Sharma, learned counsel for the petitioners and Mr R Dutta, learned counsel for the respondent.

2. The material facts which are necessary for adjudication of the question raised in this appeal are that the respondent Shri Biprajit Dutta, while working as Assistant Engineer in North Eastern Frontier Railway was served with a memorandum/ chargesheet dated 28-6-97 containing the statement of articles of charge accompanied by the statement of imputation of misconduct or misbehaviour in support of the articles of charge. After holding a departmental enquiry on the charges served on the respondent, the Enquiry Officer submitted the report exonerating the respondent from the charge. The disciplinary authority did not agree with the findings arrived at by the Enquiry Officer and, therefore, after service of due notice as required under the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter shall be referred to as "the Rules, 1968") the disciplinary authority found the respondent guilty of charge and imposed a punishment of penalty or reduction of pay by one stage in the same time scale for a period of one year. This will have the cumulative effect of postponing the respondent's future increments. Aggrieved by the said order of imposition of penalty the respondent approached the Central Administrative Tribunal, Guwahati by moving a petition under Section 19 of the Administrative Tribunals Act, 1985. The Central Administrative Tribunal entertained the petition and set aside the order passed by the disciplinary authority imposing penalty on the respondent. The Tribunal on appreciation of the materials placed on record reached to the conclusion

ATTESTED

15/03/04

Guwahati

that in fact as per the order of the disciplinary authority itself there was no discrepancy between the reasoning and the findings arrived at by the Enquiry Officer as well as that by the disciplinary authority. On this finding the Central Administrative Tribunal has set aside the order of the disciplinary authority imposing punishment on the respondent. Aggrieved by this order passed by the Central Administrative Tribunal the present petition has been filed.

3. The only submission made by the learned counsel for the Railways is that on account of the fact that imposition of penalty under Rule 6 of the Rules, 1968 being made appellable under Rule 48, the Administrative Tribunal could not have exercised jurisdiction to entertain and adjudicate upon the petition filed by the respondent under Section 19 of the Administrative Tribunal Act unless and until the respondent exhausted his remedy provided under the relevant Rules. Section 20 of the Administrative Tribunals Act prohibits the Tribunal ordinarily to admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. The phraseology used in this section clearly indicates that ordinarily the Tribunal shall not exercise the jurisdiction of entertaining the application under Section 19 unless it is satisfied that alternative remedies available to the claimant have been exhausted by him. The restriction imposed under Section 20 has to be followed and adhered to by the Tribunal ordinarily, but that does not take away the jurisdiction of the Tribunal to entertain an application even if the claimant has not exhausted the remedies provided under the relevant Rules. It is a rule of discretion and the discretion is left to the Tribunal to entertain or not to entertain an application where the remedy as provided under the relevant service Rules. The words used under Section 20 puts a balance on the side of

Gauhati High Court

ATTESTED
10/10/2014
J. P. Sanyal
Joint. Pers. Officer/Cat
781007

not entertaining an application ordinarily when the alternative remedy is provided under the relevant service rules and it is in the exceptional circumstances of cases the Tribunal can exercise jurisdiction to entertain an application under Section 19 although the claimant has not exhausted the remedy provided under the relevant service rules. ✓ In the present case exercise of jurisdiction by the Tribunal in entertaining the petition filed by the respondent cannot be said to be an exercise beyond the competence of the Tribunal, when the Tribunal has entertained the petition, and we do not find any infirmity in the order passed by the Central Administrative Tribunal, We cannot say that exercise of jurisdiction by the Tribunal is not a proper exercise of the discretion by the Tribunal in the facts and circumstances of the present case.

4. In view of the above, the petition stands disposed of. However, there shall be no order as to costs.

Gauhati High Court

Sd/- A. H. Sarker
Judge

Sd/- P. P. Naskar
Chief Justice

Prno 6849
20/1/04

CERTIFIED TO BE TRUE COPY
Atm. Barpeta, Gohain.
Date 22.01.04
Superintendent (Canning Section)
Gauhati High Court
Authorised U/3 76, Act I, 1872
22/1/04

ATTESTED
Kalluam
15/1/04

Asst. General Officer/Con
A. P. Sanyal/Gauhati-78101

To:

The General Manager
N F Railway Maligaon
GUWAHATI-11

(Through Proper Channel)

WA 18/4/2002

Sir,

Sub:- Opening of the sealed cover for promotion to Sr. Scale Engineering
Department.

Ref:- My representation dated 3.6.2002.

I have the honour to request you to be kind enough to refer my representation dated 3rd June 2002 and order for opening sealed cover in respect of D.P.C. recommendation held in 1998 in the matter of promotion to Sr. Scale in the Engineering branch of N. F. Railway and for implementation of the same.

With regards,

Encl: Xerox copy of

- (1) Promotion Order No.08/98
- (2) Seniority list of Gr. 'B' Officer
- (3) Copy of representation dt.03.06.02.

Yours faithfully,

[Signature]

(Biprojit Dutta)

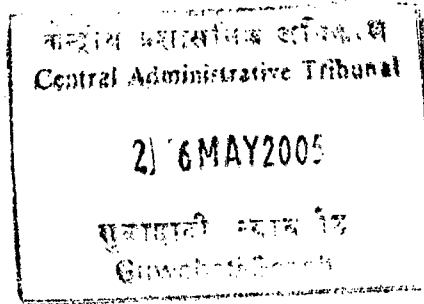
AXEN/Con/N.F.Railway/Pl.,
Maligaon.

dt 09-08-2004

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20/3

Page 6

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Certified to be true copy
K. Paul
Advocate.
20/8/04
GM/MLG
H.F.



*Filed by -
The respondents -
through
25/5/05*

By Dy. Chief Personnel Officer Bandana D.
N.F. Railway, Maligaon
Guwahati-11
26.5.05

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A. NO.2/05

Sri Biprajit Dutta & Ors.

-VS-

Union of India & Ors.

WRITTEN STATEMENT FILED BY THE RESPONDENTS


1. That the respondents have received a copy of the petition and have gone through the same and understood the contents thereof.
2. That save and except the statement which are specifically admitted herein below, other statements made in the OA are categorically denied. Further the statements which are not borne on records are also denied and the applicant is put to the strictest proof thereof.
3. That with regard to the statement made in para 1 to 3 of the OA the answering respondents do not admit anything contrary to the relevant records of the case.
4. That with regard to the statement made in para 4.1 and 4.2 of the OA the answering respondents do not admit anything contrary to the relevant records of the case.

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Chief Personnel Officer
N.F. Railway, Maligaon
Guwahati-781 001

5. That with regard to the statement made in para 4.3 of the OA, the deponent while denying the contentions made therein begs to state that in terms of Rule 18(3) of RSDA Rules, 1968, the disciplinary authority may disagree with the findings of the enquiry authority on any article of charge and record, its reasons in such disagreement and record its own findings on the basis of evidences of record.

6. That with regard to the statement made in para 4.4 and 4.5 of the OA, the deponent doesnot admit anything contrary to the relevant records of the case.

7. That with regard to the statement made in para 4.6 of the OA the respondents beg to state that it is admitted that during the pendency of the disciplinary proceeding against the applicant some of his juniors along with the applicant were considered for promotion to senior scale as Executive Engineer by the Departmental bench Promotion (DPC) committee in the year 1998. The result of DPC in respect of the applicant was kept under sealed cover due to a pending DAR case against him. Currency of the penal in the said DPC was expired before completion of DAR proceeding. As such the seal cover was not opened. The applicant was considered for promotion in the subsequent DPC held in the year 2000, 2001, 2002 & 2003 but the applicant was not found fit for promotion due to below bench marking and vigilance case instituted at the instance of S.P., C.B.I in disproportionate assets case.

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Chief Personnel Officer
N.E. Railway, Maligaon
Guwahati-11


It is to be stated further that the penalty imposed against the applicant was for reduction of pay for one stage lower in the same time scale for one year vide order dated 8.11.2001 and the same was set aside and quashed by the Hon'ble Tribunal in OA No.310/2001. However inspite of exoneration by the Hon'ble Central Administrative Tribunal, Guwahati from charge dated 8.11.2001, the applicant was not considered fit for promotion by the DPC due to below bench marking in ACRs and report of the vigilance case as stated above.

Accordingly the applicant was also replied to his representation submitted to the GM(P/MLG) vide its letter No.E/112/21/con/pt-V dated 9/10.9.02.

A copy of the letter dated 9.9.03 is annexed herewith and marked as Annexure-1.

8. That with regard to the statement made in para 4.7 of the OA, the deponent doesnot admit anything contrary to the relevant records of the case.

9. That with regard to the statement made in para 4.8 of the OA, the deponent while denying the contentions made therein begs to state that in every proceeding before the DPC the case of applicant was duly being assessed and considered that he had not been found fit for promotion to senior scale due to below bench marking in ACRs. It is fact that the penalty imposed by the disciplinary authority was set aside and quashed by the Hon'ble Tribunal, this doesnot

5

 Chief Personnel Officer
 N.F. Railway, Maligaon
 Guwahati-11

mean that he has been fit for promotion but he was continued to be found unfit for promotion by the DPC as stated above.

10. That with regard to the statement made in para 4.9 of the DA the deponent while reiterating and reaffirming the statement made above begs to state that the applicant was continued to be found unfit by the DPC due to below bench marking in ACRs and registered case of SP/vigilance. Therefore promotion of the applicant from the date of next juniors is not possible.

11. That with regard to the statement made in para 4.10 of the DA the deponent doesnot admit anything contrary to the relevant records of the case.

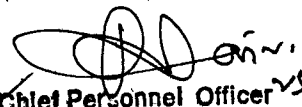
12. That with regard to the statement made in para 4.11 of the DA, the deponent while denying the contentions made therein begs to state that it is wrong to state for the applicant that exonerated from one charge doesnot mean exonerated from all charges but he had not cleared up other vigilance cases. It is not correct that the authority had not maintain the sealed cover rules in the instant case. The applicant was not found fit for promotion in every proceedings adjust by the DPCs. It is not fact that the applicants case was unassessed or by passed without consideration for promotion by the DPC, as it is evident from the remarks in the preceeding paras.

Under the facts and circumstances stated above the original application has no merit and deserves to be dismissed with cost.

VERIFICATION

I, Shri R. AAI VU aged about
40 years, Son of LATE S. RAMASAMY resident
of MALIGAON
presently working as Dy Chief Personnel Officer (HQ)
N.F. Railway, Maligaon do hereby solemnly verify and
state that the statements made in paragraphs 5,
are true to my knowledge and those made
in paragraphs 7, 9, 10, 12
being matter of records are true to my information derived
therefrom, which I believe to be true and the rests are
my humble submissions made before this Hon'ble Tribunal. I
am also authorised and competent to sign this verification
on behalf of all the respondents.

And I sign this verification on this 25th day
of May, 2005 at Guwahati.


Dy. Chief Personnel Officer 25/5
N.F. Railway, Maligaon
Guwahati-11
Signature.

- 6 -

Annexure-1

N.E. RAILWAY

Office of the
General Manager (P),
Maligaon, Guwahati-11.

No. E/112/21/CON PL.V

Dated: 09.09.2003

To
Shri B. Dutta,
AXEN/CON/PL-3,
H.F.Rly, Maligaon.

Sub: DPC for promotion to Sr. Scale (Adhoc) from
Group 'B' of AXEM.

Ref: Your representation dated 04.08.2003.

Your representation has been examined and considered in detail. The promotion from one grade to another grade is based on the performance of preceeding years. Committee after going through the details of the performance, recommends empanelment of a particular candidate. It is mentioned that you have not been considered fit for promotion, based on the performance and benchmark stipulated for the same. Accordingly your representation is disposed off.

(P.K. SINGH)
Dy. CPO/Gaz.
for General Manager (P).

Attested
Shri
Advocate

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORIGINAL APPLICATION NO. 2 OF 2005

Shri Biprajit Dutta Applicant

- Versus -

Union of India & Ors. Respondents.

**REJOINDER FILED BY THE APPLICANT TO THE
WRITTEN STATEMENT FILED BY THE RESPONDENTS**

1. That the applicant has received a copy of the written statement filed by the respondents in the aforementioned O.A. The applicant has gone through the same and has understood the meaning of the contents thereof and begs to file his rejoinder as follows.
2. That, the prayer made by the applicant, in O.A. No. 2/2005, is for a direction towards the respondents to open the sealed cover in respect of the applicant and to give him promotion to the post of Executive Engineer (Senior Scale) from the date his juniors were promoted in 1998.

Contd..... 2

Filed by, Biprajit Dutta
(BIPRAJIT DUTTA)
through, Krishnendu Paul, Advocate,
20-06-2005.

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Bijoy /
(BIPROST D4 TTA)

3. That, on 7-2-2005, learned counsel for the respondents was asked to obtain instructions by this Hon'ble Tribunal as to whether the sealed cover procedure was adopted or not in case of the applicant and whether any of his juniors were promoted to the senior scale.

4. That, on 11-2-2005, the learned counsel for the respondents submitted before this Hon'ble Tribunal, upon instructions, that the sealed cover procedure was adopted by the respondents in case of the applicant but he was not recommended for promotion by the D.P.C. (obviously, after opening the sealed cover).

5. That, the respondents thereafter filed their written statement before this Hon'ble Tribunal on 26-5-2005. In their written statement, at paragraph 7, the respondents have stated that the sealed cover, purportedly adopted in case of the applicant in the year 1998, was not opened. The reason cited for not opening the sealed cover is that the currency of the panel in the said DPC expired before completion of the departmental proceedings against the applicant.

The aforementioned statements made by the respondents in their written statement are both fallacious as well as misleading. The statements are misleading because on 11-2-2005 it was submitted on behalf of the respondents that sealed cover procedure was adopted but applicant's case for promotion was not recommended by the DPC.

NO
Bifurged
13/08/2015 DUTTA

This will be revealed from the order-sheet of the Hon'ble Tribunal's case records. Whereas, in their written statement at paragraph 7, the respondents have stated that sealed cover of 1998 was not opened, or, in other words, not acted upon. Therefore, how can the question of DPC not recommending the applicant's case for promotion in 1998 arise, when the sealed cover itself containing the recommendation of the DPC, was not opened. The reasoning given by the respondents for not opening the sealed cover of 1998 is that the currency of the panel expired before completion of DAR proceeding. This is clearly fallacious because the instructions contained in the Railway Board's letter dated 22-1-93 (annexure A/6 of the O.A.) contemplates that the juniormost officiating person may be reverted to accommodate an employee who has been recommended by the DPC for promotion, after opening the sealed cover, upon complete exoneration from all charges. Therefore, the question of expiry of the currency of the panel recommended by the DPC in 1998, does not arise, and the sealed cover in case of the applicant ought to have been opened and promotion be given, if necessary, by reverting the juniormost officiating person. Viewed from another perspective, the time for completion of DAR proceedings is 167 days as laid down in the Railway Board's letter No. E(D&A) 69 RG-6-17 dated 8-1-71. The said DAR proceedings against the applicant which was initiated on 28-6-97 could not be completed within the stipulated period of 167 days due to the fault and lapses on the part of the respondents. Therefore, when the currency of the panel in the said DPC expires before

High Court
(Bihar)
Dated 28-8-96

completion of the departmental proceedings, how can the applicant be made to suffer on that account.

6. That, the Enquiry officer nominated by the respondent, after detail enquiry gave his findings dated 25-2-99 and had exonerated the applicant from all charges, which was accepted by this Hon'ble Tribunal through the judgement dated 9-5-2002 and also upheld by the Hon'ble High Court/Gauhati vide judgement dated 8-1-04. So the plea of expiry regarding currency of Pannel made in the year March '98 is not at all justified and acceptable.

7. That, the respondents in paragraph 7 of their written statement, have further stated that the applicant was considered for promotion in the subsequent DPC held in the year 2000, 2001, 2002 and 2003 but the applicant was not found fit for promotion due to below bench marking and vigilance case instituted at the instance of S.P., C.B.I. in disproportionate assets case.

That applicant will come to the vigilance case later. First of all, with regard to the statement that the applicant was not fit for promotion due to below bench markings, the applicant states that if at all he was considered 'Not Fit' for promotion due to below bench marking, the grounds therefore ought to have been clearly brought out and communicated by the respondents to the applicant, as per the Railway Board's letter No. 96/289-B/secy./Admn. Dated 28-8-96. Since, no such endeavour was ever made by the respondents to bring out the grounds for considering

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Bijoyjit Singh
(B, PRO) + DGT

the applicant 'Not Fit' for promotion and communicate the same to the applicant, in terms of the Railway Board's letter, therefore, the applicant cannot be declared to be not fit for promotion in the years 2000, 2001, 2002 and 2003. The repeated denial of promotion based on ACR grading without any communication clearly violated the rules/guide line laid down by the Railway Board through many circulars vide No. 91/289-B/Secy/Admn dt.8-1-91, 95/289-B/Secy/Admn dt 05-05-95, 96/289-B/Secy/Admn dt 28-8-96, 98/289/Secy/Admn dt 6-4-98 etc.

Now, coming to the stand taken by the respondents in their written statement that due to vigilance case instituted at the instance of S.P., C.B.I. in disproportionate assets case, the applicant's case for promotion was not considered, the applicant states that the minor penalty memorandum dated 10-5-2004 in the disproportionate assets case was served upon the applicant by the respondent No.(2) acting as Disciplinary Authority asking him to show cause. The applicant also submitted on 16-11-2004 his reply followed by reminder dated 11-5-05 but the said proceedings are yet to be finalised even after expiry of limitation period as laid down in Rules/Guide line. The applicant fails to understand how the said minor penalty memorandum dated 10-5-2004 can stand in the way of the applicant for being considered for promotion in the earlier years i.e. 2000, 2001, 2002 and 2003, as stated by the respondents in paragraph 7 of their written statement.

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Bijoyjit Datta
(BIPPOJIT DATT)

8. That, in the concluding portion of paragraph 7 of the written statement the respondent have stated that inspite of exoneration by this Hon'ble Tribunal the applicant was not considered fit for promotion by the DPC due to below bench marking in ACRs and report of the vigilance case and that the applicant was given reply to his representation on 9-9-2003.

In this connection, the applicant states that the applicant never received the aforesaid letter dated 09-09-2003. With regard to the stand taken by the Respondents that the applicant was found not fit for promotion by the D.P.C. due to below bench marking in A.C.Rs and report of the vigilance case, the applicant states that he was never communicated the grounds for which he was considered not fit for promotion due to below bench marking in A.C.Rs, as was required to be done in terms of the Railway Board's letter No. 96/289-B/Secy./Admn, dated 28-08-1996. Therefore, the Respondents ought to have considered the case of the applicant for promotion because the below bench marking in A.C.Rs, are not in accordance with the instructions contained in the Railway Board's letter. As regards the report of the vigilance case, the Applicant states that the same cannot be a ground to deny promotion to the applicant, in the years 2000, 2001, 2002 and 2003 because the said minor penalty memorandum/Vigilance Case came to be instituted only in the year 2004.

9. That, with regard to the statements in Paragraphs 9 of the written statement, the applicant states that the stand

taken by Respondents that "in every proceeding before D.P.C. the case of the applicant was duly being assessed and considered that he had not been found fit for promotion to senior scale due to below bench marking in A.C.Rs". cannot be a ground to disqualify the applicant for promotion. The reason is that for considering an officer not fit for promotion due to below bench markings in ACRs, the grounds therefor, should be clearly brought out and communicated to the officer reported upon as stipulated in Railway Board's letter. Since this exercise was not undertaken by the Respondents, therefore they cannot deny promotion to the applicant based on such uncommunicated grounds for below bench markings in his ACRs.

10. That with regard to the statements made in paragraph 10 of the written statement, the applicant reiterates and reaffirms what he has already stated in the foregoing paragraphs No. 7, 8 and 9 of this Rejoinder.

11. That with regard to the statements made in paragraphs 12 of the written statement, the applicant states that the instant faulty and baseless vigilance case is of the year 2004, so this can hardly be a ground for not considering the case of the applicant for promotion in the earlier years 2000, 2001, 2002 and 2003. The Respondents at paragraph 12 of the written statement have stated that sealed cover was maintained but the applicant was not found fit for promotion in every proceedings adjudged by the D.P.C. This is however contrary to the stand taken in paragraph 7 of the written statement to the effect that the

35
Belonging to me
(16/05/19)
DATE 16/05/19

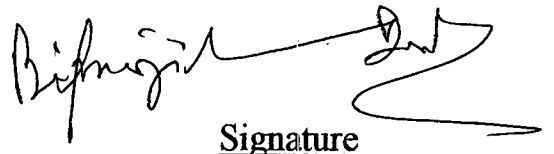
sealed cover of 1998 was not opened. Such inconsistent pleadings of the Respondents in their written statement can hardly support the stand of the Respondents for not considering the applicant's case for promotion, but it supports the claim of the petitioner in the said O.A. for promotion to the senior scale from the date his juniors were promoted in the year 1998. The applicant's prayer is for opening the sealed cover of the findings recorded by the DPC in 1998. Admittedly the sealed cover of 1998 was not opened. Therefore, the Hon'ble Tribunal may direct the respondents to produce the DPC proceedings along with all related documents and to open the sealed cover of 1998 in respect of the applicant and promote him to the post of Executive Engineer (Senior Scale) with all consequential relief.

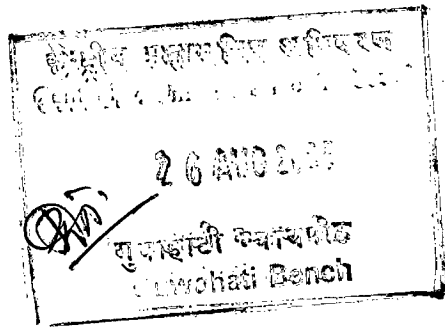
The applicant, most respectfully submits that the Respondents have failed to dislodge the claim of the applicant for promotion to the post of Executive Engineer (Senior Scale) from the date his juniors were promoted in 1998. The Hon'ble Tribunal may be pleased to direct the Respondents to grant promotion to the applicant to the post of Executive Engineer (senior scale) if necessary by holding a review D.P.C. within a specific time period, and by reverting the juniormost officiating person as per Railway Board's letter dated 22-1-93.

VERIFICATION

I, Shri Biprajit Dutta, son of Shri B. C. Dutta, aged about 46 years, residing in Railway Bungalow No. 294/D, Sarada Colony, Maligaon, Guwahati – 781011, do hereby verify that the statements made in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 are true to my knowledge and the rest are my humble submission before the Hon'ble Tribunal and I have not suppressed any material facts.

And I sign this verification on this the 20th day of June, 2005.


Signature



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI

ORIGINAL APPLICATION No. 2 OF 2005

Shri Biprajit Dutta APPLICANT

- Vs -

Union of India & Ors. RESPONDENTS

AFFIDAVIT FILED BY THE APPLICANT

IN TERMS OF THE ORDER DATED 12.08.2005 IN THE
AFOREMENTIONED ORIGINAL APPLICATION

1. That, during the course of hearing of the aforementioned O.A. on 12.8.2005, a question arose as to whether any criminal case is pending against the applicant in disproportionate assets case as averred by the respondents in paragraph 7 of their written statement. This Hon'ble Tribunal directed the applicant and the respondents to file their respective affidavits in this regard within two weeks. Hence, this affidavit is filed on 26.08.05 by the applicant in response to the Hon'ble Tribunal's Order dated 12.08.2005, solemnly declaring as follows :

2. That, the prayer made by the applicant in O.A. No. 2/2005, is for a direction towards the respondents to open the sealed cover in respect of the applicant and to give him promotion to the post of Executive Engineer (Senior Scale) from the date his junior were promoted in 1998.

Contd.....2.....

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Filed by, Biprajit Dutta 26/8/05
(BIPRAJIT DUTTA)
through, Krishnendu Paul, Advocate, 26-8-05.

3. That, the respondents in paragraph 7 of their written statement have admitted that during the pendency of the disciplinary proceeding against the applicant some of his junior alongwith the applicant were considered for promotion to senior scale as Executive Engineer by the DPC in the year 1998. The result of DPC in respect of the applicant was kept under sealed cover due to a pending DAR Case against him. Currency of the panel in the said DPC expired before completion of DAR proceedings and as such the sealed cover was not opened. The respondents in the said paragraph 7 of their written statement further averred that the applicant was considered for promotion in the subsequent DPC held in the year 2000, 2001, 2002 and 2003 but the applicant was not found fit for promotion due to below bench marking and vigilance case instituted at the instance of S.P., C.B.I. in disproportionate assets case.

Now, it is in respect of the vigilance case instituted at the instance of S.P., C.B.I. in disproportionate assets case that the applicant has been directed by this Hon'ble Tribunal on 12.8.2005 to file an affidavit.

4. That, the applicant states that in the vigilance case instituted at the instance of S.P., C.B.I. in disproportionate assets case against the applicant, the C.B.I. have recommended RDA (Regular Departmental Action) for major penalty against the applicant, to the Central Vigilance Commission. However, the Central Vigilance Commission, after obtaining the comments of the Railway Board, advised initiation of minor penalty proceedings against the applicant.

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26/10/07
26/10/07
(26/10/07)
26/10/07

: - 3 - :

A copy of the aforesaid letter
containing the advise of the
C.V.C. is annexed hereto as
ANNEXURE - 1

5. That, in pursuance of the CVC's advise in the vigilance case instituted at the instance of S.P., C.B.I. in disproportionate assets case, the General Manager/Con, N.F.Railway, Maligaon (Respondent No.2) served a memorandum of charge for minor penalties under Rule 11 of Railway Servants (D&A) Rules, 1968, vide Memo. No. Z/SS/CON/DA/GAZ (BD) Pt.-I dated 10.5.2004. The statement imputation of misconduct/misbehaviour, enclosed to the above mentioned memo., contain the following imputation (Paragraph 6) -

"Thus, Sri Biprojit Dutta, while working as Asstt. Engineer (Construction), committed gross misconduct in as much as he has acquired assets disproportionate to his known sources of income to the extent of Rs. 1,46,251/- during the period January'93 to 28.11.2001. Sri Biprojit Dutta, thus, failed to maintain absolute integrity and acted in manner which is unbecoming of a Railway Servant and thereby violated Rule 3(1)(i) and 3(1)(iii) of Railway Services (Conduct) Rule, 1966."

A copy of the aforesaid
Memorandum dated 10.5.2004 is
annexed hereto as ANNEXURE - 2.

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Biprojit Dutta
(Biprojit Dutta)

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9. That, the applicant respectfully states that it is only when a charge-memo in disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/Charge-sheet is issued. To deny promotion the disciplinary/criminal proceedings must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. This is the law laid down the Apex Court in the case of Union of India -Vs- K.V. Jankiraman and the same is also embodied in the circulars of the Railway Board. Since, there is no criminal proceedings pendencies against the applicant and only a charge-memo for minor penalty is pending against him, therefore, what follows is that the respondents cannot deny promotion to the applicant prior to ¹⁰/11.5.2004 which is the date on which the charge-memo for minor penalty in the disproportionate assets case, instituted at the instance of S.P, C.B.I, was issued to the applicant.

Moreover, as per the Railway Board's circular No. E(D&A) 2003 RG-6/15 dated 7.5.2004, where the second or subsequent proceedings were instituted after promotion of the junior to the railway servant on the basis of recommendation made by the DPC which kept the recommendation in respect of

Contd.....6.....

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By *[Signature]* 26/10/05
(B) P. R. S. T. D. V. (A)

: - 6 - :

the railway servant in sealed cover, the benefit of assessment by the DPC will be admissible to the railway servant on his exoneration in the first proceedings, w.e.f. the date his immediate junior was promoted. In the instant case, the applicant's juniors were promoted in 1998 when the applicant's case was kept in sealed cover due to pendency of the first departmental proceedings initiated vide memo. Dated 28.6.97. However, the applicant was exonerated from all charges by the enquiry officer vide report dated 25.2.99 which was upheld by this Hon'ble Tribunal on 9.5.2002 and also, subsequently, by the Hon'ble High Court on 8.1.2004. Therefore, under the Railway Board's circular dated 7.5.2004 and also as per the decision of the Apex Court in the case of Delhi Jal Board -Vs- Mohinder Singh (reported in 2000 (7) SCC 210), the applicant is entitled for promotion to the post of Executive Engineer (Senior Scale) w.e.f. 17.4.1998 the date his immediate juniors were promoted, because the second departmental proceedings were initiated vide memo dated ¹⁰/11.5.2004 much after promotion of the juniors and also after complete exoneration of the applicant in the first proceedings.

A copy of the Railway Board's Circular dated 7.5.2004 is annexed hereto as ANNEXURE - 5.

10. That this affidavit is filed bonafide and in the interest of justice.

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High Court
(28/6/97)
DPC

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AFFIDAVIT

I, Shri, Biprojit Dutta, son of Shri B.C. Dutta, aged about 46 years, residing in Railway Bungalow No. 294/D, Sarada Colony, Maligaon, Guwahati - 781 011, in the district of Kamrup, Assam, do hereby solemnly affirm and declare as follows :

1. That I am the applicant in O.A. No.2/2005 as well as the accompanying affidavit, being fully acquainted with the facts and circumstances of the case and therefore I am competent to swear this affidavit.

2. That the statements made in this paragraph and paragraphs 1,2,3 and 8 are true to my knowledge and those made in paragraphs 4,5,6,7 and 9 are being matters of records and true to my information derived therefrom which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this affidavit on this the 26 day of August, 2005, here at Guwahati.

Identified by :-

Arinwarigya Sam
Adho cate

Biprojit Dutta
26/8/05
DEPONENT

-8-

CONFIDENTIAL

ANX-1.

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CENTRAL VIGILANCE COMMISSION

The CBI have recommended RDA for major penalty against Shri Biprojit Dutta, AEN, NF Railway, on the following misconducts:

- (i) Possession of assets disproportionate to the known sources of income to the extent of Rs.2,96,917, i.e. 13.71% of the total income during the check period;
- (ii) Declaration of his wife as dependent, though she is an earning lady, thus enjoying the benefits admissible to a dependant family member;
- (iii) Failure to intimate the department regarding purchase of land with an Assam Type House in the name of his wife.

2. The Railway Board, in their comments, have brought out the following points for consideration:

- (i) The lapse of not informing the department about the purchase of property in the name of his wife, is too trivial to invite action under major penalty proceedings. In fact, the conduct rules do not provide for intimations for acquisition of property by the spouse if the transaction is through her/his own income;
- (ii) In terms of Railway Servants (Pass) Rules, family includes spouse of a railway servant whether earning or not. The CBI's conclusion that the wife of Shri Dutta, being an independent income tax assessee, was not entitled to take benefit from railways is not correct.
- (iii) While calculating disproportion of the officer, there have been minor corrections in computation of income and expenditure. However, the CBI have not allowed him a benefit of Rs.1,36,751 on account of saving from TA/DA, as he could save a part of it being unmarried till August 1988. If this is allowed, the disproportion comes to Rs.1,46,251 only.

3. In view of the above observations, the Commission, in agreement with the Railway Board, would advise initiation of minor penalty proceedings against Shri Biprojit Dutta, AEN.

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4. Action taken in pursuance of the Commission's advise may please be intimated.

(K.L. ARUJA)
Officer on Special Duty

✓ Railway Board (Shri Shiv Kumar, Advisor-Vig) New Delhi
CVC's I.D. Note No. 0036 RLY 06 Dated.

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ANX-2

~~CONFIDENTIAL~~

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NORTHEAST FRONTIER RAILWAY

Office of the
General Manager/Con
Maligaon: Guwahati-11

No. Z/SS/Con/DA/GAZ(BD)/PLI

Dated: 11.05.2004

To

Biprajit Dutta
AXEN Con/PL/MLG

Sub Memorandum No. Z/SS/Con/DA/GAZ(BD)/PLI dated
10.05.2004 (SE 11)

The above mentioned memorandum is enclosed herewith in a sealed cover. May please acknowledge receipt of the same.

Encl: One with 5 (five)
Enclosures.

(A. Saikia)

11/5/04

Dy.CPO/Con/MLG
For General Manager/Con

-11-

Standard Form of Memorandum of Charge for Minor Penalties.
(Rule 11 of Railway Servants (D&A) Rules 1968)

Office of the
General Manager/Construction,
N.F. Railway : Maligaon.

No. Z/SS/CON/DA/GAZ(BD)pt.I

Dated, 10.5.04

MEMOORANDUM

Shri Biprojit Dutta, AXEN/Con/PI/MLG working in N.F. Railway Construction is hereby informed that it is proposed to take action against him under rule 11 of the Railway Servants (Discipline Appeal) Rules, 1968. A statement of the imputations of misconduct or misbehaviour on which action is proposed to be taken is enclosed.

Shri Biprojit Dutta, AXEN/Con/PI/MLG is hereby given an opportunity to make such representation as he may wish to make against the proposal. The representation, if any, should be submitted to the undersigned so as to reach within ten days of receipt of this Memorandum.

If Shri Biprojit Dutta, AXEN/Con/PI/MLG fails to submit his representation within the period specified in para 2, it will be presumed that he has not representation to make and orders will be liable to be passed against Shri Biprojit Dutta, AXEN/Con/PI/MLG ex parte.

The receipt of this Memorandum should be acknowledged by Shri Biprojit Dutta, AXEN/Con/PI/MLG.

DA : A Statement as above in 5 pages.



(N. Ramasubramanian)
General Manager/Con,
N. F. RLY : Maligaon.

To
Shri Biprojit Dutta,
AXEN/Con/PL/MLG.

Received on
11-05-04
Bandyopadhyay

Statement of Imputation of Misconduct/Misbehaviour framed against Shri Biprojit Dutta, the then Asst.Engineer (Con), Kumarghat, Tripura, now AXEN/Con/PL/MLG

Sri Biprojit Dutta, while working as AEN/CON, committed gross misconduct by way of omission and commission in the following manner:-

Sri Biprojit Dutta joined Railway as inspector of works (IOW), Grade-III in the month of July, 1979 and got promotion to AEN(Con) in the month of May, 1993.

That, the check period has been taken from Jan/93 to 28.11.01.

That, following are the income from known sources, expenditure, savings and assets in the name of Sri B.Dutta and his wife.

1. INCOME :

(i) SALARY INCOME:

The details salary income of Sri Biprojit Dutta during the check period of January, 1993 to November, 2001 are mentioned below:-

<u>Sl.No. & Period</u>	<u>Gross Salary</u>	<u>Net Salary</u>	<u>TA/DA</u>
1. January, 1993 to April, 1993	Rs. 27,154/-	Rs.18,222/-	Rs 6762/-
2. May, '93 to Aug., 1993	Rs. 23,296/-(5824x4)	Rs.15,318/-(3829x4)	-
3.Sept.,1993 to December,1994	Rs.1,14,223/-	Rs.71,528/-	Rs 11,165/-
4. Jan.,1995 to May,1996	Rs.1,40,881/-	Rs. 84,658/-	Rs 19,431/-
5. June,1996 to September,1998	Rs.3,25,765/-	Rs.1,67,510/-	Rs 50,616/-
6. October, 1998 to Nov.,2001	Rs.6,10,788/-	Rs.1,86,124/-	Rs 48,777/-
Total =	Rs.12,42,107/-	Rs.5,43,360/-	Rs 1,36,751/-

The net salary income of Sri Biprojit Dutta during the period of check comes to **Rs 5,43,360/-**.

(ii) RENTAL INCOME:

Total income received from rent from house properties during the period 1992-93 to November, 2001 comes to **Rs.1, 66,750/-**.

(iii) INCOME OF WIFE:

The net income of Smt. Shaswati Dutta as per the IT return file comes to **Rs.6,86,051/-**.

(iv) INCOME ON INTEREST ON NSC,KVP,AND FD A/Cs. Etc.:

The interest earnings on savings through NSC,KVP,RP,FD,RD etc during check comes to **Rs. 2,02,743/-**.

Smt

(v) **INTEREST ON SAVING BANK A/cs:**

The income on interest in saving banks A/cs of Sri Biprojit Dutta and family during the check period worked out to Rs. 4,162/-.

As such, the total income of Sri Biprojit Dutta and his wife during the check period comes to Rs. 16,03,066/-.

2. **EXPENDITURE**

The expenditure incurred by Sri Dutta during the check period of Jan/93 to 28.11.01 have been verified on the basis of receipt, cash memos and other accounts of expenses so far available as under.

(i) **EXPENSES ON SCHOOLING:**

Verifiable expenditure towards education of children during the period comes to Rs. 14,670/-.

(ii) **MUNICIPAL TAXES:** Rs. 4099/-

(iii) **INCOME TAX PAID OTHER THAN TDS:** Rs. 29,850/-

(iv) **LIC PREMIUM:** Rs. 46,850/-

(v) **TELEPHONE CONNECTION:**

The total expenditure for telephone connection and billed during the check period = Rs. 6,445/-.

(vi) **Purchase of Usha Sewing machine:**

Sri Biprojit Dutta also purchased one Usha Sewing Machine (Foot) with cover from M/s Assam Trading Agency, Usha Sewing Machine, GAR-ALI, Jorhat - 785001 on 25.4.97 @ Rs. 5150.00 whereas Smt. Shaswati Dutta has declared during search that the price was Rs. 4050/-. As such the same was recorded accordingly in the inventory memo. But as per the cash memo, the actual cost was Rs. 5,150.00. Hence, difference of Rs. 1,100.00 has been added to the expenditure side.

(vii) **Purchase of Crompton Water Pump:**

Sri Biprojit Dutta also purchased one Crompton Water Pump at the rate of Rs. 5300/- on 4.5.01 from M/s Shree Durga Enterprise, Hospital Road, Silchar.

(viii) Sri Biprojit Dutta also stated that he had spent a sum of Rs. 25,000/- towards repairing and maintaining of old ancestral property during the check period and the said amount of Rs. 25,000/- has been added to expenditure.

(ix) However, the kitchen expenses, clothing, electricity bills etc could not be available. Hence after failing to calculate the expenditures based on records, the expenditure

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on these non-verifiable heads were taken one-third of the Gross Salary during the check period. The Gross Salary received by Sri Biprojit Dutta during the check period was Rs. 12,42,107/- and 1/3rd. of its comes to Rs. 4,14,036/-.

Thus, the total expenditure of Sri Biprojit Dutta and his family during the check period comes to Rs. 5, 47,350/-.

3. ASSETS:

Investigation revealed that the followings are the assets both moveable and immovable owned by Sri Biprojit Dutta and his family at the end of the check period:

(i) Assam Type Building on ancestral land:

Sri Biprojit Dutta has ancestral land inherited from his uncle (L) Baren Kumar Dutta, freedom fighter measuring 5.8 kata(approx) located at Sukanta Sarani, Hailakandi Road, Silchar-5 with standing house of Assam Type building which he had constructed from 1978-84 and renovation with extension in 1986-88. For the said construction and renovation with extension, he had spent a sum of Rs 50,000/- as per his submitted to his department.

(ii) RCC BUILDING:

Sri Biprojit Dutta has also constructed one three storied RCC building on the above said existing land of 500 sq. ft. phase-wise starting from 1992-93 and completed upto 2nd floor in 2000-01 for which he had obtained permission the department and also reflected the same in his property returns. For the construction of this RCC building Sri Biprojit Dutta has spent a sum of Rs. 3, 75,000/- and he has also got the building evaluated through approved valuer Sri Avijit Paul Chowdhury who, after considering all aspects worked out the cost of the construction to Rs. 3, 75,600.00 only, i.e Rs. 600.00 higher than the cost of construction stated by Sri Dutta. The value declared by Sri Biprojit Dutta, i.e Rs. 3,75,000.00 is taken as the value of the building.

(iii) Land owned by wife:

Another land having holding No. 615, W/No.16 measuring 2 kathas & 14 chattaks, located near B.T.College, Hailakandi Road, Silchar was purchased by Smt. Shaswati Dutta, w/o Sri Biprojit Dutta, (D/o Sri Roma Ranjan Roychoudhury) on 11.10.2000 from one Smt. Sumita Chakraborty at Rs. 1,65,000.00. The sale deed bearing No. 1249 at Sl. No. 1383 dtd 11.10.2000 was executed between the two on 11.10.2000 before the Dy. Registrar (Regn) Cachar, Assam (Sri D.Dutta). The registration fee, stamp fee and all fees paid by the purchaser as per the records comes to Rs 28,898/- and the total amount spent comes to Rs. 1,93,898/-.

(iv) INVESTMENTS:

Total Investments made by Sri Biprojit Dutta in National Savings Certificates, Banks and Term Deposits Receipts during check period comes to Rs. 4.48.011/-.

[Handwritten signature]

The total investments made by Smt. Shaswati Dutta, W/o Sri Biprijit Dutta, during the check period comes to Rs. 4,02,215/-.

(v) HOUSEHOLD ITEMS:

The amount arrives to Rs. 44,900/- as per inventory taken.

(vi) JEWELLERIES:

The total value of Jewelleries comes to Rs. 1,01,806/-. But the jewelleries gifted as declared by Sri Dutta and wife valued Rs. 2,917/- were not taken into account.

Hence, the total value of Assets possessed/ acquired by Sri Biprojit Dutta and his wife Smt. Shaswati Dutta during the check period comes to Rs. 16,15,830/-.

4. ASSETS ACQUIRED PRIOR TO THE CHECK PERIOD:

(i) Salary income:

Sri Biprojit Dutta received a gross salary of Rs. 3,73,321/- including the pin money saving of Rs. 10,000/- (during 1979 to 1992) prior to those period as per Annexure 'A' of Details submitted by Shri Biprojit Dutta to CBI on 21-10-2002.

(ii) Rental income:

Sri B. Dutta has also shown the rental income from one Assam type house which was constructed by him before the check period after entering into service as Rs. 78,560/- against which assets worth about Rs. 2,77,112/- were found and Sri Dutta has not claimed any other investment or assets but for a negligible sum of Rs. 845/- found in balance in his 4 inoperative bank accounts which interalia means that the balance amount of his income was his expenditure before the check period.

(iii) BANK BALANCE:

The Bank pass books of Sri Biprojit Dutta before the check period show that all his bank A/cs were inoperative and there was balance of Rs. 845.50 only comprising of in 4 bank accounts which is not being taken into his final assets being negligible.

(iv) NATIONAL SAVINGS CERTIFICATES, TD, etc:

As per the statement submitted by Sri Biprojit Dutta to the CBI and also from his Personal Diaries for the year 1992 & 1993 recovered during search, he had invested a sum of Rs. 1,99,717/- during the period of 1980-81 to 1992-93 in NSCs, RIPs in different post Offices and Banks. As such, the value of the said investment at the time of acquisition were taken as Assets/NSCs acquired by Sri Biprojit Dutta prior to check period i.e. Rs. 1,99,717/- as stated above.

(v) BUILDING:

Prior to the check period, Sri Biprojit Dutta was already in possession of land inherited from his uncle(L) Barendra Kumar Dutta, located at Sukanta Sarani, Hailakandi Road.

Amal

Silchar wherein he had constructed one Assam Type Building during 1978-84 spending a total amount of Rs.50,000/- as reflected in his property returns and also in statement submitted to the CBI. Accordingly, Rs. 50,000/- has been taken as value of Assam Type Building considering cost of the land NIL as assets before the check period.

(vi) HOUSEHOLD ITEMS:

That, the value of house -hold items acquired by Sri Biprojit Dutta and family before the check period were mentioned in the inventory memo prepared during the search. Valuation of the items were also taken as per declaration of Smt. Shaswati Dutta, w/o Sri Biprojit Dutta during search. However, gifted items as declared were not taken into account. The value mentioned by the Shri Biprojit Dutta and his wife were taken into consideration.

The value of the household items/assets acquired by Sri Biprojit Dutta and his wife before the check period comes to Rs. 27,395/- as per the inventory memo.

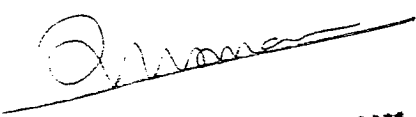
Hence, the total value of assets acquired by Sh. Biprojit Dutta before the check period worked out to Rs. 2, 77,112/-.

5. Thus, the following position has emerged:

1	Income	Rs.16, 03,066/-
2	Expenditure	Rs. 5,47,350/-
3	Savings	Rs.10, 55,716/-
4	Assets(at the end of check period)	Rs. 16,15,830/-
5	Assets before check period	Rs. 2,77,112/-
6	Assets disproportionate at the end of the check period	Rs. 2,83,002/-

TA/DA received by Sri Dutta during the check period (during Jan/1993 to Nov/2001) is Rs 1, 36,751/-. Even considering this whole amount was spent on his personal needs, the amount of dis-proportionate assets works out to Rs 1,46,251/-.

6. Thus, Sri Biprojit Dutta, while working as Asst. Engineer (Construction), committed gross misconduct in as much as he has acquired assets disproportionate to his known sources of income to the extent of Rs. 1,46,251/- during the period January '93 to 28-11-2001.. Sri Biprojit Dutta, thus, failed to maintain absolute integrity and acted in a manner which is unbecoming of a Railway Servant and thereby violated Rule 3(1)(i) & 3(1)(iii) of Railway Services (Conduct) Rule, 1966.


N. RAMASUBRAMANIAN
 General Manager,
 M.E. Railway (Construction)
 Bangalore, Karnataka - 560 001

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ANX-3

CONFIDENTIAL

Date : 16th Nov. 2004

To:

The General Manager/Con,
N.F. Railway, Maligaon.

(Through proper channel)

Respected Sir,

Sub : Disciplinary Proceeding.

Ref : i) Your Memorandum No. Z/SS/CON-
DA/GAZ(BD)/Pt.I dated : 10.05.2004

ii) My letter No. 17.05.04, 12.07.04,
23.08.04, 08.10.04 and 01.11.04

1. With due regards I beg to state that in response to your memorandum of charges I prayed for supply of certain documents to prepare and submit my defence as in the memorandum of charges my income was wrongly calculated without taking into account 17 bills. After long correspondences only payment particulars of 10 bills have been furnished and the rest 7 bills are stated to be not available although I submitted the bill nos, date bill preparing authority and the accounts units from where the bills were paid. As the matter is unnecessarily delayed I am submitting my defence on the basis of my records.

2. That Sir, at the very outset I beg to state that even on the basis of the wrong and partial data & on the basis of which the charges have been framed does not warrant framing of charges, as the alleged disproportionate assets of Rs.1,46,521 is very much less than 10% percent of net income of the Rs.16,03,066 vide I(V) of Charge sheet on the basis of Hon'ble Supreme Court's decision in Krishenchand Agnihotri Vs State of Madhya Pradesh (AIR 1977 SC-796) read with Full Bench judgement of the Hon'ble Central Administrative Tribunal, in K. Kunniraman Sr. DEN, S. Rly, Trivendum Vs U.O.I, vide No. E 1992 (2) SLJ (CAT) 115, wherein law laid down is that "where the excess of assets over the income is less than 10% of the gross income it would not be proper to hold that assets found in the possession of the delinquent is disproportionate".
3. That Sir, the memorandum of charges is based on wrong assessments of income, expenditure and assets as can be seen from the following paras.
4. The Salary income prior to check period that is during 1979 to 1992 was calculated on the basis of Annexure A as mentioned in the memorandum of charges and copy supplied to me later on by the vigilance branch. It can be seen by calculation from the said Annexure A, document relied on in the memorandum of charges as mentioned in item 4.(I) at

5. page- 4 of the memorandum that the salary income upto 91-92 (i.e. salary upto Feb'92 as salary of March is paid in April always) was taken into account and salary for month of Month of March'92 to Dec'92 was not taken into account. This can be easily found out by calculating the salary income shown in Annexure A for period of 1978-79 to 91-92 which comes to Rs. 373321. Thus salary for March'92 (paid in the month of April'92) to December'92 which amount to Rs.63912/- was not taken into account. Thus the total Gross income prior to check period is Rs. 4,37,233 and not 3,73,321 as taken to be salary income prior to the check period.

A statement showing the income prior to check period i.e. 1978-79 to 1991-92 and detail monthly salary income from March'92 (paid in April'92) to December'92 are annexed as Annexure B as a part of Annexure-"A".

- 5.1 Similarly, in computing my salary income as many as 17 supplementary bills pertaining to the check period through which arrear salary after pay fixation on the basis of 5th Central Pay Commission recommendation, arrear Salary after refixation on pay by adjusting 6 (six) annual increments granted me for qualifying AMIE(INDIA) certificate, Arrear TA/DA bills and Salary bills for the period May'93 to Aug'93 (in respect of which only average was taken) were not taken into account. This was detected by me while the documents on the basis the salary income during the check period (as supplied to me by the vigilance branch) were cross checked with the payment particulars available with me. This fault can be easily find out if the total income as shown in Annexure "A" is compared with that/Income

calculated prior to check & during check period and added up. I applied for copy of the respective bills stating BR. No. date, bill preparing authority and the Accounts units vide my application dated 12.07.2004. The particulars of these 17 bills are as under :-

S. No.	Bill Particulars	Bill Reference	Date	Bill Unit	A.C.U.
1.	Arrear/Supplementary TA/DA	E/50/KAS En/SCL/TA	25.01.93	XEN/C/KAS/DMR	SAO/C/SCL
2.	Regular Salary Bill for the month of May/93	E/101/KAS En/SCL	20.05.93	XEN/C/KAS/DMR	SAO/C/SCL
3.	Regular Salary Bill for the month of June/93	E/104/KAS En/SCL	23.06.93	XEN/C/KAS/DMR	SAO/C/SCL
4.	Regular Salary Bill for the month of Jul/93	E/321/GM/CON/S	28.07.93	SPO/C/MLG	FA&CAO/C/MLG
5.	Regular Salary Bill for the month of Aug/93	E/394/GM/CON/S	20.08.93	SPO/C/MLG	FA&CAO/C/MLG
6.	Arrear/Supplementary TA/DA Bill	E/384/GM/CON/TA	17.08.93	SPO/C/MLG	FA&CAO/C/MLG
7.	Arrear PLB Bill	E/12/CON/PLB	18.10.93	XEN/C/DMV	DAO/LMG
8.	Arrear /Supplementary TA/DA	E/11/CON/TA	18.10.93	XEN/C/DMV	DAO/LMG
9.	Arrear /Supplementary TA/DA	E/CON/32/TA	15.03.94	XEN/C/DMV	DAO/LMG
10.	Arrear /Supplementary TA/DA	E/CON/33/TA	15.03.94	XEN/C/DMV	DAO/LMG
11.	Arrear Bill for HRA	E/CON/38/HRA	21.04.94	XEN/C/DMV	DAO/LMG
12.	Arrear /Supplementary TA/DA	292-E/C/GC/MXN/TA	24.08.98	Dy.CE/C/MXN	DAOTSK
13.	Arrear bill for 6(six) Advance increments for passing AMIE	E/79/KA/En/SCL KAS	05.01.93	XEN/C/KAS/DMR	DAO/LMG
14.	5 th Pay Commission Arrear Bill	274-EC/G-C/MXN	11.07.98	Dy.CE/C/MXN	DAO/TSK
15.	Arrear /Supplementary TA/DA	141-E/C/G-C/MXN	27.06.97	Dy.CE/C/MXN	DAO/TSK
16.	Arrear /Supplementary TA/DA	E/111/C/KA/G(TA)	25.02.99	Dy.CE/C/AGTL	SAO/C/ATL
17.	Arrear /Supplementary TA/DA	AB NO CO &/ATL/04	09.05.00	Dy.CE/C/AGTL	SAO/C/ATL

Out of these on;y payment particulars of 10 bills indicating a net payment of Rs. 67,290/- without indicating the gross amount, deduction etc. supplied to me under letter Z/SS/CON/DA/GAZ (BD)/Pt.-I dated 08.10.2004.

The balance 7 bills were stated to be not available. As the particulars of 7 bills which included net payment of Rs. 41160/-, I again vide my letter dated 15.10.04 submitted bills Nos., date A/C. Unit, etc. and requested for kind verification with respective A/c. Units. But I have not been furnished with verified position as yet. As such I have prepared a statement of total salary income for the entire check period showing, Gross Salary, deduction, net salary and TA/DA along with the Br. No., Date, A/cs. Unit etc. The statement include the 17 bills not accounted in the memorandum of charges while computing the salary income.

A copy of the said statement is annexed as Annexure "C"

5.2 A cross check of the above statement in Annexure 'C' with data (as supplied to me) on the basis of which salary income for the check period in the memorandum of charges have been computed it would show that, with minor deference in one or two isolated cases of insignificant amount, except the amount in 17 bills not taken into account items tally with each other. As 10 bills out of 17 have been traced and I have produced copy of the supplementary arrear salary Bill No. E/79/KA/En/SCL KAS, dated 25.01.1993 for Rs. 21459.00. As all particulars including BR. No., date etc. are available the authenticity of balance 6 (six) bills can not be questioned. As such taken these 17 bills into account my salary income during the check period would come as under with the income shown in memorandum of charges.

SN	Particulars of Salary (in Rs.)	As per memorandum of charges				Annexure 'C'	As per Actual			
		Gross	Deduction	Net	TA/DA		Gross =	Dedctn +	Net+	TA/ DA
1.	Jan'93 to April'93	27154	NIL	18221	6762	1	29077	4303	16089	8685
2.	May'93 to Aug'93	23296		15318	-	2	32058	3616	19978	8464
3.	Sep'93 to Dec'94	114223		71528	11165	3	126711	31430	74974	20307
4.	Jan'95 to May'96	140881		84658	19431	4	149537	38787	89847	20903
5.	Jun'96 to Sept'98	325765		167510	50616	5/a&b	364679	108431	205632	50616
6.	Oct'98 to Nov'01	610788		186124	48777	6/a&b	638587	374740	192030	71817
Total (In Rs.) :-		1242107		543359	136751		1340649	561307	598550	180792

5.3 From the statement Annexure 'C' ofn table shown in para 5.2 it can be seen that my net salary income during the Check period Rs. 598550.00 and not 543359.00 as computed in the memorandum of charges and TA/DA paid to me during the Check period is Rs. 180792 and not Rs. 136751 as computed in the memorandum of charges. Thus a sum of Rs. 55191 in net Salary income and Rs. 44041 in TA/DA have not been computed giving rise to difference of Rs. 99,232.00 against the salary and TA/DA only.

5.4 That Sir, an amount of Rs. 8987/- as interest on certain Saving Bank A/c. as per statement Annexure '7' were not taken into account. Hence, the total interest income of S.B. A/c. come Rs.4162+Rs.8987 = Rs. 13149.00

5.5 Thus the total Income of me & my wife together comes during check period as under :-

- a) Net Salary during the Check period = Rs.5,98,550.00
b) Rental Income during Jan'93 to Nov'01= Rs. 1,66,750.00
c) Income of wife during check period = Rs. 6,86,051.00
d) Income on interest on NSC,KVP,FC etc.= Rs.2,02,743.00
e) Income on interest in SB A/c. etc. = Rs. 13,149.00
f) TA/DA during Check period = Rs. 1,80,792.00
Then Total income after Salary deduction = Rs. 18,48,035.00

6. That Sir, in respect of item 2 of memorandum of charges, it may be stated that most of the items., except the kitchen/food and miscellaneous expenditure are matter of records. As far as Kitchen expenses are concerned the same depends upon the size of my family, food & habits, Calory/Food Value required for different age group, including sex and nature of work etc. etc. and as such blind following of 1/3 rd of Gross Salary Income would lead erroneous conclusions. But as I do not have day to day records I refrain to make any dispute.

7. That Sir, In respect of Assets in item/3 of the memorandum of charges these are also matter of records ~~other~~ than household items and jewellery. As far as household items are concerned these were purchased on different dates spread over my entire past life and its valuation on the period of investigation is likely to be higher side. Similarly as far as jewelleraries are converned, mainly I have purchase the major jewelleries/ornaments for self marriage spread over from 1985 to 1988 and subsequently after words occasion which were kept in Bank Locker. The average value of same declared as Rs. 80,000/- as per I.T.R. (Zerox Copy enclosed for your ready reference). Hence the total value of Assets = Rs.50,000 (A/Type Building) + Rs. 3,75,000/- (R.C.C. Building) +

Rs. 1,93,898/- (Land & Bldg of wife) + Rs. 4,48,000/- (N.S.C., F.D. etc.) + Rs. 4,02,215.00 (NSC, KVP, F.D. etc. of wife) + Rs. 44,900 (Household Goods + Rs. 80,000/- (Jewelleries/ ornaments) = Rs. 15,94,024.00 instead of Rs. 16,15,830.00.

- 8.1 That Sir, in respect of item 4 of the memorandum of charges I.e. Assets Prior to check period I beg to draw your kind attention to para 4 of above and annexure 'B' where in it has been prior to check period from 78-79 to December'1992 was not correctly computed and the salary for 10 months from March'2002 to December'2002 were not taken into account and the salary income would come to Rs.4,37,233.00 and not 3,73,321.00.
- 8.2 The statement made in its 4(ii) regarding rental income is correct but the portion of the sentence "against which assets worth about Rs.2,77,112.00 were found and Shri Dutta has not claimed any other investment" is not correct. In fact vide annexure 'A' (on the basis of which the memorandum of charges) has been drawn, I have pointed out that a sum of Rs. 65,000.00 has been invested during 1986-87 (Rs. 33,000.00), 1989-90 (Rs.20,000/-) & March'92 to Dec'92 (Rs.12,000.00) towards R.C.C. building which was constructed in phases covering over number of years. This investment of Rs.65,000/- in respect of R.C.C. building is also reflected in the basis of surveyor and Assessers reports dated 08.01.2002 while evaluating the R.C.C. building which is accepted and on the basis of this the value of R.C.C. building has been computed in the memorandum of charges. Thus the value of assets prior to

check period would be Rs.2,77,112/- + Rs.65,000/- = Rs.
3,42,112/-

8.3 Regarding other items is accepted to be corrected.

9. Thus the following position emerges :

- | | | |
|---|---|------------------|
| (i) Income during Check period | = | Rs. 18,48,035.00 |
| (ii) Expenditure during Check period | = | Rs. 5,47,350.00 |
| (iii) Savings during Check period | = | Rs. 13,00,685.00 |
| (iv) T/Assets at the end of the Check Pd. | = | Rs. 15,94,024.00 |
| (v) Assets prior to Check Period | = | Rs. 3,42,112.00 |

Thus the saving during the check period is Rs. 13,00,685.00 when added to assets prior to check of Rs.3,42,112.00 tallies with Total assets found at the end of the check period and there is no disproportionate assets at all rather the balance amount is running business capital and cash in hand of wife Smt. Shaswati Dutta.

I would therefore, humbly pray for dropping the charges of Minor Penalty for which I shall remain ever grateful. If your honour has any doubt about my innocence, I pray that an enquiry may be instituted in terms of Rule 11(I) (b) of the Railway Servants (D&A) Rules 1968 after giving me all relevant documents as sought on different dates

Enclo : As above.

Yours faithfully,



(Biprojit Dutta)

AXEN/CON/PL-II/MLG

DETAILS STATEMENT OF SALARY & DEDUCTION INCLUDING ASSETS PRIOR TO CHECK PERIOD AS PER ANNEXURE "A" (IN PART)

DETAILS STATEMENT OF SALARY & DEDUCTION INCLUDING ASSETS PRIOR TO CHECK PERIOD AS PER ANEXURE 'A' (IN PART)																									
F7/EAR	SCALE	PAY	DA ADA IR	HRA	SCA	FI/ADV	IFT/DA	GROSS	PF	VPF	PF/ADV	FI/ADV	GIS	OR CP	Tax	LTax	Total Dedn	N/Amount	Bill/A-C Chequ/ Bank (As per record)	ASSETS VALUE BEFORE THE CHECK PERIOD					
																				BILL UNIT & ACCOUNT UNIT	Investment/Cost	House hold goods etc	NSC/MS S RD/FD etc	A/Type Bldg	
																									RCC Bldg
		10000	(By pin money SAVINGS)					10000										10000	As per Statement Annex-A						
1978-79	600(Fixed)	6000						1000	7000									7000	As per Statement Annex-A					5000	
1979-80	425-700	5975	1469					782	8226									8226	As per Statement Annex-A	XEN/C/S-J/SCL & SAO/CON/SCL				5000	
1980-81	DO	5100	3311					1289	9880				3	50		53	9627	As per Statement Annex-A	do			4850	10000	1000	
1981-82	DO	5190	6017					1031	12238	111			45	50		208	12032	As per Statement Annex-A	do					5000	
1982-83	DO	5370	7381					1426	14157	444			337	255		1036	13121	As per Statement Annex-A	do					5000	
1983-84	550-750	6030	9945					3098	18073	523			240	335		1098	17975	As per Statement Annex-A	do					2000	
1984-85	DO	6800	12368					3325	22491	632			240	125		997	21494	As per Statement Annex-A	do					26350	2000
1985-86	DO	7040	15854					2894	25788	642			240	150		1032	24756	As per Statement Annex-A	do			10680	26800		
1986-87	1600-2600	13230	13519					3696	30445	1103			240	200		1543	28902	As per Statement Annex-A	do		33000	5000	3290	16800	7000
1987-88	DO	17762	6779					3108	27849	1633			240	300		2173	25476	As per Statement Annex-A	do			5000		40450	12000
1988-89	2000-3200	23720	8600					6350	38670	1978			240	350		2569	36101	As per Statement Annex-A	do			15000	6700	16000	6000
1989-90	DO	24660	10474					5234	40368	2059			260	550	274	3143	37225	As per Statement Annex-A	do		20000	5000	800	15400	
1990-91	DO	25380	12987					8740	47107	2119			360	400		2879	44228	As per Statement Annex-A	do			5000	250	20000	
1991-92	DO	26100	29073					5294	60467	3373			360	525	770	5028	55439	As per Statement Annex-A	XEN/C/D-K/DMR & SAO/CON/SCL			5000		15000	
		188357	137755					47247	373321	14618			2805	3290	1044	21757	351564	As per Statement Annex-A	do						
with	SCALE	PAY	DA	HRA	SCA	F/ADV		GROSS																	
Mar-92	2000-3200	2180	1308	100	300			1968	5856	182	400	600	30	100		1312	4544	BR E/25/DK/KAS 23/3/92	do						
Apr-92		2600	1560	100	300			1560	6120	217	400	600	30	100		1347	4773	BR E/29/DK/KAS 22/4/92	do						
May-92		2600	1846	100	300			1092	5938	217	400	600	30	100		1347	4591	BR E/41/DK/KAS 20/5/92	do		2600				
Arrear DA Jan/92 to Apr/92			1006														1006	BR E/42/DK/KAS 20/5/92	do						
Jun-92		2600	1846	100	300			978	5824	217	400	600	30			1247	4577	BR E/47/DK/KAS 18/8/92	do						
Jul-92		2600	1846	100	300				4846	217	400	600	30			1247	3599	BR E/54/DK/KAS 22/7/92	do					6373	
Aug-92		2600	1846	100	300	600		978	6424	217	400	600	30			1247	5177	BR E/61/DK/KAS 20/8/92	do		2400				
Sep-92		2600	1846	100	300			1680	6526	217	400	600	30	42	150	1439	5087	BR E/64/DK/KAS 17/9/92	do		3000				
Oct-92		2600	3094	100	300			1680	7774	217	3000	600	60	30	45	150	4102	3672	BR E/69/DK/KAS 20/10/92	do		4497			
Nov-92		2600	2158	100	300			1680	6838	217		600	60	30	45	150	1102	5736	BR E/72/DK/KAS 19/11/92	do					
Dec-92		2540	2158	100	300			1682	6760	217		600	60	30	45	150	1102	5658	BR E/75/DK/KAS 18/12/92	do					
TOTAL		26520	20514	1000	3000	600		13278	63912	2136	5800	6000	180	300	477	600	16492	48420							
PAND TOTAL		213877	158269	1000	3000	600		60525	437233	16753	5800	6000	180	3105	477	3290	1644	37249	399984	G/TOTAL=Rs 65000+40000+27395+199717+50000=Rs 3 82 112					

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ANEXURE (1)

Month	Scale Of Pay	DAYS	Pay	DA	Arr	HRA	SCA	F/ADV	IR	TA/DA	Gross	PF	VPF	PF-ADV	F/ADV	GIS	Arr O-S	PTAX	I-TAX	T-Deduction	Net-Pay	Bill /A-C Reference	Bill /A-C Unit	
HOW/Gr-1/KAS																								
Jan-93	2000 - 3200-	31	2540	2158		100	300			1652	6760	217	0	600	60	30	45	200	150	1302	5518	BRNO-E/48/KASEn/SCL dt 24-1-93	XEN/CON/KAS SURV	
Feb-93	2000 - 3200-	28	2540	2158		100	300			1740	6238	217	0	600	60	30	45	175		1127	5771	BRNO-E/89/KASEn/Scl dt 20-2-93	DO	
Mar-93	2000 - 3200-	31	2540	2158		100	300			1680	6778	217	0	600	60	30	45	45		937	5781	BRNO-E/84/KASEn/Scl dt 23-3-93	DO	
Apr-93	2000 - 3200-	30	2540	2158		100	300			1680	6778	217	0	600	60	30	45	45		937	5781	BRNO-E/97/KASEn/Scl dt 22-4-93	DO	
TOTAL				10160	8632		400	1200			6762	27154	868		2400	240	120		150	4303	22851			
ARR/Supplementary TA	For JUL/92									1923	1923												BR NO E/50/KAS En/Scl/TA 25/1/93	
GRAND TOTAL										8685	29077													
ANEXURE (2)																								
May-93	2000 - 3200-	31	2540	3328		100	300			1740	8008	217		600	60	30					847	7101	BRNO-E/101/KASEn/Scl dt 20-5-93	DO
Jun-93	2000 - 3200-	30	2540	2392		100	300			1740	7072	217	0	600	60	30					847	6165	BRNO-E/104/KASEn/Scl dt 23-6-93	DO
AEN/C/MLG																								
Jul-93	2000 - 3500-	31	2600	2392		100					5092	217		600	60	30					907	4185	BRNO-E/321/GM/Con/S dt 28-7-93	SPO/CON/MLG
Aug-93	2000 - 3500-	31	3178	2524			800				6902	265		600		30					895	6007	BRNO-E/394/GM/CON/S dt 20-8-93	DO
TOTAL				10858	11036	0	300	1400		0	3480	27074	916		2400	180	120			3616	23458			
AREAR TA/DA BILL FROM MAY/93 TO JULY/93										4984	4984												BR NO E/384/GM/CON/TA DT 17/8/93	DO
Grand Total										8464	32058									3616	23458			

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MONTH	Design & Scale	Days	PAY	DA	HRA	SCA	IR	TADA	MISC	Gross	PF	VPF	Pt Adv	O/S rec	GIS	P Tax	TAX	T Deduction	N/Pay	BILL /A-C Ref	Bill Unit
Sep-93	AEN/COMV	30	2825	2599		400				5824	265	1000	600		30		100	1995	3829	BRNO E/1/CON/S dt 22-9-93	XEN/CON/L/D/DMV
Oct-93	do	31	2825	3164		400	150			6539	265	1000	600		30		100	1995	4544	BRNO E/8/CON/S dt 20-10-93	DO
Nov-93	do	30	2825	2740		400	100			6065	265	1000	600		30		100	1995	4070	BRNO E/18/CON/S dt 28-11-93	DO
Dec-93	do	31	2825	2740		400	100			6065	265	1000	600		30		100	1995	4070	BRNO E/20/CON/S dt 22-12-93	DO
Jan-94	do	31	2825	2740		400	100			6065	265	1000	600		60		100	2025	4040	BR NO E/24/CON/S DT 21/01/94	do
Feb-94	do	28	2825	2740		400	100			6065	265		600		60	250		1175	4890	BR NO E/28/CON/S DT 21/02/94	do
Mar-94	do	31	2825	2740	300	400	100			6365	265	1000	600		60			1825	4440	BR NO E/35/CON/S DT 22/03/94	do
Apr-94	do	31	2825	3531	300	400	100			7156	265	1000	600		60			1925	5231	BR NO E/40/CON/S DT 23/04/94	do
May-94	do	31	2825	2838	300	400	100	1659		8222	265	1000	600		60			1925	6297	BR NO E/47/CON/S DT 23/05/94	do
Jun-94	do	30	2800	3016		400	100	1127		7543	265	1000	600		60			1925	5618	BR NO E/52/CON/S DT 24/06/94	do
Jul-94	do	31	2900	3016		400	100	3234		9650	265	1000	600	900	60			2825	6825	BR NO E/CON/67/S DT 22/07/94	do
Aug-94	do	31	2900	3016		400	100	1295		7711	265	1600			60			1925	5786	BR NO E/68/CON/S DT 29/08/94	do
Sep-94	do	30	2900	3016		400	100	1029		7445	265	1600			60			1925	5520	BR NO E/71/S DT 28/9/94	do
Oct-94	do	31	2900	4176		400	100	945		8521	265	1600			60			1925	6596	BR NO E/CON/76/S DT 27/10/94	do
Nov-94	do	30	2900	3306		400	100			6706	265	1600			60			1925	4781	BR NO E/CON/81/S DT 25/11/94	do
Dec-94	do	31	2900	3306		400	100	1876		8582	265	1600			60		100	2025	6557	BR NO E/CON/ /S DT 26/12/94	do
			45725	48785	900	6400	1550	11165		114525	4240	18000	6600	900	840	250	600	31430	83095		
	ARR/SUPLI TA/DA BILL FROM AUG/93 TO SEP/93							2891		2891									644	E/12/CON/PLB DT 18/10/93	DO
	ARR/SUPLI TA/DA BILL FROM OCT/93 TO DEC/93							3605		3605										E/11/CON/TA DT 18/10/93	DO
	ARR/SUPLI TA/DA BILL FROM JAN/94 TO FEB/94							2646		2646										E/CON/32/TA DT 15/3/94	DO
	AREAR HRA BILL FROM JUL/93 TO FEB/94			2400						2400										E/CON/33/TA DT 15/3/94	DO
Grand Total					3300			20307		126711								31430	86139	2400 E/38/CON/HRA DT 21/4/94	DO

ANEXURE (4)

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MONTH	SCALE	DAY	PAY	DA	IR	SCA	IR	TA	GROSS	PF	VPF	QR O/S	GIS	P Tax	I Tax	T/DEDUC	SALARY	BILL/A-C OR CHEQU/BANK REFF	BILL UNIT
Jan-95	DO	31	2900	3306		400	100	945	7651	265	1600		60		100	2025	5626	BR NO E/CON/82/S DT 25/01/95	XEN/CON/LD/DMV
Feb-95	DO	28	2900	3306		400	100	1134	7840	265	1600		60	250	360	2535	5305	BR NO E/CON/95/S DT 20/02/95	DO
Mar-95	2000-3500	31	2900	3306		400	100	1169	7875	265	1600		60			1925	5950	BR NO E/CON/98/S DT 24/03/95	DO
Apr-95	DO	30	2900	4582		400	100	1071	8053	265	1600		60			1925	7128	BR NO E/110/CON/S DT 24/04/95	DO
May-95	DO	31	2900	3625		400	100	1253	8278	265	1800		60			1925	6333	BR NO E/ CON/S DT 18/05/95	DO
Jun-95	DO	30	2975	3719		400	100	1743	8937	248	1600		60			1908	7029	BR NO E/135/C/S/DMV DT 20/6/95	DO
Jul-95	DO	31	2975	3719		400	100		7194	248	1600		60			1908	6268	BR NO E/141/C/S/DMV DT 20/07/95	DO
Aug-95	DO	31	2975	3719		400	1573	3199	11866	248	1600		60			1908	9958	BR NO E/148/CON/S/DMV 20/8/95	DO
Sep-95	DO	30	2975	4063	100	100	298	1111	8847	248	1600		60			1908	6739	BR NO E/150/C/S/DMV 20/09/95	DO
Oct-95	DO	31	2975	5027	100	100	298		8500	248	1600		60	93		2001	6489	BR NO E/160/C/S/DMV 23/10/95	DO
Nov-95	DO	30	2975	4046	100	100	298	2649	10168	248	2000	446	60	93		2847	7321	BR NO E/166/C/GC/LD/FGK 23/11/95	DY/CE/CON/LD/DMV
Dec-95	DO	31	2975	4046	100	100	298		7519	248	2000		60	93	100	2501	5018	BR NO E/194/C/FGK/DMV/ 21/12/95	DO
Jan-96	DO	31	2975	4046	100	100	298	2667	10186	248	2000		60	93	100	2501	7885	BR NO E/01/C/LD/FGK/DMV/G 23/1/96	DO
Feb-96	DO	28	2975	4046	100	100	298	1995	9514	248	2000		60	93		2401	7113	BR NO E/25/C/LD/FGK 23/2/96	DO
Mar-96	DO	31	2975	4046	100	100	298		7519	248	2000	223	60	93	251	2875	4644	BR NO E/37/C/LD/DMV/FGK 23/3/96	DO
Apr-96	DO	30	2975	5474	100	100	298	1967	10914	248	2000	669	60	93		3070	7844	BR NO E/57/C/LD/DMV/FGK 24/4/96	DO
May-96	DO	30	2975	4403	100	100	298		7876	248	2000	223	60	93		2624	5252	BR NO E/62/C/LD/DMV/FGK 25/5/96	DO
	TOTAL		50200	68479	900	4100	4955	20903	149537	4301	30000	1561	1020	994	911	38787	110750		

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ANEXURE (5/a)

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SN-67/15

MONTH	SCALE	IDAY	PAY	DA	IR	IR	SCA	IR	TA/DA	N 2355	GROSS	PF	VPF	Or O'S	GIS	P Tax	I Tax	T/DEDUC	N/Salary	BILL or A/C CHEQ/BANK Reference	BILL UNIT
Jun-96	2000-3200	30	3050	4514		100	100	305	4247		12316	254	2000	229	60	93		2636	9680	BR NO 46-E/C/G-C/MXN 25/6/96	DY CE/CON/MXN
Jul-96	DO	31	3050	4514		100	100	305	1582		9651	254	2000	229	60	93		2636	7015	BR NO 59-E/C/G-C/MXN 24/7/96	DO
Aug-96	DO	31	3050	4514		100	100	305	1980		10029	254	2000	229	60	93	500	3136	6893	BR NO 63-E/C/G-C/MXN 26/8/96	DO
Sep-96	DO	30	3050	4514		100	100	305			8069	254	2000	229	60	93	500	3136	4833	BR NO 72-E/C/G-C/MXN 23/8/96	DO
Oct-96	DO	31	3050	5858	305	100	100	305	1855		11573	254	2000	228	60	106	500	3149	6424	BR NO 78-E/C/G-C/MXN 14/10/96	DO
Nov-96	DO	30	3050	4850	305	100	100	305			8710	254	2000	229	60	106	500	3149	5561	BR NO 87-E/C/G-C/MXN 27/11/96	DO
Dec-96	DO	31	3050	4850	305	100	100	305	1267		9977	254	2000	229	60	106	500	3149	6828	BR NO 83-E/C/G-C/MXN 28/12/96	DO
Jan-97	DO	31	3050	4850	305	100	100	305	1527		10237	254	2000		60	106	500	2820	7317	BR NO 103-E/C/G-C/MXN 27/01/97	DO
Feb-97	DO	28	3050	4850	305	100	100	305	1939		10649	254	2000		60	106		2420	8229	BR NO E/110/C/G-C/MXN 25/02/97	DO
Mar-97	DO	31	3050	4850	305	100	100	305	3577		12287	254	3000		60	106		3420	8867	BR NO 126-E/C/G-C/MXN 27/3/97	DO
Apr-97	DO	30	3050	4850	305	100	100	305			8710	254	3000		60	106		3420	5290	BR NO 130-E/C/G-C/MXN 24/4/97	DO
May-97	DO	31	3050	6525	305	100	100	305			10385	254	3000		60	128		3442	6943	BR NO 133-E/C/G-C/MXN 27/5/97	DO
Jun-97	DO	30	3150	5355	315	100	100	315	1811		11246	263	3000		60	106		3429	7817	BR NO 138-E/CON/MXN 27/6/97	DO
Jul-97	DO	31	3150	5355	315	100	100	315	3227		12562	263	3000		60	106		3429	9133	BR NO 147-E/C/G-C/MXN 28/7/97	DO
Aug-97	DO	31	3150	5355	315	100	100	315	1084		10429	263	3000		60	106		3429	7334	BR NO 152-E/C/G-C/MXN 27/8/97	
Sep-97	DO	30	3150	5355	315	100	100	315			9335	263	3000		60	106		3429	5906	BR NO 161-E/C/G-C/MXN 22/9/97	
Oct-97	DO	31	3150	5355	315	100	100	315			9335	263	3000		60	106		3429	5906	BR NO 170-E/C/G-C/MXN 26/10/97	
Nov-97	7500-12000	30	9500	1235			100		1246	75	12156	792	3000		60	106		3958	8198	BR NO 188-E/C/G-C/MXN 24/11/97	DO

Contd

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MONTH	SCALE	DAY	PAY	DA	IR	IR	SCA	IR	TADA	N paga	GROSS	PF	VPF	Gr O/S	GIS	F Tax	I Tax	T/DEDUC	N Salary	BILL or A/C CHEQ/BANK Reference	BILL UNIT
Dec-97	DO	31	9500	1235			100		3017	75	13927	792	3000		60	106		3958	9969	BR NO 209-E/C/G-C/MXN 23/12/97	DO
Jan-98	DO	31	9500	1235			100			75	10910	792	3000		60	106		3958	6952	BR NO 213-E/C/G-C/MXN 27/01/98	DO
Feb-98	DO	29	9500	1235			100			75	10910	792	3000		60	106	2072	6030	4880	BR NO 230-E/C/G-C/MXN 26/02/98	DO
Mar-98	DO	31	9500	1235			100		1198	75	12086	792	4000		60	106		4958	7128	BR NO 240-E/C/G-C/MXN 25/03/98	DO
Apr-98	DO	30	9500	1235			100		1736	75	12648	792	4000		60	106		4958	7888	BR NO 248-E/C/G-C/MXN 23/04/98	DO
May-98	DO	31	9500	2660			100		4920	75	17255	792	4000		60	106		4958	12297	BR NO 258-E/C/G-C/MXN 28/05/98	DO
Jun-98	DO	30	9500	1520			100			75	11195	792	4000		60	106	500	5458	5737	BR NO 267-E/C/G-C/MXN 24/08/98	DO
Jul-98	DO	31	10000	1600			100			75	11775	813	4000		60	106	500	5479	6296	BR NO 279-E/C/G-C/MXN 26/07/98	
Aug-98	DO	31	9750	1560			100			75	11485	813	4000		60	106	500	5479	6006	BR NO 286-E/C/G-C/MXN 24/08/98	
Sep-98	DO	30	9750	1560			200		6372	75	17957	813	4000		60	106	500	5479	12478	BR NO 301-E/C/G-C/MXN 14/09/98	
TOTAL			157850	102624	4015	1700	2900	5235	42653	825	317802	13138	82000	1603	1680	2938	7072	108431	209705		
ARREAR/SUPLI TADA BILL FOR MAY & JUN/98											5508		5508						5508	BR NO 292-E/C/G-C/MXN 24/08/98	
AREAR BILL OF 6 ADV INCRIMENT FOR PASSING AMIE FROM 88 TO 91												21459	1243						20216	BR NO E/79/K A/EN/SCL/K-A SURVdt	XEN/KA SURV/DMR
																				5/1/93 PAID ON JUN/97 BY DAO/LMG	
5TH PAY COMISSION ARREAR BILL PAY+DA												17810							17810	BR NO 274-E/C/G-C/MXN 11/07/98	DY CE/CON/MXN
AREAR/SUPLI TADA BILL FOR MAR/97											2100		2100							BR NO 141-E/C/G-C/MXN 27/06/97	DO
Grand Total									50616		364679	14381						108431	253239		

ANEXURE (6/a)

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Month	Scale	Days	PAY	DA	MISC	HRA	SCA	CONV All	TA/DA	N Pap	Gross	PF	VPF	Relif	GIS	Gr O/S	P Tax	I Tax	T/DEDUC	N/Salary	
Oct-98	7500-12500/-	31	9750	2145			750	400		75	13120	813	6000		60		42	800	7715	5405	BR NO E/80/C/K-A/GAZ 26/10/98 Dy.CE/C/AGTL
Nov-98	- do -	30	9750	2145		976	750	200		75	13896	813	6000		60		42	800	7715	6181	BR NO E/87/C/K-A/GAZ 24/11/98 Dy.CE/C/AGTL
Dec-98	- do -	20	6250	1384		315	484	129		48	8650	524	6000		60	200	42	800	7626	1024	BR NO E/91/C/K-A/GAZ 28/12/98 Dy.CE/C/AGTL
Jan-99	- do -	31	9750	2145		488	750	200		75	13406	813	6000		60		42	1411	8326	5082	BR NO E/100/C/K-A/GAZ 28/01/99 Dy.CE/C/AGTL
Feb-99	- do -	28	9750	2145		488	750	200		75	13408	813	6000		60		42	1411	8326	5082	BR NO E/108/C/K-A/GAZ 24/02/99 Dy.CE/C/AGTL
Mar-99	- do -	31	9750	2145		488	750	200		75	13408	813	6000		60				6873	6535	BR NO E/113/C/K-A/GAZ 29/03/99 Dy.CE/C/AGTL
Apr-99	- do -	30	9750	6045		488	750	200		75	17308	813	6000		80		50		6923	10385	BR NO E/135 -do- 28/04/99 Dy.CE/C/AGTL
May-99	- do -	31	6750	3120		488	750			75	14183	813	6000		80		50		6923	7280	BR NO E/137 -do- 18/05/99 Dy.CE/C/AGTL
Jun-99	- do -	30	9750	5120		488	750			75	14183	813	6000		80		50		6923	7280	BR NO E/146 -do- 22/06/99 Dy.CE/C/AGTL
Jul-99	- do -	31	9750	3120		488	750			75	14183	813	8000	315	80		188		8374	4809	BR NO E/158 -do- 23/07/99 Dy.CE/C/AGTL
Aug-99	- do -	31	9750	3120		488	750			75	14183	813	8000		80		84		8957	5228	BR NO E/181 -do- 21/08/99 Dy.CE/C/AGTL
Sep-99	- do -	31	9750	3120		488	750			75	14183	813	8000		80		84		8957	5228	BR NO E/178 -do- 24/09/99 Dy.CE/C/AGTL
Oct-99	- do -	31	11000	4070		550	750			75	16445	917	8000		80		84		9061	7384	BR NO E/183 -do- 28/10/99 Dy.CE/C/AGTL
Nov-99	- do -	30	10000	3700		500	750			75	15025	833	8000		80		84		8977	6048	BR NO E/203 -do- 25/11/99 Dy.CE/C/AGTL
Dec-99	- do -	30	10000	3700		500	750			75	15025	833	8000	325	80		84		9302	5723	BR NO E/208 -do- 18/12/99 Dy.CE/C/AGTL
Dec-98	AREAR	11	3460	761		173	286	71		27	4758	289							289	4469	BR NO E/210 -do- 18/12/99 Dy.CE/C/AGTL
Jan-00	- do -	31	10000	3700		500	750			75	15025	833	8000		80		84	5000	13977	1048	BR NO E/222 -do- 19/01/00 Dy.CE/C/AGTL
Feb-00	- do -	29	10000	3700		500	750			75	15025	833	6000		80		84	8454	13431	5594	BR NO E/234 -do- 23/02/00 Dy.CE/C/AGTL
Mar-00	- do -	31	10000	3700		500	750			75	15025	833	8000		80		84	1000	9977	5048	BR NO E/46 -do- 22/03/00 Dy.CE/C/AGTL
Apr-00	- do -	30	10000	3700		500	750			75	15025	833	8000		80		84	1000	9977	5048	BR NO E/5 -do- 27/04/00 Dy.CE/C/AGTL
May-00	- do -	31	10000	4200		500	750			75	15525	833	8000		80		84	1000	9977	5548	BR NO E/12 -do- 24/05/00 Dy.CE/C/AGTL
Jun-00	- do -	30	10000	3800		500	750			75	15125	833	8000		80		84	1000	9977	5148	BR NO E/31 -do- 26/06/00 Dy.CE/C/AGTL
Jul-00	- do -	31	10500	3990		525	750		5508	75	21348	875	8000		80		84	1000	10019	11328	BR NO E/44 -do- 27/07/00 Dy.CE/C/AGTL
Aug-00	- do -	31	10250	3895		513	750			75	15483	875	8000		80		84	1000	10019	5484	BR NO E/52 -do- 23/08/00 Dy.CE/C/AGTL
Sep-00	- do -	30	10250	3895		513	750		5688	75	21171	875	8000		80		84	1000	10019	11152	BR NO E/81 -do- 19/09/00 Dy.CE/C/AGTL
Oct-00	- do -	31	10250	5127		513	750			75	16715	854	8000		80		84	1000	9998	6717	BR NO E/72 -do- 27/10/00 Dy.CE/C/AGTL
Nov-00	- do -	30	9750	3998	240	488	750		4752	75	20053	813	8000		80	1234	84	1000	11181	8862	BR NO E/84 -do- 25/11/00 Dy.CE/C/AGTL
Dec-00	- do -	31	9750	3998		488	750			75	15061	813	8000		80	1250	84	1000	11207	3854	BR NO E/85 -do- 22/12/00 Dy.CE/C/AGTL
Jan-01	- do -	31	9750	3998		488	750			75	15061	813	6000		80	1250	84	1000	11207	3854	BR NO E/91 -do- 23/01/01 Dy.CE/C/AGTL
Feb-01	- do -	28	9750	3998		488	750			75	15061	813	8000		80	1250	84		10207	4854	BR NO E/98 -do- 28/02/01 Dy.CE/C/AGTL
Mar-01	- do -	31	9750	3998		488	750		5436	75	20497	813	9000	315	80	1250	84	1000	12522	7975	BR NO E/110 -do- 28/03/01 do
																					Contd.....

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ANEXURE (G/B)

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SN/67-18 SN

APR-01	- do -	30	9750	4778		488	750			75	15541	813	9000		60		84	1000	10957	4884	BR NO E/05	-do-	25/04/01	do
MAY-01	- do -	31	9750	4193		488	750		4092	75	19348	813	9000		60		84	1000	10957	8391	BR NO E/09	-do-	21/05/01	Dy.CE/C/AGTL
JUN-01	- do -	30	9750	4193		488	750			75	15256	813	9000		60		84	1000	10957	4299	BR NO E/16	-do-	27/06/01	Dy.CE/C/AGTL
JUL-01	- do -	31	9750	4193			750		3708	75	18476	813	9000		60	488	84	1000	11445	7031	BR NO E/25	-do-	24/07/01	do
AUG-01	- do -	31	9750	4193			750			75	14758	813	9000		60	156	84	1000	11113	3655	BR NO E/31	-do-	26/09/01	do
SEP-01	- do -	30	9750	4193			750		4200	75	18968	813	9000		60	156	84	1000	11113	7855	BR NO E/37	- do-	26/09/01	do
OCT-01	- do -	31	9750	4973			750			75	15548	813	9000		60	156	84	1000	11113	4435	BR NO E/45	-do-	16/10/01	do
NOV-01	- do -	31	9750	4388	420		750		3840	75	19228	813	9000		80	156	84	1000	11113	8110	BR NO E/53	-do-	28/11/01	do
SUPPLEMENTARY TADA BILL FROM APR/98 TO OCT/99																								
										11553														
TOTAL			378000	140786	660	16374	28500	1600	48777	2850	615547	31385	293000		2280	7548	2898	36678	374740	228254	BR NO E/201/C/KAG(TA) 24/11/99			DY CE/C/AGTL
SUPPLEMENTARY TADA BILL FROM SEP/98 TO JAN/99																								
										12812														
SUPPLEMENTARY TADA BILL FOR DEC/99 & FROM JAN/00 TO MAR/00																								
										10428														
Gnd TOTAL			378000	140786		16374	28500	1600	71817		636587													
Difference																								

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ANNEXURE 7.							
BANK / Branch	A/C NO	Date	Amount	BANK/Branch	A/C NO	Date	Amount
UBI / Silchar (M pur)	5540/12	20/3/93	14	B F			1205
				A Bank/LMG	10936/51	18/9/95	308
do		29/9/93	14	do	do	27/3/96	185
do		18/3/94	55	do	do	10/7/96	120
do		8/12/94	3	SBI/GLGT	29/111 T	30/12/96	61
do		29/3/95	3	do	do	3/96/97	7
do		14/8/95	127	SBI/JT	LD77/1948	20/2/98	69
do		13/2/98	240	do	do	8/8/98	36
do	231	23/8/98	235	SBI/KUGT	28/218	8/1/99	7
do		18/3/97	180	do	do	11/8/99	394
do		10/7/97	109	SBI/DMR	78/13110	20/1/99	526
do		27/1/98	73	do	do	1/3/00	2712
do		28/7/98	75	do	do	26/3/01	3357
do		22/3/99	77				
TOTAL			1205				8987

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SN-67/20

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Att
6/7/0

U.B. - The information above based on available records and on memory approximately.
P.F.V. - Present Face Value with interest there on.

[Handwritten signature]

BIRMINGHAM OFFICE E

Asst Executive Engineer Mr

V.C. LIAISON

Sd/- रेलवे, मालगाँव, गुवाहाटी-11
Way, Maligaon, Guwahati

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SN-67/21

SN-68

CAPITAL ACCOUNT:

BIPROJIT DUTTA:

F/Year ; 99-00

A/Year : 00-001

In Rs.

In Rs.

To drawings	48,000.00	Balance b/f	Rs. 8,94,315.00
To L.I.F.			
P.F.			
G.I.S.	1,29,527.00	By salary income (gross)	1,96,861.00
etc. Tax		By prop. Income (net)	13,050.00
		By matured value	
Balance	9,65,614.00	of interest on R.D.	3,600.00
C/F.		By S.D. A/C. Intt.	5,000.00
		(Credited) (L.S)	
		By N.S.C. Intt.	
		matured value	21,315.00
		received etc.	

Rs. 11,34,141.00

Rs. 11,34,141.00

[Handwritten signature]

AH *[initials]*

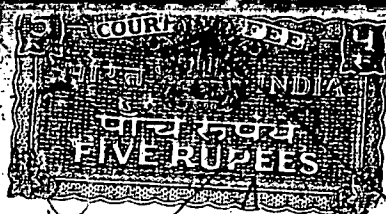
6/1/69

मल्लिकार्जुन त्रिपाठी/इंजी.
BALANCE OFFICER/IE
रेलवे, मालगाँव, गुवाहाटी-1
N.F. railway, Malgaon, Guwahati

-Sw-107(c)

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N.F. Halfway, Malligauri.



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PAN (GIR NO) = ADOPD 8089K(D3086/S)

SN-67/2

CAPITAL ACCOUNT
BIPROJIT DUTTA.

F/Year : 2000-2001
A/Year : 2001-2002

<u>In Rs.</u>		<u>In Rs.</u>	
To drawings	40,000.00	By Balance	Rs. 9,65,614.00
" L.I.P.	410.00	Int. on S.B.A/C.	Rs. 7,516.00
" L.I.P. (Jivan Suraksha)	10,140.00	By salary (Gross)	Rs. 1,72,500.00
" P.F/V.P.F.	1,06,463.00	By salary TA/DA(+)	Rs. 16,100.00
" P/Tax.	1,000.00	Income from	
" I/Tax (at source)	11,000.00	M.P. (Net)	Rs. 13,050.00
" " By Bank challan:-		By Matured Value	Rs. 27,276.00
" G.I.S.	720.00	F.D./NSC etc. (+)	Rs. 15,943.00
" Balance C/F.	10,36,015.00	(Int. only)	
		By Matured Value	Rs. 10,000.00
		on K.V.P. Int. only.	
Rs.	12,20,167.00	Rs.	12,20,167.00

BALANCE SHEET AS ON 31-3-2001

BIPROJIT DUTTA.

LIABILITIES

ASSETS

<u>In Rs.</u>	<u>In Rs.</u>
Capital on per A/C.	Rs. 10,36,015.00
	R.C.C. Bldg 2nd floor under Const.
	Rs. 3,75,000.00
	Assam Type House
	Rs. 50,000.00
	F.D.
	- In hand
	Rs. 1,13,207.00
	R.I.P.
	K.V.P.
	- In hand
	Rs. 1,09,700.00
	N.S.C.
	Jewellery
	Rs. 80,000.00
	Furniture etc.
	Rs. 00,000.00
	Cash in hand & Bank.
	Rs. 2,20,900.00
	Rs. 10,36,015.00

Certified to be a true copy
(R. S. Das)
Income Tax Officer
Ward, Dhamanagar



BIPROQUIT, MEERUT.

Capital Account as on 31-3-2002

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SN-67/23

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To drawings		In Rs.	In Rs.
For Self and duty	22,000/-	By balance B/F	10,36,015.00
For Misc. including family & other etc.	30,000/-	By salary (gross) including TA/DA	2,02,754.00
To I/Tax (TDS)	10,000/-	By H/P property inc.	
To " B/Challan	4,600/-	ma. (net)	24,300.00
To " "	4,141/-		
To P/Tax	1,000/-	By maturity R/P intt.	
		UBI/M. Puz/5CL	2,212.00
To PF/VPF	1,17,756/-	By Maturity NSC intt.	
To GIS	720/-	only	20,300.00
To LIC	10,550/-	By SB A/C intt. cred- ited with (LS)	12,000.00
By C/F.	10,97,606/-		
	12,98,301/-		12,98,301.00

Balance Sheet as on 31-3-2002.

Liabilities in Rs.		Amount in Rs.
10,97,606/-	A/c type (old) Bldg. extension	65,000.00
	RCC Bldg. (Complete)	4,00,000.00
	Materials purchased for top floor with GI sheet roofing	25,000.00
	RIP (UBI)	15,117.00
	FD (Allah. Bank)	1,00,302.00
	NSC/KVP etc.	69,700.00
	Jewellery/Ornament etc.	1,00,000.00
	Furniture, TV, Freezer etc.	
	house hold goods including clothes etc.	1,00,000.00
	Cash in hand & Bank	2,02,407.00
	SB A/C No.	
	5540 (UBI/M. Puz)	1,20,000
	73/13110 (SBI/DMR)	62,000

10,97,606.00



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ANX-4

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Confidential

No.BD/CON/1/05-06/DAR

Dated: 11-05-2005

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

(Through proper channel)

Sub: Prayer for Early release of all financial documents in original for proper utilisation/reinvestment & finalisation of DAR proceedings.

Ref: My several letters dated on several dates with latest on 04.01.05 in response with your memorandum of charge vide No.2/SS/Con/DA/Gaz (BD)/Pt.I dated 10.05.04.

Respected Sir,

I have the honour to state you the following few lines for your kind sympathetic order please.

My humble submission is that please refer my earlier letters said above to the subject matter may I again request you please take early necessary steps to release all the financial documents in original which are lying with Railway since long back to avoid further financial loss.

That Sir, there was no dispute because all the financial documents were not only admitted but also reflected in the annual Income Tax return duly assessed by the concerned authority as a token of correctness.

That Sir, the details defense is already submitted on 14.11.04. after long correspondence regarding the document for arrear salary particulars which were not taken into account for computation of my Income.

That Sir, the Income difference when added with excess assets value during check period is easily cover up the disproportionate value as shown in memorandum of charges by mistake.

That Sir, due honour was not given regarding guideline laid down by the Hon'ble Supreme Court when 10% difference of total Gross income is permissible as not to be treated as disproportionate assets of a delinquent officials during the check period.

That Sir, it is out of mentioned that the undersigned was permitted by you to construct self R.C.C. residential building after dismantling the old existing Assam type building at Silchar with the source of that said financial documents which are presently lying with Railway. (Zerox copy enclosed).

That Sir, the circumstances compelled me to stop the construction work of said residential R.C.C. Building because of non release the same with an investment of Rs.80,000/- from S.B. A/c.no 73/13110 at SBI/DMR since two year back.

*Certified to be true.
K. Paul, Advocate.*

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That Sir meanwhile the cost of steel and timber increased upto 100% along with 50% increased of labour and other building material cost causing financial loss of rupees more than 4(four) lakhs (detailed follows).

That Sir, it is out of mentioned that the limitation period for finalization of DAR proceeding is already expired and the matter is unnecessary delayed causing extreme sufferings to the undersigned.

That Sir, your kind early action will help the undersigned to protect not only self financial loss but also undue revenue loss to the Govt. of India as an income & other taxes as amended time to time.

Under the above circumstances I again pray to your honour please take appropriate steps for releasing all financial documents & finalise the proceeding in earliest and for that act I will remain ever grateful to you.

With regards,

Yours faithfully,

(B. Dutta)

AXEN/CON/PL,
N.F.Rly.Maligaon.

Copy to:

- (1) Secy. To GM/Con for kind information of GM/Con/MLG.
- (2) CVO/MLG - this is as per my earlier letter reference on date 8.10.2004 & 15.10.2004.

(B. Dutta)

AXEN/CON/PL,
N.F.Rly.Maligaon.

All letters Handled & concern submitted to Hand
20/10/04

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ANX-5

Ref:- Railway Board's No. E(D&A)2003 RG-6/15 dated 07.05.04.

Sub:- Promotion of Railway servants against whom disciplinary proceedings have been initiated – procedure to be followed.

Attention is invited to para 6 of Board's letter No. E(D&A)92 RG6-149(B) dated 21.1.93 which provides as follows :

"A Government Servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a Sealed Cover by the DPC. He shall not be promoted until the conclusion of disciplinary case/criminal proceedings and the provisions contained in this letter will be applicable in his case also."

Similar provisions are contained in para 3.1 of Board's letter No. E(D&A)92/ RG6-149(A) dated 21.1.93 also, which are applicable to non gazetted railway servants, with the exception that there will be no objection to promotion if the disciplinary proceedings initiated are for imposition of a minor penalty.

The above provisions envisage that if a disciplinary proceeding against a Railway servant on account of which the findings of the DPC in his case had been kept in a sealed cover, is finalised resulting in opening of sealed cover and grant of promotion but before he is actually promoted, another disciplinary/judicial proceedings is initiated against him, then he shall not be promoted until the conclusion of the subsequent proceedings. In other words, the promotion of the railway servant would depend on the outcome of all such proceedings initiated before he is actually promoted.

The matter has been reviewed by the Board in the light of DOP&T's OM No. 22011/2/2002-Estt.(A) dated 24.2.2003 (which is based on Hon'ble Supreme Court's judgment in the case of Delhi Jal Board vs Mohinder Singh (JT2000(10)SC158) and it has been decided that where the second or subsequent proceedings were instituted after promotion of the junior to the railway servant on the basis of recommendation made by the DPC which kept the recommendation in respect of the railway servant in sealed cover, the benefit of assessment by the DPC will be admissible to the railway servant on his exoneration in the first proceedings, w.e.f. the date his immediate junior was promoted.

In this connection, it is further clarified that in case the subsequent proceedings (commenced after the promotion of the junior) were finalised earlier i.e. before exoneration of the railway servant in the first proceedings and resulted in imposition of any penalty and the Railway servant concerned is to be promoted retrospectively on the basis of exoneration in the first proceedings, the penalty imposed may be modified and effected with reference to the promoted post. An indication to this effect may be made in the promotion order itself so that there is no ambiguity in the matter.

Board have also decided that the benefit of promotion on conclusion of the first proceedings may be allowed in those cases also where ad hoc promotion in terms of para 5 of Board's orders dated 21.1.93 referred to above had been given to the railway servant during pendency of the disciplinary proceedings on account of delay in finalisation of these proceedings and on conclusion of the proceedings with imposition of a minor penalty (other than withholding of promotion) the railway servant is deemed to be regularly promoted from the date of ad hoc promotion in terms of provisions contained in para 5.3 of Board's letter No. E(D&A)92/RG6-149(B) dated 21.1.93 and paras 5.3 & 5.4 of Board's letter No. E(D&A)92/RG6-149(A) dated 21.1.93, provided the date of ad hoc promotion of the railway servant is prior to the date on which the second proceedings were instituted against him.

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ANNEXURE

Date of issue of 1st
Charge sheet against 'A' : 1.1.1998

Date of DPC which : 1.1.2000
Considered, among others,
'A' and his Junior 'B' for
promotion but kept findings
(‘Fit’) in respect of ‘A’ in
sealed cover.

Date of issue of 2nd : 1.3.2002
Charge sheet against ‘A’

(i) Date of promotion : 1.1.2002
Junior ‘B’

Date of exoneration : 1.6.2003
of ‘A’ in the 1st (w.e.f. date of promotion
disciplinary proceedings. of Junior ‘B’)

Note :

- (a) 2nd charge sheet dated 1.3.2002 does not come in the way of promotion of ‘A’ as it was issued after the date of promotion of Junior.
- (b) Promotion w.e.f. 1.1.2002 can be given to ‘A’ even if the 2nd charge sheet dated 1.3.2002 had already been finalised and a penalty imposed, say on 1.9.2002. The penalty is to be modified, if necessary, and effected w.r.t. the promoted post.
- (ii) Date of promotion : 1.6.2002
of Junior ‘B’.
- Date of exoneration : 1.6.2003
of ‘A’ in the 1st
Disciplinary proceedings.
- ‘A’ cannot be promoted following
the exoneration, as the 2nd charge
sheet was issued prior to the date
of promotion of Junior ‘B’.
- (iii) Date of imposition : 1.6.2003
of minor penalty of
censure in 1st disciplinary
proceedings.

Promotion, if otherwise admissible in terms of para 3.2 of Board’s letter No. E(D&A)92 RG6-149(B) dated 21.1.1993, cannot be granted since such promotion can be

granted only prospectively i.e. after 1.6.2003 and the 2nd charge sheet has already been issued before that date.

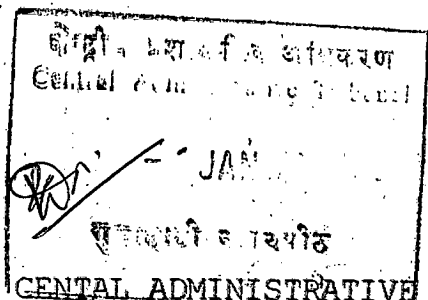
(iv) Date of ad hoc : 1.2.2002
promotion of 'A' in
terms of para 5 of
Board's letter No.
E(D&A) 92 RG6-49(B)
Dated 21.1.1993, after
Completion of 2 yrs.
from the date of DPC.

Date of imposition : 1.6.2003
of minor penalty of
censure in 1st
disciplinary proceedings.

Date of regularisation : 1.2.2002
of promotion in terms
of para 5.3 of Board's
letter dated 21.1.1993.

Note :

- (a) The 2nd charge sheet dated 1.3.2002 will not come in the way of promotion of 'A' as it was issued after the date from which ad hoc promotion was granted.
- (b) If the ad hoc promotion had been granted to 'A' after the issue of 2nd charge sheet say on 1.9.2002, regularisation of promotion following imposition of minor penalty in 1st proceedings will not be admissible as the second charge sheet was issued before the date of proposed regularisation.



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL.

GUWAHATI BENCH: GUWAHATI

Filed by -
The Respondents
through
Pradeep Kumar Singh
Advocate
Pradeep Kumar Singh
Dy. Chief Personnel Officer
M.F. Railway, Maligaon
Guwahati-781 001

O.A. NO. 2/05

Sri Biprajit Dutta & Co.

-Vs-

Union of India & Ors

ADDITIONAL WRITTEN STATEMENT FILED BY THE RESPONDENTS

I Sri Pradeep Kumar Singh aged about 37.....
years son of Sri. Bbup Lal Singh..... resident
of Maligaon, Guwahati do hereby solemnly affirm and state
as follows:

1. That I am the D.Y. C.P.D. / 1. B.A. 3. N. F. Railway,
Maligaon and as such am acquainted with the facts and
circumstances of the case and by dint of my official capacity
competent to swear this Affidavit.
2. That the deponent in terms of order dated 12.8.05
passed by the Hon'ble Tribunal begs to place the following
facts for kind consideration and necessary action thereof.
3. That the averment made by the Applicant regarding
non consideration of his case for promotion to senior scale
on adhoc basis is not correct. The deponent craves leave of
this Hon'ble Tribunal to place and rely upon the record
file at the time of hearing of the case.
- A. In the DPC held on 19.6.2000 his case was

considered but found unfit due to poor performance reflected in ACR. (ref; SN 25/1 and SN 27)

B. In the DPC held on 9.1.01 his case was considered but due to poor performance recorded in ACR as well as due to currency of penalty of reduction to lower scale in the time scale of pay for one year from 21.2.2000 arising out of a major penalty charge-sheet. (ref; SN 40 and 40 E.)

C. In the DPC held on 21.6.02 his case was considered but found unfit due to poor gradings recorded in ACR. As per the minutes of the proceeding it is clear that during 1997-2002 he could not earn Very Good in any of the years whereas the seven persons who were promoted got at least two very good during 1997-2002. (ref; SN 94).

D. In the DPC held on 27.8.02 his case was not considered due to currency of major penalty as well as due to the fact that the CBI had registered a case against him vide CVO/MLG letter dated 22.5.02. (ref; SN 107 and SN 79)

E. In the DPC held on 2.5.03 his case was considered but due to poor grading in ACR he was found unfit.

F. In the DPC held on 10.6.05 the case of the applicant was considered. The findings of the DPC in favour of Shri Dutta has been kept in sealed cover due to pending Major Penalty - DAR case.

4. That the deponent begs to place the record file along with the sealed cover at the time of hearing of the case where from the communications regarding pendency and registration of criminal case is reflected.

4.1 Communication dated 29.1.02 issued by the Vigilance Department indicates the fact of pendency of criminal case against the applicant. (ref; SN 52).

4.2 Certificate issued by the Chief Engineer dated 20.6.02 indicates regarding pendency of criminal case

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Singh

Pradeep Kumar Singh
N.F. Railway, Maligaon
Guwahati-781001

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against the applicant. (ref; SN 89)

4.3 Communication dated 22.5.02 issued by the Chief Vigilance Officer indicates registration of criminal case by CBI. (ref; SN 79)

That apart from above there are other communications indicative of the fact that there were criminal cases as well as departmental proceeding pending against the applicant for which his case could not be considered for such promotion. Now the minor penalty charge sheet issued to the applicant dated 10.5.04 has been finalized.

5. That the statements made above are based on records and the deponent craves leave of this Hon'ble Tribunal to place the same at the time of hearing of the case.

6. That the statements made in paragraphs ...1, 2, 2.....are true to my knowledge and those made in paragraphs...3, 4, 4.1, 4.2, 4.3..... are matters of record which I believe to be true and rests are my humble submission.

And I sign this Affidavit on this the ...2nd... day of ...January....2006.

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Pradeep Kumar Singh
Dy. Chief Personnel Officer
N.F. Railway, Maligaon
Guwahati-11