

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

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(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

07.11.17

FORM NO. @
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 301/05
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicant(s) B. Appa Rao

Respondent(S) U.O.I JFM

Advocate for the Applicants K.N. Chudhry, R.S. Chudhry
G. Rahul, N. Goman

Advocate for the Respondent(S) K.K. Biswas CCSG
Rly St. Counsel

Notes of the Registry Date _____ Order of the Tribunal

This application is in form
is filed/C.F. for Rs. 50/-
deposited vide IPC/DO
No. 266/8952
Dated 8.11.05

Deer
Dy. Registrar

Pl. comply order dated
12.05.

12.05

steps taken on

6/01/06 (Friday)

Notice & order
sent to D/section
for issuing to
resp. Nos. 1 to 5 by
regd. A/D post.

6/11/06. D/No = 96 to 100 pg
D/ = 19/01/06.

01.12.2005 Present : Hon'ble Mr. Justice G.
Sivarajan, Vice-Chairman.

Heard Mr. P. N. Goswami, learned
counsel for the applicant and Dr. M. C.
Sarma, learned counsel for the Railways.

Admit. Issue notice to the
respondents.

Post on 16.01.2006. Written
statement, if any, in the meantime.

Sivarajan
Vice-Chairman

mb
16.1.06

When the matter came up for
hearing Mr K.K.Biswas, learned Railwa
standing counsel prays for one month
time to file written statement.
Prayer allowed.

Post on 17.2.06 for order.

Sivarajan
Vice-Chairman

17.02.2006 No reply statement has been filed. Let the case be posted on 08.03.2006.

Vice-Chairman

mb

8.3.2006 Learned counsel for the respondents Mr.K.K.Biswas submits that he would like to have some more time to file reply statement. Let it be done. Post on 10.4.2006.

Vice-Chairman(J)

Vice-Chairman(A)

bb

02.05.2006 Mr. K.K. Biswas, learned Railway counsel for the respondents submits that he has already filed written statement. Three weeks time is granted to the applicant to file rejoinder, if any. Post on 26.05.2006.

Vice-Chairman

mb

26.05.2006 Learned counsel for the applicant submitted that he has received a copy of the reply statement and would like to file rejoinder. Post on 21.06.2006.

Vice-Chairman

mb

12-1-06

Service awaited

by

16-2-06

① Service report awaited.

② No. W/S has been filed.

by

7-3-06

① Service report awaited.

② No. W/S has been filed.

by

Written statement has been filed on behalf of the respondents.

by
26.4.06.

1-5-06

① S. filed

for

25-5-06


No Rejoinder has been filed.

No rejoinder has been filed.

27.10.2006

Judgment pronounced in open Court, kept in separate sheets.

The O.A. is disposed of in terms of the order. No order as to costs.


Vice-Chairman

/bb/

8.11.06
C. Carg. has
been collected by
the H/Adv. for the
applicant and a
copy of the same
handed over to
the Adv. Counsel.
ab

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No. 301 of 2005

DATE OF DECISION 27.10.2006

B. Appa Rao

Applicant/s

Mrs.R.S.Choudhury

Senior Advocate for the
Applicant/s.

- Versus -

U.O.I. & Ors.

Respondent/s

Mr.K.K.Biswas, Railway Counsel


Advocate for the
Respondents

CORAM

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

THE HON'BLE MR. GAUTAM RAY, ADMINISTRATIVE MEMBER

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


Vice-Chairman/Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 301 of 2005.

Date of Order: This, the ~~27th~~ day of October, 2006.

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

THE HON'BLE MR. GAUTAM RAY, ADMINISTRATIVE MEMBER

B. Appa Rao
Son of Late B. Jampia
Central Gota Nagar
Railway Quarter No. 124 C
District:- Kamrup, Assam (781124).

..... Applicant.

By Sr. Advocate Shri K.N.Choudhury, Advocates S/Shri
R.S.Choudhury, G.Rahul & P.N.Goswami.

- Versus -

1. Union of India
Through the Secretary to the Govt. of India
Ministry of Railways
Rail Bhawan
New Delhi- 110 001.
2. North East Frontier Railways
Maligaon, Guwahati
Through the General Manager.
3. The General Manager (Safety)
North East Frontier Railway,
Maligaon, Guwahati-781 011.
4. The Chief Mechanical Engineer
North East Frontier Railway,
Maligaon, Guwahati-781 011.
5. Divisional Mechanical Engineer (P)
North East Railway, Lumding
Dist: Nagaon, Assam (782447).

..... Respondents.

By Mr.K.K.Biswas, Railway Counsel.

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O R D E R

RAY, GAUTAM, MEMBER (A) :

The applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 against the disciplinary proceeding initiated against him in connection with the head-on collision between 5658 Dn Kanchanjangha Express and Up LMG Food Train at Kamakhya Station on 28.1.2002 and the impugned order dated 3.2.2003 issued by the Divisional Mechanical Engineer (P), N.F. Railway, Maligaon consequent to which he has been removed from service as also the subsequent order passed by the Appellate Authority upholding the penalty of removal.

2. Through the Original Application, the applicant has prayed for the following reliefs:-

"8.1 Set aside and quash the impugned order dated 03/02/2003 under No.TP/3/LM/1-4/2002 issued by the Divisional Mechanical Engineer (P), N.F. Railway, Maligaon whereby the applicant has been removed from service as well as all consequential orders passed by the Appellate Authorities.

8.2 Set aside and quash the Disciplinary Proceeding against the applicant in connection with the head-on collision between 5658 Dn Kanchanjangha Express and Up LMG Food Grain at Kamakhya Station on 28/01/2002.

8.3 Direct the respondent authorities to reinstate the applicant in his post

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with all service benefits including period from 02/02/2003 till date.

8.4 Cost of the application.

8.5 Any other relief(s) that the applicant may be entitled to under the facts and circumstances of the case and/or as may ~~be~~ deem fit and proper considering the facts and circumstances of the case."

3. Briefly stated, the facts of the case of the applicant are as hereunder:

The applicant joined Railway service on 1.11.1970 and since then he was serving the Indian Railways as a Driver of Goods Train for about 33 years. He had been working in the Kamakhya-New Bongaigaon Section via Goalpara since April, 2001. On 28.1.2002 he was asked to take charge of the Up Lumding Food Grain Train as Driver from Bongaigaon. The applicant took charge of the said train and started from Bongaigaon towards Guwahati at 1620 hrs. He was accompanied by Diesel Assistant Driver Sri Surendra Nath Bora. According to the applicant, the train reached Azara at 2200 hrs. and after being detained for 15 minutes for line clearance, the applicant proceeded with the train towards Kamakhya Station. While approaching Kamakhya Station, the Up Distant Signal was showing 'Yellow' aspect and the applicant, after crossing the same, approached Up Home Signal, which was also showing 'Yellow' aspect. The applicant submits that the 'Yellow' signifies that the concerned train should approach the

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station/platform concerned with caution at a speed of not above 15 kms/hour. Accordingly, the applicant lowered the speed of the train ~~of~~^{to} 15 kms/hour. After crossing the Up Home Signal, the applicant saw a light on the Line No.1 on which the applicant was proceeding and he then realised that another train was either approaching or standing on the other side of the same line. He tried his best to reduce the speed of the train but could not completely stopped the train due to the down gradient after the Home Signal and, ultimately, the Up Lunding Food Grain Train collided with 5658 Dn Kanchanjangha Express.

4. An inquiry into the said incident was conducted by the Commissioner of Railway Safety and a report was submitted by him. On 29.1.2002, the Divisional Mechanical Engineer (P) issued an order under No. TP/3/LM/1-4/2002 vide which the applicant was placed under suspension contemplating a departmental proceeding against him.

5. On 13.6.2002, the Divisional Mechanical Engineer (P) proposed to hold an inquiry against the applicant under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 and issued charge-sheet to the applicant for his lack of alertness during duty and passing signal at danger violating the provisions of GR-3.78(1)(a), (b) and (4) and also Rule 3(1)(ii) of the Service Conduct Rules of Railway, 1966. The Inquiry

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Officer submitted his report on 27.11.2002 wherein it was recorded that the charge against the applicant has been established (Annexure-E). The Disciplinary Authority under his order dated 3.2.2003 (Annexure-H) imposed the penalty of removal from service with immediate effect upon the applicant. The applicant submitted his appeal dated 20.2.2003 (Annexure-I) against the said punishment. The Appellate Authority by his order dated 15.5.2003 confirmed the penalty of removal from service imposed upon the applicant by the Disciplinary Authority. The applicant thereafter filed an application dated 4.6.2003 before the Revisional Authority. Vide order dated 4.11.2004 (Annexure-L) the Reviewing Authority upheld the punishment of removal awarded to the applicant. Thereafter, the applicant vide representation dated 25.1.2005 (Annexure-M) prayed before the General Manager, N.F.Railway, Guwahati, for review of the order dated 4.11.2004 but the same was not entertained by the Railway authorities vide order dated 11.2.2005 (Annexure-N) on the ground that once a revision has been done by a competent authority, no further revision lies with any other authority. The applicant being aggrieved by the above orders has preferred this Original Application challenging the legality and validity of the penalty of removal from service so imposed on him, stating that the said removal is arbitrary, illegal and done in a mechanical manner and

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in violation of Articles 14 and 16 of the Constitution of India.

6. The respondents have contested this Original Application by filing a detailed written statement. It has been stated by the respondents that the procedure to be followed while dealing with safety related disciplinary cases has been issued by the Ministry of Railways/Railway Board vide letter No. E(D&A)2003/RG.6-5 dated 19.2.2003 and all cases arising out of train accident are dealt with as per the letter. The applicant was fully aware about the gravity of the offence he had committed in not fulfilling the duties entrusted to him while running a train. They further stated that the applicant because of his conduct, wrong doing, callous and careless action, has been imposed the necessary quantum of punishment required to be imposed as per Ministry of Railways/Railway Board Circular No.99/Safety(A&R)/6/1 dated 23.4.1999. There has been no violation of any rule. The Commissioner for Railway Safety has come to his findings after carefully considering the factual material and circumstantial evidence at his disposal and observed that the head-on collision between 5658 Dn Kanchanjangha Express and Up Lumding Food Grain Train at Kamakhya Station occurred due to Driver of Up Lumding Food Grain disregarding the 'RED' Express of the Up Home Signal and the train passing Signal at danger point because of the 'failure of the Railway Staff'. The



applicant, who was in-charge of the said Goods Train, was held primarily responsible for his violation of General Rules and disregarding the signal at 'danger' and hence the punishment imposed on him was in accordance with the rules after giving him reasonable opportunities for his defence. The respondents have further stated that Kamakhya Station is provided with Panel Interlocking Signalling System. When a train is received on Line No.1 from Guwahati end, then there is no possibility to take 'OFF' the Up Home Signal into 'Yellow' aspect for the train coming from Azara for the same line.

7. The applicant submitted his written defence on 27.6.2002 (Annexure-D). The respondents have not accepted his defence since his statement ^{es} do not corroborate with the signalling system at Kamakhya Station, CRS inquiry and Accident Committee Reports. The Disciplinary Authority i.e. DME/Lumding imposed the penalty of removal from service on the applicant according to the gravity of the case since the charges against the applicant had been established in the departmental inquiry conducted as per procedures and rules. During inquiry, the applicant was given sufficient opportunity to represent his case with the help of his defence counsel for proving his innocence. No such procedure exists regarding communication of the tentative views by the Disciplinary Authority, as submitted by the applicant, ^{at} as the same stage of issuing

show cause notice, before imposition of penalty order. The penalty of removal from service as imposed by the Disciplinary Authority, was confirmed by the Appellate Authority on appeal. The respondents state that there has been no lapse or laches on their part in the matter of holding inquiry and all formalities of D.A. Rules, 1968 have been followed.

8. The applicant has filed a rejoinder wherein he has submitted that he has been removed from service by the respondents in a vindictive manner. He has denied the statement of the respondents that he has been careless and callous while discharging his duties. On the contrary, he submits that since his joining in service, he has served the Railways with utmost sincerity and was always vigilant in following the signals. Since the Circulars dated 19.2.2003 and 23.4.1999 of the Railway Board (supra), relied upon by the respondents in their reply statement, have not been annexed to it, the applicant is unable to defend his case appropriately. He submits that any circular issued by the Railway authorities cannot preclude the Disciplinary Authority/Appellate Authority to apply their mind to the peculiar facts and circumstances of a case. During inquiry by the CRS, the examination of various persons showed that Up Distant Signal and Up Home Signal of Kamakhya Station from Azara side had on earlier occasions created confusion within the Railway staff. On

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an earlier occasion, the Up Home Signal at Kamakhya Station was not functioning properly and continued showing 'Yellow' aspect despite the fact that another train was occupying Line No.1 and an accident had taken place on the same line and at the same platform at Kamakhya Station between Up Lumding Food ^{Grain} Train and Down Rajdhani Express. The Driver of the said train, Sri S.C. Dey and the Diesel Assistant Driver Sri R. Barman were proceeded with by the Department and after holding a departmental inquiry they were imposed with a minor punishment of withholding the increment. In comparison, the quantum of punishment so imposed on the applicant is in no way justified. The accident, which occurred earlier on the same line due to faulty Up Home Signal could have prejudiced the officials responsible for such signal control. It is also submitted by the applicant that at para 7.5(ii) of the CRS Report, it has been mentioned that the accident could have been averted if B.G. Line No.1 was isolated from the line of Guwahati-Jogighopa-New Bongaigaon Section at Azara end by providing ^a ~~as~~ 'Sand Hump' instead of existing Derailing Switch No.71X so that if a train from Goalpara passes the Up Home Signal at danger, it would enter the 'Sand Hump'. Hence, according to the applicant, the Inquiry Officer solely putting the blame on the applicant and the Diesel Assistant Driver for the accident does not hold good and should be rejected by this Tribunal.


✓

9. We have heard Mrs.R.S.Choudhury, learned counsel for the applicant and Mr.K.K.Biswas, learned Railway counsel for the respondents. We have also perused the pleadings, gone through the records produced before us and given our anxious thoughts to the facts and circumstances of the case.

10. The main charge in this case is that the accident took place on 28.1.2002 between 5658 Dn Kanchanjangha Express and the Up Lumding Food Grain Train of which the applicant was the driver, due to disregarding of the 'RED' aspect of the Up Home Signal and passing signal at danger by the applicant with his train as a reason whereof, an accident had occurred. It is the complaint of the respondents that the applicant might have been under the influence of alcohol. However, from the medical reports as also forensic report, this allegation has not been proved beyond doubt. While the medical report states that the applicant may have taken alcohol in lesser quantity but the forensic report is completely otherwise and in favour of the applicant. The applicant has categorically stated that he was not under the influence of alcohol and has stopped consuming it ^{from} ~~from~~ the year 1988 on health grounds though prior to 1988 ^{when} ~~when~~ he used to take it occasionally in off duty hours. The report of the Breathalyser test to which the applicant was subjected to

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next day after the accident stated the applicant 'normal'. The applicant's case is that the accident occurred due to faulty signal. However, it is now well settled that in a departmental inquiry the scope of interference by Court or Tribunal is very limited. The Court or Tribunal has only to see whether the laid down procedure has been followed and principles of natural justice have been complied with or not, while conducting the inquiry. The Court or Tribunal can only interfere when it is a case of no evidence or the delinquent official is not afforded proper opportunity to defend himself. In the instant case, while going through the inquiry report and the orders of the Disciplinary Authority, Appellate Authority as also the Reviewing Authority, we find that the laid down procedure has been followed diligently and the applicant has been given all opportunities to defend himself. As such, there is no scope for this Tribunal in intervening in the matter. However, we find that the applicant has rendered about 33 years of service and the respondents have not shown that there was any complaint whatsoever against him on earlier occasions including that of an accident. The applicant has been awarded the maximum penalty of removal from service after having put in more than 30 years of service in the Railways. It is true that Court or Tribunal should not ordinarily interfere regarding the quantum of punishment inflicted by a competent Disciplinary



Authority. However, considering the fact that the applicant was at the fag end of his service and was not awarded any penalty on an earlier occasion during his long service tenure, we are of the considered view that the applicant's case may be considered sympathetically by the appropriate authority so that a lesser punishment could be awarded to him.

11. In that view of the matter, we remit the case back to the Disciplinary Authority for ~~reconsideration~~^{reconsideration} so that the applicant can be awarded some lesser or at least the punishment of compulsory retirement in place of maximum penalty of removal from service which will not affect his pensionary benefits. The case is, therefore, remitted back to the Disciplinary Authority for reconsideration of the matter and for passing appropriate order within a period of four months from the date of communication of this order.

12. The Original Application is disposed of on the lines stated herein above without any order as to costs.


(GAUTAM RAY)
ADMINISTRATIVE MEMBER


(K.V. SACHIDANANDAN)
VICE CHAIRMAN

/BB/

- 1 DECEMBER 2005

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No. 301 of 2005

Sri B. Appa Rao ... Applicant

-VERSUS-

Union of India & Ors. ... Respondents

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Filed by

P.N. Goswami

Advocate

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

Sri B. Appa Rao ... Applicant

-VERSUS-

Union of India & Ors. ... Respondents

SYNOPSIS

The Applicant herein has been serving the Indian Railways as a Driver of Goods Train for about 33 years. On 28.1.2002 the Applicant was asked to take charge of the Up Lumding Food Grain Train as a Driver from Bongaigaon. The Applicant took over charge of the Train at 1600 hours and started from Bongaigaon at 1620 hours. The Applicant was detained at Azara for 15 (fifteen) minutes and at 2215 hours he started towards Kamakhya station. Finding the Up Distant Signal showing 'Yellow' aspect and the Up Home Signal also showing the 'Yellow' aspect, the Applicant continued to proceed towards Kamakhya station on Line No.1 cautiously at a speed of 15 Kms per hour. However, while proceeding, the Applicant saw light on Line No. 1, on which the Applicant's Train was also proceeding, and the Applicant realized that another Train was approaching from the opposite direction on the same line. Despite best efforts to reduce the speed of the Train, the Up Lumding Food Grain Train, of which the Applicant was the Driver, collided with the 5658 Down Kanchanjunga Express. The Commissioner of Railway Safety conducted an inquiry about the incident and submitted his report on the basis of which the charges were framed against the Applicant and the Applicant was placed under suspension on 29.1.2002. The inquiry proceeding so conducted by the Inquiry Officer against the Applicant did not take into consideration several relevant and material aspects of the report submitted by the Commissioner of Railway Safety. Without considering such aspects, the Inquiry Officer submitted his report and the Disciplinary Authority imposed the penalty of removal from service vide order dated 3.2.2003. The Applicant, therefore, approached the Appellate authority for reviewing the order of the Disciplinary Authority. However, the appeal of the Applicant was rejected vide order dated 25.1.2005. Further, the revision so prayed for by the Applicant was also rejected vide letter dated 11.2.2005. Being highly aggrieved by the impugned order dated 3.2.2003 passed by the Disciplinary Authority as well as the consequential orders passed by the Appellate authority, the Applicant has preferred this Original Application challenging the legality and validity of the penalty of removal from service so imposed on the Applicant.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

Sri B. Appa Rao ... Applicant

-VERSUS-

Union of India & Ors. ... Respondents

LIST OF DATES

- 28.2.2002:- The Applicant was asked to take charge of Up Lumding Food Grain Train as Driver from Bongaigaon, and proceeded towards Laming. However, after crossing the Up Home Signal at Kamakhya Station, the Applicant saw a light on the Line No: 1 in which the Applicant was proceeding and tried his best to stop the train and ultimately the Up Lumding Food Grain Train collided with the 5658 Down Kanchanjunga Express.
- 29/01/2002:- The applicant was placed under suspension by the Divisional Mechanical Engineer (P). (ANNEXURE-B, Pg 41)
- 13/06/2002 :- The Divisional Mechanical Engineer (P) issued charge sheet and article of charges to the applicant. (ANNEXURE-C, Pg 43)
- 27/06/2002:- The applicant submitted his written statement of defence to the aforesaid Charge Sheet as well as Article of Charges. (ANNEXURE-D, Pg 47)
- 29/07/2002:- The Disciplinary Authority appointed an Enquiry Officer.
- 27/11/2002:- The enquiry officer submitted his report. (ANNEXURE-E, Pg 50)
- 20/12/2002:- The Divisional Mechanical Engineer (P) furnished a copy of the Enquiry Report to the applicant. (ANNEXURE-F, Pg 54)
- 23/01/2003:- The applicant submitted his written representation against the enquiry report. (ANNEXURE-G, Pg 55)
- 03/02/2003:- The Divisional Mechanical Engineer (P), issued the impugned Order whereby the penalty of removal from service has been imposed on the Applicant. (ANNEXURE-H, Pg 56)

20/02/2003:- The applicant preferred an appeal before the Sr. Divisional Mechanical Engineer, Lumding. (ANNEXURE-I, Pg 57)

15/05/2003:- The Divisional Mechanical Engineer (P) issued a letter whereby it was communicated to the applicant that the appeal preferred by him has been considered by the competent authority and has confirmed the penalty imposed on him by the Disciplinary Authority.

(ANNEXURE-J, Pg 62)

04/06/2003:- The applicant filed an appeal for review of the Impugned Order of removal before the Chief Operating Manager, N.F. Railway

(ANNEXURE-K, Pg 63)

04/11/2004:- Chief Mechanical Engineer disposed of the appeal and upheld the penalty imposed on him by the Disciplinary Authority.

(ANNEXURE-L, Pg 65)

25/01/2005: The applicant submitted a representation before the General Manager, N.F. railway and requested for reviewing the Order dated 04/11/2004.

(ANNEXURE-M, Pg 67)

11/02/2005:- The Sr. Divisional Mechanical Engineer issued a letter to the applicant that the representation dated 25/01/2005 could not be considered by the authority in view of the Railway Boards notification that once a revision has been denied, no further revision lies to any of the authority.

(ANNEXURE-N, Pg 70)

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B. Appa Rao

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

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

ORIGINAL APPLICATION NO. /2005

BETWEEN

1. B. Appa Rao
S/o Late B. Jampia
Central Gota Nagar
Railway Quarter No. 124 C
District – Kamrup, Assam (781124)

... Applicant

- VERSUS -

1. Union of India,
Through the Secretary to the Government of India,
Ministry of Railways
Rail Bhawan,
New Delhi –110001.
2. North East Frontier Railways,
Maligaon,
Guwahati-781011
Through the General Manager.
3. General Manager (Safety))
North East Frontier Railways,
Maligaon, Guwahati-781011.
4. Chief Mechanical Engineer
North East Frontier Railways,
Maligaon, Guwahati-781011.
5. Divisional Mechanical Engineer (P)
North East Railway,
Lumding,
District – Nagaon, Assam (782447)

... Respondents.

B.A. Rao

DETAILS OF THE APPLICATION:

1. PARTICULARS OF ORDERS AGAINST WHICH THIS APPLICATION IS MADE:

- ✓ The instant application is directed against the Disciplinary Proceeding against the applicant in connection with the head-on collision between 5658 Dn Kanchanjangha Express and Up LMG Food Grain at Kamakhya Station on 28/01/2002 and the impugned Order dated 03/02/2003 under No. TP/3/LM/1-4/2002 issued by the Divisional Mechanical Engineer (P, N.F. Railway, Maligaon whereby the applicant has been removed from service most arbitrarily, illegally and in a mechanical manner, and the subsequent orders passed thereto by the Appellate Authority, thereby violating the rights guaranteed to the applicants under Article 14 and 16 of the Constitution of India.

2. JURISDICTION OF THE TRIBUNAL:

The Applicants declare that the subject matter in respect of which the application is made is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION:

The Applicant further declares that the application is filed within the limitation period under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE:

- 4.1 That the applicant is a citizen of India and as such entitled to all the rights, privileges and protections guaranteed to the citizens of India under the Constitution of India and the laws framed thereunder.
- 4.2 That the applicant joined in the railway service on 01/11/1970 and since then is serving the Indian Railways as a driver of Goods Train for about 33 years to the complete satisfaction of all concerned. It is stated herein that the Applicant has been working in the Kamakhya – New Bongaigaon Section via Goalpara since April/2001.
- 4.3 That, prior to narrating the facts of the case, the Applicant deems it fit and proper to place on record certain technical points with regard to the signaling system, which is followed by the Railways with regard to the Goods/Passenger Trains. The Applicant states that prior to approaching a station, a train crosses two signals, first is known as Distant Signal which normally determines the platform/line which the train has to take. The Distant Signal normally has 3 (Two)

B.A.Rw

slots of Green Yellow and Red. The Red aspect signifies that the train should stop for line clearance, the Green aspect signifies that the Train can continue at the same speed towards the station concerned, whereas the Yellow aspect of the Distant Signal signifies that the Train should proceed with caution at the speed of approximately 15-20 Km/hr towards the second signal which is called the Home Signal. Normally the distance between the Distant Signal and the Home Signal is 1 Km. The Home Signal which is situated very near to the platform has also 3 (three) aspects, Red, Yellow and Green. The Red aspect of the Home Signal signifies that the Train should stop immediately since the line is being occupied by some other Train. The Green aspect of the Home Signal is normally meant for Trains which would not be stopped at the Station and would proceed directly across the Station. The Yellow aspect of the Home Signal signifies that the concerned Train should approach the Station/Platform concerned with caution at a speed of not above 15 Kms/hour. It is further pertinent to mention herein that once the Engine of the Train crosses the Home Signal, the signal automatically goes back to Red aspect. Hence, it is only the Driver and the Diesel Assistant Driver of the Train who can correctly state the position of the signal concerned before the Train passes that particular Signal.

- 4.4. That, on 28.2.2002, the Applicant was asked to take charge of Up Lumding Food Grain Train as Driver from Bongaigaon. On the arrival of the Train at Bongaigaon at 1600 hours, the Applicant took over charge of the said Train and checked the Engine properly and at 1620 hours started from Bongaigaon towards Guwahati. The Applicant was accompanied by Diesel Assistant Driver Sri Surendra Nath Bora. The Applicant deems it pertinent to state herein that he was subjected to a breathalyser test at New-Bongaigaon for checking traces of alcohol, if any, and the test so conducted was negative. It is further stated that the Applicant being a patient of Diabetes and further having suffered from Tuberculosis in the year 1998, had stopped consuming alcohol completely since 1998. Further, it is stated that prior to 1998, the Applicant used to take alcohol occasionally only during off duty hours.
- 4.5 That, the Applicant states that the Applicant reached Azara with the Train at 2200 hours wherein he was detained for 15 (fifteen) minutes till 2215 hours for line clearance. Thereafter, the Applicant proceeded with the Up Lumding Food Grain Train towards Kamakhya station.
- 4.6 That, while the Applicant was approaching Kamakhya station (in Railway parlance, Kamakhya is referred to as 'KYQ' Station), the Up Distant Signal was showing Yellow aspect and therefore, after crossing Up Distant Signal, the Applicant approached Up Home Signal, which was also showing Yellow aspect. Accordingly, the Applicant proceeded with caution and as per the Yellow aspect

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of the Up Home Signal, he lowered the speed of the Train to 15 Kms/hour. However, after crossing the Up Home Signal, the Applicant saw a light on the Line No. 1 in which the Applicant was proceeding and he realized that another Train was either approaching or standing on the other side of the same line. Having realized the fact that some mistake has occurred somewhere, the Applicant tried his best to reduce the speed of his Train, but could not completely stop the Train due to the down gradient after the Home Signal and ultimately the Up Lumding Food Grain Train collided with the 5658 Down Kanchanjunga Express, which was also about to stop on the Line No. 1. Immediately, after the collision, the Applicant got down from the Train and found that the Engine of his Train had derailed and the Applicant asked the Diesel Assistant Driver to inform the Station Master about the accident, while he waited near the site of the accident. Subsequently, the Applicant himself went to the Station and met the AME/HQ who advised him to go to the Hospital since the Applicant sustained injuries.

4.7 That, after the accident, the Commissioner of Railway Safety (herein after referred to as the C.R.S.) conducted an inquiry about the said incident and submitted his report. During the inquiry, the C.R.S. examined several officers of the N.F. Railway including the Driver and Diesel Assistant Driver of Up Lumding Food Grain Train and 5658 Down Kanchanjunga Express as well as the Assistant Station Master, Station Manager, T.I., Guwahati etc. It was proved during the inquiry by the deposition of the Senior Divisional Medical Officer Dr. D.K. Das that the Driver of Up Lumding Food Grain Train (the Applicant herein) was not found in inebriated condition and had full consciousness having normal gait. Further, by the deposition of various personnel, who were examined during the inquiry by the C.R.S., it was shown that Up Distant Signal and Up Home Signal of Kamakhya from Azara side has, on earlier occasions also, created confusion within the Railway staff. Although the CRS in his report has stated that it had been proved by trial and test that when the line No. 1 of Kamakhya is occupied, Up Distant Signal from Azara side showed Yellow and the Home Signal showed Red, but the CRS has failed to consider that at the time of crossing the Home signal by the Up Lumding Food Grain, the 5658 Dn Kanchanjanga Express might not have occupied the Line No.1, as a result of which the Home Signal was showing Yellow instead of Red.

4.8 That at paragraph 7.3.8 of the CRS report it has been stated that the Goalpara line was constructed by the Construction Organization of N.F. Railway including the addition/ alterations at Kamakhya Station where the Goalpara line has converged with the main line. The B.G. Line No.1 was to be isolated from the line of GHY-JPZ-NBQ section at Azara end by normal setting of Derailing Switch No. 71X as the B.G. Line No1 is an important loop line of the main line then the less

important line of Goalpara Section. In such a situation the Orientation of the Derailing Switch No 71X should have been in the facing direction from Azara side and trailing direction from Guwahati side whereas it is actually laid in the other way. At paragraph 7.5.(i) the CRS report has admitted that if the derailing Switch No. 71X had been correctly oriented i.e. in the facing direction from Goalpara side and trailing direction from Guwahati side, possibly the collision could have been averted or at least its consequences could have been minimized. The CRS has also stated that the accident could have been averted if the B.G.Line No1 was isolated from the line of Guwahati- Jogighopa-New Bongaigaon section at Azara end by providing 'sand hump' in lieu of existing Derailing Switch No 71X so that if a train from Goalpara passes the Up Home Signal at danger it would enter the sand hump. Be it stated herein that the applicant was not served with the complete copy of the said CRS enquiry report.

A copy of the relevant portion of the said CRS Enquiry Report is enclosed herewith and marked as **ANNEXURE -A.**

- 4.9 That on 29/01/2002 the Divisional Mechanical Engineer (P) issued an Order under No. TP/3/LM/1-4/2002 whereby the applicant was placed under suspension contemplating a departmental proceeding against him.

A copy of the suspension order dated 29/01/2002 is annexed herewith and marked as **ANNEXURE-B.**

- 4.10 That on 13/06/2002 the Divisional Mechanical Engineer (P) proposed to hold an inquiry against the applicant under Rule 9 of the Railway Servants (Discipline and appeal) Rules, 1968 and accordingly issued charge sheet. Along with the charge sheet an article of charges was also enclosed wherein it was stated that the applicant has been charged for lack of alertness during duty and passing signal at danger violating the provisions of GR-3, 78(1) (a), (b) & (4) and also Rule -3 (1) (ii) of Service Conduct Rules of Railway, 1966.

A copy of the aforesaid Charge Sheet as well as the Article of Charge dated 13/06/2002 is annexed herewith and marked as **ANNEXURE-C.**

- 4.11. That on 27/06/2002 the applicant submitted his written statement of defence to the aforesaid Charge Sheet as well as Article of Charges. In the said written statement the applicant denied all the charges leveled against him and stated that the accident took place due to no fault of the applicant and he neither disregarded the Red aspect of the Home signal nor passed the signal at danger. The applicant categorically stated that the Up Home Signal at Kamakhya from Azara side was

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showing the Yellow aspect, accordingly the train passed the signal at a regulated speed. That the applicant was totally vigilant and alert during the duty and never violated GR-3, 78(1) (a), (b) & (4) and Rule -3 (1) (ii) of Service Conduct Rules of Railway, 1966. In the written statement the applicant also stated that he was not under influence of alcohol, which is evident from the test conducted at New Bongaigaon and blood test at Forensic Science Laboratory (FSL)/ Guwahati at the behest of the railway authority. It is pertinent to mention that, the guard and the Diesel Assistant Driver of the train have also stated that the Up Home signal was at Yellow which supports/corroborates the statement of the applicant. The applicant stated that the accident has occurred as the authorities failed to set the loop line into the line no.2 at Kamakhya station at the time of the accident. As has already been stated herein above the trains coming from Goalpara have to take the platform no.1 and cannot be diverted to any other line. The applicant also relied on paragraph 7.3.8 and 8.2.2 of the CRS report wherein signal and telecommunication department has been held responsible for wrong installation of the derailing switch no.71X.

- 4.12 That in the written statement of defence the applicant also stated that the accident took place because of the lack of adequate knowledge of the sectional loco inspector regarding signaling of the route which was proved in the CRS report. The applicant also stated that the statement of the Assistant Station Master, Kamakhya should not be taken bonafide as he fled from the station after the accident.

A copy of the written statement of defence dated 27/06/2002 is annexed herewith and marked as **ANNEXURE-D.**

- 4.13 That on 29/07/2002 the Disciplinary Authority appointed the Assistant Divisional Mechanical Engineer, New Guwahati as the Enquiry Officer. In the said enquiry the applicant was represented by a presenting officer. On 27/11/2002 the enquiry officer submitted his report wherein it is stated that whenever a train is being received on line no 1 from Guwahati then the yellow aspect of home signal for receiving any train coming from Azara is not possible as per interlocking system of Kamakhya Station. The Enquiry officer also held that the applicant was not vigilant enough. The accident could have been avoided if the applicant was sufficiently alert. It is also stated in the enquiry that the applicant was not following the proper Signal aspect. In the enquiry report it was stated that the accident could be avoided if the derailing switch No 71 X be fitted in normal condition, i.e. facing point for the train coming from Azara then in such cases the train would derail if the signal is disregarded.

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A copy of the said Enquiry report dated 27/11/2002 is enclosed herewith and marked as ANNEXURE-E.

- 4.14. That vide letter dated 20/12/2002 the Divisional Mechanical Engineer (P) furnished a copy of the Enquiry Report to the applicant and asked the Applicant to submit his written representation against the enquiry report before the Disciplinary Authority within 15 days of the receipt of the letter.

A copy of the letter dated 20/12/2002 is annexed herewith and marked as ANNEXURE-F.

- 4.15 That in response to the aforesaid letter dated 20/12/2002 the applicant on 23/1/2003 submitted his written representation against the enquiry report. The applicant in the said representation stated that although as per the enquiry report there was no possibility to take off the home signal into yellow aspect for trains approaching from Azara as 5658 Dn was entering and about to stop in line no 1 as per the principles of interlocking signaling system but when there is failure of system there is possibility of taking place of such type of incidents. Some examples of such type of incidents were already submitted by the defence counsel of the applicant. In the said representation the applicant also requested the Disciplinary Authority to take into consideration of the submissions made by his defence counsel.

A copy of the representation dated 23/01/2003 is annexed herewith and marked as ANNEXURE-G.

- 4.16. That to his utter shock and surprise, the applicants found that on 03/02/2003 the Divisional Mechanical Engineer (P), without applying his mind to the relevant factors, issued an Order under No.TP/3/LM/1-4/2002 whereby the penalty of removal from service with immediate effect has been imposed on the Applicant.

A copy of the impugned Order dated 03.02.2003 is annexed herewith and marked as ANNEXURE-H.

- 4.17 That immediately after receipt of the impugned removal order dated 03/02/2003 the applicant on 20/02/2003 preferred an appeal before the Sr. Divisional Mechanical Engineer, Lumding. In the said appeal the applicant alleged that the Enquiry Officer and the Disciplinary Authority erroneously appreciated the evidence and improperly applied the Rules. Although the charges were based on the CRS report but the deficiencies of the wrong system at Kamakhya pointed by the CRS report were not given due regard. In fact, the charges were founded on partial appreciation of the CRS report. The applicant in his appeal also alleged

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that the authorities relied on the sufficiency of interlocking system of signaling at Kamakhya but failed to take note of the fact that there may be failure of signaling system. Even the examples cited by the defence counsel of the applicant regarding the signal failure in interlocking system were not countered by the Enquiry Officer. The Enquiry Officer also declined to give his finding regarding the physical state of the brake in regard to VA-IB release valve sticking up at half position despite application of the brake before collision. It was also stated by the Applicant in his appeal, that the evidence of the guard of Up Lumding food grain about the derailing switch being in intact condition after the accident, was ignored. The applicant also stated that the applicants train could proceed on line no 1 only as the point was set on to that line on signal because if the point was not set to line no 1 the train would have derailed at the point where the Azara side line meet the line no 1. The disciplinary authority acted in a predetermined manner and relied only on those facts which fulfilled their oblique motive.

A copy of the appeal dated 20/02/2003 is annexed herewith and marked as ANNEXURE-I.

- 4.18 That on 15/05/2003 the Divisional Mechanical Engineer (P) issued a letter under no.TP/3/LM/1-4/2002 to the applicant whereby it was communicated to the applicant that the appeal preferred by him has been considered by the competent authority and has confirmed the penalty imposed on him by the Disciplinary Authority.

A copy of the letter dated 15/05/2003 is annexed herewith and marked as ANNEXURE-J.

- 4.19 That the applicant immediately thereafter on 04/06/2003 filed an appeal for review of the Impugned Order of removal before the Chief Operating Manager, N.F.Railway alleging interalia that the action of the Disciplinary Authority is punitive in nature. It was contended by the applicant that had the facing point of the derailing switch been towards the Azara side the train would have derailed and the accident could have been avoided. As such if any loss has been done to the railway property same cannot be attributed to the applicant. The applicant also stated that in his 33 years service carrier there is not a single instance of any deficiency of service on his part. And the punishment of removal would bring untold miseries to the applicant and his entire family.

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A copy of the appeal/review application dated 04/06/2003 is annexed herewith and marked as **ANNEXURE-K.**

- 4.20 That the aforesaid appeal of the applicant was disposed by the Chief Mechanical Engineer vide Order dated 04/11/2004 under No. CME/SS/2/3 whereby the said authority upheld the penalty imposed on him by the Disciplinary Authority.

A copy of the Order dated 04/11/2004 is annexed herewith and marked as **ANNEXURE-L.**

- 4.21 That being aggrieved by the aforesaid non consideration of the appeal/ revision of the applicant by the competent authority, on 25/01/2005 the applicant submitted a representation before the General Manager, N.F. railway and requested for reviewing the Order dated 04/11/2004 passed by the Chief Mechanical Engineer, N.F. Railway. However on 11/02/2005 the Sr. Divisional Mechanical Engineer issued a letter to the applicant that the representation dated 25/01/2005 could not be considered by the authority in view of the Railway Boards notification that once a revision has been denied, no further revision lies to any of the authority. By the aforesaid letter the applicant was asked to submit a petition to the President of India.

Copies of the representation dated 25/01/2005 and letter dated 11.02.2005 are annexed herewith and marked as **ANNEXURE-M & N respectively.**

- 4.22 That the applicant at this stage deems it pertinent to mention that in the instant case two separate Charge Sheets were issued in the Standard Form No.5 to the applicant as well as to the Diesel Assistant Driver in terms of the Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 which indicates that there ought to have been separate proceedings or simultaneous proceedings. The simultaneous proceeding is nowhere prescribed in the Rules, it is a practice adopted by the Inquiry Officer for their convenience. However, in the instant case, the Inquiry Officer proceeded to hold common proceedings in terms of the Rule 13 of the Railway Servants (Discipline & Appeal) Rules, 1968. In this connection for convenience of this Hon'ble Tribunal Rule 13 is reproduced hereunder.

“Rule 13:- (1) Where two or more Railway servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Railway servants, may make an order directing that disciplinary action against all of them may be taken in a common proceedings.”

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As such, it is not automatic that where two or more Railway servants are involved it will automatically be a case of Common Proceedings. It requires an express decision which can be taken only by the authority who is competent to dismiss from service all the persons involved in the case. But in the present case the Inquiry Officer of his own proceeded to hold common proceeding in total disregard of the aforesaid Rule-13.

- 4.23 That the applicant is highly aggrieved by the impugned Order dated 03.02.2003 issued by the Divisional Mechanical Engineer (P, N.F. Railway, Maligaon whereby the applicant has been removed from service most arbitrarily, illegally and in a mechanical manner as well as the subsequent orders of the authorities concerned, the applicant has preferred this O.A. challenging the manner in which the disciplinary authority inflicted the punishment of removal from service on the applicant.

5. **GROUND FOR RELIEF WITH LEGAL PROVISIONS:**

- 5.1 For that although all the staff including those who operated the signal were called for and their depositions were taken, however the relevant aspects of their depositions were completely ignored/ overlooked by the CRS as well as the Inquiry Officer. Further, since none of the signaling staff were present at the signal spot except the Driver and the Diesel Assistant Driver who were the only persons present at the signal spot and they witnessed the actual signal condition, hence, the deposition of the driver and the Diesel Assistant Driver ought to have been given more weightage than that of other witnesses. As such the view taken by the CRS as well as the Inquiry Officer is not a conclusive one. Hence the impugned Order dated 03/02/2003 based on the report of the enquiry officer is liable to be interfered with by this Hon'ble Tribunal.
- 5.2 For that the Disciplinary authority failed to appreciate the fact that once the engine crosses the Home Signal at Yellow/Green the signal automatically becomes Red, hence it is only the Driver and the Diesel Assistant Driver who can exactly tell the actual aspect of the Home Signal. Although the CRS in his report has stated that it had been proved by trial and test that when the line No. 1 of Kamakhya is occupied, Up Distance from Azara side showed Yellow and Home Signal Red but the CRS has failed to consider that at the time of crossing the Home signal by the Up Lumding Food Grain, the 5658 Dn Kanchanjangha Express might not have occupied the Line No.1 as a result of which the Home Signal was showing Yellow instead of Red. As such, the findings of the Inquiry Officer in this regard are vitiated and the consequential orders passed by the authorities concerned are liable to be set aside and quashed.

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5.3 For that the Enquiry report as well as the decision of the Disciplinary authority are perverse and result of non application of mind to the relevant facts and circumstances of the case and the same are mere surmises and conjectures. As the finding of the Enquiry Officer is based partly on evidence and partly on Surmises and Conjectures, it would stand viated. As the rule of reasonable doubt is a rule of prudence, no action can be taken on the basis of mere belief or suspicion. As such the impugned action on the part of the respondents is discriminatory, illegal, arbitrary and malafide and is also violative of Articles 14 and 16 of the Constitution of India.

5.4 For that, from the CRS report it is well established that secondary responsibility was fixed on Signal & Telecommunication department of Construction Department instead of Mechanical Department. At paragraph 7.3.8 of the CRS report it has been stated that the Goalpara line was constructed by the Construction Organization of N.F. Railway including the addition/ alterations at Kamakhya Station where the Goalpara line has converged with the main line. The B.G. Line No.1 was to be isolated from the line of GHY-JPZ-NBQ section at Azara end by normal setting of Derailing Switch No. 71X as the B.G. Line No1 is an important loop line of the main line then the less important line of Goalpara Section. In such a situation the Orientation of the Derailing Switch No 71X should have been in the facing direction from Azara side and trailing direction from Guwahati side whereas it is actually laid the other way. At paragraph 7.5.(i) of the CRS report, it has been admitted that if the derailing Switch No. 71X had been correctly oriented i.e. in the facing direction from Goalpara side and trailing direction from Guwahati side, possibly the collision could have been averted or at least its consequences could have been minimized. The CRS has also stated that the accident could have been averted if the B.G. Line No1 was isolated from the line of Guwahati- Jogighopa-New Bongaigaon section at Azara end by providing 'sand hump' in lieu of existing Derailing Switch No 71X so that if a train from Goalpara passes the Up Home Signal at danger it would enter the sand hump. As such, the accident cannot be solely attributed to the applicant. Hence, the impugned order of removal of service imposed on the Applicant by the respondents is liable to be interfered with by this Hon'ble Tribunal.

5.5 For that several other drivers had also complained of the signaling system of the Kamakhya Station prior to the accident but the respondents without applying their mind to these relevant factors have proceeded to inflict punishment on the applicant with a predetermined mind.

5.6 For that the guard and the Diesel Assistant Driver of the train have not stated that the Up Home signal was at Red which supports the statement of the applicant that

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the Up Home Signal was showing Yellow aspect when the train approached the station. The accident has occurred as the authorities failed to set the loop line into the line no.2 at Kamakhya station at the time of the accident. As has already been stated herein above the trains coming from Goalpara have to take the platform no.1 and cannot be diverted to any other line. The authorities have failed to take in to consideration all theses aspects of the matter. The disciplinary authority acted in a predetermined manner and relied on the fact which fulfills their oblique motive. Hence, this Hon'ble Tribunal in exercise of its power may be pleased to set aside the impugned removal order and the consequential orders thereto.

- 5.7 For that the Inquiry Officer and the Disciplinary Authority erroneously appreciated the evidence and improperly applied the Rules. Although the charges were based on the CRS report but the deficiencies of the wrong system at Kamakhya pointed by the CRS report were not given due weightage/regard. In fact, the charges were founded on partial appreciation of the CRS report. The applicant in his appeal had also alleged that the authorities relied on the insufficiency of interlocking system of signaling at Kamakhya but failed to take note of the fact that there may be failure of signaling system. Even the examples cited by the defence counsel of the applicant regarding the signal failure in interlocking system were not countered by the Enquiry Officer. The Enquiry Officer also declined to give his finding regarding the physical state of the brake in regard to VA-IB release valve sticking up at half position despite application of the brake before collision. As such, the same has resulted in grave and serious prejudice to the Applicant in addition to the fact that such impugned action is discriminatory and highly shocking to judicial conscience.
- 5.8 For that two separate Charge Sheets were issued in the Standard Form No.5 to the applicant as well as to the Diesel Assistant Driver in terms of the Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 which indicates that there should be separate proceedings or simultaneous proceedings. However, the Inquiry Officer proceeded to hold common proceedings in total disregard of the aforesaid Rule-13 of the Railway Servants (Discipline & Appeal) Rules, 1968. As a result, the Enquiry proceeding itself is void ab-initio and the applicant has suffered grave and serious prejudice because of the same and was put in a disadvantageous position in the inquiry.
- 5.9 For that the entire disciplinary proceeding is vitiated on account of violation of the principles of Natural Justice. The applicant was not afforded with reasonable opportunity to refute the findings of the Enquiry Report. This is evident from the fact that the Enquiry Report was forwarded to the applicant without any tentative view of the Disciplinary Authority. The probable decision which might even lead to the removal of the applicant from service was also not communicated to the

B.A Rao

applicant and as such the applicant submitted a simple representation against the Enquiry Report. The applicant states that had he known the tentative view of the Disciplinary Authority, he would have submitted a detailed representation against all material aspects of the matter. Not having known such tentative view of the Disciplinary Authority has hence gravely prejudiced the applicant.

5.10 For that in the backdrop of the facts and circumstances that have been narrated hereinabove, it is apparent that the impugned action on the part of the respondents is clearly in violation of Articles 14, 16 and 21 of the Constitution of India in addition to being totally opposed to the settled principles of service jurisprudence.

5.11 For that it is clearly evident that the impugned Order dated 03/02/2003 has been issued most mechanically without any application of mind to the relevant factors. In fact, factors other than relevant and bonafide have been taken note of while issuing the said impugned Order. Under these circumstances it is apparent that the said impugned action is grossly illegal, arbitrary, unfair, unreasonable and capricious. No person reasonably instructed in law could have issued the said impugned Order. The same reflects malice in law as well as malice in facts. As such the said impugned Order is liable to be set aside and quashed.

5.12 For that the conditions precedent for conducting a fair departmental proceeding have not been followed in the instant case and hence impugned Order of Removal is void ab initio.

5.13 For that this application is filed bonafide and in the interest of justice.

6. **DETAILS OF REMEDIES EXHAUSTED:**

The Applicant declares that he has no other alternative, equally efficacious remedy available to him except by way of this instant applicant.

7. **MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT:**

The applicant declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. **RELIEF SOUGHT FOR:**

Under the facts and circumstances stated above, the applicant prays that this application be admitted, records be called for and notice be issued to the

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Respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and upon perusal of the records be pleased to grant the following reliefs: -

- 8.1 Set aside and quash the impugned Order dated 03/02/2003 under No. TP/3/LM/1-4/2002 issued by the Divisional Mechanical Engineer (P, N.F. Railway, Maligaon where by the applicant has been removed from service as well as all consequential orders passed by the Appellate Authorities.
- 8.2 Set aside and quash the Disciplinary Proceeding against the applicant in connection with the head-on collision between 5658 Dn Kanchanjanga Express and Up LMG Food Grain at Kamakhya Station on 28/01/2002.
- 8.3 Direct the respondent authorities to reinstate the applicant in his post with all service benefits including period from 03/02/2003 till date.
- 8.4 Cost of the application.
- 8.5 Any other relief(s) that the applicants may be entitled to under the facts and circumstances of the case and/or as may deem fit and proper considering the facts and circumstances of the case.

This application is filed through the Advocate.

9. **PARTICULARS OF THE I.P.O.:**

- i) I.P.O. :
- ii) Date :
- iii) Payable at :

10. **LIST OF ENCLOSURES:**

As stated in the index.

BA Rao

VERIFICATION

I, Sri B. Appa Rao, son of Late B. Jampia, aged about 52 years, resident of Central Gota Nagar, Railway Quarter No. 124 C, within the district of Kamrup, Assam, do hereby solemnly affirm and verify that I am the Applicant in the instant application and as such, I am fully conversant with the facts and circumstances of the case. The statements made in Paragraphs- 1, 2, 3, 4.1, 4.2, 4.4, 4.5, 4.6, 4.11, 4.12, 4.15, 4.17, 4.19, 4.21, 4.23, 5, 6, 7, are true to my knowledge and those made in Paragraphs- 4.3, 4.7, 4.8, 4.9, 4.10, 4.13, 4.14, 4.16, 4.18, 4.20, 4.22, are matters of records derived therefrom, which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 01st day of ^{December.} November, 2005 at Guwahati.

B. Appa Rao

SIGNATURE OF THE APPLICANT

approaching with normal speed to Kamakhya as authorised by the approaching signal suddenly he felt a jerk with an unusual sound and train came to a stop after exhausting air pressure in the brakevan. Immediately he proceeded towards train engine and found that his train had dashed against 5658 Down Kanchenjunga Express on line No. 1 at Kamakhya station. He stated that after attending the spot he inquired whether the Driver and DAD sustained injury or not who intimated that they had sustained minor injury and after that he extended co-operation in rescue operation of affected passengers. During cross examination he could not remember whether he had been told at ZTS about the minimum air pressure to be available in the brake-van and he admitted to refresh his knowledge. He deposed that he was not been subjected to breathalyser test at New Bongaigaon and neither he could say whether the Driver and DAD were subjected to breathalyser test at New Bongaigaon nor he was aware regarding availability of breathalyser machine at New Bongaigaon. He further stated that signals from Kamakhya station were not clearly visible because of curvature. He did state that it was a common practice that the B.P.C issued from Ambala side were valid up to New Bongaigaon but for foodgrain rakes beyond New Bongaigaon they were asked by the Control to use the same B.P.C for further destination and without revalidation. He stated that on 28.1.2002 at the time of accident the speed of the train was about 15 to 20 KMPH. He had no explanation when he was told that the speed recording graph of the locomotive showed the speed of the train at the time of accident was 40 Kmph. He stated that he could not notice the aspect of distant and home signal since he was busy with some paper work.

5.2 Shri Ajit Kumar Roy, Working Guard, 5658 Dn. of 28.01.02 : (DOB : 03.08.42, DOA: 30.05.66, Length of service: 35 Yrs. & 8 months, Length of service in present grade : 6 Yrs. & 8 months) The witness stated that on 28.01.2002 the train departed from Guwahati at 22.20 hours, 20 minutes behind the schedule, owing to some operational problems and before starting he himself tested vacuum pressure and brakevan equipments of his SLR which were found all OK. He deposed that after departure from Guwahati station with proper signal the train was received at Kamakhya station on line No. 1 with proper signal and SS/Kamakhya was exhibiting hand signal indicating to stop last R.A 5906 where AGM/N.F. Railway was likely to entrain. While the train was going to halt at Platform No. 1 at about 22-37 hours he felt a heavy jerk and coaches backed towards Guwahati side. He controlled the train by applying vacuum. Immediately he tried to contact the driver with walkie-talkie to find out the reason but since no response was received he proceeded towards train engine and met his Assistant guard sustaining injury who informed about head-on collision between up goods train and his train at the station. He further stated that he advised his Assistant to get first aid as well as to inform regarding the accident. He also advised his driver found standing along with L.I and DAD to get first aid for their injury. During cross examination the witness deposed that breathalyser test was not being done ever since he has been working as Guard from 1995. He did state that protection of rear of his vehicle was not necessary after the accident since the last vehicle was within up starter of Kamakhya station. He added that there was neither unusual occurrence nor any problem after the departure of the train from Guwahati till it reached at Kamakhya. According to him occupation of passenger was moderate and weather condition and visibility were normal.

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5.3 Shri B. Apparao, Working Driver, Up Lunding Foodgrain : (DOB : 01.07.1950, DOA : 10.05.1970, Working in the present grade from 02.07.2000) The witness stated that on 28.01.02 after departing from Azara station while he was approaching Kamakhya station the Up Distant Signal was exhibiting one yellow and Up Home Signal was exhibiting one yellow and finding the same he proceeded towards KYQ station. After passing home signal he found white light on line No. 1 and presuming a train was already on the same line he started controlling his train by reducing the speed. But the train collided with the stationary train in spite of his endeavour. He deposed that condition of the brake power of the train was good which he tested enroute. The head light of the engine was functioning properly. He further added that weather and visibility were good and he was driving in the long hood. He further stated that there was no problem with any signal in the up direction but in the down direction the visibility of distant signal of Dudnai station was not clearly visible because of broken roundel. He deposed that two speedometers were fitted in his loco and both were showing the same speed. At first he deposed that the train speed was 20 Kmph while it was passing the Home Signal but during cross-examination he mentioned, it could have been 15 Kmph and again when he was asked that speed recording graph indicated the speed of the train at about 40 Kmph at the time of collision he replied that it might have been possible due to down gradient after home signal. He further deposed that he was aware of the down gradient but he was unable to place any reason of not controlling the speed of the train at the time of entering Kamakhya station. He stated that he observed the abnormal exhibiting of signal at Kamakhya station indicating up direction distant signal being yellow and home signal as green but he never reported in writing regarding conflicting aspect of the signal though verbally it was reported to the Crew Controller. He added that green aspect of home signal comes when the train is required to run through any of the lines and at that time the train should run at a speed which is maximum permissible i.e. 60 to 65 Kmph. He further stated that BCN rakes can be stopped within a distance of 20 meters if it is moving at a speed of 15 Kmph. He admitted during cross examination that collision took place due to excessive speed of his train because as per his own statement the train could have been brought to a stop within a distance of 100 to 150 meters after the Up Home signal which meant that in that case there would have been a gap of 300 meters between the two trains. He further stated that he did not apply emergency brake, which was applied by DAD. He deposed that after crossing distant signal he found that the home signal was showing yellow aspect and that is why he did not control the train speed. He further deposed that no deficiency was recorded in the loco log book and according to him the accident took place at 22-50 hours. He stated that he neither encountered any defective signal nor he was issued any OPT/27 to pass any signal defective except at Abayapuri station where he was issued OPT-27 to pass the defective Home signal at "OFF" position. During cross examination he reconfirmed that at Kamakhya station both up distant signal and home signal were exhibiting single yellow aspect. He stated that he never experienced any problem with the brake power of the train during the entire run. He was subjected to Breathalyzer test at New Bongaigaon and the test was negative. He further stated that he was not in the habit of consuming alcohol while on duty though prior to 1998 he used to consume the same occasionally at home.

5.4 Shri S.N. Bora, Working DAD of Up Lunding Foodgrain : (DOB: 28.12.59, DOA: 19.02.81) The witness corroborated the statement of the driver of the train. He stated that he applied

- xxvi) Long hood all handle rod damaged
- xxvii) Long hood right side bubble dresser shifted & leaking.
- xxviii) (8L, 8R, Cylinder Head near) Engine Block Foundation Plate broken.
- xxix) M.R. 1 A.D.C pipe line drain cock damaged.
- xxx) M.R. No. 1 all inlet & outlet pipe completely damaged.

3.3.3

Damage to coaches of 5658 Down

Sl. No.	Coach No.	Damage.
1.	NIR VPU 16820	Smashed and under frame bent, body sheared, trolley damaged
2.	NIR VPU 16835	- Do -
3.	NE SLR 8749	Springs worked out, dash pot broken

3.3.4

There was no damage to any of the wagons of Up Lunding Foodgrain

3.4

Cost of damages in rupees

a)	Locomotive No. 16267	80,00,000/-
b)	Locomotive No. 17361	5,00,000/-
c)	Rolling Stock (5658 Down)	30,25,000/-
d)	Rolling Stock (Up Foodgrain)	Nil
e)	Permanent Way	9,00,000/-
f)	Signalling	2,00,000/-
g)	Electrical	Nil
Total		1,24,27,000/-

IV. LOCAL FEATURES

4.1

The Section and the Site:

4.1.1 The accident took place in the civil district of Kamrup at Kamakhya Station at Km.401/8 of Guwahati - Agthori Broad Gauge Single Line non electrified section of Lunding Division of Northeast Frontier Railway (Annexure-III). The soil is yellow coloured soft morum and the track is on about 2 Metre high bank. The alignment is straight and level at the point of accident but falling gradient in the line from Azara side. The weather and visibility were clear at the time of accident

4.1.2

The permanent way at the place of accident consisted of 52 Kg. rails of 1983 B4 with 3% wear. Sleepers were PSC with density of M+4 and laid in 1995-96. There was no

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unserviceable sleeper in the vicinity of the accident spot. The fishplates were 610 mm long with 2 mm diameter bolt holes. The fish bolts were 180 mm long with 25 mm diameter and no washer was used. The ballast was 50 mm size hard stone with average cushion of 200 mm.

4.2 Signalling:

The section is provided with Multiple Aspect Colour Light Signals and means of operation is Route Relay Interlocking. Standard III interlocking is provided on BG side and Standard I on MG side.

4.3 The kilometerages referred to in this report are reckoned from New Jalpaiguri as under:

1.	New Jalpaiguri	Km.	0.00
2.	New Coochbehar	Km.	126.19
3.	New Bongaiaon	Km.	251.41
4.	Rangiya	Km.	360.76
5.	Accident Spot (Kamakhya Stn.)	Km.	401.80
6.	Guwahati	Km.	403.28
7.	Azara (via Goalpara)	Km.	414.17

Km. 162.76 (from NBO)

4.4 Headquarters, System of Working and Train Speed:

4.4.1 The control office is at Guwahati. Senior Divisional Signal and Telecommunication Engineer is head of the division both for signal and telecommunication side. The system of working is absolute block system.

4.4.2 For section via Rangia, DEN is headquartered at Maligaon and AEN is headquartered at Guwahati. PWI and APWI are also headquartered at Guwahati. For section via Goalpara DEN is headquartered at Alipurduar and AEN is headquartered at Goalpara. PWI is headquartered at Chaigaon and APWI is headquartered at Azara.

4.4.3 The maximum permissible limit of speed of track in the section via Rangia is 75 KMPH and via Goalpara is 80 KMPH. There were neither any temporary nor any permanent speed restrictions in the vicinity of the yard.

V. SUMMARY OF EVIDENCE

Running Staff:

5.1 Shri P.N. Pandey, Working Guard Up Luring Goods Train: (DOB :10.08.48, DOA: 30.08.66, Length of service: 35 Yrs., 5 months, Length of service in present rank : 1 year & 2 months) The witness stated that after leaving Azara station at 22-18 hours while the goods train was

emergency brake before the collision and after applying the same he lost his sense since he was injured due to impact of the collision. He stated that on 28.01.2002 both the distant signal as well as home signal of Kamakhya station were yellow. He stated further that on 28.01.2002 his loco passed the Home signal at yellow at a speed of 15 Kmph. As stated by him, his train could be stopped within a distance of 20 to 30 meters if it runs at a speed of 15 Kmph. He could not reply satisfactorily when asked how his train passing home signal at 15 Kmph could not be stopped after seeing the head light of opposite train although a gap of more than 180 m was still available. He added that he was not subjected to breathalyzer test at New Bongaigaon. Moreover, during last one year he was not subjected to such tests either at New Bongaigaon or at New Guwahati.

5.5

Shri K. Singh, Driver, 5658 Down Kanchenjunga Express : (DOB: 18.07.44, DOA: 01.03.62) The witness stated that on 28.01.02 after departing from Guwahati at about 22-20 hours his train hauled by locomotive No. 16267 (WDM2) was going to halt at Kamakhya station at about 22-35 hours. At that time he saw the light of a train which was perhaps coming on the same line. He alerted the Loco Inspector and before they could further think, the train from opposite direction came and rammed against his train. As a result he sustained injury. He deposed that one electrical and one mechanical speedometer were provided with his engine and both were showing the same speed. He further deposed that his train was provided with vacuum brake. He stated that while his train was being received at Kamakhya, Distant Signal was exhibiting double yellow and home signal yellow with route indicator for line No. 1. He mentioned that at the time of accident his train was about to stop and when he realised that opposite train was coming on the same track, he released both SA9 and A9 with the intention that in case of collision his train could be pushed back, minimising the impact. He was not sure whether the Automatic Vigilance Control device was fitted in his loco. He estimated the speed of the opposite train at about 32 to 35 Kmph.

5.6

Shri S. Marak, Senior DAD, 5658 Down : (DOB : 18.02.68, DOA: 27.10.92) The witness corroborated the statement of the working driver of the same train and stated that while his train was approaching at Kamakhya, Distant Signal was exhibiting double yellow and home signal yellow. He was not subjected to breathalyzer test at Guwahati. He faintly recollected that perhaps 2 months back he was subjected to such a test. He stated further that head light, flasher light and speedometers were in working condition and weather and visibility were good. He stated that after the accident the train got pushed back about one coach length. He estimated the speed of the opposite train between 25 to 40 Kmph.

Operating Staff:

5.7

Shri G. Sarma, Leave Reserve/Assistant Station Master/Azara : (DOB: 01.03.66, DOA: 31.01.92) The witness who was on duty from 18.00 hours of 28.01.02 to 6-30 hours of 29.01.02 at Azara station stated that after getting line clear from Assistant Station Master, Kamakhya and exchanging all right signal with Guard the Up Lumding Foodgrain left Azara station at 22-13 hours of 28.01.02 and at about 23.00 hours he was informed by the Alipuduar Control that the train collided head-on with 5658 Down at Kamakhya station. He deposed that the driver of the Up

Lunding Foodgrain did not complain about the brake power of the train at his station. He further stated that head light of the locomotive of the Goods train was all right. He mentioned that it takes long time after despatch of an Up goods train from his station and receiving of in reply from Kamakhya since trains stop at Home signal for half an hour or so for passage of main line trains. In case of direct reception from Azara it takes 25 to 30 minutes approximately.

5.8 ✓ Shri P. Das, Assistant Station Master, Kamakhya : (DOB: 01.07.71, DOA: 02.03.01) The witness who was performing duty from 21-00 hours of 28.1.2002 to 07.00 hours of 29.01.02 at RRI cabin, Kamakhya stated that as per instruction of SCR/Area Control/GIT he granted line clear for 5658 Down to receive on line No. 1 and granted line clear for Up Lunding Foodgrain which would remain outside Up Home-Signal on Goalpara line. After getting 'out' report of 5658 Down from Guwahati west cabin he instructed the gateman to close the gate. The train arrived at Kamakhya at 22-30 hours and while it was entering he heard a loud sound and immediately he came out of the cabin but could find nothing. After 15 to 20 minutes he was informed by the ASM/Indoor that Up Lunding Foodgrains collided with 5658 down on line No. 1. Immediately he intimated the matter to on duty SCR/Area Control/Guwahati to call for ARME and ART. He deposed during cross examination that after the accident the up home aspect was red and up distant signal was one yellow on Azara side. He deposed that distant signal has 'single yellow' or 'double yellow' aspects and for home signal there are two aspects viz. yellow or red aspect with route indicator. He accepted during cross examination that he was not very clear regarding conflicting signals. He mentioned that he has not come across any complaint from the driver or guard regarding Up distant and Up Home from Azara side particularly with regard to any conflicting aspect or poor visibility. He opined that the accident was caused due to disregard of Home signal by the driver of Up Lunding Foodgrain.

5.9 Shri M. Rahman, Pointman 'B' Azara : (DOB: 01.01.72, DOA: 29.04.99) The witness who was on duty from 18-00 hours of 28.01.2002 to 06-30 hours of 29.01.02 stated that Up Lunding Foodgrain, which was standing at Azara station, left after receiving line clear from Kamakhya station and after that he exchanged all right signal with Guard. He deposed that the condition of the head light of Up Lunding Foodgrain was normal and bright. He further deposed that most of the trains stop at Azara station due to non receipt of clearance from Kamakhya station.

DOA: 07.07.77, Length of service: 24 Yrs. 4 months. The witness stated that on 28.01.02 at 22-50 hours from Senior Area Manager, Guwahati siren for ARME was blown at 22-52 hours. ARME was placed on line No. 1 from sick line, which left for Kamakhya at 22-35 hours and arrived Kamakhya at 0.45 hours. He added that subsequently he informed ASM/CGS and DYCC/Maligaon to call all accident relief trains. He stated that he had not been imparted any special training for working in control office though he had been imparted 'On Hand Training' for one month to pick up learning knowledge of control office. He explained how the records of train movements are being kept in the Control Diary. He deposed that planning was made for various movement of trains at Kamakhya from 22-00 hours to 23-00 hours on 28.01.02 indicating despatch of 5658 Down from GIT to KYO via double line and after due stoppage at KYO this train was to be

despatched towards APDJ for which Up Lumding Foodgrains was to be controlled at Up Home signal and 5622 Up NE Express was to be despatched via south line because the north line was blocked by Down goods train due to stalling between KYQ and GHY. He stated that it was not possible for a train from Goalpara to enter at a speed more than 15-20 Kmph since there is no direct despatch via line No. 1 and south line and for passing through line No. 2 or line No. 3 cross-over were to be negotiated either at the trailing end or facing end which meant that train speed had to be controlled to 15-20 Kmph. He further stated that GR 4.01 and SR 4.01/1 were not being followed in the Area Control at Guwahati. He added that he would like to introduce the system with immediate effect. He felt that it will be advantageous of having a tapping of Area Control circuit, Guwahati at Azara in Alipurduar Division. According to him the accident took place due to over shooting of Up Home signal by the Driver in "ON" position. He did state that there was delay in despatching ARME by 20 minutes since it was placed on the sick line and there was delay in despatching ART as well since the crane was under repair.

5.11 Shri S.C. Das, Station Manager, Kamakhya Station; (DOB: 01.03.48, DOA: 17.04.76) The witness stated that AGM, N.F. Railway, Maligaon was to travel by 5658 Down Kanchenjunga Express and accordingly after arriving station at 21-00 hours talked to Area Control, Guwahati regarding position of Inspection Carriage and checked the various features of the platform and then went to platform No. 1 to accompany AGM/N.F. Railway where Sr. Area Manager, Guwahati was also present. He further stated that 5658 Down after arriving on platform No. 1 at 22-35 hours while it was going to stop, all of a sudden a loud sound was heard from engine side and immediately he rushed to the front side and found that Up Lumding Foodgrains collided head on with 5658 Down Kanchenjunga Express. Immediately he informed all concerned and extended assistance in rendering first aid as well as sending injured passengers to hospitals. He mentioned that as per intimation received from Area Control, 5622 Up was to be received on line No. 3 at about 22-10 hours. 5658 Down was to be received on line No. 1 from Guwahati. He admitted that he got confused with the various aspects of the different signals at Kamakhya station and he felt the need of refreshing his knowledge. He stated that he could not render any medical assistance to the injured crews since they were away though he did render medical aid to the injured passengers.

5.12 Shri R.K. Goswami, Assistant Station Master, Kamakhya; (DOB: 01.03.69, DOA: 02.03.2001) The witness who was on duty at Kamakhya station from 21-00 hrs. of 28.01.02 to 07-00 hours of 29.01.02 stated that planning was made to receive 5658 Dn on line No. 1 and despatched after stoppage. Up Lumding Foodgrain was to be detained at Up Home signal which would be despatched through to Guwahati via south line after departure of 5622 Up N.E. Express. Accordingly at 22-30 hours 5658 Dn (in which AGM/N.F. Railway was to entrain from Kamakhya) came on line No. 1 at Kamakhya station and while it was about to stop at that moment he heard a loud sound and immediately he ran to the front side of the engine and found Up Lumding Foodgrain had collided head on with 5658 Down on line No. 1. He stated that he informed the matter to on duty ASI, RRI, Area Control, Central Control, Central Hospital and all other persons concerned. After that he extended co-operation in restoration work and medical assistance. He deposed that it was a general practice to detain up trains from Azara at the Home Signal and later on despatched the

same to Guwahati after availability of particular line. He further stated that as per interlocking plan, direct despatching of trains from Azara side was not permitted through line No. 1 but it was possible to despatch directly through line Nos. 2 and 3. He stated that ~~it was possible to have both distant and home signals yellow with home signal route indicator either showing line No. 2 or line No. 3.~~ He also stated that if the train from Goalpara was to be received on line No. 1, the distant signal would be green with home signal showing yellow without route indicator. He deposed that during his tenure he has not come across any signal failure or any conflicting aspect of signal. He mentioned that on 28.01.02 he informed the Station Manager regarding the position of various train running at Kamakhya and at the time of accident he was on the eastern side of platform No. 1 and according to him the accident took place at about 22-32 hours. He added that prompt medical attention was rendered to injured passengers. He stated that there was no last minute change in the train running and he opined that accident took place due to over shooting of home signal at Danger by Up Lumding Foodgrain.

5.13 Shri S. Ghosh, Assistant Station Master, Guwahati: (DOB: 8.10.55, DOA: 12.11.83, Length of service 18 Yrs.) The witness who had been performing duty at west cabin of Guwahati from 2100 hours of 28.01.02 stated that after obtaining line clear from Kamakhya at 22-12 hours, he informed Cabin man of ST/10 and ST/11 to close the gate. 5658 Dn. left Guwahati at 22-20 hours. He was informed by the Section Controller, Guwahati about the accident. He further stated that 5658 Dn. was not overcrowded. He stated that as per planning of Area Control 5658 Dn. was to be despatched via south line and on arrival at KYQ, 5622 Up was to be despatched from KYQ via south line as north line was blocked by stalled BTRA Neptha. He added that there was no last minute change in the planning of train running. He deposed that ARME suffered a delay of 25 minutes since it was not stalled on the nominated siding and the same was placed in the pit line at Guwahati for some repair works and ART also suffered detention.

5.14 Shri A. Banik, T.I/Guwahati: (DOB: 31.01.61, DOA: 16.04.84, Total length of service: 17 Yrs., Length of service in present grade: 11 months) The witness stated that on the day of accident he had gone to Changsari Station for conducting surprise/night inspection and at the time of returning he came to know of the accident from Area Control. He stated that on reaching Kamakhya station he met Sr. Area Manager/Guwahati who advised him to go to RRI/Cabin/Kamakhya and co-ordinate him shunting as per requirement of ART staff. He deposed that before his arrival at Kamakhya station at about 3.45 hours of 29.01.2002 all the documents including the ASM's key for the Relay Room have been seized by Shri Mushahary, T.I/Guwahati. He stated that he carried out detailed inspection on 23.09.2001 and non detailed on 16.01.2002 of Kamakhya station. He stated that neither he carried out test in the Up direction i.e. Azara side Home and distant signal for their proper functioning nor conducted any foot plate inspection from Azara to Kamakhya direction during last six months. He deposed that the accident took place due to disregard of Up Home Signal at red by the driver of Up Lumding Foodgrain. According to him conflicting signal was not possible. He stated further that he did not receive any complaint or information of any conflicting signal being displayed at Kamakhya station either during his stay or

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from earlier records. He stated that during his working as T.I. since April 1984 he had not come across any such instruction indicating preservation of clues and sealing of relay room etc.

5.15

Shri K. Das, Pointsman, Kamakhya Station : (DOB: 01.01.53, DOA: 23.11.79, Total length of service: 22 Yrs & 2 months, Length of service in present rank: 9 Yrs. & 2 months)

The witness who was on duty at Kamakhya from 21-00 hours of, 28.01.02 stated that 5658 Dn. was received with proper signal. The train passed the RRI cabin with tail lamp. While it was on line No. 1 he heard a loud sound and on reaching the site he found that the collision had taken place. He added that at the time of accident the speed of 5658 Down was about 5 to 10 Kmph.

5.16

Shri S.C. Mushari/TI/Guwahati : (DOB: 01.03.64, DOA: 10.11.90, Total length of service: 11 Yrs. & 2 months, Length of service in present rank : 2 Yrs. & 10 months) The witness

stated that he was present at Kamakhya station platform at 21-50 hours with Senior Area Manager/Guwahati to attend AGM/N.E. Railway who was in 5658 Down. When the train was being received on line No. 1 and going to halt at platform No. 1 suddenly a loud sound was heard and after proceeding towards engine side he noticed that head-on collision had taken place. After intimating all concerned as per instruction of Sr. Area Manager/Guwahati he went to RRI Cabin for seizure of concerned documents as well as to preserve clues. After the accident he happened to see the 5658 Up Lunding Foodgrain on the platform and he did not smell alcohol. He deposed that on 29.01.02 he told Sri Goswami on duty ASM to seal the relay room. He further deposed that at the time of collision, 5658 down was about to halt and after the collision 5658 Down got rolled back by at least 50 meters and from the sound of the collision he could estimate the speed of Up Lunding Foodgrain at 35 to 40 Kmph. According to him the accident took place due to disregard of signal at Danger by the driver of Up Lunding Foodgrain.

5.17

Shri J.S. Meena, Senior Area Manager, Guwahati : The witness stated that he

was on protocol duty at Kamakhya station along with AGM/Maligaon. Immediately after arrival of 5658 down at 22-33 hours on platform No. 1 a loud sound was heard and the train got pushed back towards Guwahati end and he was shocked to observe that a goods train from Up direction collided head-on with Down Kanchenjunga Express. He intimated the matter to control from ASM cabin. He provided his vehicle to shift the injured passengers to Maligaon hospital and asked all concerned to render first aid to injured persons. He added that at about 23-15 hours CSO, CME, CSE, Sr. DEN and other branch officers reached the accident spot. He stated that out of 2 deceased persons, next of kin of one deceased and injured passengers were given exgratia payment and the second deceased person had not been paid since next of kin was not available. He deposed further that after the accident initially there were some dissatisfaction among injured passengers regarding medical assistance but they were promptly attended to by shifting the injured to Central Hospital. He mentioned that there was delay in placing of ARME in the ARME siding for which staff had been taken up. He opined that from the joint observation it revealed that accident took place due to overshooting of home signal at Danger and entering into line No. 1 by Up Lunding Foodgrain. He stated that present orientation was to allow train on the line No. 1 from Guwahati end and line No. 3 from Agthori end simultaneously and therefore provision of a second trap was a better solution.

S&T Staff:

5.18 Shri A. Ghatak, Section Engineer/Signal/Kamakhya : (DOB: 08.02.63, DOA: 11.12.85, Total length of service 17 Yrs & 3 months, Length of service in present grade 1 Yr. & 5 month) The witness stated that immediately after being informed of the accident he rushed to the cabin along with Sr. Section Engineer/ Signal/ Guwahati and took the note of panel position. He further stated that the position of the panel was jointly recorded by the SSE/Signal, Guwahati, SSE/P. Way/Guwahati and TI/Guwahati on 28.01.2002 at 22-45 hours. He stated that during joint inspection all the signal aspects were in danger position and no unusual feature of the panel was noticed. He stated that it was not possible as stated by the Driver and DAD of Up Lumding Foodgrain that the distant signal and home signal of Kamakhya from Azara side were displaying yellow aspect with home signal displaying no route indicator. Moreover test was conducted to disprove the possibility by keeping a train on line No. 1 in presence of Dy. CRS (S&T)/ Kolkata and the possibility of such signal aspect could not be proved. He affirmed that relay room was not opened after the accident and was double locked till it was opened in presence of Dy. CRS and other officers. He added that he inspected the Kamakhya last on 16.01.02 and no problem was observed. He admitted that during foot plate inspection of Dy. CRS/S&T on the night of 30.01.02 the visibility of Up Home signal was not satisfactory due to orientation of signal.

5.19 Shri J. Datta, MCM/ KYQ : (DOB: 30.6.53, DOA: 24.11.76) The witness who was on duty from 13-30 hours to 21-30 hours stated that relay room was opened after observing necessary formalities for taking down relay contact utilization for preparation of completion diagram. He further stated none of the relays were either handled or operated since it was through visual observation. He further stated that nothing unusual was noticed at the time of end of his duty hours i.e. at 21-30 hours of 28.01.02.

5.20 Shri T.K. Sen/ Technician//Kamakhya : (DOB: 25.12.63, DOA: 06.03.86, Total Length of Service : 15 Yrs. & 10 Months, Length of service in present rank: 10 Yrs.) The witness was on night duty from 21.30 hours. He stated that after being aware of the accident immediately he informed SE/SIG/KYQ about the accident at 22-37 hours and jointly recorded the panel position at about 22-45 hours of 28.01.02 and thereafter he along with SE/SIG/GHY, who arrived subsequently, went to the accident spot and inspected all the points and observed visually that the trap point No. 71X got damaged. He deposed that after taking over charge he checked up relay room register and found that the relay room was opened during the previous shift but no problem was found in the panel. He stated that he was not aware that relay position should be noted for the purpose of inquiry but he noted the panel position. He added that joint observation of panel was noted by SSE/Signal/KYQ, SASM on duty, TI, and one more officer when he himself was also present. He clarified that both Up home signal and up distant signal from Azara side cannot have single yellow aspect. Just after the accident Home signal was showing red with distant signal yellow. He stated that he had not checked up the visibility of Up Home Signal and Up distant signal from Azara side.

5.21 Shri S. Banik, Technician/II/ Guwahati : (DOB: 02.11.1960, DOA: 19.02.80, Total length of service: 21 Yrs. & 11 months, Length of service in present rank: 10 Yrs.) The witness stated that while performing duty from 07-30 hours on 29.01.2002 he came to know of the accident. He found Relay Room was under double lock which was sealed at about 08-30 hours of 29.01.02 by ASM/KYQ in presence of TI/GHY. He deposed that he had some doubt about the date when the relay room was last opened before the accident. He further deposed that he accepted his mistake for not furnishing of the correct information of last opening of Relay Room prior to the accident.

5.22 Shri T.K. Mukherjee, JE-I/CON/Drawing/Maligaon : (DOB: 14.02.67, DOA: 13.11.90, Total length of service: 11 Yrs. & 2 months, Length of service in present grade : 9 days) The witness stated that on 28.01.02 at 15-15 hours he had accompanied Mr. Parial, Apprentice Inspector as per instruction of SSTE/Construction to verify the contact and configuration with the approved circuit and also to provide contact number as per availability at site i.e. from the Relay Room. One ESM from open line was present at that time with him. He deposed that Mr. Parial the Apprentice Inspector did not make any changes in the relay position and by visual observation asked him to make the changes in the drawing sheet. He further deposed that after their work the Relay Room was locked by the ESM belonging to Open line.

5.23 Shri A. Parial, Apprentice/JE-II/Signal : (DOB: 27.05.65, DOA: 21.03.89, Total length of service: 12 Yrs. & 11 months, Length of service in present rank: 7 months) The witness stated that he along with Shri T.K. Mukherjee, JE-I/DRG/Con/MLG went to RRI/Kamakhyia office at about 15-15 hours of 28.01.02 for tallying of contact chart in connection of completion drawing and Shri J. Dutta/MCM/Kamakhyia was present at that time. He deposed that he had gone for only visual inspection and no relay position was changed by him. He stated that after their work Shri Dutta locked the Relay Room with both the keys and was seen going towards RRI cabin for handing over the key which was confirmed by Sri Dutta when he intimated the depositing of the key from the cabin.

Medical Department:

5.24 Dr. D.K. Das, Senior Divisional Medical Officer, Central Hospital, Maligaon : He opined that smell of alcohol, while examining Shri B. Apparao, the driver of Up Lunding Foodgrain, was found but the test for Ethyl alcohol in blood did not reveal the presence of it which might happen in case of consuming less amount of alcohol or if it was taken much earlier. He further opined that ~~during clinical examination the driver was not found in inebriated condition~~ and had full consciousness having normal gait. He added that prompt medical attention was rendered.

Civil Engineering Staff:

5.25 Shri P.N. Ram, SSE/PW/GHY : (DOB: 04.07.59, DOA: 24.11.84, Total length of service: 18 Yrs., Length of service in present grade: 17 Yrs. & 2 months) The witness stated that after reaching the accident spot at 23-50 hours of 28.01.02 he ensured train protection and

inspected the extent of damage to the track and relayed the same to Central Control for arrangement of materials for early restoration. Joint observations of track, wagons, coaches, engines and signal position were made by SHY, SSE/Signal and SSE/Mech. He stated that during joint observation no skidding mark on the rail top was noted due to application of emergency brake by the driver of Up Lumding Foodgrain. He stated that trap point was found partly in open condition and there was clear wheel mark over the tongue rail and the tongue rail got twisted. He opined that joint observation indicated that the trap was open and was forcibly closed or attempted to be closed by the passage of Up Lumding Foodgrains in the trailing direction. According to him the accident took place due to overshooting of home signal at danger by the Up Lumding Food grain. He stated that after the accident Up Home signal and Up distant signal of Azara side were red and yellow respectively. He added that the Trap Point No. 71X was found in good condition when last inspected by him on 16.01.2002. As depicted by him, the jurisdiction of Lumding Division extends up to Trap Point No. 71X (Km. 174/8) which means that a small portion of KYQ yard including the Points & Crossing is under Alipurduar Division. He admitted that the entire yard should be under one Division.

5.26 Shri T. Ali Golegan, Azara (DOB: 31.12.1952, DOA: 13.10.1982, Length of service: 20 Yrs.) The witness who was on duty from 10-30 hours of 28-01.02 stated that Up Lumding Foodgrain passed at 22-25 hours over the level crossing gate No. 275. He stated that the gate had a telephone connection with Kamakhya. Both the driver and guard of the Up Lumding Foodgrain exchanged signal. According to him the train was going on normal speed like other trains.

Mechanical Staff:

5.27 Shri P.C. Das, LINGC : (DOB: 06.06.45, DOA: 19.02.66, Total length of service 36 Yrs., Length of service in present rank : 2 Yrs. & 2 months) The witness stated that his jurisdiction was from Guwahati to Lumding, Guwahati to New Bongaigaon via both Goalpara and Rangia. He stated that before issuance of competency certificate to a driver he travels with the driver concerned to check the knowledge of signal, knowledge in trouble shooting, alertness and signalling system. Shri B. Appa Rao, the working driver of Up Lumding Goods train was given competency certificate after following the due procedure. In answer to a question he admitted of having knowledge of a few corrections in the Competency Book of Shri B. Appa Rao but he had no knowledge of the large number of over-writings in the Competency Book. Replying to a question he ~~stated that he has seen Up Distant signal and Up Home signal of KYQ from Azara side being single yellow without route indicator.~~ He also stated that Up home signal of KYQ from Azara had three route indicators. Further questions put him exposed his extremely poor knowledge of signalling system in general and of the section under him. He was specifically asked that after seeing the condition and damages of trap point No. 71X after the accident, what could be his observation. He replied that apparently the damage was caused when a Up Lumding Foodgrain trailed through the open trap and trying to close it forcibly. On his claim that defective signals are recorded by the driver in the Lobby Register, he could not substantiate his claim when the Lobby Register was produced before him as it did not contain any such entry. He could not produce any diary or any inspection note to support his claim for observing any defective signal of KYQ while approaching from Azara.

5.28 Shri S.P. Paul, SSE (C&W) /NGC : (DOB: 17.03.45, DOA : 05.09.62, Total length of service: 39 Yrs. & 7 months, Service in the present rank : 12 Yrs. & 5 months) The witness stated that as per instruction of CDO/ Guwahati he along with TI/GHY and SSE(Signal) recorded the brake power of Up Lumding Foodgrain at Azara and it was found to be 92%. He stated that no grazing mark on rail head was noticed to indicate that the emergency brake of the goods was applied. He further stated that the condition of trap No. 71X was partly open and no damage to the trap point was noticed by him. He added that the condition of rake of Up Lumding Foodgrain was good so far as running gear, brake gear and buffing are concerned. He mentioned that there was no deficiency or missing of any safety items in the BCN wagons.

Commercial Staff:

5.29 Shri K. Bhowmick, Chief Travelling Ticket Inspector/II/APDJ : (DOB: 12.04.55, DOA: 15.05.78, Total length of service: 24 Yrs., & 7 months) The witness was on duty as Batch Incharge by 5658 Dn. of 28.01.02. As per his statement the train left Guwahati at 22-15 hours. After arrival at Kamakhya station at about 22-35 hours he suddenly felt a heavy jerk and a heavy sound was heard and the train started to rollback and as a result of the impact he sustained minor injury. He stated that the train occupation was about 70% including general compartments. He deposed that after the accident there was no complaint for loss of belongings or lack of medical attention. He added that necessary medical attention was rendered in association with the Guard with the help of First Aid Box. He deposed that no body inside the train was killed due to the accident but passengers sustained injury. He further clarified that the accident took place almost simultaneously as it was coming to a stop.

Security Staff:

5.30 Shri R. Das, Head Constable/RPF/Pandu : (DOB: July, 1943, DOA: In the year 1962, Total length of service: 38 Yrs., Length of service in present rank : 19 Yrs.) The witness who was on duty at Kamakhya station from 18-00 hours of 28.01.02 to 06-00 hours of 29.01.02 stated during his duty hours the head-on collision took place on line No. 1. Immediately he cordoned the area and rendered medical assistance to the injured persons. He further stated that he did not receive any complaint regarding loss of belongings by any passenger of 5658 Dn. Kanchenjunga Express. He deposed that among two deceased, one was a constable from GRP and the other was not known to him.

VI. TESTS AND OBSERVATIONS

6.1 (a) Brake power of Up Lumding Food Grain

The driver of the train stated that the brake power was good and he tested it enroute. The guard of the train also confirmed the above and quoting from BPC he mentioned that the air pressure in the loco was 5 kg per cm sq. while in the brake van it was 4.8 kg. per cm sq. Out

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of 41 cylinders 39 cylinders were in operative condition. The brake van was also fitted with quick coupling. Both the driver and the guard confirmed that there was no problem with brake power till the time of accident.

The brake power of Up Lunding Food Grains was tested jointly by SSE (C&W)/New Guwahati, TI/Guwahati and SSE/Signal/Guwahati (Annexure IV) after the accident on 29.01.2002 at Azara station and found it to be 92%. It is, therefore, confirmed that the train had prescribed brake power on its entire run from New Bongaigaon to Kamakhya Station.

(b) Observations on signalling system

A joint observation of the panel position of RRI cabin was taken by SSE(Sig)/Guwahati, SE(P.Way)/Guwahati and TI/Guwahati at about 2245 hours on 28.01.2002 (Annexure V). It was observed that points No. 73, 67 and 69 were normal and 68 was in reverse condition. This indicated that (i) signals were not initiated for line No. 2 and 3 from Azara side and the signal initiated from Guwahati side to line No.1 only from the South line and (ii) the track circuit OFT (Line No.1) 67 AT, 71 X/73 AT and 76 AT were in dropped condition. This indicated that track circuits responded correctly as they were occupied by 5658 Dn. and Up Lunding Foodgrains.

From the above observations the probability of lowering signals for line No.1, 2 and 3 from Azara side and malfunctioning of track circuit of line No.1 are discounted.

(c) Visibility of approach signals

A joint test was conducted on 30.01.2002 both during day and night jointly by Dy.CRS(S&T)/Kolkata, Dy.COM/Safety and Sr.DSTE/Lunding (Annexure VI) and it was observed that Up distant was visible from the sighting board and Up Home Signal was visible from a distance of 200 m. During night time the visibility of the same signals were 600 m and 250 m respectively. The technical note of Dy.CRS(S&T)/Kolkata (Annexure-XIII) has suggested for improving visibility of sighting board of Up Distant signal of KYQ (Goalpara side) by providing luminous tape and to improve the visibility of Up Home signal by realigning the off set bracket and proper focusing.

(d) Interlocking and simulation test

On 31.01.2002, the interlocking of Kamakhya RRI(BG) was jointly tested by Dy.CRS(S&T)/Kolkata, STM/Safety/Maligaon and Sr.DSTE/Lunding (Annexure VII) and found that the interlocking was in proper working order. A test was carried out by simulating the condition prevailed at the time of accident i.e. line No.1 being occupied by a train and attempting to receive a train from Azara side to line No.1. But the Up Home signal of Kamakhya (Azara side) remained in danger condition with distant signal showing single yellow aspect.

From this test it is clear that the claim made by both the driver and the DAD of the goods train that both the distant and the Home signal were yellow is false with a motive to mislead the inquiry.

(e) Joint observation of points

A joint observation of the relevant points at Kamakhya station and spot findings were made by SSE/Sig/Guwahati, SSE/P.Way/Guwahati, SSE/Mech. and TI/Guwahati (Annexure VIII & IX). It was observed that point No.67A was in normal condition i.e. set in favour of Azara side and had no hitting mark or any other defect. It was also found that the derailing switch No.71 X which is in the facing direction from Guwahati side and in trailing direction from Azara side was found to be in damaged condition. Both the driving and locking rods were bent. There was a gap of about 2". The switch of 71X was bent apparently due to trailing through. This indicates that the trap point 71X was in open condition. This is also confirmed from the joint track measurements (Annexure-X) of the senior subordinates.

From the above observations it appears that the goods train trailed through the open derailing switch and forcibly tried to close it during the passage of wheels causing extensive damage to the switch. There is no sign or mark of derailment before the derailing switch No.71X to indicate that the point might have been damaged as a result of derailment.

VII. DISCUSSIONS

7.1 Time of accident

According to the driver of Up Lumding Food Grain the train left the previous station Azara at 2215 hours and met with the accident at 2250 hours. As per the guard of 5658 Dn. Kanchanjanga Exp. the collision took place at 2237 hours. However, the Station Manager/Kamakhya who was present on platform No.1 of the station, the accident occurred at 2235 hours. The CTT/II/Alipurwar on duty in 5658 Dn. Exp. also stated the time of accident as 2235 hours. The driver and DAD of 5658 Dn. Exp. stated the time to be 2235 hours. From the foregoing, I estimate that the collision occurred at 2235 hours.

7.2 Speed at the time of collision

7.2.1 5658 Dn. Kanchanjanga Express : From the evidence of the driver as well as that of the DAD, the express train had entered line No.1 negotiating the turn out at 15 kmph and was about to stop when the accident took place. As per the guard of the train the train was about to stop on line No.1 and he even applied vacuum to stop the train so that last vehicle (RA 5906) stopped at a particular place. It may be mentioned that AGM/NF Railway was to entrain at Kamakhya Station and therefore the loco crew and the guard were extra cautious to control the speed suitably so that RA 5906 could position itself at a particular place. According to

CTTI(II)/Alipurduar Junction on duty in 5658 Dn., the collision took place simultaneously with stoppage of the express train. Hence the speed of the express train was almost zero at the time of collision.

7.2.2 Up Lumding Food Grain: According to the driver of Up LMG F/G, he crossed the Up Home signal of Kamakhya at 15 kmph. When it was pointed out that the speed recorder of the loco was showing a speed of 40 kmph at the time of collision, he admitted that it could be 40 kmph as there was down gradient. The DAD of the train in his evidence stated that the speed of the train was 15 kmph when he passed the Up Home signal. In reply to a question he stated that the train could be brought to a stop within a distance of 20 to 30 m from a speed of 15 kmph. Answering to another question he stated that after crossing first facing point No. 73A (located at a distance of about 180 m from the Dn. starter of line No.1 where 5658 Dn. was received) he realised that his train was being received on an occupied line as he saw the head light of the express train. When it was pointed to him that had the train been running at 15 kmph it should have been possible to bring the train to a stop (as per his own statement) within 20 to 30 m i.e. well ahead of the obstruction, he had "nothing to say". Therefore, the observations of both the driver and the DAD on the speed can not be given any credence. The driver of 5658 Dn. Express estimated the speed of the goods train at about 30 to 35 kmph. His DAD estimated the speed between 25 to 40 kmph. A scrutiny of the speedometer chart of the loco of the goods train indicated a speed of 40 kmph at the time of accident. All things taken into account and looking at the extensive damages sustained by the two locomotives (para 3.3 and Annexure XI) and the three coaches of the express train (para 3.3, Annexure XI & XII) I estimate that the speed of Up LMG F/G was 40 kmph.

7.3 Factors relevant to the cause of the collision

7.3.1 Was the brake power of Up LMG F/G adequate?

As per the BPC issued by Jn. Engineer/C&W, Ambala/Northern Railway on 24.01.02, the Up LMG F/G had an air pressure of 5 kg per cm sq. and 4.8 kg per cm sq in the loco and brake van respectively. It had 39 operative cylinders out of total number of 41 cylinders. Therefore, the train started with adequate brake power from Ambala. The Brake Power Certificate No. 03163 was valid up to destination. As per the existing instruction of NF Railway, any roller bearing stock of food grain received from other railway (in this case it was from Northern Railway) either via Malda or Kalihar, could be sent to the BG destination without requiring revalidation of BPC. Thus, the BPC issued at the originating station Ambala was valid up to Lumding. The crew of the Up LMG F/G in their evidence deposed that the brake power of the goods train was satisfactory. The driver also confirmed that he had tested the brake power enroute. The guard in his evidence also confirmed about satisfactory brake power. The Sr.DOM, Sr.DME and Sr.DSO of Alipurduar Division also confirmed in a joint note that the ill fated train did not report anything unusual.

As already discussed in para 6.1(a), the joint test of brake power of Up LMG F/G confirmed the brake power to be 92%.

In view of the above there is no reason to believe that there was poor brake power of Up LMG F/G.

7.3.2 Were the Up approach signals taken "off" or it remained "blank" for Up LMG F/G?

According to ASM/Kamakhya RRI, he consulted Section Controller, Area Control, Guwahati at 2155 hours and the following instructions were received:

- (a) 5622 Up from Rangia side was to be received on line No.3 (Platform 2)
- (b) to grant line clear for Up LMG F/G which will remain outside Up Home Signal on the Goalpara section
- (c) to grant line clear to 5658 Dn. Kanchanjanga Exp. and to receive the same on line No.1 (platform 1)
- (d) After despatch of 5658 Dn. from line No.1 towards Rangia, 5622 Up was to be despatched from line No.3 via South line (North line being blocked by Dn. BTRA NAPTHA from 2035 hours due to stalling).
- (e) at the 'in' report of 5622 Dn. at Guwahati, Up LMG F/G was to be received and dispatched through line No.2 via South line.

Accordingly, he granted line clear to 5622 Up at 2200 hours, to Up LMG F/G at 2205 hours and 5658 Dn. at 2210 hours. 5622 Up arrived on line No.3 at 2220 hours (at platform No.2). Then he asked line clear for 5658 Dn. from Agthori Station at 2223 hours after getting 'out' report of 5658 Dn. from Guwahati West cabin at 2220 hours. He then took 'off' signal for line No.1 and 5658 Dn. arrived Kamakhya at 2230 hours.

The Section Controller/Area Control/Guwahati also confirmed the above programme of reception and despatches of trains at Kamakhya station. The ASM/KYQ also confirmed the above planning of train movement in his statement. He also deposed that there was no last minute change in the above planning.

The ASM/RRI/Kamakhya confirmed that on Goalpara line, the Up distant was one yellow and Up Home signal was red as Up LMG F/G was to be stopped at the home signal. However, both the driver and the DAD of Up LMG F/G claimed that while approaching Kamakhya station both the Up distant signal and Up Home signal were showing one yellow.

A joint observation of the panel position of RRI cabin was taken by Sr. Supervisors at 2245 hours on 28.01.2002. As already discussed in Para 6.1 (b), the joint observation discounted the probability of lowering signals for line No.1, 2 and 3 from Azara side as well as mal functioning of track circuit No.1.

Further tests carried out by Dy.CRS(S&T)/Kolkata, Sr.DSTE/LMG and STM(Safety)/Maligaon on 31.01.2002 [vide Para 6.1 (d)] confirmed that the interlocking of RRI was in proper working order. A test also confirmed that it was not possible to take off Up home signal from Azara side when a Dn. train was being received on line No.1 or it was occupied by a train and the Home signal remained in danger with Up distant signal showing yellow aspect. As per Station Working Rule (SWR) of KYQ station, for reception of a DN train on Line No.1, the adequate distance is required to be kept clear upto derailing switch No. 71X from starter signal No. 57W with point No. 67A - 67B and 71X in normal position. The collision took place when 5658 Dn. express was about to stop on line No.1 (platform No.1) for schedule stoppage.

As discussed in para 6.1 (e), derailing switch No.71 X was found badly damaged and the nature of damages indicated that the point was being closed forcibly by the passage of Up LMG F/G.

Both the driver and the DAD of Up LMG F/G stated that the Up distant and Up home signal of Kamakhya from Goalpara side were single yellow while their train was approaching Kamakhya. The statement of driver and DAD confirmed that the approach signal were not blank. Moreover, as per station record there was no power failure at the time of accident to cause signals blanking off. Similarly, both the approach signals (distant and home) being one yellow as claimed by the crews, is ruled out in view of foregoing discussions.

Thus, from all the available evidence and as discussed above, it is clear that the approach signals for Up LMG F/G at Kamakhya were neither in 'blanked off' condition nor the home signal was taken off and that the goods train passed the Up home signal at danger.

7.3.3 Did the signal and interlocking arrangement malfunction at Kamakhya on 28.01.2002?

Kamakhya station is provided with central Panel Interlocking. Dy.CRS(S&T)/Kolkata along with Sr.DSTE/Lungding and STM(Safety)/Maligaon tested all the conflicting movements and their interlocking of the BG yard at Kamakhya and found it to be fully in order. 'Calling on' signal from Azara side for all the three lines could not be tested as the same was not coming off and it was also found from the record of "Calling On Counter Register" that Azara side "calling on" signal was not operated after 26.01.2002 and up to 30.01.2002 and the last number was 000024. This indicates that the 'calling on' signalling was not functioning since 26.01.2002. This discounted the probability to mislead the crews by the 'off aspect' of 'calling on' signal. Moreover, either on 28.01.2002 or several days preceding 28.01.2002, there has not been any complaint by any staff of other department including loco deptt. about any kind of mal functioning of the interlocking arrangement at Kamakhya station.

I, therefore, based on the various evidence and tests carried out after the accident, hold that there was no mal functioning of interlocking system at Kamakhya on 28.01.2002.

7.3.4

Could there have been any tampering in the relay room by S&T staff ?

To find an answer to the above the following facts as revealed during the inquiry needs consideration :

- (i) The relay room is provided with double locking arrangement with two pad locks. Both the keys of one lock is retained by S&T staff while both the keys of the other lock is under the custody of RRI Panel ASM.
- (ii) Either on 28.01.2002 or several preceding days, there was no signal failure which needed any attention by S&T staff.
- (iii) There was no complain by the staff of any other deptt. or loco deptt. about mal functioning of inter locking system.
- (iv) On 28.01.2002 around 1550 hours, Apprentice JE-II/Signal and JE/IV/Con/Maligaon, in presence of MCM/Kamakhya had opened the relay room for the purpose of contact verification. It is a non interfering type of work which required only visual inspection of the relay contacts. The keys of the relay room were returned to ASM/Kamakhya at about 1815 hours on the same day i.e. nearly 4 hours prior to the accident. During this period the trains ran safely and no problem of signalling or interlocking was noticed or reported. It may also be mentioned that as per the relay room register, the relay room was opened on 25.01.2002 and 26.01.2002 for the same purpose i.e. contact verification. Several trains have passed from all directions since then and nothing unusual was noticed by any one nor any entry was made in the signal failure register either. It can be concluded, therefore, that contact verification work is non invasive and non interfering type of work which does not result in any kind of change in circuitry let alone failure on the unsafe side.
- (v) The relay room was sealed in the morning of 29.01.2002 and was opened for the first time after the accident i.e. on 31.01.2002 in presence of Dy.CRS/S&T/Kolkata and other officers of the railways. Subsequent inspection and testing by them found interlocking system in order.

Thus, in consideration of the above facts, I rule out the possibility of tampering of relay room by S&T staff.

7.3.5

Visibility of Up approach signals during day and at night time

The driver had categorically stated that the Up approach signals were clearly visible even on the long hood direction. The joint tests carried out by the Dy.CRS(S&T)/Kolkata and other officers of the railways revealed :

- (i) During day, Up distant is visible from sighting board (located at a distance of 608 m from distant signal) while the Up home signal (located on right hand side due to curve) was visible from 200 m. The distance between Distant and Home signals is 1008.5 m.
- (ii) At night, Up distant is visible from 600 m and Up home signals from 250 m.

Although the visibility of Up home signal is slightly restricted due to wrong orientation and incorrect focussing, the driver did not face any difficulty in visibility.

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7.3.6

Physical condition of crew of Up LMG F/G

The driver and DAD had an outstation rest of 8 hours 15 minutes at New Bongaigaon. The guard had a rest of 32 hours at Headquarter station. While the driver stated that he was subjected to Breathalyzer test at NBQ, the DAD denied of being subjected to any such test. DSO/APDJ, however, in his note No. T2/AP/T/24/2001-02 dated 04.02.2002 submitted that both the driver and DAD of Up LMG F/G were tested by Breathalyzer machine at crew control room at NBQ at the time of 'Signing On'. The 'Signing ON Register' of NBQ has recorded that both the driver and DAD were subjected to Breathalyzer test and found NORMAL and recorded their signatures (as a token of their being subjected to the test) as later on found by Dy.COM(Safety)/Maligaon during his surprise inspection at the instance of CRS. Dy.COM(Safety) with the above observation confronted the DAD in the Central Hospital/Maligaon who clarified that the signatures in the register are taken in token of their reporting for duty. Therefore, the remarks "NORMAL" in the register, as per the DAD, has been recorded by the crew control although no test has been done actually.

After the accident the driver, who sustained injury, was admitted in Central Hospital/Maligaon at 2400 hours of 28.01.2002. As per the report of Sr.DMO(Surgeon)/Maligaon, the driver smelled of alcohol although he was fully conscious, oriented with normal behavior and normal gait. His handwriting was normal. A blood sample was taken out at 0030 hours on 29.01.2002 and was sent to Forensic Science Laboratory/Guwahati. The report, however, revealed "Negative Ethyl Alcohol". TI/Guwahati met DAD on the platform after the accident, but he did not smell alcohol.

Thus, it appears that both the driver and DAD were more or less steady with their faculties functioning normally, although the driver having consumed alcohol enroute cannot be

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ruled out. In fact in his own statement he has admitted that prior to 1998 he used to take alcohol occasionally in off duty hours, but after 1998 he has stopped taking alcohol on health ground.

It may be pointed out that unless alcohol is taken in adequate quantity and blood sample is drawn within a short time, the result of blood alcohol test may not show positive as could have been the instant case considering that the driver smelled alcohol at the time of admission in hospital.

7.3.7 Role of Crew of Up Lunding Foodgrain:

Both the driver and DAD of Up Lunding Foodgrain started from New Bongaigaon with outstation rest of 8 hours 15 minutes. Their train had proper brake power which was tested by the driver en-route. In the entire run from New Bongaigaon till the time of accident the train had no problem of brake power as admitted by them nor there was any unusual occurrence as confirmed by the Divisional Officers of Alipurduar Division. The crews were not proved to be under influence of alcohol (vide para 7.3.6) although the driver smell of alcohol after the accident. As revealed by the analysis of speedometer chart of the loco the train generally maintained a speed below 50 Kmph and the maximum speed attained during run was 60 Kmph at one point only. The maximum permissible speed of the goods train in the section is 65 Kmph. All the speed restrictions have been observed by the driver as per the spool. Hence the driver was running at a speed less than the maximum permissible speed of the section and observed the speed restrictions. However, the speed of the train at the time of collision was 40 Kmph as recorded in the speedometer chart. Both the driver and DAD stated that Up Distant signal of Kamakhya was showing yellow and Home Signal was also showing yellow without any route indicator. This is a conflicting signal and it has been proved by test that display of such conflicting signals was not possible. On the contrary it had been proved by trial and test that when line No. 1 of Kamakhya is occupied, the Up Distant from Azara side showed 'yellow' and Home Signal 'red'. Both the driver and DAD stated initially that their train was entering Kamakhya station at a speed of 15 Kmph. However, during cross-examination the driver admitted that the speed could be 40 Kmph "due to down gradient after home signal". DAD when asked to explain why the train could not be brought to a stop within the distance of 180 M when he saw the light of express train in the opposite direction and the speed of the goods train was only 15 Kmph as claimed by him he had "nothing to say". Therefore, it is clear that both the driver and DAD have not been vigilant in observing the correct aspects of approach signals and failed to control the train and passed the home signal at danger and collided with 5658 Down Kanchenjunga Express on line No. 1.

Under the circumstances, I hold the crews primary responsible for the collision by violating the provision of GR 3.78 (1) (a) and (b) and (4).

7.3.8

Role of S&T Department of Construction Organisation:

The Goalpara line was constructed by the Construction Organisation of N.E. Railway including the addition/alterations at Kamakhya station where the Goalpara line has converged with the mainline. As per SWR of Kamakhya station issued on 26.05.2000 the isolation to be provided as per Para 2.5.3 (a) (iii) is as under:

"BG Line No. 1 is isolated from the line of GHY-JPZ-NBQ section at Azra end by normal setting of Derailing Switch No. 71X"

From the above it is clear that the intention of the SWR provision was to isolate BG Line No. 1, which is an important loop line of the main line, from the less important line of Goalpara section. In such a situation the orientation of Derailing Switch No. 71X should have been in the facing direction from Azra side and trailing direction from Guwahati side while at site it is actually laid the other way. Similarly the orientation of Derailing Switch No. 64X at Guwahati end should have been oriented the other way. The SWR have been issued jointly by DSO / Lunding, DSTE/ Guwahati, DSTE(Con.)/ Maligaon and Deputy COM (Con) / Maligaon. The S&T department of Construction Organisation should have been careful in laying the Derailing Switch Nos. 71X and 64X to fulfil the provision of SWR para No. 2.5.3 (a) (iii) and 2.5.3 (ii) respectively.

7.3.9

Role of Sectional Loco Inspector:

The evidence and subsequent cross-examination of Shri P.C. Dey (vide para 5.27) exposed his poor knowledge about colour light signalling. A few of his observations made during his deposition are given below briefly:

- i) That his train could be received on line No. 2 at Kamakhya station from Goalpara with both Up Distant and Up Home of Kamakhya being green. (The fact is to enter line No. 2 from Goalpara side the train has to negotiate a crossover and the distant will be double yellow with home at single yellow with route indicator. Moreover, there is no green aspect of Up Home Signal)
- ii) That Up Home signal of Kamakhya from Goalpara side has 3 route indicators. (The fact is that there are only 2 route indicators for line No. 2 and 3)
- iii) That Up Home Signal of Kamakhya from Goalpara side can be passed at a speed of 65 Kmph when the home signal is displaying green aspect. (The fact is home signal does not have any green aspect).

Although as admitted by him he attended refresher course at PTS, New Bongaigaon in 1998, it is evident that he has not learnt enough to discharge his duties. The role of loco Inspector in training and counselling the loco crew is very crucial from safety point of view.

Therefore unless the Loco Inspector himself is thorough in his knowledge, it is difficult for him to discharge his duties and it is no wonder that both the driver and DAD of Up Lumding Foodgrain under Shri Dey were ignorant of the basic knowledge of signalling of the route in which they were working. My subsequent inspection of the railways has confirmed this belief that many of the Loco Inspectors are not thorough with their knowledge. The Railways need to identify such Loco Inspectors having inadequate/wrong/poor knowledge and organise a crash course to up date their knowledge. Till then these supervisors should not be put in charge of loco crews in the interest of safety.

7.4 Cause of the accident:

Having carefully considered the factual, material and circumstantial evidence at my disposal, I have come to the conclusion that head-on collision between 5658 down Kanchenjunga express and Up Lumding Foodgrain, on line no. 1 at Km. 401/8 at Kamakhya station of Guwahati - Agthori Broad Gauge single line non electrified section of Lumding Division of Northeast Frontier Railway which occurred at 22-35 hours on 28.01.2002 was due to driver of Up Lumding Foodgrain disregarding the 'red' aspect of the Up Home Signal and the train passing signal at danger.

Accordingly, this accident is classified under the category "Failure of Railway Staff".

7.5 Could this accident have been averted:

The accident could have been averted :-

- i) If the B.G Line No. 1 was isolated from the line of Guwahati - Jogighopa - New Bongaigaon section at Azara end by providing 'sand hump' in lieu of existing Derailing Switch No. 71X so that if a train from Goalpara passes the up home signal at danger would enter the sand hump.
- ii) If the Derailing Switch No. 71X had been correctly oriented i.e. in the facing direction from Goalpara side and trailing direction from Guwahati side, i.e. fulfilling the provision of SWR para 2.5.3 (a) (iii), possibly the collision could have been averted or at least its consequences could have been minimised.

7.6 Other matters brought to light:

7.6.1 Standard Time:

During the inquiry it revealed (vide para 5.10) that checking of time by Section Controller as per GR 4.01 and SR 4.01/1 is not being followed. This was also confirmed by me during my extensive inspections of the Railway. Chief Operations Manager of the Railway should issue necessary instructions to all concerned for abiding by the provision of GR 4.01 and SR 4.01/1.

made quickly to enable the Board to take a realistic decision considering that Railway Safety Review Committee (Khanna Committee) have also endorsed the view that the criteria of minimum educational qualification for any job on the Railways should be matriculation

VIII. CONCLUSION

8.1 Cause of the accident:

Having carefully considered the factual, material and circumstantial evidence at my disposal, I have come to the conclusion that head-on collision between 5658 down Kanchenjunga express and Up Lumding Foodgrain, on line no. 1 at Km. 401/8 at Kamakhya station of Guwahati - Agthori Broad Gauge single line non electrified section of Lumding Division of Northeast Frontier Railway which occurred at 22-35 hours on 28.01.2002 was due to driver of Up Lumding Foodgrain disregarding the 'red' aspect of the Up Home Signal and the train passing signal at danger.

Accordingly, this accident is classified under the category "Failure of Railway Staff"

8.2 Responsibility:

8.2.1 Primary :

- i) Shri B. Appa Rao, Goods Driver, NGC (refer para 7.3.7) for his violation of GR 3.78 (1) (a) and (b) and (4).
- ii) Shri S.N. Borah, Diesel Assistant Driver, NGC (refer para 7.3.7) for his violation of GR 3.78 (1) (a) and (b) and (4).

8.2.2 Secondary :

The Signal and Telecommunication department of Construction Organisation for the reasons brought out in para 7.3.8.

8.2.3 Blameworthy:

Shri P.C. Dey, Loco Inspector, NGC for the reasons brought out in para 7.3.9.

मानक फार्म सं० 1

निम्नलिखित आदेश का मानक फार्म

प्रा. मी. रेलवे/INDIAN RAILWAY

Q-174, 20/A

STANDARD FORM NO. 1

निलम्बन आदेश का मानक फार्म

Standard form of order of suspension

(यह आदेश केवल रेलवे के लिए ही प्रयुक्त है)

(This form is only for use of Railways)

(रे. म. (अनु. एवं नं.) नियम 1968 का नियम 5 (1))

(Rule 5(1) of the RS (D & A) Rules 1968)

(अज्ञात)

सं./No 11/3/L7/1-4/2002

आदेश देने वाले अधिकारी का नाम

(रेल प्रशासन का नाम) 11/3/L7/1-4/2002 B LFFI

(Name of Railway Administration)

(यह आदेश केवल रेलवे के लिए ही प्रयुक्त है)

(This form is only for use of Railways)

(अज्ञात)

(जारी करने का स्थान) LFFI Date 29.01.2002

(Place of issue) Date

(यह आदेश केवल रेलवे के लिए ही प्रयुक्त है)

(This form is only for use of Railways)

(अज्ञात)

आदेश
ORDER

(यह आदेश केवल रेलवे के लिए ही प्रयुक्त है)

(This form is only for use of Railways)

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Certified to be true copy.

P. N. W.

जहाँ यह भी लागू किया जाया है कि इस आदेश के लागू रहने के दौरान उपर्युक्त श्री/श्रीमती
 निलम्बन प्राधिकारी की पूर्व-अनुमति प्राप्त किये बिना मुख्यालय से बाहर नहीं जायेंगे/जायेंगी।
 It is further ordered that during the period this order shall remain in force, the said Shri/Smt. B. Appasaiah
 Dr. (G)/NGC shall not leave the head quarters without obtaining the previous permission of
 the competent authority.

(राष्ट्रपति के आदेश द्वारा उनके और उनके नाम में)
 (हस्ताक्षर/Signature) *[Signature]*
 (नाम/Name) *Y.M. DEY, DME(P) / Lumding*
 निलम्बित करने वाले अधिकारी का पदनाम
 Designation of the suspending authority
Chief Mechanical Engineer
 (गवर्नर, रेलवे बोर्ड, जहाँ रेलवे बोर्ड निलम्बन प्राधिकारी हो)
 (Governing Body, Railway Board, where Railway Board is the suspending authority)

(जहाँ राष्ट्रपति निलम्बन प्राधिकारी हो, वहाँ राष्ट्रपति की ओर
 से प्रमाणीकरण हेतु संविधान के अनुच्छेद 77 (2) के अधीन
 प्राधिकृत अधिकारी का पदनाम)
 (Designation of the officer authorised under article
 77 (2) of the constitution to authenticate orders on
 behalf of the president, where the President is the
 Suspending authority).

प्रतिलिपि प्रेषित/Copy to:-

श्री/श्रीमती (निलम्बित रेल कर्मचारी का नाम तथा पदनाम)
 निलम्बन के दौरान वे निर्यात भर्त्ता से संबंधित आदेश अलग से जारी किये जायेंगे।
 Shri/Smt. B. Appasaiah, Dr. (G)/NGC (name and designation of the suspended Railway ser-
 vant). Orders regarding subsistence allowances admissible to him during the period of suspension will issue sepa-
 rately. APO/CHY, Sr. DPO/LMG & SSE (Loco) / NGC for information and necessary
 action accordingly. SSE (Loco) / NGC is advised to inform

*जहाँ आदेश स्पष्टतः राष्ट्रपति के नाम से ही दिया जाना है।
 Where the order is expressed to be made in the name of President. this office immediately about
 the date from which the staff
 have been put under suspension
 actually.

FORM OF CHARGESHEET.

N.F. Rly

Staff copy

ANNEXURE C

(STANDARD FORM NO.5.)

(Rule: 9 of the Railway servants (Discipline and appeal rules 1968)

No. IF/3/LM/1-4/2002

DRM(M)'s Office (Name of Railway Administration)

Place of issue) LMG Dated 13-6-2002

MEMORANDUM.

~~THE PRESIDENT/RAILWAY BOARD~~ undersigned propose(s) to hold an inquiry against Shri B. APPARAO, Dr (G)/NGC under rules:9 of the Railway servants (Discipline and appeal) Rules, 1968. The substance of the imputations of misconduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement or articles of charge (Annexure: I). A statement of each imputations of misconduct or mis-behaviour in support of each articles of charge is enclosed (Annexure: II) A list of documents by which and a list of witnessed by whom, the articles of the charge are proposed to be sustained are also enclosed (Annexure: III and IV). Further, copies of documents mentioned in the list of documents, as per Annexure: III are enclosed.

2. * Shri B. APPARAO is hereby informed that he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annex: III) at any time during office hours within 10 (ten) days of receipt of this Memorandum for this purpose he should contact** DME(P)/LMG, immediately on receipt of this Memorandum.

3. Shri B. APPARAO is further informed that he may if, he so desired, take the assistance of any other Rly. servant an official or Rly. Trade Union (who satisfied the requirements of Rule:9 (13) of the Rly. servants (Discipline and Appeal) Rules, 1968 and Note: I and / or Note: 2 there under as the case may be) for inspecting the documents and assisting him in presenting his case before the inquiring authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Rly. servant of Rly. Trade Union official(s) Shri B. APPARAO should obtain an undertaking from the nominate(s) that he(they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case(s) if any, in which the nominee(s) had already undertaken to assist the undersigned/General Manager. The undertaking should be furnished to the undersigned/General Manager along with the nomination.

4. Shri B. APPARAO is hereby directed to submit to undersigned (through General Manager SSE (Loco)/NGC Railway for a written statement of his defence (which should reach the said General Manager, within 10 days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of his defence and within ten days after completion of inspection of documents if he desires to inspect documents, and also -

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

5. Shri B. APPARAO is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or reject articles of charge.

Certified to be true copy.

P. N. *[Signature]*

Contd. --- 2/-

R
18/6/02

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B. APPARAO

5. Shri. B. APPARAO is further informed that if he does not submit his written statement of defence within the period specified in para. 2 or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rules 9 of the Mly. servants Discipline and Appeal rule, 1968 or the order/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry ex parte.

B. APPARAO

7. The attention of Shri B. APPARAO is invited to Rule:20 of the P.W.D. Service Conduct Rules 1966, under which no P.W.D. servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri B. APPARAO is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule:20 of the P.W.D. services (conduct) Rules:1966.

8. The receipt of this Memorandum may be acknowledged.

Enelo, 5--

By _____
the President

xx the xx residue xx

Signature: M. DEY, DME (P) // LMG

Name and designation of the competent authority.

ent authority.
 1. 1944. 1945.
 Divisional Mechanical Engineer (T)
 1. Railway, Lumding

70.

Chri B. APPARAO,

Designation and place. Driver (G) // NGC

(2) Copy to Shri SSE (Loco) / NGC (name and designation of the loading authority) for information.

1- Strike out which ever is not applicable.

* To be deleted if copies are given/not given with the Memorandum as the case may be.

•• Name of the authority. (This should imply that whenever a case is referred to the Disciplinary authority by the investigating authority or any authority who are in the custody of the listed documents or who would be arranging for inspection of the documents to enable this authority being mentioned in the draft memorandum.

Where the president is the Disciplinary authority.

X To be retained wherever President or the Rly. Board is the
or the Rly. Board is the competent authority.

to be used wherever applicable see Rule 16 (i) of the RD(DA) Rules, 1968. Not to be inserted in the copy sent to the Rly. servant.

(Contd---3/-

N. F. R. L. Y.

Memorandum of chargesheet under rule 9 of the RS(D&A) Rules, 1968.

ANNEXURE: I.

Statement of articles of charge framed against shri B. APPARAO,
Driver (G)/NGC

ARTICLES: I.

That the said Shri _____ while
functioning as _____ during the period _____
(here enter
definite and distinct articles of charge)

On 28-01-2002, 5658 DN Kanchanjungha Express train collided with UP LMG Foodgrain on line No.1 at KM-401/8 at KYQ Station of GHY-AGT BG single line non-electrified section. As a result, coach Nos. NRVPV-16836 & NFVPV-16820 of the Express train got derailed and capsized. Moreover, W/No. NFBCNL-36567 of the goods train got derailed and capsized as and when Up LMG F/G passed signal at danger bursting Point No.71(X) at KYQ Station.

The accident took place due to disregarding of the 'RED' aspect of the UP Home Signal and passing signal at danger by you with your train.

train. Hence, you are charged for your lack of alertness during duty and passing signal at danger violating the provision of GR-3.78(1)(a), (b) & (4) and also rule -3(1)(ii) of Service Conduct Rules of Rly., 1966.

1. 21 202, 2015
Divisional Mechanical Engineer (F)
M. F. Railway. Lunda
A/N

Statement of imputation^{of} misconduct or misbehaviour in support of the articles of charge framed against Shri B. APPARAO,
Driver (G) / NGC.

As above

~~CONFIDENTIAL~~

7-9-60
U.S. Navy
Naval Medical Department
A. B. Kellway, Landing

Annexure: III

List of documents by which the articles of charge framed against Shri B. APPARAO, Driver (G)/NGC to be sustained. _____ are proposed

1. Copies of the relevant items of CRS Enquiry Report in 5 which are received from Sr. DSU/LMG

[Signature]
12/11/02
Mechanical Engineer (G),
M. F. Railway, Lumding

Annexure: IV.

List of witnesses by whom the articles of charge framed against Shri B. APPARAO, Dr (G)/NGC to be sustained. _____ are proposed

1. Shri P. N. Pandey, Guard/NBQ
2. ASM on duty/KYQ

[Signature]
12/11/02
Mechanical Engineer (G),
M. F. Railway, Lumding

To
The Divisional Mechanical Engineer(F),
N.E. Railway, Lumding.

Dated at New Guwahati the 27.6./2002

Sub:- Written Statement of Defence.

Ref:- No.TP/3/IM/1-4/2002 dated 13.6.2002.

Sir,

Most respectfully I beg to state that Article 1 in the Memorandum of Chargesheet appended to your letter referred to above is denied by me and the following is stated in defence of myself for your consideration and to beg not to warrant proceedings for the imposition of any major penalty as the matter can be disposed of at your competence.

1. That Sir, the accident took place not because of my fault in disregarding of the 'RED' aspect of the Up Home Signal ; and that I did not pass the signal at danger with my train.

2. That the Up Home signal at Kamakhya from Azara side was shewing the yellow aspect when my train was approaching it and accordingly I passed it at regulation speed.

3. That I was totally alert during the duty hours on train and could discern the Up Distant Signal showing yellow from 250m and consequently could reduce the speed to within regulation limit onwards of Up Distant ;

4. That I neither violated GR-3 78(1)(a), (b) & (4) nor there was any occasion for doing so to pass the signal at danger as the fact was that the signal was showing yellow.

5. That I did not violate Rule 3(1)(ii) of SCR, 1966 ; That I am a loyal and capable workman under the Railways having 32 years of experience at various stages and have been running trains since 14.4.2001 in the KYQ-NBQ route without fault.

6. That I was not found to have taken alcohol a fact that was adequately established by test at NBQ and blood test at FSL/GHY at the behest of the Railway authorities.

7. That I did not take alcohol enroute nor by or near the time the accident took place and consequently I was fully normal, alert and vigilant while on duty in train a fact also corroborated at CRS report.

8. That nothing was wrong with my conduct in passing the Up Home signal can also be seen from the guard's observation in statistical train report. (Xerox copy enclosed in Annexure-I).

Certified to be true copy.
P.N. W

Contd.....2

There the guard Shri P.N. Pandey has not stated that the Up Home signal was at 'RED' aspect; That thus guards this observation is proof of my statement that the Up Home signal was showing yellow, And that this is also supported by the statement of my DAD Shri S.N. Berah.

9. That the Point to pass on from Jogighopa-Pancharatna line, along which my train was coming, to line No. 1 and this was commensurate with the yellow aspect of the Home signal and that this also establishes my innocence by showing my adherence to the yellow aspect.

10. That the regulation measure supporting my position in Para-9 can be found in S.R-3.39/8 (General Rules 1976 for Indian Railways) which is quoted below:

S.R. 3.39/8. Setting of points against blocked lines.

When a running line is blocked by stalled load, wagon vehicle or by a train which is to cross or give precedence to another train or immediately after the arrival of a train at the station etc., the points in rear or double line sections and at either end on single line section should be immediately set against the blocked line except when shunting or any other movement is required to be done on that line.

If all the lines at a station happen to be blocked when line clear has been granted to a train, the points should be set for the line occupied by a stalled load or a goods train in that order so that, in case of mishap, the chances of casualties are minimised. In case all the lines at a station are occupied by passenger trains, points should be set for a loopline, to negotiate when the speed of the incoming train would be reduced which in turn, would minimise the consequences casualties. While doing so, points may be set for a loop occupied by a train, if any, whose engine is facing the direction of approach of the incoming train rather than for the loop occupied by a train where a passenger coach, will in the case of a collision, receive the impact. These precautions shall be taken in addition to the observance of other precautions like use of lever cellar.

11. That the magnitude of the accident is not my creation is also seen from the avoidance by authorities from observing the regulation quoted at para-10 above, because the loopline onto main line No. 2 at Kamakhya was not set at the time of the accident.

12. That the magnitude of the accident is not my creation is also established in the CRS report in its findings of the role of S&T Deptt. of construction organisation (at para 7.3.8 and para 8.2.2).

Contd.....3

13. That I was made a scapegoat of the accident scenario by inherent lack in the system, as is found in the absence of isolating point KYQ to isolate BG line No.1 from the line of GP section and also by wrong orientation of derailing switches as observed by CRS report(at para 7.3.8) and the scenario is such that the staff is made liable to definite consequence of accident, if one takes place, by anybody's omission or commission.

14. That the magnitude of the accident is not my creation is also proved by dereliction of sectional Loco Inspector and his lack of adequate knowledge on signalling of the route in the system which is established in the CRS report (at para 7.3.9).

15. The bonafide of ASM KYQ to corroborate evidence against one is suspect, because he fled his post after the accident.

16. That the Up Home signal was showing yellow at the time was also supported by DAD in my train Sri S.H. Borah.

17. That CRS enquiry was much after the accident for obvious reasons, and I was given the opportunity to state my case only in response to questions framed and found suitable by them.

19. That before CRS enquiry competent Rly. sources maintained that the cause of the accident was wrong signalling a fact that was reported in local press which was not refuted (Xerox copy enclosed as Annexure-II).

Under the circumstances I beg your consideration on the above grounds for exonerating me from the article of charges and statement of imputation of misconduct and misbehaviour both of which are denied by me. Hope and pray you would find my above defence adequate so as to be kind enough to drop the proceedings for major penalties thus saving my livelihood and ability to support my family for which act of your good judgement I would ever pray.

I state that I shall like to be personally heard and take assistance of Sri B.C. Bordoloi, Sr. LI, Diesel/NGC and, also to call witness in my support namely, Sri P.N. Pandey, Guard/NBO and Sri S.N. Borah, DAD during further proceedings, if any.

Yours faithfully,

B. Appa Rao.

B. APPA RAO)
DRIVER / GOODS / NEW GUTTAH T.I.

Report of enquiry in connection with the Major case No. TP/3/LM/1-4/2002 issued against Shri B.A. Rao, Driver Goods/NGC.

Shri B. Appa Rao, Driver Goods/NGC under SE/Loco was issued Major memorandum vide DME/Power/LMG's No. TP/3/Lm/1-4/2002, dated 13-6-02 (SN-22 to 25).

The undersigned was appointed as Enquiry Officer vide SF/7-20: TP/3/Lm/1-4/2002 dated 29-7-2002 (S.N.42)

Immediately after the accident Shri Rao reported sick HOD w.e.f. 29-1-02 under DMO/MLG and, as such, the letter of suspension could be served by SF/Loco/NGC on 9-4-02. However, Shri Rao has been shown as suspension w.e.f. 9-4-02 vide SF/1 no. TP/Lm/1-4/2002 dated 29-1-02 (SN.03)

The article of charge was as under-

Annexure-I

Articles-1.

"On 28-1-02, 5658 DN Kanchanjungha Express train collided with up Lmg. Foodgrain on line no.1 at km-401/8 at Kyq Station, Guwahati-AGT BG single line non. Electrified section. As a result, coach No. NRVPU-16836 and NFVPU-16820 of the Express train got derailed and capsized. Moreover, W/No. NFBCNL-36567 of the Goods train got derailed and capsized as an when up LMG F/G passed signal at danger bursting point no. 71(x) at Kyq Station.

The accident took place due to disregarding of the Red aspect of the up Home Signal and passing signal at danger by you with your train.

Hence, you are charged for your lack of alertness during duty and passing signal at danger violating the provision of GR-3.78(i)(a),(b) & (4) and also Rule-3(i)(ii) of Service Conduct Rules of Rly, 1966."

Annexure-II

(Same as appeared in Annexure-I)

The following dates of enquiry were fixed by the undersigned:

Certified to be true copy.
P.N. W.

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Sl. No.	Date	Persons called to attend the enquiry	Persons attended	Remarks
1	19-8-02	Shri B. Appa Rao, DE Sri S.N. Baruah, DAD	Attended	Preliminary Held
2	07-x-02	Shri B. A Rao, DE Arjun Paswan, DC P.N. Pandey, Guard/NBQ R. K. Goswami, Asm/Kyq P. Das, Asm/Kyq S. N. Baruah, DAD/NGC	All attended and enquiry held	
3	10-x-02	Shri B. A. Rao, DE Shri S.S. Marak, DAD/NBQ Shri A. Ghatak, SE/SIG/Kyq Shri Arjun Paswan, DC Shri S. N. Baruah, DAD/NGC	All attended accept Shri A. Ghatak Enquiry held	
4	31-x-02	Shri B. A. Rao, DE Shri A. Ghatak, SE/SIG/Kyq Shri S.N. Baruah, DAD/NGC Shri Arjun Paswan, DC	All attended accept Shri B.A. Rao Enquiry held	
5	14-11-02	Shri B. A. Rao, DE Shri Arjun Paswan,	Attended and enquiry held	

No dates of enquiry could be fixed during the month of September 2002, as the record demanded was not available in the case file.

The following staff were examined and cross examined

Prosecution witness

1. Shri P.N. Pandey, Guard/NBQ
2. Shri R. K. Goswami, ASM/Kyq.
3. Shri P. Das, ASM/RRI/Kyq.
4. Shri S. S. Marak, DAD of 5658
5. Shri A. Ghatak, SE/SIG/Kyq.

Shri Rao has taken the opportunity to submit final submission after conclusion of enquiry.

Gist of evident produced by the management

The charged against Shri B. A. Rao has been framed on the basis of report of Hon'ble CRs/N.F. Circle/Kolkata who conducted the enquiry into the Head-on-collusion between 5658 DN and up Lmg Food Grain at Kyq. on 28-1-02.

Out of 05(five), 03(three) witnesses namely S/Shri P.Das, ASM/RRI/Kyq, R.K. Goswami, ASM/Kyq and A. Ghatak, SE/Kyq emphasis about the up Home Signal to be 'Red' while up Lmg. Foodgrain entering at Kyq.

As per the principle of inter locking signaling system/k whenever a train (coming from Ghy) in entering at L/No.1 of Kyq Station, then there is no possibility to take 'OFF' of the up Home Signal into 'Yellow' aspect for the train coming from Azara for the same-line.

Gist of evident produced by the charged employee-

- 1) Shri Rao in his deposition stressed to have 'Yellow' aspect of both 'Distant' and 'Home' while up Lmg Food grain was entering Kyq. from Azara. So there was no need to stop his train or to reduce the speed.
- 2) The Head-on-collision accident could have been avoided had there been the similar facilities of station in respect of receiving train, that to available at RQJ.
- 3) Shri Rao further stated that he was quite alert in all respect at the time of entering Kyq. Station on seeing the 'Yellow' aspect of up Home signal /Kyq.
- 4) The Guard of the Up Lmg. Food grain could noticed that the derailing switch No.71 x (over which the train entered into Kyq. Station) was in intact condition after the accident.
- 5) As per D.C. of Shri B.A. Rao the aspect of Home Signal/Kyq. Can be changed by adopting the method of short circuit. So in this case, L/No.1 of Kyq. Might be occupied by 5658 down but the 'Yellow' aspect of Home Signal/Kyq for up Lmg. Food grain by the method of Short Circuit cannot be rolled out.
- 6) The Defense Counsel, Shri Arjun Paswan also pointed out that in certain cases the locomotive may not be held in correct ord.. particularly the system of brake due to the fact that VA-1 release valve sticking up at half position despite application of brake. So the influence of the aforesaid valve at the time of entering Kyq. Station by up Lmg. Food grain cannot rolled out and as a result of which the driver failed to stop in short distance.

Assessment of evidence of both the sides-

- 1) The 'Yellow' aspect of Home Signal/Kyq was exactly for line no..... as because it was only 'Yellow' without junction indicator as per the driver statement.

But practically whenever a train is being received on line No.1 from Ghy. end than obviously 'Yellow' aspect of Home Signal/Kyq. for receiving any train coming from Azara is not at all possible as per the working principle of inter locking system, which was PREVAILING AT Kyq and thus, Shri Rao violated G R-378(i)(a). Moreover, there was no any concrete evidence regarding manipulation of Home Signal/Kyq.

2. From the enquiry it is revealed that Shri Rao was not enough vigilant and for which he could not assess the setting of point in his favour or not. The head-on-collision between 5658 DN & up Lmg Food grain could be avoided; if Shri Rao was sufficiently alert then he could have noticed the setting of point in advance and controlled the train immediately and thus violated GR 318(b)
3. Shri Rao was quite acquainted in the section NBQ-GHY and vice-versa with due LR with the held of concerned Loco Inspection.
4. It is further revealed in the enquiry that Shri Rao was not followed the proper Signal aspect particularly Home Signal/Kyq. And the corresponding points as a result of which the head-on-collision took place at Kyq. between 5658 DN and Lmg Foodgrain on 28-1-02 clearly indicates about the violation of service and conduct Rules No:3(i) & (ii).
5. Further the accident at Kyq could be avoided if the derailing switch No:71 x be initially fitted in normal condition i.e. facing point for the train coming from Azara then in such cases the train would derailed after disregarding of the signal

Considering all the relevant facts revealed through the evidence produced in favour of and against the charge, it has reasonably appeared that Shri Rao was entered at Kyq despite 'Red' aspect of up Home Signal/kyq and as a result of which the Head-on-collision took place on 28-1-02 at kyq between 5658 and up Lmg Foodgrain.

As such, the charge against Shri B. A. Rao, Driver Goods/NGC as brought vide Major memorandum no:TP/3/Lm/1-4/2002 has been established.

DA/One loose case containing
01 to 92 pages +
07 pages of enquiry report

No. Ane/NGCDA/7-Pt-II
Dated-27/11/02

Sd/ eligible

(S. K. Dutta)
Asst. Divl. Mech, Engr.
New Guwahati.
Dt. 27.11.02

ANNEXURE - F

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H. P. H. V.

No: TP/3/LF/L-4/02.

Office of the
DM (M)/LMG, Dt-20.12.02.

To,

- (1) Sri B. Appa Rao. DR/Gds/HGC.
- (2) Sri S. M. Borah. DAD/HGC.

Through: SSE(LCCO)/HGC.

Sub: DAR enquiry in connection with
Head on collision betn. up LBQ/
LMG/FG and 5658 Dn Kanchar Junghe
Express at KY on 28.01.02.

The report of the enquiry officer is enclosed.
The disciplinary authority will take suitable decision
after considering the report. If you wish to make any
representation or submission, you may do so writing to
the disciplinary authority within 15 days on report of this
letter.

DA- As above.

DM (P)/LMG.

10.1.03
Certified to be true copy.

R.N. *[Signature]*

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ANNEXURE - G

To
The ME(P)/LMG,
N.F.Railway.

Dated, 23/01/2003

(Through Proper Channel)

Sub: - Representation.

Ref: - Your letter No.TP/3/LM/1-4/02
dt.20.12.02.

Respected Sir,

In reference to your letter No.cited above
I have gone through the report of learned enquiry officer
and submit my opinion before you for your judicious consi-
deration Please.

That Sir,E.O officer furnished in this report
that there was no possibility to take off the home signal
into yellow aspect in favour of Up LMG FG for L-1 at KYQ
as because 5658 Dn was entering and about to stop in L/No.1
as per the principle of interlocking signalling system.

In this regard I like to say that this is
normal rule when interlocking system working but when system
failed when such type of incident took place.Some examples
was already been submitted by D.C.

So,submission of my D.C.may given due cognizance
as it is a judicious one at time of considering the action
and oblige.

Thanking You,

Yours faithfully,

B. Appa Rao

(B.APPA RAO
DRIVER/GOODS/NGC)

23/1/03

Certified to be true copy
P.N. at

NOTICE OF IMPOSITION OF PENALTY OR REMOVAL FROM SERVICE:

NO. TP/3/LM/1-4/2002

Office of the
DM (G)/LMG, Dated: 03.02.2003

TO

Name : SHRI B. APPARAO
Department : Mechanical
Father's Name : Shri Jhampaiya.
Date of appointment : 01.11.1970
Basic pay : Rs. 6060/-
Scale of pay : Rs. 5900- 8000/-
Designation : Driver (G)/LMC
Station : KGC

Your explanation, dated: 27.6.2002 and your reply, dated: 23.01.2003 in response to the Charge Sheet No. TP/3/LM/1-4/2002, dated: 13.06.2002 and Show Cause Notice vide Gen No. of this letter, dated: 20.12.2002 have been gone through very objectively. The (P)/LMG, being the disciplinary authority has also kept in mind all possible factors and circumstances while considering your explanation; but in view of the following reasons the same cannot be accepted.

CHARGES:

On 28.01.2002, 5558 DI Ranchanjanha Express train collided with UP LMG/FG on line NO.1 at KYQ Station of GY - AGT BG Single Line non-electrified section. As a result, coach Nos. NFVPIL 16836 and NFVPIL 16820 of the Express train got derailed and capsized. Moreover W/HO. NF/BCL-35567 of the Goods Train got derailed and capsized as and when UP LMG/FG passed signal at danger bursting point NO.71(X) at KYQ.

The accident took place due to disregarding of the 'RED' aspect of the UP Home Signal and passing signal at danger by you with your train.

Hence, you are charged for your lack of alertness during duty and passing signal at danger violating the provision of GR-3, 78 (1)(a), (b) & (4) and also Rule-3(1)(ii) of GR of Rly., 1966.

ORDERS OF DISCIPLINARY AUTHORITY:

I have gone carefully through the case alongwith all relevant documents including appeal/representation submitted against the Show Cause Notice by Shri B. Apparao, Dr(G)/KGC and found that there is no such reasons or any points to be exempted from the charges brought against him.

I have also studied the DAR Enquiry report submitted by the P.O. wherein the charges brought against the DE for passing signal at danger bursting point No.71(X) at KYQ on 28.01.2002 has been proved with justified reasons.

In view of the above, I have decided to impose a penalty of REMOVAL FROM SERVICE against Shri B. Apparao, Dr(G)/KGC with immediate effect.

Certified to be true copy.

P. N. V.

To
The Sr. Divl. Mechanical Engineer,
N.F. Rly/Lumding.
(Through SE/Loco/Wat)
Sub : Appeal.

Ref : DME(P) LMG Letter No. TP/3/LM/1-4/2002 dtd.03-02-2003.

Sir,

Most respectfully I submit the following appeal on the grounds detailed below with reference to your Notice of imposition of penalty of removal from service quoted above.

1. That I am thankful to authorities for giving me the opportunity for this appeal.
2. That the respected enquiry officer and the Disciplinary authority erroneously appreciated the evidence and improperly applied the rules in the findings leading to the decision of the disciplinary authority.
3. That the charges were based on the CRS Calcutta report but the deficiencies of the wrong system at KYQ observed by the CRS Calcutta in his report were not given due regard, So that charges are not wholly based on facts brought out in the 1st enquiry under the authority of the CRS Calcutta. Thus the charges being founded on partial appreciation of the CRS report and thus without the correct basis are liable to be set aside ab initio.
4. That while both the above authorities relied on the sufficiency of interlocking system of signalling at KYQ, they failed to take note of all the facts^{er} that may take a part in the failure of the Signalling in going wrong to show the yellow aspect to my train as submitted by me.

Contd.....2

Certified to be true copy.

P.N. *wi*

5. That the examples of signal failure in interlocking system cited by my D.C. were not countered by the findings of the E.O. The point about short ^{circuit} without capable of leading to system failure by showing the aspect not intended as raised by my D.C. was also not countered by any evidence.

6. That the point of physical state of the brake in regard to VA-IB release valve sticking up at half position despite application of the brake before collision took place was also not countered by any evidence in the enquiry.

7. That the evidence of the guard of Up LMG F/G about the derailing switch No-71-X being in intact condition after the accident was ignored without any basis of independent witness.

8. That the vital facts mentioned in Para-3, 4, 5 & 6 above were left unanswered by any evidence in the enquiry and thus the findings of the E.O. were not optimum for correct assessment by the Disciplinary authority for his arriving at the decision of the above penalty. The Disciplinary authority also failed to take note of this lacunae in the enquiry.

9. That the regulation measure in S.R. 3.39/8 (General Rules 1976 for Indian Railways) raised by me in my representation dated....29-6-2002....in its Para-10 was not considered by the E.O.

10. That my train could proceed to line No.1 only when the point was set on to that line on Signal, was not considered by the above authorities at all, because they omitted to see that if the point was not set to line No.1 my train would have derailed at the point where the Azara Side line met the Line-No.1. They picked facts contrary to witness of the guard of my train and

Contd.....3

NOCC-2-2

Dist. Secy. Enquiry (C)

abstaining from considering other factors that can contribute to the bursting of the point and chose the impact of the LMG F/G as the only factor responsible for bursting of the point.

11. That this is picking of facts up for predetermined imputation and suffers from partiality.

12. That the above officers failed to assess the value of the contributing factor to the collision and the magnitude of the accident as stated at Para-11, 12, 13 & 14 of my representation dated 29-6-2002 and thus position those contributing factors against consideration of the circumstances and arriving at the nature of penalty adequate in the circumstances by correctly choosing the right alternative available in R.1707 (iv to viii) of Railway Rules of Establishment Code, and have without application of mind taken recourse to the pan ultimate penalty.

13. The Disciplinary authority has also failed to assess the contributing factors and has also failed to consider the two distinct stages that can be constructed. The first stage is that of the reality of the collision and the second stage is that of the avoidance of the collision. The penalties from iv to vii (of R.1707) listed as alternative to each other can be imposed only on a strict consideration of these two stages. If the first stage is considered for application of penalty, the above Rule (1707) does not make penalty at VI to VII absolute necessity under all circumstances because the rule itself provided for application of these penalties VI to VII ordinarily. The import of the word 'ordinarily' should have led the Disciplinary authority to consider other alternatives of penalty under the rule. But the

Contd.....4

Disciplinary authority has failed to give due consideration to the proviso of the Rule 1707.

14. That they also failed to assess the relevance of the S.R. 3.39/8 of G.R. 1976 for Indian Railway and thus failed to find out the true causes of the Collision in perspective.
15. That the evidence by Shri R.K. Goswami ASM KYQ before CRS Kolkata as stated in Para-5.12 of that report was not assessed and independently verified by E.O. That witness stated there that both distant and Home Signals were possible to have in Yellow aspect when route is indicated by Signalling to line No.2 or Line No.3. Thus the probable compounding of mistake and or malfunctioning of the signalling for LMG F/G was not verified though our train proceeded on Line No.1 because of setting the point on to there.
16. That there was no independent witness during the Enquiry for evidence on S.R. 3.39/8 of G.R. as submitted by me.
17. That the CRS Kolkata in his enquiry report clearly mentioned about his examination of the lobby Register and of the calling on counter Register. But during the enquiry these two Registers were not placed before my D.C. and thus deprived me of reasonable opportunity for complete defence and this violated the principle of natural justice.
18. That the above facts would reveal the inadequacy of the enquiry if the E.O's report and the verbatim evidence of the

Contd....5

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witnesses are scrutinised. Then it will be sufficiently clear that it was not a tenable basis for the disciplinary authority to arrive at the decision of the imposition of the said penalty. Since the only allegation of my disregarding the alleged red aspect of the signals is made suspect by the uncountered facts raised in my defence as stated above, your honour would kindly see that, the imposition of such harsh punishment is totally unwarranted on the part of the disciplinary authority and that I deserve an exoneration of the charges.

Under the circumstances, I would most fervently request you kindly to consider the above grounds and my otherwise neat service record and revoke the order under appeal for which act of kindness I will ever pray.

Dated : 20-2-2003.

Yours faithfully,

B. Appa Rao

(B. Appa Rao)
Driver(G) NCC.

R
20/2/03

N. F. RAILWAY

NO. TP/3/LM/1-4/2002

Office of the
DM (N) LMG, Dated: 15.5.2003

TO

Shri B. Apparao, Driver (G)/NGC

Through SSE (Loco)/NGC

Sub:- Action by revising authority in connection with the case of Head-on collision between 5658 DM Kanchanjunga Express and UP LMG F/G at KYQ on 23.01.2002.

Ref:- 1) NIP issued from this office vide order No. of this letter, Dated: 3.2.2003 and
11) Your appeal submitted on 20.2.2003.

Please refer to the above and note that ADM/LMG, being the competent authority has revised your case along with all relevant documents, factors including your appeal and on going through the same very carefully and objectively he has confirmed the penalty imposed against you by DA.

In this regards the orders passed by ADM/LMG may be noted as under:-

"I have gone through the entire DAR proceedings on appeal of Shri B. Apparao. After thorough and careful study of the case, I find no additional points to consider the case. It has been established on relevance of the documents produced on accident enquiry and also DAR Enquiry that the accident occurred due to negligence of duty and disregarding of the 'Red' aspect of UP home signal and passing signal at danger bursting point NO. 71(X) by LMG F/G (his train) which resulted in head-on collision with DM 5658 Kanchanjunga Express and causing loss of Railway property of Rs. 1,24,27,000/-. I, therefore, come to the conclusion that the punishment of removal from service imposed by DA against Shri B. Apparao holds good."

DM (P)/LMG

Copy to:- Sr. DPO/LMG

APO/CHY &

SSE (Loco)/NGC

For information and necessary action please.

DM (P)/LMG

Certified to be true copy.

P. N. C.

Received
17/5/03

To
The Chief Mechanical Engineer
N.F. Railway/Maligaon
Guwahati-781011.

(Through proper channel)

Respected sir,

Sub:- Appeal for review action by revisioning authority in connection with the case of head - on - collision between 5658 Dn and up LMG F/G at KYQ on 28.01.2002.

Ref:- DME(P) /LMG's letter No TP/3/LM1-4/2002 dated 15-05-2003.

While acknowledging the receipt of ADRM/LMG's orders communicated vide DME(P)/LMG's letter under reference with shock I beg to submit the following few lines for favour of your kinds consideration and on early sympathetic action please

That sir vide DME(P) /LMG's memorandum (S.F.No 5) No. TP/3/LM/1-4/2002 dt.13.06.2002 I was charged for causing the head-on-collision between 5658Dn and my Up LMG Food grain at KYQ on 28-01-2002 disregarding the "RED" aspect of up home signal and passing the signal at danger

That sir an enquiry was held in the matter and the learned enquiry officer held the charge levelled against me proved and the disciplinary authority without first examining the report as per laid down procedure in terms of Rly Boards directives communicated vide CPO/N.F.Rly's letter No. DAC/541 dated 30.05.1996 gave me 15 days notice to represent vide his notice Dt 20.12.02

That sir, considering my appeal dated 23.01.03 against the native the judicious disciplinary authority imposed the punishment of REMOVAL vide his N.I.P dated 03.02.03 giving me a chance to appeal to the Sr. DME/LMG within 45 days from the date of receipt of the notice.

That sir, obeying the orders I preferred an appeal against the notice on 20.02.2003 to the Sr. DME/LMG, the Appellate authority but, for reason not known my appeal was put up to ADRM/LMG, the revision in authority straight away who uphold the orders if the disciplinary authority removing me from service specially giving stress on the amount of loss of Rly. property to the tune of Rs 1,24,27,000/-

That sir instead of taking much of your valuable time I would simply pray to your judicious honor to be gracious enough to appreciate that the DAR action is not only punitive but also curative and the orders for removal is nothing but a death sentence depriving me of all the benefits. I accrued by long sincere and unblemished service of 32 years leaving no scope to cure my defects.

Certified to be true copy.
P. N. W.

That sir, so far as the amount of loss is concerned I would like to draw your kind attention to 6.1(e) of CRS/Kolkata's Enquiry report that the derailing switch No. 71X at KYQ is in facing direction from GHY side and trailing direction from Azara side allowing the up LMG F/G to trail through while the very principle of the Rly system is to guard against any mishap or at least reduce the loss of life and property to the extent possible. Had the facing point been there at the Azara and my train would have derailed then and there and the severe collision could be avoided.

That sir, from on 01.07.1951 I was appointed in the Railway on 01.11.1970 I have been serving for about 33 years with the utter satisfaction of my superiors and the punishment of removal will not only bring an end to my longhaired plans but also bring untold miseries to the members of my big family consisting of wife, four sons, one U/M daughter, one dependant U/M sister and widow mother and therefore pray to your generous honour kindly to pass necessary orders by reducing the punishment to the extent that I may not be deprived of my pension and other settlement dues so that the members of my family may at least dream of survival in these hard days.

I am confident that my prayer will receive the balance of your justice and a favorable orders passed for which act of your kindness I shall remain grateful and shall ever pray.

With profound regards.

Yours faithfully,

B. Apparao

Dt. 4.06.2003.
New Guwahati

(B.Apparao)
Driver (goods) under
Orders of removal



कार्यालय

मुख्य यांत्रिक इंजीनियर

मालीगांव, गुवाहाटी - 781011, असम

ANNEXURE— L

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Office of the
Chief Mechanical Engineer
Maligaon, Guwahati - 781011, Assam

No. CME/SS/2/3

November 4, 2004

Shri B. Appa Rao,
Ex. Driver Goods/NGC

Sub : DAR Case against Shri B. Appa Rao, Ex. Driver Goods/NGC in connection with head-on collision between 5658 Dn and Up LMG Foodgrain at KYQ on 28.01.02

Ref : Appeal of Shri B. Appa Rao, Ex. Driver Goods/NGC dated 04.06.03 addressed to CME

I have carefully gone through the appeal dated 04.06.2003 of Shri B. Appa Rao, Ex. Driver Goods/NGC and also the entire relevant papers/documents of the DAR proceedings against him as a sequel to which he was awarded the punishment of Removal from Service.

Shri B. Appa Rao in his appeal dated 04.06.03, addressed to the Revisionary Authority has sought a reduction in penalty on the following grounds.

1. He has stated that the Derailing Switch No. 71X at KYQ was in the facing direction from GHY side which allowed LMG Foodgrain to trail through. Had the derailing Switch been facing the Azra side, Up LMG Foodgrain would have derailed and the collision could have been avoided.

A perusal of the documents on record reveals the following.

1. CRS's Accident Inquiry Report states that the orientation of Derailing Switch No. 71X should have been in the facing direction from Azra side and trailing direction from Guwahati side while at site it was actually laid the other way.
2. CRS, in his Inquiry Report has further brought out that : -
 - 2.1 Visibility of Up Distant and Up Home Signals of Kamakhya Station was tested and found to be O.K.
 - 2.2 The train had proper brake power which was tested enroute.
 - 2.3 Speed of the train, as recorded in the Speedometer Chart, was 40 KMPH at the time of the collision.

Contd....P/2

Certified to be true copy

Certified to be true copy

P. N. *[Signature]*

2.4 The accident occurred due to the driver of UP Lending Foodgrain disregarding the 'red' aspect of the Up Home Signal and the train passing the signal at danger.

2.5 Responsibility for the above accident lies with the following : -

(a) Primary Responsibility

- (i) Shri B. Appa Rao, Goods Driver/NGC
- (ii) Shri S. N. Borah, Diesel Asstt. Driver/NGC

(b) Secondary Responsibility

S&T Department of Construction Organisation

(c) Blame Worthy

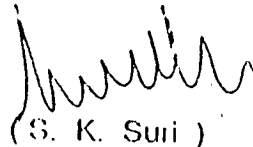
Shri P. C. Dey, Loco Inspector/NGC

The facts that the Signalling & Telecom Department of Construction Organisation have been charged with the Secondary Responsibility and Shri P. C. Dey, Loco Inspector/NGC has been found to be 'Blame Worthy' do not in any way mitigate the severity of offence of Shri B. Appa Rao who has been charged with the 'Primary Responsibility' of causing the accident.

3. It is seen that during the course of the DAR Inquiry full assistance has been provided to the delinquent staff and according to the Report of the Inquiry Officer the charges leveled have been proved.
4. All through the DAR Inquiry, Shri B. Appa Rao has been stating that he did not pass the Home Signal in 'red' condition. His contention is not supported by the evidence on record and his statement appears to be false.
- II. Shri B. Appa Rao, ex. Driver Goods in his appeal to the Revisionary Authority has further stated that he has served the Railways for 33 years and the punishment imposed on him will result in untold misery to him and his family.

It has to be borne in mind that a 'Collision' is the worst form of Railway accident and the staff found guilty of causing a 'Collision' must be awarded the most severe penalty.

Having carefully gone through the case in its entirety and after considering all the relevant aspects and applying my mind, I am of the opinion that the penalty of "Removal from Service" awarded to Shri B. Appa Rao should hold good.



(S. K. Suri)
Chief Mechanical Engineer

(Advance copy sent direct)

ANNEXURE - M⁸⁸

To,
The General Manager
N. F. Railway,
Maligaon

Guwahati- 781011

Through proper channel

Sub. : Prayer for Reviewing the order passed by CME/N. F. Rly/ Maligaon considering my appeal as a scheduled cast employee hailing from very poor family

Ref. : CME/N. F. Railway/MLG is Order No. CME/SS/2/3 of 04 - 11 - 2004 conveyed under DRM (M)/LMG's letter No. TP/3/LM/1-4/02 of 24 - 11 - 2004

Respected Sir,

The undersigned beg most respectfully and humbly as under :

That Sir, the procedural lapses and harsh dealing of my case by the Revisionary Authority no Justice could be bestowed upon the delinquent employee who was awarded punishment for removal from service.

1. That Sir, in spite of dealing my appeal by Sr. DME/LMG, the same was dealt by the ADRM/LMG which authority is a non-entity in the RS(DA) Rules, 1968.

2. That I had originally submitted my revision petition to Chief Operating Manager, N. F. Railway, Maligaon who have been the appropriate authority in control of Loco Running Staff as could be seen from Rly. Board's letter no. E(G) EC 1-1 of 22 - 09 - 2004 circulated under GM/P/MLG's Circular No. 80 E/107/RS. RI X1 (C) of 3-11-2004. But in sharp contrast to that my revision petition was dealt by CME/NFR/MLG which stood in violation of Rly. Board's order. In this connection I have to mention that from age old time COPS/COM was the revising authority of the Loco Drivers. But while considering my petition then COM/N. F. Railway/MLG Sri Anilava Lal raised objection and wanted to have the reference under which COM became the Revising Authority. Since it was age old order, none could lay hands on that old order. The present Rly. Board's order of 22-09-2004 is practically a re-iteration of the old order.

Certified to be true copy
P.N. *vi*

3. That Sir, as per circular no-DAC/591 of 11-9-2002, the Enquiry report were forwarded to me without endorsing the tentative view of Disciplinary Authority and as was the case I was deprived from resonable opportunity to defend my case which ran against the principal of Natural Justice.

4. That Sir, the main allegation against me was to pass signat at Danger. That the Break-power was not satisfactory as the certificate for the same was given from a station which was far away from N. F. Railway's Jursdiction. In The Brake Powere certificate, there had been endroement on the back of Brake Power Certificate (in a separate paper) by the Station Master/New Jalpaiguri so the fct that Brake-Power was not in order. This aspect was not deliberated in the enquiry. Nor the Enquiry Officer / Presenting Officer did produce the same in the enquiry. It may be mentioned here that after the accident the vacuum certificate was taken from me by Sri S. K. Choudhary AME/LOCO/HDO/MLG. The Driver's hand book which was taken by Sri H. Tata Dy/COM/Safety/MLG was bearing the testimony of proper vacuum Brake, For want of proper vacuum I had to apply emergent Brake at Kamakhya which is a recorded fact. An attested photo copy of receipt of Driver's diary is enclosed herewith, for your perusal please.

5. That the CME/NFR/MLG was too harsh to me and awarded improper punishment upon me.

6. Keeping in view the Commissioner of Railway Safety's report your honour would find that the responsibilities in respect of this accident were apportioned as under :

Primary (i) Sri B. Appa Rao, Driver/NGC

(ii) Sri S. N. Bora, DAD/NGC

Secondary The signal & Tele-communication Department of Construction Organisation

Blame worthy P. C. Dey, Loco Inspector/New Guwahati

7. That Sir, I strongly beleave that point no. 71X at KYQ wax installed in wrong direction violating the Mandatory provosion of Absolute Block system, installed by the signal department. Had the installation of the said point no. 71X (a drailing switch), rightly installed the train could be got detailed and the impact of acciednt would have been a minimal one.

- 69 - 1
40

8. The delinquent employee would like to draw your attention to the GM(P)/MLG's letter no. E/74/OP-XVI(C) of 12 - 11 - 2004 in which the minimum penalty in respect of passing signal at danger quantified as :

"Removal or compulsory retirement where entirely due to neglect of Driver reduction to lower grade, if there are contributory factors like loss of Brake Power on the run which he could not have detected when he took charge of the Engine"

The authorities, like Disciplinary Authority, Appellate Authority and Revisionary Authority while dealing with my defence, appeal, petition did not do justice to me in spite of remaining scope as existed in the GM/P's order Dt. 12-11-2004.

That Sir, I am a poor man, hailed from Scheduled Caste Community have become now beggar. All my family members including school going children, marriageable daughter will embrace death when all financial benefits of service such as gratuity and pension etc. have been forfeited.

In view of above lapses in procedure, failure in systems and harsh attitude of authorities, I seek the provision of Rule 25/Review from my General Manager with the request to quash my removal order and re-instate into my former service.

That Sir, at last I pray that before disposing of this review petition, I shall fervently request you to grant me as a personal hearing in which Railway recognised Trade Union official will assist me

For this act of kindness, I shall even pray.

Encl.

Receipt of
Dy./COM/S/Maligaon

Dated, Maligaon 25.11.01-2005

(B. Appa Rao)

Rly. Qr. No. 124(C) Type - I
Central Gotanagar,
GUWAHATI - 781011

Yours faithfully

B. Appa Rao

(B. Appa Rao)
Driver (Goods)

N. E. Railway/New Guwahati
Under order of removal

ANNEXURE - N₁

N. F. RAILWAY

NO. TP/3/LM/1-4/2002

Office of the
DM (G) / LMG,
Dated: 11.02.2005.

TO

Sri D. Apparao, Ex-Driver (G) / NCC
Through SE (Loco) / NCC

Sub:- Disposal of appeal.

Ref:- Your appeal submitted on 25.01.2005.

.....

Please refer to the above and note that vide
RB's NO. 2 (G.A. 79/RG-6/40, Dated: 18.8.81, Railway Board has
clarified that once a revision has been done by any of the
authorities under the aforesaid rules, no further revision
lies in any of the other authorities. However, the aggrieved
employee has the right under Rule NO. 31 of Rly. Servants
(G.A.) Rules 1968 to submit a petition to the President of
India which will be dealt with in the RLY Board in accordance
with the extant instructions, in consultation with UPSC.

It is, therefore, you are advised to submit
a petition addressed to the President of India through
proper channel, if so desired by you.

*Al/crm
11/2/05*

For Sr. DM (G) / LMG

Copy to:- SE (Loco) / NCC for information and necessary action.

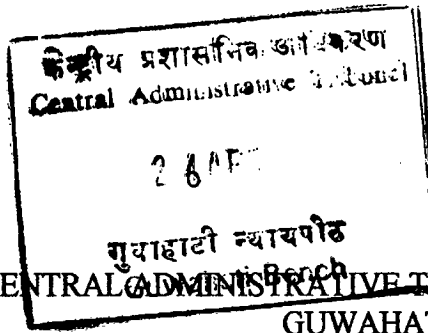
*Recd
5/3/05*

For Sr. DM (G) / LMG

Certified to be true copy.

P.N. in

Information and necessary action
//
DM (G) / LMG



- 71 -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

O.A. No301 of 2005.

नवल कामिनी अधिकारी
पू. सी. रेवड़ी लामडिंग
Divisional Personnel Officer,
S. P. Railway, Lumding

Sri B.Appa Rao.....Applicant.

-VRS-

The Union of India and others.....Respondents.

WRITTEN STATEMENT ON BEHALF OF THE
RESPONDENTS.

Filed by:
Advocate
26.4.06

The answering Respondents most respectfully shweth,

1. That they have gone through the copy of the application filed by the above named Applicant and understood the contents thereof. Save and except the statements which have been specifically admitted herein below or those which are borne on records all other averments/allegations as made in the application are hereby emphatically denied and the Applicant is put to the strictest proof thereof.

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

3. That the application suffers for want of valid cause of action to redress the Applicant of his troubles and punishment received for his own careless and callous duty as will be clearly evident from the statements made in the relevant paragraphs below. The Applicant knows fully well how grave the offence he had committed for not fulfilling the duties entrusted to him while running a train under his care and likely to be controlled on all circumstances as per Rules.

4. That the Respondents beg to state that for want of the valid cause of action for the Applicant the application merits dismissal as the application suffers from wrong representation and lack of understanding of the basic principles followed in the matter as will be clear and candid from the statements made hereunder.

4.1. That the Respondents respectfully submit here that a procedure for dealing with safety related Disciplinary cases issued by the Ministry of Railways, Railway Board

Contd.....P/2... That.....

under Letter No.E (D & A) 2003/RG.6-5 dated 19.2.2003 is there and all such cases arising out of train accident are dealt with accordingly. A copy of the said Circular will be furnished at the time of Hearing.

4.2. That in regard to punishment to be imposed in instant cases a Circular issued by the Ministry of Railways under Railway Board's No. 99/Safety (A & R)/6/1 dated 23.4.99 is submitted herewith which will postulate that the conduct and callousness and carelessness action and wrong done by the Applicant while performing his duty warrants severe punishment and the Respondents have issued the necessary quantum of punishment required to be imposed upon according to the said Circular of the Ministry of Railways and Railway Board.

4.3. That the Applicant begs to submit that the Commissioner for Railways Safety in his report have observed and made findings after carefully considering the factual material and circumstantial evidence at his disposal that the **Head on collision** between 5658 DN Kanchanjangha Express and UP Lumding Foodgrain, on line No.1 401/8 at Kamakha Railway Station of Guwahati – Agthori Broad Gauge single line non qualified Section of Lumding Division of the North East Frontier Railway which occurred at 22.35 hrs. on 28.1.02 was due to driver of UP Lumding Foodgrain disregarding the “RED” express of the UP Home Signaling and the Train passing signal at danger point was because of the “ failure of the Railway Staff” and for which the Applicant Sri B.Appa Rao In-Charge of the said Goods Train was held primarily responsible for his violation of GR (General Rules) 3.78 (1)(a) and (b) and 4 and hence the punishment imposed upon the Applicant was absolutely in accordance with Rules which was made and imposed to the Applicant after observing all formalities and giving him all reasonable opportunities for his defence as per the Disciplinary Rules.

4.4. That it is submitted that in the ‘Brief’ dated 22.2.03 submitted by the Applicant to the Senior Divisional Mechanical Engineer, N.F.Railway, Maligaon, as submitted by him as Annexure-I in his application that confirms “ since the only allegation of my disregarding the alleged red aspect of the signal is made suspect by the uncountered facts raised in my defence” it is evidentially proved that the Applicant was very much aware of his offence committed in disregarding the said signal and caused the **Head on collision** accident which could have been averted ,had he applied his care, caution, diligence and full responsibility in running the train Driver which ought to do, and thus he is fully responsible for the charges leveled against him and the quantum of punishment imposed upon him was fully in order and according to the Rules.

4.5. In the reply by the Chief Mechanical Engineer, N.F.Railway, Maligaon to the Applicant vide his letter No.CME/SS/2/3 dated 4.11.04 in reply to his appeal addressed to the Chief Mechanical Engineer as annexed under Annexure-L by the Applicant is sufficient to construe the magnitude and gravity of the offence committed by the Applicant while performing his duty as a Goods Driver and because of his violation of the working Rules in running the train and carelessness and irresponsibility the **Head on collision** of the train caused which somehow saved the a huge disaster and casualties.

4.6. That the Applicant after reviewing the matter by the Chief Mechanical Engineer have made a wrong approach to the General Manager again for reviewing the order to be made by the General Manager, N.F.Railway. As per DAR, 1968 the next higher Authority of reviewing the matter in this case should have been the President of India as per DA Rules 1968. But instead of availing that DAR Provision the Applicant deliberately approached the General Manager and violated the Rules of the DAR,1968 and thus committed offence. However, the Respondents beg it to be an ignorance of the DA Rules on the part of the Applicant, had considered sympathetically to communicate the proper forum would be in this case for considering the merit of his representation was the President of India. This is very much evident from the Annexure-N submitted by the Applicant himself, which, to the best of the knowledge of the Respondents, it is reiterated, the Applicant had not availed the opportunity of such Rule though communicated to him as he himself annexed the letter issued by the Respondents to him suggesting for filing of mercy petition to the President of India, for considering the punishment inflicted upon him instead he has straightway come to this Hon'ble Tribunal for his redress. Thus the Application consists the irregularities as per DA Rules,1968 and thus violated the provision of the Administrative Tribunal Act 1985 and therefore is not tenable in the eye of law and is liable to be dismissed with cost to the Respondents.

5. THE PARAWISE COMMENTS IN REGARD TO FACT:

5.1. That as regards paragraph 4.1 made by the Applicant in his application, the respondents offers no comments.

5.2 That as regards paragraph 4.2 made by the Applicant in his application it is submitted that the Applicant joined in the Railway Service on 1.11.70 and was promoted as Goods Driver on 27.2.01.

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बिहल कामुक अड्डा/१२,
१० सी० रेलवे कामडिग
Divisional Personnel Office
S. P. Railway, Lumding

5.3. That as regards paragraph 4.3. the Respondents humbly submit that the Kamakhya (KYQ) Railway Station is provided with Central Panel Interlocking Signaling system. As such the statements of Driver and Diesel Assistant Driver can not be the final say. As per principle of interlocking signalling system at Kamakhya, whenever a train coming from Guwahati is entering at Line No.1 at Kamakhya station then there is no possibility to take "OFF" the Up Home Signal into "YELLOW" aspect for the train coming from Azara for the same line. Hence the contention of the Applicant and/or his associated Diesel Assistant Driver as stated therein is not tenable in the prevailing signaling system for the trains.

5.4. That in regard to the statement made in para-4.4 by the Applicant it is submitted that in the Charge Memorandum dated 13.6.02 no allegations so brought against the Applicant except that disregarding the signal at DANGER. However it may be mentioned that as per CRS Enquiry Report, after the accident the driver who sustained injury, was admitted in Central Hospital/Maligaon at 24.00 hours on 28.01.2002. As per the report of Sr. DMO (Surgeon)/Maligaon, the driver smelled of alcohol although he was fully conscious, oriented with normal behaviour and gait. A blood sample was taken out at 0.30 hrs on 29.01.2002 was sent to Forensic Science Laboratory/Guwahati. The report however, was followed "Negative Ethyl alcohol" as referred in CRS Enquiry Report.

5.5. That as regard the statement made in para-4.5 by the Applicant it is submitted that the Respondents offer no comments.

5.6. That as regard the statement made in para-4.6 by the Applicant it is submitted that the Kamakha station is provided with Panel interlocking Signaling System Practically whenever a train is received on Line No.1 from Guwahati end then obviously "YELLOW" aspect of Home Signal at Kamakhya for receiving any train coming from Azara is not at all possible as per the working principle of interlocking system, which was prevailing at Kamakha station. Hence, the contention of the Applicant is not admitted.

5.7. That as regard to the statement made in para-4.7,4.8, 4.9,4.10, 4.13,4.14,4.20,4.21 by the Applicant, the Respondents offer no comments.

5.8. That as regard the statement made in para-4.11 by the Applicant, it is submitted that the Applicant submitted his written defence on 27.6.2002(Annexure-D of the Applicant) are not acceptable so much so that his contention do not corroborate with the

Contd.....P/5...signaling...

signaling system at Kamakhya Railway Station, CRS enquiry & Accident committee Reports and thus he can not escape his liability for such averted accident which was termed by CRS as "**Hume Failure**" that is, the failure on the part of the Driver and his Diesel Assistant.

5.9. That as regard the statement made in para-4.12 it is submitted that Shri Parimal Chandra Dey, Loco Inspector/New Guwahati is held responsible being as the counselor of the Applicant and accordingly, he was WARNED for the first time to be more careful in future regarding proper Counseling to avoid recurrence of such lapses ,albeit it was the choice of the Applicant to engage him as his Defence Counsel.

5.10. That as regard the statement made in para-4.15 it is submitted that in response to the DME(P)/LMG'S letter, Dated 20.12.2002, the Applicant submitted his written representation of 23.01.2003. It may be pointed out that as per CRS Enquiry Report, the panel interlocking signaling system was in order at Kamakhya station and, hence, the contention of the Applicant is not acceptable.

5.11. That as regard the statement made in para-4.16, it is submitted that the penalty was imposed against the Applicant by Divisional Mechanical Engineer/Lumding (the Disciplinary Authority) according to the gravity of the case as the charges as brought against the Applicant, for passing signal at "**danger**" bursting the Point No.71 (X) at Kamakhya Station on 28.01.2002 have been established with justified reasons in the departmental enquiry conducted as per the procedures and Rules of the prevailing system.

5.12. That as regard the statement made in para-4.17 & 4.18 , it is submitted that the Appellate Authority went through the appeal of the Applicant, dated: 20.2.2003 and confirmed the penalty of REMOVAL FROM SERVICE as imposed by the Disciplinary Authority and the action has been taken on the basic grounds having gone through the reports of the Departmental Inquiry Officer as well as CRS, N.F.Circle, Kolkata in accordance with the Railway Board's norms as prescribed.

5.13. That as regard the statement made in para-4.19, it is submitted that the allegation as brought against this Para is denied as the failure to ensure proper signaling aspect before passing the same at Kamakhya Railway station on part of the Applicant can not be ignored anyway on safety point of view for which the Driver and his Diesel Assistant are absolutely responsible.

5.14. That as regard the statement made in para-4.22, it is submitted that the Applicant and the Diesel Assistant Driver were served Charge Sheets individually. The Appointment letters of Enquiry Officer were also issued separately. Accordingly, the Enquiry Officer submitted his Enquiry Report each for the Charged Officials and there remains to be no lapse or latches as per Railway D.A. Rules of 1968.

5.15. That as regards the statement made in paragraph-4.23 by the Applicant the Respondents beg to state that after observing all formalities as per the DAR 1968 and the prevailing Railways Working System and Rules and also after considering all aspects carefully and going through the proper application of mind the punishment imposed upon the Applicant according to the Rules and even after his removal the Applicant was advised for preferring the mercy petition to the President of India for review of the case, but as it appears the Applicant has not availed of the Provision of the said Review petition and is the reason known and to the best of the knowledge of the Respondents no representation by the Applicant has been submitted before the President of India as was advised. Hence, the channel of getting remedies for imposition of punishment for the offence caused by him has not been exhausted. Thus the filing of this application before this Hon'ble Tribunal is not at par the Administrative Tribunal Act and Rules and therefore has no merit at all and it deserves to be dismissed with cost to the Respondents.

6. Para-wise comments in regard to Grounds:

6.1. That as regards the Grounds made on paragraph-5.1,5.2,5.3 and 5.4 by the Applicant in his application the answering Respondents beg to submit that the allegations of the Applicant have no basis and therefore in the eye of law are not tenable and hence, denied altogether.

6.2. That as regards the comments made in para 5.5 and 5.6 the answering Respondents beg to submit that cases of passing signals at DANGER are various in nature and it cannot be viewed leniently at all. That the very fact that a signal is at danger implies that the section ahead is occupied by any train or train's engine/loads and if the Driver disregards this safeguard it may definitely lead to a collision. So, it is to be viewed as Breach of Safety, and accordingly, the similar punitive action should be taken against any defaulting staff/Driver irrespectively against the cases whether collision is taken place or not .Railway Administration can not allow the disaster to happen.

6.3. That as regards the comments made in Para-5.7 by the Applicant the answering Respondents beg to submit that the charge was framed on the basis of the misconduct of the Applicant mentioned in the foregoing paras.

6.4. That as regards the comments made in para-5.8 by the Applicant, it is stated that the allegations of the Applicant is not admitted as no common Proceeding, as alleged, was held.

6.5. That as regards the comment made in para-5.9 by the Applicant, it is stated that the Applicant was given all reasonable opportunities at every stage at the time of process for D & AR action which was initiated as per the extant procedures and accordingly, before passing the final penalty orders, he was served a copy of the Inquiry Officer's report which might have been gone thoroughly by the Applicant while submitted his representation to the show Cause Notice issued vide no.TP/3/LM/1-4/2002, dated 20.12.2002. During DAR Enquiry, the Applicant had already been given sufficient opportunities to represent the case with the help of his Defence Counsel for proving his innocence. No such procedure is existed regarding communication of the tentative views by the Disciplinary Authority, as stated by the Applicant, at the same stage of issuing Show Cause Notice before imposition of penalty order.

6.6. That the averments of the Applicant as stated under paras 5.10, 5.11, 5.12 and 5.13 in the application are denied in toto.

6.7. That the present application has no merit at all and it deserves to be dismissed with cost to the Respondents.

7. That the Respondents beg to state that for the submission made in the foregoing paragraphs their remains no way for the charged official, herein the Applicant in the instant O.A, to escape his liabilities and disown the responsibilities at all for the facts and circumstances detailed above, and, hence, the application is liable to be rejected abinitio and in limine with cost to the Respondents.

8. That the averments, allegations and statements made by the Applicant are baseless and somewhere concocted, frivolous and, therefore, are not tenable in the eye of law and

hence, the punishment imposed upon the Applicant while he was in service was at par with rules and after observing all formalities necessitated as per DAR and other Rules and System and also after giving him all reasonable opportunities for his defence as required under the law of the land.

9. That the Respondents beg to crave leave of this Hon'ble Tribunal for submission of Additional Written Statement, Re-joinder, if necessary.

-VERIFICATION-

I, Sri... N. B. Das....., aged about 58 years in the official capacity do hereby solemnly affirm and verify that the statements are all derived from the records and to the best of my knowledge and information and believe to be true and the paragraph 6.6. to 9 are my respectful submission.

And I sign this Verification on thisth day of March, 2006.

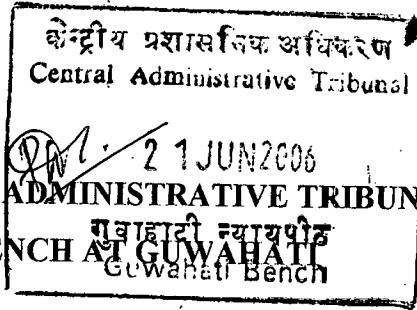
बहुल कामिनी अधिकार
१० सी० रेलवे, लामदिंग
Divisional Personnel Office
For and on behalf of Lamin

Union of India and other Respondents.

To

The Dy. Registrar,
Central Administrative Tribunal,
Guwahati.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI



Original Application No. 301/2005

Filed by the Deponent
Through, P.N. Goswami,
Advocate, 21/06/06.

IN THE MATTER OF:

Original Application No. 301/2005

Sri B. Appa Rao.

.... Applicant

-Versus-

Union of India & Ors.

...Respondents

-AND-

IN THE MATTER OF:

An Affidavit-in-Reply filed on behalf of the
Applicant in the aforesaid Original
Application.

AFFIDAVIT - IN - REPLY / REJOINDER

I, Sri B. Appa Rao, son of Late B. Jampia, aged about 52 years, resident of Central Gota Nagar, Railway Quarter No. 124 C, within the district of Kamrup, Assam do hereby solemnly affirm and state as follows.

1. That, I am the applicant in the aforesaid original application and a copy of the written Statement so filed by the Respondents has been served upon me through my counsel. I have gone through the same and understood the contents thereof. I am well acquainted and fully conversant with the facts and circumstances of the instant case and as such, I am competent to file this affidavit.
2. Save and except the statements, which have been specifically admitted herein below, all other averments/Statements made in the Written Statement shall be deemed to have been denied by the Applicant/Deponent.

3. That, with regard to the statements made in paragraphs 1 and 2 of the Written Statement, the Deponent/Applicant has no comments to offer and denies anything that is contrary to the records of the instant case.
4. That with regard to the statements made in paragraph 3 of the written statement, the deponent categorically denies the same and further states that the application does not suffer from want of valid cause of action. In fact, in a vindictive manner ~~the respondents have removed the applicant from service~~ without any fault on his part. Further, the applicant categorically denies that the punishment inflicted upon him is due to his carelessness and callousness. The deponent since his joining in service had served the Railways with utmost sincerity and was always vigilant in following the signals.
5. That, with regard to the statements made in paragraphs 4.1 and 4.2 of the Written Statement, the Deponent has no comments to offer since, the copies of the circulars dated 19.02.2003 and 23.04.1999 have not been annexed with the Written Statement to enable the Applicant to defend his case appropriately and accordingly. As such, the Respondents are put to strictest proof thereof. However, the Applicant further states that any circular issued by the Railway Authorities cannot preclude the Disciplinary Authority/Appellate Authority to apply its mind to the peculiar facts and circumstances of any given case. In view of the facts and circumstances of the instant case, the punishment imposed on the Deponent/Applicant is grossly disproportionate.
6. That with regard to the statements made in Paragraph 4.3 of the written statement the deponent categorically denies that the Commissioner of Railway Safety in his report had observed that the accident occurred due to the fault of the driver of the Up Lumding Food Grain, disregarding the RED aspect of the Up Home signal. In this regard it is respectfully submitted that at Paragraph 7.5(ii) of the CRS report it is admitted that if the derailing switch No. 71X had been correctly oriented i.e. in the facing direction from Goalpara Side and trailing direction from Guwahati side, possibly the collision could have been averted or at least its consequences could have been minimized. The CRS has also stated that the accident could have been averted if the B.G. Line No.1 was isolated from the line of Guwahati-Jogighopa-New Bongaigaon section at Azara end by providing a 'Sand Hump' in lieu of the existing derailing switch No.71 X, so that if a train from Goalpara passes the Up Home Signal at danger level, it would enter the sand hump. Further by the deposition of various persons who were examined during the enquiry by the CRS, it was shown that Up Distant Signal and Up Home Signal of Kamakhya station from Azara side

has, on earlier occasions also created confusion within the railway staff. It is pertinent to mention herein that on an earlier occasion also as the Up-Home Signal at Kamakhya Station was not functioning properly, another accident had also taken place on the same line and at the same Platform at 'Kamakhya' Station between Up Lumding Food Grains Train and Down Rajdhani Express. It is categorically stated herein that to the best knowledge of the Applicant, the said accident had also taken place due to the same problem of Up Home Signal, which continued to show 'Yellow' aspect despite the fact that another train was occupying the line No.1 at the Platform at Kamakhya station. Be it further stated herein that the Driver of the said Up Lumding Food Grains, viz. Sri S. C. Dey and the Diesel Assistant Driver, viz. Sri R. Barman were also proceeded against by the department and after a departmental enquiry, a minor punishment of withholding the increment was imposed upon them. As such, in comparison and considering the fact that the inquiry proceedings against the Applicant were pari-materia, the quantum of punishment so imposed on the Applicant is in no way justified.

7. That, with regard to the statements made in paragraphs 4.4 of the written statement, the Deponent categorically denies the correctness of the same.
8. That, with regard to the statements made in paragraphs 4.5 of the written statement, the Deponent begs to state that from the reply dated 04/11/2004 issued by the Chief Mechanical Engineer it is apparent that he had failed to apply his mind to the relevant facts and circumstances of the case, more particularly regarding the wrong installation of the derailing switch which was in facing direction from Guwahati side. The Chief Mechanical Engineer mechanically relied on the report of the CRS and upheld the punishment imposed on the applicant.
9. That, while denying the statements made in paragraphs 4.6 of the written statement, the deponent/applicant humbly states that the Disciplinary And Appeal Rules, 1968 as applicable in the instant case, envisages punishment/penalty being imposed by the Disciplinary Authority. Subsequently, the punishment/penalty is subject to the jurisdiction of the Appellate Authority and if the Appellate Authority decides against an incumbent, the next authority is the Revisional Authority. Once the Revision Petition is rejected, the channel for redressal of grievance before the Railway Authorities is exhausted and the incumbent has no other remedy except for approaching this Hon'ble Tribunal. It is evident from the statements made in the said paragraph, i.e. 4.6 of the Written Statement that any petition made to

the President of India is only a *Mercy Petition* and cannot in any way take away the right of the Applicant to approach this Hon'ble Tribunal. As such, the statements made contrary thereto shall be deemed to have been denied by the Deponent/Applicant.

10. That, with regard to the statements made in paragraphs 5.1 and 5.2 of the written statement, the deponent/applicant has no comments to offer.
11. That, with regard to the statements made in paragraph 5.3 of the written statement, the deponent/applicant once again reiterates the statements made in paragraph 4.3 of the Original Application and paragraph 5 of the instant affidavit.
12. That, with regard to the statements made in paragraphs 5.4 and 5.5 of the Written Statement, the deponent/applicant once again reiterates the statements made in paragraph 5.4 of the Original Application and paragraph 6 of the instant affidavit. The deponent categorically denies that he had ever consumed alcohol while on duty and as such the question of smell of alcohol does not arise.
13. That, with regard to the statements made in paragraphs 5.6, 5.7 and 5.8 of the Written Statement, the Deponent/Applicant once again reiterates the statements made in paragraphs 4.7 and 4.8 of the Original Application. At paragraph 7.5 (ii), the CRS report itself contemplates that "if the derailing switch No.71X had been correctly oriented, i.e. in the facing direction from Goalpara side and trailing direction from Guwahati side, possibly the collision could have been avoided....." As such, the action of the Enquiry Officer and the authority in assigning the blame solely on the Deponent/Applicant and the DAD of the train cannot hold ground and as such, is liable to be rejected by this Hon'ble Tribunal.
14. That, with regard to the statements made in paragraph 5.9 of the Written Statement, the same do not corroborate and/or deal with the statements made by the Deponent/Applicant in paragraph 4.12 of the Original Application and as such the Deponent/Applicant refrains from commenting on the same.
15. That, with regard to the statements made in paragraphs 5.10 of the written statement, the same are mere repetition of the Enquiry report dated 27.11.2002 and hence, the Deponent/Applicant refrains from commenting on the same since the same have been suitably dealt with in the Original Application.

16. That the Deponent/Applicant denies the statements made in paragraphs 5.11 and 5.12 of the Written Statement to the extent they are contrary to the records of the case.
17. That, the statements made in paragraphs 5.13 of the written statement are denied by the Deponent/Applicant in so far as they are contrary to the records of the case. The Deponent/Applicant further reiterates the statements made in paragraphs 4.19 of the Original Application.
18. That the Deponent/Applicant categorically denies the statements made in paragraph 5.14 of the Written Statement and further states that it is a fact that separate charge sheets were issued to the Applicant as well as the DAD i.e. Sri S.N. Bora and the Enquiry reports submitted were also separate for the charged officers. However, the fact remains that the enquiry proceedings so conducted was a joint/common proceeding which would be evident from the records of the enquiry proceedings wherein the signature of both the charged officers has been recorded on every sitting of enquiry on the same piece of paper. As such, the statements made contrary thereto are categorically denied and the records of the case would reveal that the enquiry officer proceeded to hold a common proceeding in the matter resulting in gross lapses and/or laches as per the Railway Disciplinary and Appeal Rules, 1968.
19. That, with regard to the statements made in paragraphs 5.15 of the written statement are denied by the Deponent/Applicant. The deponent further reiterates and reaffirms the statements made in paragraph 9 of the present affidavit.
20. That, the statements made in paragraphs 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 7 and 8 of the Written Statement are categorically denied by the Deponent/Applicant. Since the same are mere repetition of the statements made in the written statement, the deponent reiterates the statements made in the foregoing paragraphs of the instant affidavit. The Deponent/Applicant humbly states that a test was carried out with regard to the signaling system at Kamakhya Station on 31.01.2002 after a gap of 3 days from the date of accident, during which period the signaling aspect could have been corrected and/or set right by the authorities concerned in order to escape the liability and make the Deponent/Applicant as well as the DAD of the train, the scapegoat in the matter. This is further certified by the fact that as stated herein above, another accident had taken place on the same line due to the same confusing 'Yellow'

aspect of the Up Home Signal at 'Kamakhya' station. Hence, another accident on the same line due to the same faulty Up Home Signal, could have harmed/prejudiced the officials who were responsible for such Signal control and hence in order to escape liability, the same has been conveniently attributed to the Applicant and the Driver of the Train. As such, the statements contrary thereto are denied by the Applicant/Deponent. That the grounds averred to in the Original Application are good and tenable grounds for this Hon'ble Tribunal to intervene into the matter and accordingly, grant appropriate relief to the Applicant as has been stated in the Original Application

21. That, the statements made in this paragraph and in paragraphs 1 to 20 are true to my knowledge and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this affidavit on this 21st day of June, 2006 at Guwahati

Identified by me :

B. Appa Rao
DEPONENT

Advocate's Clerk.