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S
**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 303/2005
R.A/C.P No.
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SECTION OFFICER (Judl.)

Farhiz
07.11.17

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

ORDER SHEET

Original Application No. 303/05

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant(s) One N.L.Kam

Respondent(s) Various.

Advocate for the Applicants Dr. B.U. Ahmed, R. Islam
S. Hussain

Advocate for the Respondent(s) M.C. Sarma ^{CCSG} Rly St. Counsel

Notes of the Registry	Date	Order of the Tribunal
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6.12.2005 Present : Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.

Heard Dr. B.U. Ahmed, learned counsel for the applicant and Dr. M.C. Sarma, learned Railway counsel for the respondents.

Admit. Issue notice to the respondents.

Post on 17.1.2006. Written statement, if any, in the meantime.


 Vice-Chairman

pt. Comply. order dated 05
 6.12.05

✓
 7.12.05

mb

17.1.06

Dr. M.C. Sharma, learned Railway counsel submits that he would like to get instruction and file statement. Let it be done. Post on 21.2.2006.


 Vice-Chairman

Notice of order sent
 to D/section for
 issuing to resp.

Nos. 1, 2, 3 & 4 by
 regd. A/D post.

(Ans) D/No=1684 to
 1687.
 (2/12/05)

bb

Dt= 14/12/05.

Contd....

Notice duly
Served on
resp. No. 1.

(cc)
28/12/05.

21.2.2006 Dr. M.C. Sharma, learned Railways
counsel submits that he would like
to have some more time to file reply
statement. Let it be done. Post on
22.3.2006.

Vice-Chairman

16-1-06

Notice issued & duly served on R. No. 1.
Others awaited service.

(cc) filed.

.../03/06. Vice-Chairman

22.3.06

Dr. M.C. Sharma learned counsel
for the Respondents has some
personal difficulty. Post the
matter on 27.4.06.

Vice-Chairman

26-2-06

(1) Notice duly served
on R. No. 1.
Others respondent you
awaited.

(2) No. W.L.S. has been filed.

My

27.4.2006

Dr. M.C. Sharma, learned Railway
counsel wanted to have some more time
to file reply statement. Let it be
done. Post on 30.5.2006.

Vice-Chairman

21-3-06

No. W.L.S. has been
filed.

My

30.5.2006

Four weeks time is granted to
the respondents as a last chance
for filing reply statement as requested
by Dr. M.C. Sharma, learned counsel
for the Railways.

Post on 30.6.2006.

No. W.L.S. has been
filed.

My
26.4.06

29-5-06

No. W.L.S. has been
filed.

My
29-6-06

No. W.L.S. has been
filed.

bb

30.06.2006

Learned counsel for the respondents
wanted time to file reply statement.
Post on 14.07.2006.

Vice-Chairman

O.A 303/05

Notes of the Registry

Date

Order of the Tribunal

10.7.06

14.7.2006

Mr. B. Ahmed, learned counsel for the applicant is present.

Written statement has been filed by the respondents. Applicants are allowed three weeks time to file rejoinder, if any.

Post on 10.8.2006. Respondents are directed to be ready with the records by the next date.

Wts has been filed

13.7.06

bb

Vice-Chairman

mm

20.7.06

No Rejoinder has been filed.

22

9.8.06

bb

Member (A)

Vice-Chairman

No rejoinder has been filed.

22

12.3.07

pg

ce

Member

Vice-Chairman

No rejoinder has been filed.

22

19.8.07

/bb/

Member (A)

Vice-Chairman

OA. 303/2005

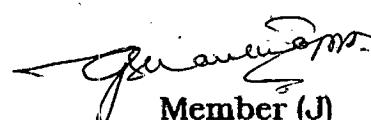
23.4.2007 Present: The Hon'ble Mr. G. Shanthappa
Member (J)

The Hon'ble Mr. G. Ray, Member (A)

Learned counsel for the Applicants sought for one-day adjournment. Dr. M. C. Sharma, learned Railway counsel has got inconvenience by one day. Both the sides submitted that the day after tomorrow is convenient date.

Call on 25.4.2007.


Member (A)


Member (J)

/bb/

25.4.07

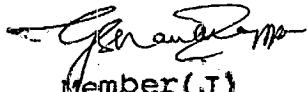
On the prayer of the counsel for the applicant call the matter on 27.4.07.


Member (A)


Member (J)

pg

27.4.07. Heard Mr. B. U. Ahmed learned counsel for the applicant and Dr. M. C. Sharma learned counsel for the respondents. Hearing concluded. Judgment reserved.


Member (A)


Member (J)

1m

18.6.07. Judgment delivered in open Court. Kept in separate sheets. Application is disposed of. No order as to costs. ✓

Vice-Chairman

1m

21.06.07
Certified copy
on the handwritten
by the applicant on
20.6.07

Records are
back for 2007
for 2007 or
for 2007

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

Original Application No. 303 OF 2005

DATED THIS THE 8th DAY OF JUNE, 2007.

CORAM :

**HON'BLE MR G SHANTHAPPA, MEMBER(J)
HON'BLE MR GAUTAM RAY, MEMBER(A)**

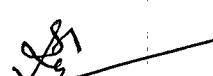
Sri Narayan Lal Karn,
Aged about 60 years,
S/o late Chaturbhuj Lal Karn,
R/o Quarter No.DS-12/H,
Railway Colony, Kalibari,
Guwahati Railway Station,
P.O. Panbazar,
P.S.Panbazar,
Dist. Kamrup, Assam. : **Applicant**

(By Advocate M/s Dr B.U.Ahmed, R.Islam & S.Hussain)

Versus

1. The Union of India,
Represented by General Manager,
N.F.Railway, Maligaon,
Guwahati-11.
2. The Chief Commercial Manager,
N.F.Railway, Maligaon,
Guwahati-11.
3. The Divisional Railway Manager,
North East Fortier Railway,
Lumding,
Dist Nagaon, Assam.
4. The Senior Divisional Commercial Manager,
N.F.Railway,
Lumding Assam. : **Respondents**

(By Advocate Dr M.C.Sarma)



ORDER

HON'BLE Mr. GUATAM RAY, MEMBER (A)

This Original Application under Section 19 of the Administrative Tribunals Act, 1985 has been filed against Order of imposition of penalty of reduction of rank (reversion to a lower service grade with a lower time scale) for a specified period vide No.C/Con/LM/Misc/98 (NLK Hd.TC GHJ dated 3-2-2003 issued by the Disciplinary Authority (DCM/LMG) and the Order of even No. dated 08-12-2003 of Appellate Authority (ADRM/LMG) and the ordr of even No. dated 3-6-2005 of the Revisional Authority (CCM), Maligaon. The Order of Punishment reduced/reverted the applicant from Head Ticket Collector to lower grade (Rs.4000-6000) at initial scale of pay for 2.5 years with loss of seniority. The above penalty would take effect from 1-8-2003.

2. The case of the applicant is briefly stated hereinbelow:

(a) While working as Head Ticket Collector in the Guwahati Station of the N.F. Railway, the applicant was allotted duty of ticket checking at entrance gate on 20-6-1995 from 17.30 hrs. to 21.00 hrs. At about 20.30 hrs. on that day a person familiar to the applicant sought help from the applicant in getting to board 2423 Dn. Rajdhani Express bound for Delhi. As per reservation charge available at Guwahati Railway Station (Additional chart from Hq. did not reach till then) the said person and his lady companion did not have confirmed ticket but were having wait-list ticket. On being insisted the applicant with express permission of the then Shift In-charge Chief Ticket Inspector (CTI) consulted the chart and found 2 berths of Barauni Quota were available from Guwahati to Barauni. On being requested



to allot those two berths to those two persons, the applicant issued a slip for procurement of tickets. By that time the night-shift staff started attending duty to be commenced from 21.00 hrs. The applicant requested the CTI, who started duty, to arrange entry of two names in the chart to whom he had issued slip for procuring tickets but the concerned CTI not only declined but also prohibited the applicant to make any entry in the chart. The applicant states that the CTI's suggestion did not pacify the applicant's sense of duty as he had moral obligation to the said passengers who had approached him for help and this sense of passion coupled with human obligation to a familiar person prompted him to tread into the office hours of his colleague and he ventured into completion of the reservation for that passenger by that time his allotted duty hour was over.

(b) The applicant further states that he was in hurry and as he found that the said passenger could not procure ticket for change, the applicant gave him Rs.100/- and returned to office. It was after completion of the reservation the applicant went out of office by about 21.40 hrs. and handed over the tickets to the commuter and finally the commuter returned the applicant Rs.100/- which he had earlier taken from the applicant. Soon after the applicant departed, the said commuter approached to the Exit gate and another gentleman (later identified a Vigilance Team Officer) called back the applicant from distance behind. The applicant left the place in hurriness as he was to attend his ailing daughter.

(c) The applicant submits that he was put under suspension w.e.f. 26-7-1995 vide Station Superintendent, Guwahati's letter No.G/E/20/III/C/95 dated 26-7-95 and the said suspension was revoked on 25-8-1995 vide Chief Vigilance Officer (Traffic),



Maligaon's urgent telegram (XXR) No.Z/Viz/289/2/Misc/Pt.II dated 24-8-95.

(d) The applicant further submits that on 12-2-1996, the Senior Divisional Commercial Manager, N.F. Railway, Lumding forwarded a Memorandum containing 3 Articles of charge proposing to conduct Enquiry against the applicant under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The charges are as follows:-

"ARTICLE-I

That Shri Narayan Lal Karn, HTC/GHY being off duty, after performing duty from 17-30 hours to 21.00 hours at GHY, unauthorisedly granted reservation to two passengers against BJU quota in 2 AC-2 coach of train No.2423 Dn of 21-6-95 despite refusal by on duty CTI/GHY.

ARTICLE-II

He granted reservation both the above passengers as mentioned in article-I on acceptance of illegal gratification of Rs.100/-.

ARTICLE-III

He did not co-operate the vigilance team of Rly. Board and ran away when call for in presence of CTI/GHY on duty.

By his above acts that Shri N.L.Karn, Hd.TC/GHY failed to maintain absolute integrity, devotion to duty and acted in a manner which is unbecoming of a Rly. Servant and thereby contravened Rule 3.1 (i) (ii) and (iii) of Railway Service Conduct Rules, 1966."

A copy of the Memorandum of Charges is enclosed and marked as Annexure "I".

(e) The applicant submitted defence statement on 2-8-96 denying all the charges brought under Articles I, II and III against him. He also urged for personal appearance of the complainant in the inquiry to sustain the veracity of the dubious complaint. However, the complainant was not examined and the entire proceedings went on



unilaterally against the applicant. A copy of the defence statement has been enclosed as Annexure "IV".

(f) It is further stated by the applicant that the Enquiry Officer submitted his report on 10-4-2002 holding that all the charges have to be so proved by the documentary and oral evidences adduced in the proceedings. The enquiry report was submitted on 10-4-2002 and the disciplinary authority sent it to the applicant on 25-10-2002 asking for his representation. The applicant submitted his representation on 10-12-2002 citing all the irregularities and anomalies that crept in the Enquiry Proceedings and the report. Copies of Enquiry Report dated 10-4-2002, forwarding letter dated 23-10-2002 and the representation of the applicant are enclosed as Annexures VIII, IX and X to this O.A.

(g) Thereafter the Disciplinary Authority passed an order on 3-2-2003 punishing the applicant by reducing his rank and reverting him from Head Ticket Collector to Junior Ticket Collector at the initial pay for a period of 30 months with immediate effect. A copy of the order dated 3-2-2003 issued by the Disciplinary Authority i.e., the Divisional Commercial Manager, Lumding is enclosed and marked as Annexure "XI" to this O.A.

(h) Against the order of punishment dated 3-2-2003 the applicant preferred a statutory appeal before the Divisional Railway Manager, N.F. Railway, Lumding. The applicant submits that the said appeal was not at all considered. On the contrary, the Appeal of the applicant prompted the Disciplinary Authority to decide for passing a more damaging order enhancing the punishment of reduction of rank to 3 years. The Disciplinary Authority issued a letter to the applicant on 22-7-2003 to show cause against proposed enhancement. Copies



of the Appeal of the applicant dated 24-3-2003 and the notice dated 22-7-2003 issued by the Disciplinary Authority are enclosed as Annexures "XII" and "XIII" to this O.A.

(i) The applicant filed a representation against the proposed enhancement of punishment but that was also not considered. The disciplinary Authority i.e., the Divisional Commercial Manager, Lumding passed an order on 16-9-2003 and stuck to enhance the punishment. However, in supersession of this order dated 16-9-2003, another order was passed on 31-10-2003 and the applicant was given opportunity to make representation. Copies of the orders dated 16-9-2003 and 31-10-2003 are enclosed as Annexures "XIV" and "XV" to this O.A. The applicant further submits that the same authority entertained the statutory appeal of the applicant and passed order dated 8-12-2003 upholding the punishment. A copy of the order dated 8-12-2003 is enclosed as Annexure "XVI" to this O.A.

(j) The applicant states that against the penalty he preferred an appeal before the Appellate Authority on 21-6-2004 and both the appeals were disposed of on 13-7-2004 by the same authority holding that such appeals have already been considered by the appellate authority and that he was to address the appeal to the Chief Commercial Railway Manager, Maligaon for further consideration. The applicant further states that in fact those appeals were not at all placed before and considered by the Divisional Railway Manager, N.F. Railway, Lumding and the applicant sent a reminder dated 22-9-2004 for placing both of his appeals to the Appellate Authority i.e., Divisional Railway Manager, Lumding. Lastly, the applicant made a fresh appeal to the appellate authority on 9-2-2005 which was disposed of on 3-6-2005 upholding the punishment/penalty. The applicant states that



in this appellate order no reason has been assigned by the Appellate Authority. Copies of appeal filed on 09-02-2005 and the order dated 03-06-2005 are enclosed as Annexure "XVIII and XIX" to this OA.

3. Being aggrieved, the applicant has moved this Tribunal seeking for the following reliefs:-

" 8.(i) For setting aside and/or quashing the impugned orders dated 03-02-2003, 22-07-2003, 16-09-2003, 31-10-2003 and 08-12-2003 (Annexures - XI,XIII,XIV,XV and XVI) issued by the Disciplinary Authority (Respondent No.4) imposing punishment/penalty of reduction of the Applicant's rank and reverting him from Head Ticket Collector to lower grade Ticket Collector at initial pay and the appellate order dated 3-06-2005 passed by the Appellate Authority upholding the order of penalty of reduction of rank imposed upon the applicant reverting him to a lower grade for 2 1/2 years;

(ii) For issuing the direction and passing appropriate orders to provide the entire service benefit of the applicant so long curtailed and held up by operation of the impugned order and all the other benefits consequential and incidental to the quashing of impugned orders;

(iii) To pass any such other or further orders as may be deemed fit and proper in the interest of justice;

(iv) To stay the operation of the impugned order during pendency of this application."

4. The respondents have contested the application by filing a counter reply.

5. We have heard Dr.B.U.Ahmed, learned counsel for applicant and Dr.M.C.Sarma, learned counsel for Railway Respondents. We have gone through the material papers placed before us. We have also gone through the documents produced before us at the time of hearing of the matter.



6. The following are the charges framed against the applicant.

ARTICLE-I

That Shri Narayan Lal Karn, HTC/GHY being off duty, after performing duty from 17-30 hours to 21.00 hours at GHY, unauthorisedly granted reservation to two passengers against BJU quota in 2 AC-*2 coach of train No.2423 Dn of 21-6-95 despite refusal by on duty CTI/GHY.

ARTICLE-II

He granted reservation both the above passengers as mentioned in article-I, on acceptance of illegal gratification of Rs.100/-.

ARTICLE-III

He did not co-operate the vigilance team of Rly. Board and ran away when call for in presence of CTI/GHY on duty.

By his above acts that Shri N.L.Karn, Hd.TC/GHY failed to maintain absolute integrity, devotion to duty and acted in a manner which is unbecoming of a Rly. Servant and thereby contravened Rule 3.1(i) (ii) and (iii) of Railway Service Conduct Rules, 1966."

7. A plain reading of the material papers enclosed alongwith the O.A. would show that on denial of the charges framed against the applicant, enquiry was conducted and the applicant was served with a report of the inquiry officer who had held all the charges as proved and the applicant represented on receipt of the enquiry officer's report by his letter dated 06-12-2002 (Annexure "X") and the disciplinary authority vide its order dated 03.02.2003 imposed penalty of reversion to the post of Junior Ticket Collector at the initial pay for 30 months (NC) with immediate effect (Page 48 of the O.A.). The applicant was advised to prefer appeal, if any, against the said order to DRM within 45 days, which can be evident in Page 47 of the O.A. Accordingly, the applicant preferred his appeal to the Divisional



Railway Manager (DRM), NF Railway, Lumding vide his letter dated 24-03-2003 which is enclosed as Annexure "XII" to the OA. Thereafter the disciplinary authority vide its letter dated 22-07-2003 informed the applicant as under :-

" Reviewing Authority (ADRM/LMG) after carefully examination of the case and penalty order of D.A (DCM/LMG) has decided to impose the penalty of reduction to lower stage for 3 years with loss of seniority.

You are hereby given an opportunity of making representation of the penalty proposed. Such representation, if any, should be made in writing and submitted so as to reach the undersigned within a period of ten days from the date of receipt of this notice."

8. The said letter of DRM is enclosed at Page 56 of the O.A. (Annexure "XIII").

9. The disciplinary authority vide its letter dated 16-09-2003 (Annexure "XIV") to the OA at Page 57 informed the applicant that -

" ADRM/LMG (Revisioning Authority) having gone through the case considered that the gravity of your offence warrants severe form of punishment and reviewed the Penalty by an enhance penalty of reduction to lower stage i.e. grade for 2.5 years with loss of seniority (C.E).

The above penalty shall take effect from 01-08-2003."

8. Thereafter the disciplinary authority issued order dated 31.10.2003, the contents of which are extracted below :-

"In supersession to this office letter No.C/CON/LM/Misc/96 (NLK-HTC-GHY) dated 28-07-2003 Reviewing Authority (ADRM/LMG) has decided to impose the penalty of reduction to lower grade (Rs.4000-6000)at initial scale of pay for 2.5 years with loss of seniority.

You are hereby given an opportunity of making representation of the penalty proposed. Such representation if any, should be made in writing and submitted so as to reach the undersigned within a period of ten days from the date of receipt of this notice."

The said order is enclosed as Annexure A - "XV" at Page 58 of the OA. However, the disciplinary authority vide its letter dated 08-12-2003 communicated the following order passed by the ADRM/LMG :-



"I have gone through the appeal of Shri N.L.Karn and full case again. Punishment proposed i.e. reduction to lower grade (Rs.4000-6000) at initial scale of pay for 2.5 years with loss of seniority holds good."

The above letter dated 08-12-2003 is enclosed as Annexure A-"XVI" at page 59 of the O.A.

9. The applicant thereafter preferred an appeal to the Chief Commercial Manager, NF Railway, Maligaon, Respondent No.2 herein, vide letter dated 09-02-2005 which is enclosed as Annexure -"XVIII" at page 61 - 63 of the O.A. In the said appeal the applicant submitted inter-alia that the 3 (three) key witnesses would not be interrogated/appeared. In para 4 of the appeal to the Chief Commercial Manager dated 09-02-2005 (Annexure - "XVIII") at pages 61-63, the applicant has stated as under :-

"That the instant case brought 3 (three) fictional allegations under 3 articles (I,II & III) of charges, have 3 (three) aspects (Rule, Law and Ground reality) with 3 (three) relevant key witnesses, one for each Article as under :-

(a) Article I, "Sri N.L.Karn, HTC/GHY being off duty after performing duty from 17/30 to 21 hrs at GHY, unauthorisedly granted reservation o two passengers against BJU Quota in AC-2 coach of train No. 2423 DN of 21/6/95, despite refusal by on duty CTI/GHY."

Point raised :- Work compiled under Rule, can not be read otherwise as "Unauthorisedly". The very fact "Refusal by on duty CTI/GHY" at night shift enough signified my retention beyond 21 hrs to complete the specific task already initiated with the consent of evening shift CTI/GHY Sri B.Aich. That, granting the (alleged) particular reservation became part of my duty in order to "maintain devotion o duty" enshrined under Rule 3 (I) (ii) of Railway Service Conduct Rule, 1966. Rule 3 (I) reads- Every Railway servant shall at all times (i) maintain absolute integrity (ii) maintain devotion to duty and (iii) do nothing which is unbecoming of a Railway servant.

Witness :- Sri B.Aich CTI/GHY, evening shift In-



charge of 20/6/95, who permitted me to do the job. Despite mentioned and recorded, but neither DA nor EO thought it fit to interrogate Sri Aich.

(b) Article II:- "He granted reservation to both the above passengers as mentioned in Article I, on acceptance of illegal gratification of Rs. 100/-."

Point raised:- The very basis of the allegation was the so-called complaint dated 21/6/95 (as if) of passengers (PD/3). Obviously never owned up by any of the passengers. Remained a cooked-up fiction, concocted at the behest of the vigilance team amongst themselves. Cannot stand in the eye of law.

Witness :- Sri Manoj Khurana (PW/4), the so-named complainant shown on PD/3. DA as well EO with repeated utmost efforts even rendering all possible facilities, could not secure his appearance to own up the complaint (In fact PD/3 been cooked up, the so-said complainant does not exist).

(c) Article III :- " He did not co-operate the vigilance team of the Railway Board and run away when called for in presence of CTI/GHY on duty."

Point raised :- No Rule or Law supported framing such aberrant allegations, which explicitly exposed the whims and fancies of the vigilance team. **Very much ignored the ground reality** that an off-duty staff having personal exigency, cannot be implicated with an unwarranted distant-call from an anonymous. Such an uncalled-for oral call ordinarily cannot have any bearing either with the office or with duty demanding co-operation from staff already left office.

Witness :- Sri Gurdeep Singh (PW/6), one of the member of the team. Who (then anonymous to me) called me (for alleged Co-operation) from distance behind. DA as well EO could not make him present even for single day before the prolonged enquiry."

10. The said appeal preferred by the applicant was disposed of by the Chief Commercial Manager, NF Railway, Maligaon as under :-

" I have gone through the relevant papers and the appeal carefully, I find no reason to alter the orders passed earlier, therefore, the order passed by ADRM/LMG stands."

The above order of the Chief Commercial Manager, NF Railway,



Maligaon was communicated by the Senior DCM/LMG to the applicant vide his letter No. C/CON/LN/Misc/96(NLK-HTC-GHY)dated 03.06.2005 which is enclosed as Annexure A-"XIX" at page 64 of the O.A.

11. A perusal of the above letter of the CCM/Maligaon would show that it is not a speaking order. The points raised by the applicant in his appeal dated 09-02-2005 (supra) have not been dealt with by him. As extracted above, the points raised in regard to the witnesses mentioned in para 4 of his appeal required to be dealt with by the Chief Commercial Manager, NF Railway, Maligaon. It goes without saying that the order of ADRM/LMG (at page 59) is also not a speaking order. It requires in this context to extract Rule 22 (2) read with Rule 22 (3) of the Railway Servants (Discipline and Appeal) Rules, 1968 which run as under for better appreciation of the issue involved in this case.

"22 Consideration of appeal.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider -

(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders -

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other



authority with such directions as it may deem fit in the circumstances of the case:

Provided that -

(i) the Commission shall be consulted in all cases where such consultation is necessary;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an enquiry under Rule 9 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 14, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit;

(iii) if the enhanced penalty which the appellate authority proposes to impose, is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has already been held in the case, the appellate authority shall, make such orders as it may deem fit;

(iv) subject to the provisions of Rule 14, the appellate authority shall -

(a) where the enhanced penalty which the appellate authority proposed to impose, is the one specified in clause (iv) of Rule 6 and falls within the scope of the provisions contained in sub-rule (2) of Rule 11; and

(b) where an inquiry in the manner laid down in Rule 9, has not already been held in the case, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit; and

(v) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 11, of making a representation against such enhanced penalty.

(3) In an appeal against any other order specified in Rule 18, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable. "

It is needless to say here that the order of Chief Commercial Manager, Maligaon has not been passed following the above rule.



12. We are, therefore, of the view that justice would be met if the matter is remitted back to the Chief Commercial Manager, Maligaon, Respondent No.2 herein to consider the appeal preferred by the applicant dated 09-02-2005 (Annexure "XVIII") at pages 61-63 of the O.A and pass order as per rule after giving the applicant a personal hearing. Accordingly, we quash and set aside the order of the Chief Commercial Manager, NF Railway, Maligaon conveyed to the applicant by the Senior DCM/LMG dated 03-06-2005 (at page 64 - Annexure "XIX") and remit the case back to the Chief Commercial Manager, NF Railway, Maligaon, the 2nd respondent herein, directing him to consider the appeal preferred by the applicant on 09-02-2005 (Pages 61-63) and pass appropriate order duly following the rule after giving the applicant personal hearing within a period of three months from the date of communication of this order.

13. The O.A is disposed of accordingly. In the circumstances of the case there will be no order as to costs.



(GAUTAM RAY)
ADMINISTRATIVE MEMBER



(G. SANTHAPPA)
JUDICIAL MEMBER

20
- 2 DEC 2005

गुवाहाटी न्यायपीठ
Guwahati Bench

THE CENTRAL ADMINISTRATIVE TRIBUNAL ::

GUWAHATI BENCH

AT GUWAHATI

O.A. NO. 303 / 2005

-BETWEEN-

Sri Narayan Lal Karn

-And-

Union of India and Others

SYNOPSIS

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Filed by - *Raficul Islam*
02-12-05
 (Raficul Islam, Advocate)

... 2 DEC 2005

गुवाहाटी न्यायालय
Guwahati Bench

THE CENTRAL ADMINISTRATIVE TRIBUNAL ::

GUWAHATI BENCH

AT GUWAHATI

O.A. NO 303 / 2005

- BETWEEN -

Sri Narayan Lal Karn, aged about 60 years,
Son of Late Chaturbhuj Lal Karn
Resident of Qtr. No. DS-12/H, Railway Colony,
Kalibari, Guwahati Railway Station
P.O. Panbazar, P.S. Panbazar, Dist- Kamrup,
Assam

— APPLICANT —

-Versus-

1. The Union of India, Represented by the General Manager, N.F. Railway, Maligaon, Guwahati – 11.
2. The Chief Commercial Manager, N.F. Railway, Maligaon Guwahati – 11
3. The Divisional Railway Manager, North East Frontier Railway, Lumding Dist- Nagaon, Assam.
4. The Senior Divisional Commercial Manager, N.F. Railway, Lumding Assam ,

— RESPONDENTS —

Filed by the
applicant through
Rafiqul Islam
Advocate
02-12-05

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DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE

Order of imposition of penalty of reduction of rank (reversion to a lower service grade with a lower time scale) for a specified period vide No. C/Con/LM/Misc/98 (NLK Hd. TC. GHY) dated 3-2-2003 issued by the Disciplinary Authority (DCM/LMG) and Order of even No. dated 8-12-03 of Appellate Authority (ADRM/LMG) and the Order of even No. dated 03-06-05 of the Revisional Authority (CCM) Maligaon. The Order of punishment reduced/ reverted the application from Head Ticket Collector to lower grade (Rs. 4000 – 6000) at initial scale of pay for 2.5 years with loss of seniority. The above penalty shall take effect from 1-08-03.

2. JURISDICTION OF THE TRIBUNAL :

The instant application challenges the imposition of penalty upon the Applicant in a disciplinary proceedings and this Hon'ble Tribunal has jurisdiction in this matter.

3. LIMITATION :

This application has been filed within the limitation period.

4. FACTS OF THE CASE :

4.1. That the applicant initially worked in the N.F. Railway as a casual labour for 9 years from July, 1969 to August, 1978. On 21-08-1978 he was given temporary status of Group 'D' Class- IV posts and appointed as Box Porter and posted at Chaparmukh under the Lumding Division of the N.F. Railway. Subsequently, he was promoted to the post of Points -Man Gr-'B' in the same Group -'D' Class -IV category on 21-02-79 and transferred to Guwahati. On his satisfactory services rendered to the Railways he was given promoted to the post of Points Man 'A' on 16-11-81 at Guwahati. In the event of sincere and dedicated services he was given chance to appear

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before the selection for promotion from Group-'D' Class- IV posts to Group-'C' Class- III post and being selected he was promoted to the post of Ticket Collector at Guwahati on 29-05-1984. In this Cadre again he was promoted to the grade of Senior Ticket Collector on 16-10-92. Further he was upgraded to the post of Head Ticket Collector on 27-12-93 and since then he was continuing his duty satisfactorily in that capacity. The service antecedents of the Application are as follows :-

Sl. No.	Post	From	To	Class/ Grade
1	Engaged as Casual Labour	July, 1969	August, 1978	---
2.	Appointed as Box Poster	21-8-1978	February, 1979	IV Gr.D
3.	Appointed as Points -Man	21-2-1979	May, 1984	IV Gr. D
4.	Ticket Collector (On selection)	29-5-1984	Dec, 1992	III Gr.C
5.	Senior Ticket Collector	16-10-1992	Dec, 1993	III
6.	Head Ticket Collector	27-12-1993		III

- 4.2. That the duty of the Ticket Collector cadre pertains to Commercial Department of the Indian Railway, and it directly involves public dealings. In order to perform the duty sincerely an incumbent has to rigidly follow the rules and manner to deal the public promptly, remain alert, civil & obliging, paying adequate attention to the comforts and conveniences of the railway users. These qualities are specifically enshrined under Rule 2903 (ii) of Commercial Manual.

- 4.3. That on 20-6-95 the applicant was allotted duty of ticket checking at entrance gate from 17.30 hrs to 21.00 hrs. On that day about 20-30 to 20-40 hrs, one person familiar to the applicant sought help in getting to board 2423 Dn Rajdhani Express of 21-06-95 bound for Delhi. As per reservation chart available at the Guwahati Railway Station (Additional chart from HQ did not reach till then) the commuter and his lady companion had no confirm ticket but they were having a

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waiting list ticket. On being insisted, the applicant with the express permission of the then Shift In-charge Chief Ticket Inspector (CTI) Sri B. Aich, consulted the chart and found 2 (two) berths of Barauni Quota were available from Guwahati to Barauni. The commuter requested the applicant to allot those 2 berths to them. Accordingly, the applicant issued a slip for procurement of tickets. By that time the night-shift staff started attending duty to be commenced from 21:00 hrs. At that time, the CTI Mr. Dhirendra Brahma also appeared in the scene and started his duty. The Applicant requested Sri Brahma to kindly arrange entry of two names in the Chart to whom he had issued slip for procuring tickets. Very unfortunately, to this Sri Brahma not only declined but also prohibited the applicant not to make any entry in the chart. Sri Brahma's suggestion did not pacify the applicant's sense of duty. He had moral obligation to the said passenger who had approached him for help and this sense of passion coupled with human obligation to a familiar person, particularly when the applicant had already involved himself by issuing the slip for tickets prompted him to tread into the office hours of his colleague and he ventured into completion of the reservation for that passenger although by that time his allotted duty hour was over. He definitely had to complete the process with entry of their names in the chart even with little detention for the time being. Accordingly he had completed the entire process and issued reservation to the said person.

- 4.4. That since the duty period was already over, the applicant was in hurry and as he found the said commuter could not procure ticket for change, the applicant gave him Rs. 100/- and returned to office. It was after completion of the reservation, the applicant went out of office by about 21:40 hrs and handed over tickets to the commuter and finally the commuter returned the applicant Rs. 100/- which he had earlier taken from the applicant. The entire transaction was made openly in public with exchange of thanks. Soon after applicant departed, the commuter and approached the gate to Exit and one gentleman (later,

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identified a Vigilance Team Officer, Sri Gurdeep Singh, a member of Vigilance) called back the applicant from distance behind. The applicant looked back and found Sri Brahma CTI approaching beside that Gentleman. The Applicant had reason to think and thought that the new person might be in need of similar some assistance, and if it was so, Sri Brahma CTI was enough to help him. The Applicant did not pay further attention, because he was already late, and had left for attending his daughter in hurriness. It is to be mentioned herein that the daughter of the applicant is a mentally handicapped and he always have to attend her. Just after office hours therefore, he rushes to his house without looking back for any one and that was exactly what happened on that day. He left the station without paying any attention to the person calling him and he was a member of the Vigilance team. the case was arranged against him by way of receipt of a complaint from that person by the Vigilance Team and that complaint has been used against him without any attempt to provide it in the proceedings that followed.

- 4.5. That the applicant was put under suspension w.e.f. 26-07-95 vide Station Superintendent, Guwahati's letter No. G/E/20/III/C /95 dated 26-07-95 and the very suspension was revoked on 25-08-95 vide Chief Vigilance Officer (Traffic) Maligaon's urgent telegram (XXR) No. Z/Viz/289/2/ Misc/Pt-II dated 24-08-95.
- 4.6. That during the suspension period applicant was directed to attend Railway Board Office at New Delhi for interrogation. In this context, an order of Chief Vigilance Officer (Traffic), Maligaon's letter No. Z/Viz/289/2 /Misc/Pt-II dated 21-07-95 was given to him. The Applicant attended the Railway Board Office , Room No. 528-A of Rail Bhawan at New Delhi on 01-08-95. At the office of Railway Board no public complainant was either presented before the Enquiry Officer or brought before the applicant for introduction or cross-reference.

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4.7. That on 12-2-1996, the Senior Divisional Commercial Manager, N.F. Railway, Lumding forwarded a Memorandum containing statement of allegations and as many as three charges proposing to conduct an Enquiry against the applicant under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The charges were based on the statement of allegations imputing that the Applicant had taken Rs. 100/- on 20-6-95 from a Commuter named Monoj Khurana in the name of service charge as illegal gratification for providing reservation in AC-A-2 Coach against Ticket No. 600098 in 2423 Dn Rajdhani Express of 21-6-95 bound for Delhi and it was upto Barauni Junction, who had filed the said complaint. The memorandum containing Articles of Charges also indicated that a List of Documents by which and a list of witnesses by whom those charges were proposed to be conducted were enclosed therewith but the Applicant did not receive any such list stated to be appended thereto as Annexures-III and IV, later on he had filed an application on 29-2-96 and prayed for documents and these were provided to him on 16-5-96 by the Divisional Railway Manager (C), Lumding. The list of witnesses were never shown to the applicant and on this ground, his defence was jeopardised.

A copy of the Memorandum dated 12-2-95,
copy of the Applicant's Petition dated 29-2-
96 and the list of documents dt. 16-5-96 are
annexed herewith as Annexure-I, II and III
respectively in this Original Application.

4.8. That on receipt of the documents, the applicant had submitted defence statement on 2-08-96 and denied all the charges brought under Articles -I, II and III against him. The applicant intimated the Enquiry Officer about the dubious complaint and urged for personal appearance of the complainant in the inquiry to sustain its veracity.

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However, the complainant was not examined and the entire proceedings went on unilaterally against the Applicant.

A copy of defence statement dated 2-08-96 is annexed herewith as Annexure -IV.

4.9. That Disciplinary Authority i.e. the Senior Divisional Manager, Lumding having received defence statement dated 2-08-96 of the applicant decided to enquire into the matter and appointed one Sri K Saha, as Enquiry Officer by an order dated 30-09-1996. The Enquiry Officer- ordered the applicant vide his letter No. Z/CON/VIG/663 dated 31-7-98 to attend the preliminary hearing with on 16-9-98 at 10:00 hrs. with his defence counsel Mr. R.K. Singh. It is to be mentioned that the date for preliminary hearing was fixed after lapse of two years violating the Rules.

4.10. That after preliminary hearing on 16-09-98 by Mr. K. Saha, the Disciplinary authority changed Enquiry Officer and again appointed Mr. A. Saikia as Enquiry Officer vide letter No. C/CON/LM/Misc/96 (NLK-HTC-GHY) dated 10-03-2000 and the new enquiry Officer Mr. A. Saikia started holding preliminary enquiry on 14-8-2000 which continued till 6-9-2001. The total time taken by the Enquiry Officer was from 10-3-2000 to 06-09-2001 i.e. one year six months violating the prescribed time of 2 to 4 months prescribed by the Rules.

A copy each of the orders dtd. 30-9-96, 31-7-96 and 10-3-2000 are annexed herewith as Annexure- V, VI and VII of this application.

4.11. That the authority relied on the documents produced and the official witnesses presented as documentary and oral evidences in the proceedings in order to prove the charges. The vital witness, i.e. the complainant was not produced by the authority. Most of the prosecution documents were not at all proved and particularly the

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complaint and recording of receipt of the so called bribe of Rs. 100/- from the Complainant. Since the applicant himself had all along admitted that he had issued the reservation and recorded the same in the concerned book, what was to be proved against him was mainly the charge pertaining to receipt of Rs. 100/- from the complainant. But nothing of this was proved. Therefore, the vital part of charges, i.e. Charge Article No. II remain to be proved. However, very unfortunately the Enquiry Officer submitted his report on 10-4-02 holding that all the charges have be so proved by the documentary and oral evidences adduced in the proceedings. The enquiry report was submitted on 10-4-02 and the Disciplinary Authority sent it to the applicant on 25-10-02 asking for his representation. The representation was submitted by the applicant on 10-12-02 citing all the irregularities and anomalies that cropt up in the Enquiry Proceedings and the report submitted thereof.

A copy of the Enquiry Report dtd. 10-4-02,
forwarding dt.23-10-2002 and the
representation of the applicant dt. 10-12-02
are annexed herewith as Annexure – VIII ,
IX, and X of this application.

4.12. That thereafter the Disciplinary Authority, i.e. the Divisional Commercial Manager, N.F. Railway, Lumding passed an order on 03-02-03 and punished the applicant by reducing his rank and reverting him from Head Ticket Collector to Junior Ticket Collector at the initial pay for a period of 30 months with immediate effect.

A copy of the aforementioned order of
punishment dt.03-02-03 issued by the
Divisional Commercial Manager, Lumding
is annexed herewith as Annexure-XI of this
application.

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4.13. That the applicant begs to state that against the order of punishment dt. 3-2-03 passed by the Disciplinary Authority imposing upon him the punishment of reduction of rank for 30 months, he preferred a statutory appeal before the Divisional Railway Manager, N.F. Railway, Lumding on 24-03-03 praying for revocation of the punishment of reduction of rank imposed on 3-2-03 by the Disciplinary Authority. The said appeal was not at all considered. Rather, the Appeal of the Applicant prompted the Disciplinary Authority to decide for passing a more damaging order enhancing the punishment of reduction of ranks to 3 years.

A copy of the statutory appeal submitted by
the applicant before the Appellate Authority
24-3-03 is annexed herewith as
Annexure-XII.

4.14. That the Disciplinary Authority going out of his way and in a most malafide manner proposed to enhance the punishment and issued a letter to the Applicant on 22-7-03 to show cause against proposed enhancement. This order has been passed purportedly by reviewing the earlier order of punishment and that was done by him suo moto and it was beyond jurisdiction. Once a punishment is imposed on a charged official, the same cannot be increased by way of review which power has not been given to the Disciplinary Authority by any statute. In the instant case the punishment/ penalty of reduction of rank for 30 months to a lower stage has been proposed to be enhanced by the Disciplinary Authority himself without any rhyme or reason and much so, without any change in circumstances. The applicant begs to state that this decision was mala fide and it was only for going in appeal against the order of the Disciplinary Authority.

A copy of the notice dt. 22-7-03 issued by
the Disciplinary Authority enhancing the
punishment/ imposing the penalty for 3

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years is annexed herewith as Annexure – XIII of this application.

4.15. That the applicant filed an application/ representation against the proposed enhancement of punishment but that was also not considered. The disciplinary Authority i.e. the Divisional Commercial Manager, Lumding passed an order on 16-9-03 and thereby stuck to enhance the punishment. Lastly in supersession of this order dt. 16-9-03 another order was passed on 31-10-2003 and the applicant was given another opportunity to representation.

A copy of the aforementioned orders dt. 16-9-03 and 31-10-03 are annexed herewith as Annexure-XIV and XV of this application.

4.16. That the same authority entertained the statutory appeal of the applicant and passed another order on 8-12-03 upholding the punishment. This order has been passed purportedly in supersession of his own order dt. 16-9-03. (Annexure – XVI).

A copy of this order dt. 8-12-03 is also annexed herewith as Annexure – XVI of this application.

4.17. That against the said order imposing penalty and upholding the same the applicant again filed an appeal before the Appellate Authority on 21-6-04 and both the appeals were disposed of on 13-7-04 by the same authority holding that such appeal have already been considered by the appellate authority and he was to address the appeal to the Chief Commercial Railway Manager, Maligaon for further consideration. In fact, however, those appeals were not at all placed before and considered by the Divisional Railway Manager, N.F. Railway , Lumding and therefore the applicant by his remainder

dt. 22-9-04 again prayed for placing both his appeals to Appellate Authority, i.e. Divisional Railway Manager, Lumding.

A copy of the petition/ reminder dt. 22-9-04 filed by the applicant before the Appellate Authority is annexed as Annexure-XVII.

4.18. That lastly the applicant filed a fresh appeal to the appellate authority on 9-2-05 and that was finally disposed of on 03-06-05 upholding the punishment/ penalty. In this appellate order no reason has been assigned by the appellate authority and as such the crave of the applicant for justice remained unaddressed.

A copy of the fresh statutory appeal filed on 9-2-05 and the order disposing the same passed on 3-6-05 by the appellate authority are annexed herewith as Annexure -XVIII and XIX of this application.

5. GROUNDS FOR RELIEF SOUGHT FOR (With LEGAL Provisions)

5.1. That under the Guidelines of the Railways for entertaining complaints, a genuine complaint will have to be verified by a particular method. In the instant case, no such verification of the said complaint on which the Applicant was proceeded against had been made. This was the reason for non-production of the complainant at the time of evidence in the proceedings and that has rendered the entire enquiry one-sided, unilateral and prejudicial to the Applicant. The charges were said to have been proved without the vital witnesses who wrote the complaint itself. It was the duty of the D.A. to call and examine the prime witnesses in the case and since that was not done, merely on the preponderance of the probabilities basing on the depositions of other witnesses, the three charges could not be said to have been proved. On these counts the order imposing penalty was illegal, unjust, improper and fortuitous.

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5.2. That the Enquiry Officer assessed the evidences, all of whom were indirect, in a cavalier fashion only to hold that the Applicant unauthorisedly issued the Reservation Slips to the complainant passenger/ commuter bound for Barauni Junction beyond his duty hours and without permission for allotment of such berths from the concerned official-on-duty at that hour of the day, which was the first charge. In proving so, he relied on Prosecution Document No. 5 and held that it was not challenged by the Applicant. The onus to prove a document always lies on the prosecution and as such, the observation in the Enquiry Report that the Applicant did not challenge such documents, for which the charge was deemed to be proved, is wholly unjustified and perverse. Thus the Charge No. I was only tried to be proved by circumstantial evidences and corroboration of the prosecution witness all of whom were interested witnesses. The Applicant was not in a position to call the shift In-Charge and therefore, he could not examine him. However, his prayer for examining him was not taken into consideration and this burden could not be discharged by him for obvious reasons. The Enquiry Officer therefore held that the applicant failed to discharge his duty to produce the said Shift-in-Charge and thus, it was improperly held that the Charge No. I was proved. Since the Applicant was not furnished with a list of witnesses beforehand, he was handicapped to have prior knowledge as to by whom the charges were going to be proved. In these circumstances, and particularly for non-supply of the list of witnesses by the prosecution the Applicant was prejudiced but that aspect of the matter was not at all considered by the Enquiry Officer which tantamount to violation of natural justice.

5.3. As regards attempts of proving the Charge No. II the Applicant begs to state that since the complainant's presence could not be secured during enquiry, the complaint must have been treated as

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pseudonymous and method of proving pseudonymous or anonymous complaint/s is different from the one in which the complainant remains present. In Regulation 510 of the Indian Railways Vigilance Manual, it has been laid down that if a complaint turns out to be pseudonymous one, it should be filed with approval of the Chief Vigilance Officer. It should be strictly verified by the Vigilance Unit, and on such verification if it found to be anonymous, the same should not be enquired into. Such process has not been maintained in the instant case and the complaint was not even verified properly as per these guidelines and it was used against the Applicant unilaterally. On this the Inquiry Officer held that whatever explanation was given by the Applicant was unconvincing and whatever produced before him, particularly the P.D.3 was convincing. Therefore, such findings are perverse and unilateral and since the Charge No. II was said to have been proved only on this basis, it is improper. This charge could not at all be proved and therefore, impugned order of penalty is liable to be set aside and/or quashed. Whatever explanation was given by the Applicant to refute the related allegation was not at all believed by the Enquiry Officer and this shows that this charge too was forced to be shown as proved.

- 5.4. The story of running away from the scene as propounded is also equally having no leg to stand. This charge has also been said to be proved on the recording of the statement of P.W.1 and the Applicant's proof of attending his daughter was not at all given any credence.
- 5.5. That the order dated 3-2-2003 itself is an order imposing penalty of reduction of rank and reversion of the Applicant from Head Ticket Collector to Junior Ticket Collector and that was for 30 months. This order was *suo motu* proposed to be reviewed without any reason and the order dated 22-7-2003 stated that the

applicant could object to penalty being increased / enhanced to 3 years. Such a move on part of the Disciplinary Authority was without any legal authority or power as no review power has been conferred upon the authority by any statute. Therefore, this is illegal and liable to be set aside and /or quashed.

- 5.6. That by the order dated 16-9-2003 the same authority posing as 'Revisional Authority' again informs the Applicant that by way of review it has been decided to enhance the penalty for 2.5 years "with loss of seniority" whereas the initial order of penalty dated 3-2-2003 held that it will not operate to postpone his future increment on restoration to former grade. These orders are mutually contradictory and violative of Natural Justice and the principles of imposition of punishment laid down by the Rules. Therefore, these orders and particularly the last orders dt. 16-9-2003, 31-10-2003, and the final order dated 8-12-2003 are all void ab-initio. These are therefore liable to be quashed.
- 5.7. That in the Memorandum containing Article of Charges, in Clause -1 itself the authorities referred to a list of documents by which, and a list of witnesses by whom the articles of charges were proposed to be substantiated and the charges were sought to be proved in the proceedings. Those lists (list of documents and list of witnesses) were stated to have been annexed with the memorandum containing Article of Charges as Annexures- III and IV but no such list was supplied or furnished to the applicant which is an incurable defect sufficient to render the entire proceedings void. For non supply of the list of documents and list of witnesses the applicant's defence in the entire proceedings was jeopardise. It is most respectfully submitted that supply of the list of documents and list of witnesses before hand to be used to prove the facts in a prosecution or a domestic proceedings is a must incompliance of the requirements of natural justice, but in

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the instant case since it was lacking, the entire proceedings is void in the eye of law. In all judicial or quasi judicial / disciplinary proceedings the non-supply of such list prior to framing of charges is an incurable defect and on this counts the present enquiry and the outcome thereof may also be held to be fatally defective in the eye of law.

6. DETAILS OF REMEDIES EXHAUSTED :

That the applicant filed a statutory appeal on 09-02-2005 before the appellate authority but the same was rejected on 03-06-2005 and hence this application.

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

The applicant begs to state that he has not filed any case in any other court and there is no proceedings currently pending in any other forum of law.

8. RELIEF SOUGHT FOR :

The applicant prays for the following relief :-

- (i) For setting aside and /or quashing the impugned orders dated 3-2-2003, 22-7-2003, 16-9-2003, 31-10-2003 and 8-12-2003 (Annexures - XI, XIII, XIV, XV and XVI) issued by the Disciplinary authority (Respondent No. 4) imposing punishment / penalty of reduction of the Applicant's rank and reverting him from Head Ticket Collector to lower grade Ticket Collector at initial pay and the appellate order dated 3-6-2005 passed by the Appellate Authority upholding the order of penalty of reduction of rank imposed upon the Applicant reverting him to a lower grade for 2 ½ years;
- (ii) For issuing the direction and passing appropriate orders to provide the entire service benefit of the applicant so long curtailed and held up by operation of the impugned order and all the other benefits consequential and incidental to the quashing of impugned orders;

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- (iii) To pass any such other or further orders as may be deemed fit and proper in the interest of justice;
- (iv) To stay the operation of the impugned order during pendency of this application;

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

- (I) I.P.O. NO. 266317189
- (II) DATE : 1.12.05
- (III) PAYABLE AT : GUWAHATI

10. **LIST OF ENCLOSURES :**

1.	IPO No.....	dated
2	Memorandum of Charges dated 12-2-95	Annexure- I
3.	Copy of the Applicant's Petition dated 29-2-96	Annexure - II
4.	List of documents dt. 16-5-96	Annexure -III
5.	Defence statement dated 2-08-96 of the Applicant.	Annexure-IV
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20	Order disposing the Statutory Appeal on 3-6-05.	Annexure-XIX

VERIFICATION

I, Sri Narayan Lal Karn, son of Son of Late Chaturbhuj Lal Karn, aged about 60 years, resident of Qtr. No. DS-12/H, Railway Colony, Kalibari, Guwahati Railway Station, P.O. Panbazar, P.S. Panbazar, Dist-Kamrup, Assam do hereby verify that the contents of this application from paragraphs No~~47 to 48~~ to 48 are true to my knowledge and I have noting to suppressed any material facts in the filing this application in this Tribunal.

I sign this verification on this ____th day of November, 2005 at Guwahati.

Narayan Lal Karn

(Narayan Lal Karn)

STANDARD FORM FOR CHARGE SHEET.

(Rules of the Railway Servants (Discipline and Appeal Rules-1968)

No. C/Cen/LM/Misc/96 (NLK-HTC-GHY)

12/02/1996.

Dated

N.F.Rly. (Name of the Railway Administration).

Place of issue :- DRM(C)/Lumding.

MEMORANDUM.

The President/General Manager Undersigned proposes(s) to hold an Enquiry against Shri N.L.Karn, Hd. TC/GHY. under rule-9 of the Railway Servants (Discipline and Appeal Rules-1968. The substance of the imputations of mis-conduct or mis-behaviour in respect of which the enquiry is proposed to be held is set out in the enclosed statement of articles of charges (annexure-I). A statement of the imputation 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 witnesses by whom, the articles of 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 N.L.Karn. is hereby informed that if he desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure-III) in any time during office hours within 10 days of receipt of this Memorandum. For this purpose he should contact ACM/II/LMG. immediately on receipt of this Memorandum.

3. Shri N.L.Karn. is further informed that he may, if he so desires, take the assistance of any other Railway servant an official of Railway Trade Union (who satisfies the requirements of rules 9(13) of the Railway Servants (Discipline and Appeal) Rules-1968 and note 1 and or note 2 thereunder as the case may be for inspecting the documents and assisting him in presenting his case before the enquiring authority in the event of an oral enquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Railway servant(s) of Railway Trade Union official(s). Shri N.L.Karn should obtain an undertaking from the nominee(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 and the undertaking should be furnished to the undersigned, General Manager Railway along with the nomination.

4. Shri N.L.Karn. is hereby directed to submit the undersigned (through General Manager Railway) a written statement of his defence (which should reach the said (General Manager) within ten days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of the defence and within ten days after completion of inspection of documents if he desires to inspect documents, and also (a) to state whether he wishes to be heard in person and (b) to furnish the names and addresses of the witnesses if any whom he wishes to call in support of his defence.

(Contd....2).

*Certified to be true Copy
Rafiqul Salam*

Advocate,
Date :

..... 2

5. Shri N.L.Karn. is informed that an enquiry will be held only in respect of these articles of charges are not admitted. He should, therefore, specifically admit or deny each articles of charge.

6. Shri N.L.Karn. is further informed that if he does not submit his written statement of defence within the period specified in para-2 of does not appear in person before the Enquiring authority or otherwise fails or refuse to comply with the provisions of rules-9 of the Railway servant (Discipline and Appeal) Rules, 1968 on the orders/direction issued in pursuance of the said rules, the enquiring authority may hold the enquiry ex parte.

7. The attention of Shri N.L.Karn. is invited to Rule-20 of the Railway Servants (Conduct) Rules-1966, under which no Railway servant shall bring or attempt to bring any political or other influence to bear upon any superior's Authority to further his interest 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 within these proceedings, it will be presumed that Shri N.L.Karn. 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 rules-9 of the Railway services conduct Rules-1968.

8. The receipt of this Memorandum may be acknowledged.

Encl: 3 (Three).

By/PA/447/and/448/449/450/451
P/447/448/449/ (J.L.Darkim).

Signature. Name and designation of the
Competent Authority. R. S. Manager.

To
Shri N.L.Karn., Hd. TC/GHY
Designation
(Through : SSs/CTTS/ GHY.)

Copy to Shri _____ (name and
designation of the lending authority) for information.
Strike out whichever is not applicable.

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

** Name of the authority (This would imply that whenever a case is referred to the Disciplinary Authority the investigation authority or any authority who are in the custody of the documents or who would be arranging for inspection of documents to enable that authority being mention in the draft-memorandum.)

Whereas the President is the Disciplinary authority.

To be retained wherever President or the Railway Board
is the competent.

N.F.Railway.

Annexure to Standard Form No.5
Memorandum of Charge sheet under Rule-9 of
R.S.(DA) Rules-1968.

Annexure-1

Statement of Article of the charges framed
against Shri Narayan Lal Karn, Hd. TC/Guwhati (Name
and designation of the Railway staff.

That the Said Shri N.L.Karn while functioning
at Hd.TC/GHY during the period 20/6/95.....
(here enter definite and distinct Articles of charges).

That the said Shri Narayan Lal Karn, Hd.TC/GHY
committed the following acts of omission and commission
on 20/6/95.

Article-I.

That Shri Narayan Lal Karn, HTC/GHY being off duty,
after performing duty from 17-30 hours to 21.00 hours at
GHY, unauthorisedly granted reservation to two passengers
against BJU quota in 2AC-**-2 coach of train No.2423 Dn of
21-6-95 despite refusal by on duty CTI/GHY.

Article-II.

He granted Reservation both the above passengers
as mentioned in article-I, on acceptance of illegal grati-
fication of Rs. 100/-

Article-III.

He did not co-operate the vigilance team of Rly.
Board and ran away when call for in presence of CTI/GHY
on duty.

By his above acts that Shri N.L.Karn, Hd.TC/GHY
failed to maintain absolute integrity, devotion to duty and
acted in a manner which is unbecoming of a Rly.Servant
and thereby contravened Rule 3.1(i) (ii) and (iii) of
Railway Service conduct Rule-1966.

Statement of imputation of misconduct
and Mis-behaviour in support of the Article of
charges framed against Shri N.L.Karn, Hd.TC/GHY.

.....

That the said Shri N.L.Karn, HTC/GHY, committed the
following acts of omission and commission on 20/6/95.
While the I.I.Vig(SS) Railway Board at GHY Railway station
on 20/6/95. On scrutiny it was found that two person
named Peunam Gupta T-25 and M.Kharana M-25 were found
written in BJU quota on berth No.35 and 36 Ex.GHY to
BJU against EFT No.600098 in 2 AC-A-2 coach. On enquiry
from the Shri D.Brahma, CTI/I who was on duty he
stated that Shri N.L.Karn, HTC/GHY who was on duty at
entrance gate from 17/30 hours to 21.00 hours taken
the reservation chart from his table at 21/30 hours
and entered the same names in the coach on berth No.
35 and 36 Ex.GHY to BJU in 1 AC-A-2 coach against
EFT No.600098 and also stated that when Shri N.K.Karn,
was written in Reservation chart of train No. 2423 Dn
name of the passengers he was asked to Shri N.L.Karn
to stop writing but he immediately went out from the
office along with the passengers and Shri N.L.Karn
taken something from the passengers.

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As per version of CTI, the IIIs(Vig)(SS) Railway Board came out from the CTI office along with the CTI/I Shri D.Brahma, and saw that one person was standing wearing black coat, the CTI confirmed that the name as Shri N.L.Karn,HTC/GHY who entered the name in the Reservation chart of two persons in BJU quota against LFT No.600093 as per version of CTI/I. The IIIs Vigilance(SS) Rly. Board called the person when CTI had confirmed that he was Shri N.L.Karn. On being hearing he turned up to-wards us and ran away from the platform through exit gate in presence of Shri D.Brahma,CTI/I/GHY. The CTI/I also confirmed that the duty of Shri N.L.Karn was at entrance gate and he should not enter the name of passengers in the chart because Shri N.L.Karn was not on duty to handle the R/chart of train No. 2423 Dn(Rajdhani Express).

The IIs Vigilance(SS) Railway Board also examined to CTI/II who was on duty he stated that Shri N.L.Karn,HTC/was written some thing on Reservation chart in CTI office at about 21/30 hours and CTI/II seen the R/Chart and was found Shri N.K.Karn,entered two names of the passengers on berths No.25 and 36 in 2-AC-A-2 coach of train No. 2423(Rajdhani Express) of 21/6/95 against EFT No.600098.

The IIs Vigilance (SS) Railway Board enquired from booking office, GHY, the said EFT was issued by Shri R.R.Das Sr. Booking Clerk/Guwahati against a slip which was issued by Shri N.L.Karn, HTC/GHY on 20/6/95.

The II Vigilance (SS) also examined the passenger ~~who~~ Shri M. Khurana on 21/6/95 who given in writing that one TC of Guwahati taken a sum of Rs.100/- from him as service charges (Illegal money) on 20/6/95 and given a slip for ticket of 2 A.C. upto BJU by 2423 (Rajdhani Express) for 21-6-95 Ex. GHY to BJU when he was on waiting list No.11 and 12 along with one lady passenger she was with him, Shri Khurana has written in his complaint that to take action against TC, who given a slip for purchase the tickets and given Reservation upto BJU by train No.2423 for 21/6/95 on 20/6/95.

Shri N.L.Karn Ed. IC was called in Board's office on 1/8/95 who stated in his statement that he issued the slip to purchase the tickets of two passengers by train No. 2423 (Rajdhani Express) for 21/6/95 on 20/6/95 and also stated that he entered the names of Shri M.Khurana and Mrs.Paunam Dutta in AC 2 tier coach on berth No.35 abd 36 in BJU quota Ex.GHY to BJU against EFT No.600098 dated 20/6/95. Shri Karn also stated that he has taken Rs.100/- from the passenger, taking some plea but his plea is not convincing and he also admitted that in his statement he was ran away from the platform when the vigilance team was called due to he was hurry but this plea of Karn is not convincing.

By his above acts that the said Shri Narayan Lal Karn, Hd. TC/GHY failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of a Rly. servant and thereby contravened Rule 3.1 (i) (ii) and (iii) of Rly. service conduct Rule-1966. ^

• • • •

१००० रुपये वालीमात्र प्रत्येक
१०० रुपये देवदेवार्थीग
Mr. E. C. Compton. M. Nagel.
Mr. A. J. Lumding.

To

The Sr. DCM,
N.F. Railway,
Lumding.

(Through Proper Channel)

Sir,

Sub : Memorandum of Charge - S.F. No. 5.

Ref : C.S. No. C/Con/LM/Misc./96(NLK-HTC-GHY) dt. 12.02.1996.

While acknowledging the receipt of above memorandum I beg to furnish me, in terms of concluding sentence of para 1 of the Charge sheet, with the Photo copies of the Documents listed in Annexure-III so that I may get a chance to defend my case.

It may also please be clarified if there is any Annexure-II to the Memorandum.

The above may not be taken as my representation against the charge brought which will be submitted on receipt of the above documents and oblige.

Yours faithfully,

Narayan Lal Karn

(N. L. Karn)
(Hd: TC/GHY.)

Dt. 29.2.96.
Guwahati.

13/2/96
Narayan Lal Karn
N.F. Railway
Guwahati

Certified to be true Copy
Rafiqul Salam

Advocate,
Date :

No.C/Com/LM/Misc/88 (NLM-ETC-GHY). Office of the
Divl.Railway Manager (C)
Lumding.

Dated 16/5/1995.

To
Shri N.L.Karn, Hd. TC/GHY
(Through SS/Guwahati).

Sub: Documents.

The following documents are sent herewith
to enable you to submit your defence within 7 days time,
failing which necessary action will be taken as per
extant rules.

1. O/EFT foil No. A600098 dated 20-6-95
Passenger foil) for Rs.2100/-
2. Original slip of two adult which was
issued by Shri Narayan Lal Karn, HIC/GHY
dated 20/6/95 by train No.2423(Rajdhani Exp)
for 21-6-95 Ex.GHY to BJU of 2 A.C.
3. Original complaint of Shri M.Khurana passenger
dated 21/6/95 Ex.GHY to BJU of 2 A.C.
4. Original Statement of Shri D.Brahma, CTI/I/GHY
dated 20/6/95.
5. Statement of Shri R.R.Das, CC/GHY dt.20/6/95.
6. Statement of Shri N.K.Karn, Hd. TC/GHY dt.
1/3/95.
7. Statement of Shri M.C.Das, Hd. TC/GHY and
Shri Nirmal Ch.Kakati, CTI/II dt. 20-6-95 in
one page.
8. Original Reservation chart of 2 A.C. A-2 coach
of train No.2423(Rajdhani Exp) dt.21-6-95
along with 2 A.C.coach.
9. Wlist of train No.2423 of 21-6-95 with CRS/GHY
- 10.

Enc. 16 Sheets

for Divl.Railway Manager (C)
Lumding.

Copy to:- SS/GHY for information. He is requested to
arrange to hand over the above documents to
Shri N.L.Karn, Hd. TC/GHY after obtaining the
acknowledgement and send the same to this office
for record. He is also requested to instruct
the concerned staff to submit his defence
within 7 days time positively.

for Divl.Railway Manager (C)
Lumding.

MC
After delivery
click photo
click photo
Certified to be true Copy
Rafiqul Islam

Advocate,
Date:

-24-

To
 The Sr. Divl. Comm. Manager
 N.F. Railway/ Lumding.

Sub:- Defence to the Memorandum No.
C/comm/115(N.L.K-GHY)
 Dated 16/5/96

Sir,

With due respect and humble submission I beg to write the following few lines for favour of your kind consideration.

That Sir, the charges brought against me are not based on facts rather it is couped to harrass a innocent employee. There is no denial that the name of the concerned reservation chart but that too was made with the permission of the concerned Supervisors. While I was performing my duties at the exit gate the party met me and requested for arranging two berths for journey upto B.J.U for the urgent affairs. Since the party was well known to me by face I thought it might obligation to oblige him by arranging accommodation. I obtained the permission from the concerned Supervisors whose custody the reservation chart are kept and then consulted the chart, found B.J.U quota was vacant. Accordingly I issue the slip for issuing of tickets by Booking counter, while proceeding to booking counter the party has requested me to give him Rs.100/- (One hundred) to purchase his tickets as he was short of money and also ensured that it will be returned within no time. I gave him Rs.100/-. After a few minutes he returned with tickets and names were entered into the reservation chart without depriving any passengers. Then the party after arranging the money of Rs.100/- and returned me the same. The allegation of accepting Rs.100/- as service charges (illegal money) as alleged is out of question.

The charges brought are also imaginary and whatsoever statement given by me has been considered as " Plea of Karna is not convincing".

I strongly plea that the complaint Shri M. Khurana must have been influenced to lodge the complaint against me and I also plea that if Shri Khurana is asked to attend the D.A.R enquiry he will definitely disclose the real facts.

In the above, circumstances, I would request you to exonerate me from the alleged charges and in the event of non-acceptance of my defence, I would like to assist by Shri R. K. Singh as my defence counsel whose concnet letter is enclosed herewith and oblige.

Yours faithfully.

Narayan Lal Karn
 (Shri Narayan Lal Karn)
 Hd. T.G. / G.H.Y.

15/8/96
 Station Superintendent
 S. P. S. I.C. I.M.D.
 N.F. Lumding. Dated 2/08/96.

Certified to be true Copy
Rafiqul Islam

Advocate,
 Date :

N.F.Railway.

G-134 P

STANDARD FORM NO.7.

Standard form of Order relating to Appointment of Enquiry Officer (Rule-9(2) of R.S(D & A)Rules-1963.

No. C/Con/LW/Misc/96 (NLK-TC/GHY)

Dated 30-09-96.

Name of the Railway Administration:- N.F.Railway.

Place of issue DRM(Commr)/Lumding's office.

O R D E R.

Whereas an Enquiry under Rule-9 of the Railway servant (Discipline and appeal) Rules-1963 is being held against Shri Narayan Lal Karn, JG.TC/GHY (Name and designation of the Railway Servant).

And whereas the undersigned consider(s) that an Enquiry Officer should be appointed to enquire into the charges framed against Narayan Lal Karn.

Now, therefore, the undersigned, in exercise of the powers conferred by Sub-rule(2) of the said rule hereby appointed K. Saha, E.O/H.M./Maligaon Enquiry Officer/H.O.H.R.S/Maligaon (Name and designation of the Enquiry Officer) as Enquiry Officer to enquire into the charges framed against the said Shri L. Karn, JG.TC/GHY

(J.L. Dukhia)

Signature.

Designation. पू. सी. देव. लाम्पा
Sr. Div. Commr. Manager,
N. F. Bly./Lumding.

Copy to:-

- 1) Shri Narayan Lal Karn, JG.TC/GHY (through) 33/GHY (Name and designation of the Railway employee).
- 2) Shri K. Saha, E.O/H.M./Maligaon. (Name and designation of the enquiry Officer).

Certified to be true Copy
Rafiqul Islam

Advocate,
Date:

~~"CONFIDENTIAL"~~- 26 -

N. F. RAILWAY.

OFFICE OF THE
ENQUIRY OFFICER / HQ,
MALLIGAON, GUWAHATI-11.

NO:- Z/CON/VIG/663

Dated:- 31/7/98.

To,

Shri N.L.Karn, ✓
Hd.TC/GHY.

(Thre:-SS/GHY).

Sub:- DAR enquiry against you vide
DCM/IMG's memorandum of charge
NO.C/CON/IM/MISC/96(NLK-HDTC-GHY)
dated 12/2/96.The Preliminary hearing in the above case
has been fixed against you on 16/9/98 at 10.00 hrs
in the chamber of the undersigned.Please attend the enquiry along-with your
adviser/Defence Counsel Shri R.K.Singh, Ex.CVI/G/
MLG positively, failing which an exparte enquiry
will be conducted.
(K. Saha.)
Enquiry Officer/HQ.

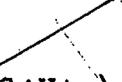
Copy forwarded to :-

1). DCM/IMG - He is requested to ensure the
attendance of the following officials as
per the programme

(i) Shri N.L.Karn, Hd.TC/GHY - C.O.

(ii) Shri R.K.Singh, Ex.CVI/G/MLG - D.C.
P.O. Soha, Via:-Sonbarsaraj,
Distt: Saharsa, (Bihar) PIN:852129.2). Sr.D.P.O/ KIR - with the request to issue
One set 1st. Class complimentary pass in
favour of Shri R.K.Singh, Ex.CVI/G/MLG from
his nearest home Rly. station to KYQ and
back to cover his journey.3). Shri R.K.Singh, Ex.CVI/G/MLG. P.O. Soha,
Via-Sonbarsaraj, Distt:Saharsa(Bihar)
PIN- 852129.

4). DY.CVO/T/MLG.

Certified to be true. Copy
Dated 10/8/98Advocate,
Date :
(K. SAHA.)
Enquiry Officer/HQ.

N.F.Railway.

STANDARD FORM NO.7.

G-134 F.

Standard form of order relating to
Appointment of Enquiry Officer
(Rule No.9(2) of R.S.(D & A) Rules-1963).

No. C/Cen/LM/Misc/96(NIK-HIC-GHY) Dated ..10/03/2000....

Name of the Railway Administration. N.F.Railway.

Place of issue :- DRM(C)/LMG's office.

ORDER.

Whereas an Enquiry under rule No.9 of the Railway Servant (Disciplinary and Appeal) Rule, 1963 is being held against Shri N.L.Karn, Ed. TC/GHY (Name and designation of the Railway Servant).

AND whereas the undersigned considers that an Enquiry Officer should be appointed to enquire into the charges framed against him,

Now, therefore, the undersigned in exercise of the powers conferred by sub-rule(2) of the said rule hereby appoints Shri A.Sarkar, E.O/HQ/Maligaon (Name and designation of the Enquiry Officer) as Enquiry Officer to enquire into the charges framed against the said Shri N.L.Karn, Ed. TC/GHY.

This is in cancellation of the memorandum No.C/Cen/LM/Misc/96(NIK-HIC-GHY) Dated 30-9-96 nominating Shri K.Saha, E.O/HQ/Maligaon as Enquiry Officer due to change of incumbency.

Signature (Joseph Dahir)
Designation of the Disciplinary Authority.
Divl. Commercial Manager
N.F. Railway/ Lending
पू. सी. रेल. लैन्डिंग

Copy to :- 1) Shri N.L.Karn, Ed. TC/Guwhati, through E.O/HQ/GHY.
(Name and designation of the Railway Servant)
2) Shri A.Sarkar, E.O/HQ/Maligaon.
(Name and designation of the Enquiry Officer.)

Certified to be true Copy
Physical Seal

Advocate,
Date :

REPORT OF THE DEPARTMENTAL ENQUIRY INTO THE CHARGES FRAMED AGAINST N.L.KARN, HD.T.C., GUWAHATI INITIATED VIDE SR.DCM/LMG'S ~~XXXX~~ CHARGE SHEET NO.C/CON/LM/MISC/96(NLK-HTC-GHY) DATED 12.2.96.

1.0. INTRODUCTION

1.1. I was appointed as Enquiry Officer by D.C.M./LMG vide his order No.C/CON/LM/MISC/96(NLK-HTC-GHY)dated 10.3.2000 in exercise of powers of Disciplinary Authority (D.A.) to enquire into the charges framed against Shri N.L.Karn, Hd.T.C./GHY. No Presenting Officer (P.O.) was nominated by D.A. and as such I had to act as P.O. as per extant provisions in DAR. The case was initially received by the then E.O. Shri K.Saha on 04.12.96 and the Preliminary Hearing was held by him on 16.9.98. The first sitting of the Regular hearing was held on 3.7.2000 & 4.7.2000 at Maligaon. Again after one adjournment on 21.11.2000 due to non-attendance of Prosecution Witnesses, was held on 13.2.2001, 5.9.2001 and completed on 7.9.2001.

1.2. The D.A. has placed on record 9 (nine) nos. of documents in the form of documentary evidence and 7(seven) officials in the form of oral evidence vide Annexure-IV of the Charge sheet. The C.O. did not cite any additional document as his Defence Document nor any official as his Defence Witness. C.O. has appointed Shri R.K.Singh, ex.CVI/G/MLG (Retired) as his Defence Counsel (D.C.). Other details are mentioned in the paras to follow.

2.0. Article of charges

2.1. The C.O. was served with the above mentioned charge sheet by D.A. containing 3(three) article of charges which are reproduced below:

Article - I

That Shri Narayan Lal Karn, H.TC/GHY being off duty, after performing duty from 17.30 hrs. to 21.00 hrs. at Guwahati unauthorisedly granted reservation to 2(two) passengers against BJU quota in 2-AC coach of the train No.2423 Dn. of 21.6.95 despite refusal by on duty C.T.I./GHY.

contd.....2

C 18/4/02

*Certified to be true Copy
Daficul Islam*

*Advocate,
Date :*

Article-II

He granted reservation both the above passengers as mentioned in article-I on acceptance of illegal gratification of Rs.100/-.

Article-III

He did not co-operate the Vigilance team of Rly. Board and ran away when called in presence of CTI/Guahati on duty.

By the above acts Shri N.L.Karn, Hd. TC/GHY failed to maintain absolute integrity, devotion to duty and acted in a manner which is unbecoming of a Railway servant and thereby contravened rules 3.1(i) (ii) and (iii) of Rly. Service conduct rules 1966. The supporting allegations in proof of the above ~~was~~ containing in Annex. II of the Charge sheet i.e. statement of imputation of misconduct and misbehaviour are not reproduced here and if necessary D.A. may refer to the relevant charge sheet.

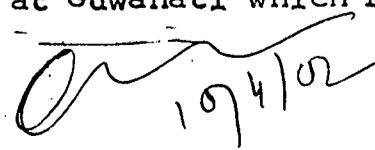
3.0. The cases of the Disciplinary Authority.

3.1. The D.A. has proposed to substantiate the charge framed against the C.O. on the basis of 9(nine) nos. of documentary evidence as aforesaid which are marked as PD-1 to PD-9 in seriatim and oral evidence of 7(seven) officials from PW-1 to PW-7.

3.1.1. PD-1 is the passenger foil of EFT No.600098 dated 20.6.95 issued for two passengers realising an amount of Rs.1050 x 2 = 2100/- in AC-2 by 2423 Dn. of 21.6.95 which reveals allotment of 2(two) berths by the above train vide berth No.35 & 36 for two passengers one each for female 25 and Male 25. This endorsement was recorded on EFT by C.O.

3.1.2. PD-2 is the original slip issued by C.O. to CCC/Booking, Guahati on 20.6.95 for two adult by 2423 Rajdhani Exp. of 21.6.95 ex. Guahati to BJU in AC-2 showing endorsement of EFT number issued and allotment of berths by C.O.

3.1.3. PD-3 is the original complaint dated 21.6.95 by Shri M.Khurana the passenger, addressed to I.I./Vigilance/ Rly. Board/New Delhi at Guahati which reveals that one

 contd....3

T.C. of Guwahati took Rs.100/- as service charges (illegal money) from the said passengers for allotment of two berths by the aforesaid train. PD-3 also reveals that the said T.C. had assured them that although their journey was scheduled to NDLS they can extend their journey from BJU onwards within the train. PD-3 also shows that the said passengers were already in waiting list no.11 & 12 in AC-2 tier which they ~~cancelled~~ at the instance of C.O.

3.1.4. PD-4 is the original statement of Shri D. Bhakma, CTI/I/GHY recorded on 20.6.95 before I.I./Vig/Rly. Board witnessed by Nirmal Ch. Kakati, CTI/II/GHY. PD-4 reveals that C.O. was on duty on 20.6.95 upto 21.00 (evening shift) in the Exit Gate. But he ~~was~~ has unauthorisedly handled reservation chart of 2423 Dn. at 21.30 hrs. collecting it from CTI's table and irregularly entered names of two passengers against berth No.35 & 36 of AC-2 tier against BJU Quota without permission from on duty CTI Incharge. Even on being forbidden by CTI incharge he is stated to have written names of said two passengers in the BJU quota and immediately left office with the said passengers and CTI saw him taking something from the passengers before leaving platform at 21.40 hrs. On being instantly called by I.I./Vig/Rly. Board, C.O. Shri Karn is stated to have ran away from the platform through exit gate.

3.1.5. PD-5 is the original statement of Shri R.R. Das, Sr. CC/GHY recorded on 20.6.95 before I.I./Vig/Rly. Board which reveals that Shri Das, Sr. CC/GHY during his duty hours from 21.00 hrs. of 20.6.95 to 7.30 hrs. of 21.6.95 issued EFT No. 600098 on 20.6.95 for two adults for Rs. 2100.00 Ex. GHY to BJU by 2423 Dn. of 21.6.95 against a slip issued by CTI/GHY on 20.6.95.

3.1.6. PD-6 is the statement of clarification of C.O. Shri Karn, Hd. TC/GHY recorded on 01.8.95 before I.I./Vig./Rly. Board at New Delhi. In the clarification, C.O. stated that (i) he was on ticket checking duty in exit gate upto 21.00 hrs. on 20.6.95. (ii) that he took permission from CTI before allotting berths and that Rs. 100/- given to him by the passengers was not as a gratification but an amount taken on credit by the passengers from C.O. for purchase of ticket which while returning to him was seen by a gentleman who was with Brahma CTI.

G.N.11/16
SD

PD-6 also reveals that C.O. was called by the gentleman i.e. I.I./Vig./Rly. Board on the spot on seeing him taking Rs.100/- from the passengers but instead of attending he fled away on some excuses. C.O. also has admitted in his clarification that he allotted berths to the two passengers beyond his duty hours. C.O. further admitted in his clarification that while allotting berth in BJU Quota he did not go through the complete chart to see that the said passengers had already got their accommodation confirmed against HQrs. E/O. Clarification statement further confirmed that C.O. himself issued the slip to CCC/Booking/GHY for issue of two AC-2 tire ticket from GHY to BJU by 2423 Dn. of 21.6.95.

3.1.7. PD-7 is a statement comprising clarifications of S/Shri M.C.Das, Hd. TC/GHY recorded on 20.6.95 before I.I./Vig/Rly. Board & CTI/GHY that he did not issue any slip before ^{between} 21.00 hrs. to 22.45 hrs. for issue of tickets for two passengers in AC-2 Tire of 2423 Dn. Rajdhani Exp. dated 21.6.95 upto BJU and clarification of Nirmal Ch. Kakati, CTI/II/GHY before I.I./Vig/Rly.Bd. and CTI/I/GHY that he saw Shri Karn writting names of two passengers in Reservation Chart against berth No. 35 & 36 of AC/2 tire of 2423 Dn. against BJU quota.

3.1.8. PD-8 consists of (i) original Resn. chart of 2-Ac coach (A/1) of 2423 Dn. dt. 21.6.95 which reveals that the complainant passengers were provided reservation in AC-2 tire i.e. berth Nos. 39 & 40 against Hd.Qrs. Emergency Quota (ii) original reservation chart of 2-Ac coach(A/2) in which names of said two passengers viz. Punam Gupta-25 and M.Khurana, M-25 have been entered against berth No.35 and 36 respectively against BJU quota.

3.1.9. PD-9 is the Waiting list chart of 2423 Dn. of 21.6.95 of 2-AC coach.

3.1.10. In addition to above the D.M. listed S/Shri (i) Brahma, CTI/I/GHY as PW-1 who witnessed the incidences took place on 20.6.95, recorded PD-4 and witnessed recording of PD-7, (ii) Nirmal Ch. Kakati, CTI/II/GHY as PW-2 who recorded his statement on 20.6.95 vide PD-7 (iii) R.R.Das, Sr. Booking Clerk/GHY as PW-3 who recorded PD-6 (iv) M.Khurana complainant passenger as PW-4(v) M.C.Das, Hd. TC/GHY/who ^{LPW-5} recorded his statement on 20.6.95 vide PD-7 (vi) A.L.Diwakar I.I./Vig/Rly. Board as PW-6 who witnessed the incidences took place on 20.6.95 including receipt of passenger's

contd....5
OCT 1991

complaint (PD-3), witnessing statement of PW-1 (PD-4), PW-2 (PD-7), PW-3 (PD-5), PW-4 (PD-3), PW-5 (PD-7), C.O. (PD-6) and (vii) Gurdeep Singh, I.I./Vig (SS)/ Rly. Bd. who accompanied PW-6 on 20.6.95.

4.0.

THE DEFENCE OF THE CHARGED OFFICIAL

4.1.0

The C.O. in his written statement of defence dated 2.8.96 in response to the Charge sheet in question submitted that charges brought against him were imaginary in as much as he obtained permission from concerned supervisor although he was performing duty in exit gate before allotting two berths in AC-2 tier to the passengers against BJU quota. That Rs. 100/- (one hundred) was taken on loan by the two passengers who were known to him, for purchasing tickets, which they returned after a few min. minutes and was not illegal money as alleged. The defence was not accepted by the D.A. and the case was remitted to the undersigned for conducted departmental enquiry.

4.1.1.

In the final written Defence Brief submitted on 13.9.2001 after completion of enquiry C.O. stated that veracity of complaint recorded by the passenger could not be established since the complainant did not attend for evidence on successive occasions.

4.1.2.

C.O. defends article of Charge-I referring to statement of PW-1 Shri D. Brahma, CTI/I/GHY (PD-4) that allegation brought against him are not proved in view of the fact that contents in PD-4 are not correct. Because he consulted and obtained permission from his B.I.C (Batch incharge) during his duty hours at about 20.30 to 20.50 hrs. to issue slips to the passengers to obtain tickets before allotting reservation against vacant berths of BJU quota when PW-1 Mr. Brahma was not on duty. That PW-1 arrived at a later stage when the passengers approached with ticket for allotment of berths. C.O. further termed the deposition of PW-1 during enquiry as contradictory referring his answer to Q.No.9 by D.C. that PW-1 saw Shri Karn entering names of passengers in reservation chart between 21.30 to 21.40 hrs. whereas vide his answer to Q.No.12 by D.C. when PW-1 was entering office at 21.00 he saw C.O. talking to passenger before entering office after a few minutes to handle the chart. C.O. further defends referring to deposition of PW-5 who failed to confirm as to who was manning current Resvn.

CC 10/11 contd... 6

counter no.12 and thereby like to conclude that reservation chart was not in counter no.12 but on the table of CTI. C.O. then defends the charge referring to deposition of PW-7 (Shri A.L.Dewakar, I.I./Vig/SS/Rly.Board) as a product of preoccupied mind by some how managing managing to get a complaint lodged by the passenger without himself witnessing the incidences. C.O. finally argues that he had issued slips during his duty hours obtaining permission from his CTI incharge before arrival of CTI/I Shri Brahmo and therefore it was his duty to complete reservation chart and thus issuing of slip for ticket during duty hours does not mean granting reservation unauthorisedly.

4.1.3. C.O. defends article of charge-II referring to the deposition of PW-1 that he did not exactly see the passenger offering Rs.100/- to C.O. but only saw transaction of 'something' between them. With reference to the deposition of PW-7 (Shri A.L.Dewakar, I.I./Vig/Rly.Board) C.O. has to say his deposition is only a hear say statement not personally witnessing anything. Finally C.O. termed the allegation of acceptance of illegal gratification as brazen lie since complainant being a bonafide well educated regular passenger cannot bribe anyone as alleged.

4.1.4. C.O. defends article of charge-III stating that being off from duty he/in a hurry to attend hospital to visit his hospitalised daughter. C.O. wants to say if PW-7 (I.I./Vig/Rly.Board) was at GHY what prohibited him from introducing himself before C.O. to obtain clarification instead of calling him from behind from a considerable distance to be able to pay heed by C.O..

5.0.0.

5.1.0.

ASSESSMENT OF EVIDENCE

The article of charge-I in brief is that C.O. while he was off duty after performing duty from 17.30 to 21.00 hrs. at GHY on 20.6.95 unauthorisedly granted reservation to two passengers against BJU quota in AC-2 coach of 2423 Dn. Rajdhani Express of 21.6.95 despite of refusal by CTI/GHY. The imputation cites that on a scrutiny of reservation chart of the

contd....7

18/4/02

aforesaid train I.I./Vig/SS/Rly.Bd. (PW-7) detected that C.O. Shri Karn, Hd. TC/GHY had unauthorisedly allotted two berths in AC-2 (A/2 Coa-ch) in the name of Punam Gupta PW-25 and M.Khurana, M-25 Ex.GHY to BJU against BJU quota at about 21.30 hrs. when he was off duty after performing duty upto 21.00 hrs. in entrance gate. That C.O. after issuing slip got purchased EFT No. 600098 by the passenger upto BJU from the counter manned by Shri R.R.Das, CC/GHY (PW-3, on duty from 21.00 hrs. of 20.6.95 to 7.30 hrs. of 21.6.95, and thereafter allotted them berth no. 35 & 36 in his hand writing inspite of being prohibited by his CTI Shri D.Brahmo (PW-1).

Now to discuss the evidence aspect at a greater length, first of all PD-6 i.e. the clarification of C.O. factored in Rly. Board's office on 1.8.95, which reveals C.O. himself clarified that he was entrusted with ticket checking duty in entrance gate on 20.6.95 and his scheduled duty hours extending upto 21.00 hrs. So he was off duty from duty after 21.00 hrs. onwards on 20.6.95. Secondly, PD-4 is the original statement of PW-1 i.e. CTI/GHY, which revealed that C.O. was on duty at entrance gate upto 21.00 hrs. This has not been challenged by C.O. during enquiry. Examination of PD-5 i.e. statement of PW-3 shows that the EFT No. 600098 dt. 20.6.95 (PD-1) for upto BJU for two adults was issued by PW-3 during his duty hours commencing from 21.00 hrs. of 20.6.95 to 7.30 hrs. of 21.6.95. During enquiry PW-5 confirmed his statement with contents but defence did not cross-examine PW-3 to prove contrarily. PD-7 is the statement of PW-5 manning counter No. 12 meant for current reservation, which reveals that during his duty hours commencing from 21.00 hrs. on 20.6.95 he did not issue any slip for issue of tickets by 2423 Dn. of 21.6.95 upto BJU during the specific period from 21.00 hrs. to 22.45 hrs. During enquiry PW-5 confirmed his statement contents and also clarified that if any current reservation is to be issued the staff manning the counter No. 12 is authorised to issue slip to booking counter to issue ticket (Ans. to Q.No. 3 by E.O.). Further, examination of PD-2, 1 & 8 revealed that PD-2 i.e. slip for issue of tickets for two persons in AC-II by 2423 Dn. of 21.6.95 from GHY to BJU was issued by C.O. on behalf of CTI/GHY and got issued PD-1 (EFT) and after releasing berth No. 35 & 36 entered the names of passengers

contd....8

15/4/13

in his hand writing in PD-8 (Reservation Chart) along with its' entries on PD-1. This has been accepted by C.O. during general examination by E.O. During regular hearing PW-1 confirmed correctness of contents of his statement (PD-4) that he noticed C.O. entering names of two passengers in reservation chart against BJU quota without ~~xxxxxx~~ caring for his advice not to do so. This statement of PW-1 exactly tallied with his deposition during enquiry vide Ans. to Q.No.9 by D.C.O. Pondering over the analysis of evidences as explained about it has become clear that C.O. while he was not on duty and inspite of ~~is~~ having ~~an~~ an authorised official at counter No.12 issued the slip for issued ~~of~~ ^{for} tickets and released reservation unauthorisedly in ~~an~~ AC-II - A/2 coach even without going through the only two page reservation chart of AC-II coaches where the said passengers were already accommodated in A/I coach (Berth No.39 & 40 of PD-8) against HQrs. quota. Defence plea that PD-3 is a hear say statement and a product of preoccupied mind of PW-6 (I.I./Vig./Rly.Bd.) without production of complainant during enquiry is not acceptable. During enquiry PW-6 confirmed all the above aspects including complaint of the passenger but C.O. in his defence could not produce any material to counter the charges. As per extant provisions in Departmental enquiry it is not necessary to produce the complainant to prove the complaint. Normally, it can be substantiated by the circumstantial evidence. C.O.'s further defence that he obtained permission while on duty between 20.30 to 20.50 hrs. from his BIC to issue slip for ticket before arrival of PW-1 (CTI/I/GHY) at 21.00 hrs., is not convincing nor supported by any defence evidence. Since he failed to cite and to produce his BIC during enquiry from whom he claimed to have obtained such permission, demanding his BIC as a defence evidence during enquiry.

In view of detailed discussion of evidence above article of charge-I levelled against C.O. stands established.

5.1.1. The article of charge II in brief says that C.O. granted reservation to both the above passengers mentioned in article of charge-I on acceptance of illegal gratification of Rs.100/-. The imputation cites

09/10/2009
contd... 9

/(PW-6)

that on an examination of the complainant passenger on 21.6.95 as also the written complaint lodged by him before I.I./Vig/Rly.Bd./for taking action against the T.C. it revealed that one T.C. took Rs.100/- from the said passenger named Mr.Khurana on 20.6.95 as service charges (illegal money) for allotment of reservation. That before issuing reservation C.O. issued a slip for obtaining ticket in AC-2 upto BJU by 2423 Dn. (Rajdhani Express) of 21.6.95 for two passenger viz. Mr.Khurana and Purnam Gupta F-25 /M-25 who were in waiting list no.11 & 12. That PD-6 (clarification of C.O. dt. 1.8.95 in Board's office) reveals C.O. Shri Karn himself stated that he took Rs.100/- from the passenger taking some other unconvincing plea. Examination of PD-3 i.e. the written complaint of the passenger (PW-4) revealed that one T.C. took Rs.100/- from the complainant passenger on 20.6.95 as service charges for a confirmed ticket upto BJU. The contents of PD-3 has further been confirmed by PW-6 (I.I./Vig/Rly.Bd.) during enquiry, before whom the passenger lodged the written complaint. Examination of PD-4 revealed PW-1 Shri Brahma CTI/1/GHY while on duty from 21.00 hrs. onward on 20.6.95 noticed the C.O. taking some thing from the passenger some time between 21.30 to 21.40 hrs. after allotting two berths to the said passengers in C.O.'s hand writing in the resvn. chart inspite of objection by PW-1. During enquiry PW-1 confirmed correctness of PD-4 ~~xxxxxxxxxx~~ contents in this regard vide answer to Q.No.10 by E.O., Defence could not exhibit anything during enquiry to disprove this rather confirmed the transaction of Rs.100/- on the plea of credit taken by the passenger from C.O. Further, examination of PD-6 (clarification of C.O. dt. 1.8.95 in Rly. Board's office) proved the transaction of Rs.100/- between the said passenger and C.O. as accepted by C.O. on some other plea in his clarification (page no.2 of PD-6). C.O.'s plea was that said Rs.100/- given to him by the passenger was not in lieu of reservation but was an amount taken on credit by the passenger from C.O. to make up shortage of fare of ticket in question (PD-1), which the passenger returned to C.O. after allotment of reservation. C.O.'s defence in the final brief that the charge of illegal gratification is brazen lie since complainant being an educated regular passenger cannot bribe any as alleged, is not acceptable for no evidence. Rather in fact of so

10/4/2000 contd...10

/cause of
actions
what

many corroborating factors that (i) C.O. was not on duty during the relevant period at the specified assignment and therefore not authorised to release reservation (ii) that all processes right from the issue of slip for ticket release of reservation took place beyond his duty hours (iii) that so many other colleague officials confirmed the irregularity committed by C.O. and finally (iv) that the passenger being a known person for C.O. for a considerable period and whom C.O. helped him with money for purchasing ticket it is beyond human perception that such a person will complain against C.O. without any interest C.O. had to release reservation to the passenger in a manner not fair as per extant norms. In the light of above analysis of evidences it is apparent that article of charge-II levelled against C.O. Shri Karn, Hd.T.C./GHY stands substantiated.

5.1.2.

The article of charge-III states C.O. Shri Karn Hd.T.C./GHY did not co-operate the Vigilance team of Rly. Board and ran away when called in presence of CTI/GHY on duty. The imputation cites that Shri C.O. Shri Karn, Hd.T.C./GHY was identified by his colleague CTI/I before I.I./Vig/SS/Rly. Board on checking at GHY as the person who unauthorisedly released reservation to the said passenger. That on being called by a gentleman (I.I./Vig/Rly.Bd.) in presence of PW-1 (CTI/I/GHY) on 20.6.95 he ran away through exist gate without responding to the call. Examination of PD-6 (clarification of C.O.) page 2 reveals that C.O. heard the call of the gentleman but he was in a hurry to go to hospital and did not listen to the call before running away through exit gate. PD-4 is in statement of PW-1 Shri Brahmo also revealed that C.O. ran away without listening to the call of I.I./Vig/Rly. Bd. PW-6 in his deposition vide answer to Q.No.3 by E.O. and PW-1 vide his answer to Q.No.12 by E.O. confirmed that C.O. did not attend the call on 20.6.95 on the plea of being 'off duty'. In the cross-examination during enquiry defence could not produce any material evidence to disprove the charge C.O. in his final defence says he was in a hurry to attend hospitalised daughter and therefore ~~not~~ could exactly hear the call. The plea is not convincing in as much as if at all he had to attend hospital he ~~not~~ could have ~~been~~ left duty place immediately after 21-00 hrs. on completion of duty and ~~not~~ should

not
as

18/4/02 contd... 11

not have waited till 21.40 hrs. Moreover, as per extant timings~~the~~ hospital visiting hours is not extended upto 21.00 hrs. ~~night~~ at night. Above all, C.O. did not cite any document in his defence like medical certificate, certificate of admission of his daughter as indoor patient etc. to accept the plea. It is rather proved that being panicked by the impending situation of his misdeed he ran ~~away~~ away from the spot.

In the light of above analysis of evidence the article of charge-III levelled against C.O. Shri N.L.Karn, Hd.T.C./GNY stands proved.

6.0.

FINDINGS

6.1.

On the basis of documentary and oral evidences adduced with the case and in view of the reasons furnished above I consider that the charges framed against Shri N.L.Karn, Hd.T.C./Guwahati vide Article-I, II & III of the Charge sheet in question are proved.


(A. Saikia)
Enquiry Officer/HQ.
Maligaon, Guwahati-11

Dated : 10.4.2002.

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ANEXURE- IX

60

N.F.Railway.

Office of the
Divl. Mgr. (C),
Lundin.

NO: C/CON/LM/Misc/96(NLK-ATC-GAY)

Dated : 23/10/2002.

To,
Shri N.L.Karn,
Hd. TO/GAY.

Thro : CTI/GAY.

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 in writing to the Disciplinary Authority within 15 days of receipt of this letter.

Encle : 1 (one) Enquiry report.

(J.JAMIR)
Divisional Commercial Manager,
N.F.Railway, Lundin.

Copy to : CTI/GAY for information. He is advised to handover this letter to the staff concerned obtaining clear acknowledgement and send the same to this office.

(J.JAMIR)
Divisional Commercial Manager,
N.F.Railway, Lundin.

Certified to be true Copy
Rafiqul Islam

Advocate,
Date :

To
Shri J.Jamir,
Divisional Commercial Manager,
N.F.Railway, Lumding:
(Disciplinary Authority)

(Thro: Proper Channel

Re: 'Further submission 'if any
in addition to written final
brief after perusal of Enquiry
Report.

Ref: Your letter No.C/CON/LM/Misc/96
dated 23.10.2002.

Sir,

I have been directed to add 'further
~~evidence~~
~~exhibits~~' if any in addition to my written brief to refute
the charges levelled against me vide your letter dated
23-10-2002 after going through the enquiry report submitted
by the Enquiry Officer(HQ); to the Disciplinary Authority.
On going through the report I have become perplexed and full
of gloomy enveloped upon my mind. The arguments put forward
by the E.O. in his report while assessing the evidence aspect
vide at page 6 to page No.11 of the report to establish the
charges filed against me are mere arguments having no leg
to stand in the eye of law on the ~~same~~ following counts: -

(1) The Sr.DCM/NFR/Lumding, Mr.Darkim was as
Disciplinary authority had nominated Mr.K.Saha as Enquiry
Officer(HQ) vide his order No.C/CON/LM/Misc/96(NLK-HTC-GHY)
dated 30-09-96 to conduct the DAR Enquiry. The preliminary
hearing in this case was held on 16-9-98. Due to change of
incumbency the earlier nomination of Mr.Saha dated 30-9-96
as E.O.(HQ) was cancelled by the DCM/NFR/Lumding Mr.J.Jamir
vide his order of even number dated 210-3-2000 nominating
Shri A.Saikia as E.O.(HQ) without cancelling the proceedings
drawn by then E.O. Shri Saha on 16-9-98.

(i) In view of the above serious anomalies, the
point arises to discuss that the present DCM/Lumding Mr.J.Jamir
is below the rank of J.A.Grade having no authority to cancel
the nomination letter issued by Mr. J.L.Darkim, Sr.DCM/LMG
on 30-9-96 as Disciplinary authority in this case.

(ii) Further while cancelling the earlier nomination
of E.O., Mr.Saha nominating Mr.Saikia as E.O.(HQ), the present

contd...2...

*Certified to be true Copy
Rafiqul Islam*

Advocate,
Date:

Page No.2.

(the present)DCM/Lumding acting as Disciplinary in this case having no any valid authority had not cancelled the earlier proceedings drawn on 16-9-98 by the ~~then~~ then E.O.Sri Saha.

(iii) While drawing the proceedings of regular hearing on 03-7-2000 by the E.O. on the strength of improper order issued by the improper disciplinary authority - there was no any mention whether the proceedings drawn on 3-9-2000 by Sri Saikia were incontinuation or cancellation of earlier proceedings drawn on 16-9-98.

The above serious irregularities have vitiating the whole enquiry proceedings. While conducting the enquiry by the present E.O./^{he} had either concealed or lack of knowledge of rule. Hence the Enquiry report submitted by the E.O. having no leg to exist in the eye of law on the one hand and on the other hand, the nomination of E.O.(HQ),Sri Saikia made by DCM/Lumding is improper having no valid authority.

(2) Assessment of evidence aspect as assessed by the E.O. while establishing the charges is an unilateral assessment having no any supporting evidence because the designated E.O. is bound to protect the interest of the prosecution side ignoring the defence evidence - hence he cannot be an impartial Judge like a Denial has come to a Judicial Chair.

(3) The present case was cropped up against me mainly based on the strength of PD-3 dated 21-6-95. It may be stated that how the E.O. has ~~totally~~ accepted the contents of the complaint(PD-3) without examining the complainant of PD-3 and depriving the facility of cross-examination by the defence to refute the brazen lie contents of the PD-3 violating the extant provision of DAR? The stand taken by the E.O. vide page 8 of the report to justify his arguments that 'as per extant provision of departmental enquiry it is not necessary to produce the complainant in the enquiry. Normally it can be substantiated by the circumstantial evidence? To refute these contents of the E.O. it can be stated for information of the D/^{Auth} that the term of extant rule as applied by the E.O. in his arguments to establish the contents of PD-3 is vast just like ~~an~~ ocean and vague term used to cover the ~~and~~ knowledge of rule. It can further be stated that nowhere of the DAR Broucher it is highlighted that without examining the complainant in the DAR Enquiry conducted by the E.O., the veracity/authenticity/genuineness of the contents of PD-3 cannot be accepted as correct/genuine. In the departmental enquiry the circumstantial evidence

Page No.3

has no any leg to stand or to substantiate the charges. The opinion as expressed by the E.O. to justify his arguments to accept the contents of PD-3 termed as "childish manner" having no any place in the DAR Broucher. Hence it is ~~an~~ cleared violation of DAR Rules as well as the Verdict of Supreme Court. The acceptance of PD-3 by the E.O. without examining the complainant and without affording the facility of cross-examination by the defence leads to a clear deliberate act of denial of reasonable opportunity to the defence to defend his case. In this connection I may quote the Supreme Court Judgement against the Union of India Vs. T.R.Verma AIR-1957 - SC-882 - " the Supreme court emphasized that the evidence of the opponent should be taken in presence of the ~~any~~ charged employee". In ~~the~~ instant case the oral evidence of the main PW i.e. the complainant was not recorded in the proceedings by the E.O. to examine the veracity of his complaint(PD-3) based on which the fabricated charges were framed against me by the D/Authy. Without examining or to verify the authenticity of the contents of complaint - the E.O. deliberately has accepted the PD-3 to protect his image violating the norms of the DAR Rule. Further I may quote the decision of Central Administrative Tribunal in the case of V.D.Joseph Vs Union of India A/(CATC -1990(14) p-99 has been that charged official could not be said to have been given reasonable opportunity of defence keeping the author of document outside the pale of cross-examination. Insoite of mentioning the above rules in my earlier brief, the E.O. deliberately did not attach any gravity of these verdicts and acted in a manner violating the rules of DAR which confers that the conducting of DAR against the C.O. is an eye wash and to console the C.O.

(4) As regards unauthorisedly issued Tickets after off duty, I further reiterate to add that this allegation was totally false in view of the above narrated facts. This reservation was ~~not~~ done with the permission of my BIC Sri D.Aich, CTI/GHY. ~~There was no any such a conduct was exist in xxm Had the party expressed that they were waitlisted passengers in that case I would not have issued any slip for purchasing of Tickets or to issue any Rxx EFT etc.~~

contd...4

Page No. 4

There was no any rule found to have place in the Commr. Book Vol. I that the TC performing duty at the Exit Gate cannot issue any slip for issuance of reservation ticket. It is an extant prevailing system at GHY rly. station that the TC performs duty at Exit gate authorised to issue ~~xx~~ reservation Tickets/slip and to realise railway fare and penalty from the unauthorised travelling passengers etc. When I consulted the R/Chart in the table of CTI Sri D. Aich who was the BIC of my duty hours, Sri D. Brahma, CTI/GHY was not my BIC as he resumed duty after 21.00 hrs. It has been alleged that Sri D. Brahma (PW-1) prevented me not to do the above job and he saw that I had taken something from the party. To refute these two allegations I can boldly say that when Sri D. Brahma PW-1 was not present there, this aspect will prove by the Duty Roster and CTI's Diary and by other corroborating evidence. How the PW-1 saw the transaction held between me and the party? What does it mean the term "something" taken? From this it reveals that this aspect is a false and a fabricated story to harass an innocent rly. staff. It may be argued that how the E.O. had accepted these false versions of the PW-1 to establish the charges frame against me?

(5) As regards motive played by the party i.e. the complainant - I may lay before the D/Authy. for his consideration that -

(i) The complainant was a waitlisted passenger of 2423 Up Rajdhani Exp: of 21-6-95 ex: GHY to NDLS (J/L No. 11/12) For fear-phychosis the party did not approach the counter No. 12 for further tickets ~~xx~~ in anticipation that the fact of earlier reservation ^{and} by the said train would have detected by the counter man. The party was fully aware that the Rly. Bd. VI was present at the GHY rly. station. To make a case against the rly staff ~~xx~~ related with the issuance of reservation ~~xx~~ tickets and it might be a fact that the party met the VI and took his advice. When the party approached me, the party had concealed the fact of their waitlist number of the said train. Had the party cancelled his waitlist R/tickets before purchasing the fresh tickets - there would be little chance to get further reservation. The concealment of fact of earlier waitlist number by the party leads to a dubious policy took by the party to defraud the railway for his personal gain and to harass an innocent staff.

contd. 5..

Page No.5.

(ii) After mitigating his purpose, the party lodged a false complaint against the staff to the railway Bd. V.I. on 21-6-95.

(iii) When the party made a fresh reservation against BJU Quota the Rly.BD.VI might have present there with the intention to make a false case case against me.

(iv) The party in his complaint stated that the TC who granted reservation, took Rs.100/- from him. If the party offered any bribe money to the C.O. when the VI was present in the CTI's office, the TC should be caught by the VI.

(6) As regards non-co-operation with the Rly.BD.VIG Team and ran away when called - I state for information of the D/Authy that this aspect has already been narrated in my written brief. In addition to above, I did not know the identity of the Rly. VIG Team. To refute this allegation I may say that if any public called me from back after completion of any duty, I was not bound to adhere to his call. Moreover, I did not do anything wrong which goes against the railway. Hence question of non-co-operation with the VIG Team did not arise at all.

From the above discussion as detailed to refute the contents of Enquiry Report - it has come to a positive inference that the E.O. while assessing the evidence aspect did not consider all these facts either wilfully or lack of Rules etc. on the one hand and on the other the E.O. is biased to protect the image of the administration for his future gain. The E.O. deliberately violated the rules of natural Justice by accepting the contents of PD-3 keeping the C.O. outside the pale of cross-examination of PW-4 to verify the veracity of the contents of the complaint lodged by PW-4 despite of the Rules referred to my earlier brief. From the unilateral opinion of the E.O. it is revealed that this DAR enquiry is an eye - wash Enquiry to console the C.O. ~~This is a vital aspect~~ This vital aspect may please be looked into by the D/authority because the case was cropped up against me based on PD-3 in the year 1995, the charge-sheet was framed in the year 1996, the preliminary hearing was held on 16-9-98 and the enquiry was completed in Sept. 2001 and the report of enquiry was submitted by the E.O. on 10-4-2002. This inordinate delay in finalising the DAR Case has violated the Rly.Bd.'s Target of 180 days as laid down.

contd...6.

Page No. 6.

The wilful act of inordinate delay violating the Board's laid down target causes a serious mental agony and injured my family life. I cannot devote any attention towards my children and my family affairs. I am now at the verge of retirement and counting my days with pall of gloomy. Had I been awarded anything adverse by the D/Authy. this would have completed well before my retirement and I shall be freezed from the false burden of allegations.

Sir while applying your mind to finalise this case, kindly extend your helping pen to make free me from the charges brought against me and save my family from the economic point of view.

Narayan Lal Karen
Yours faithfully

Dated, Guwahati
6th December '2002.

(N. N. L. Karen)
Hd. TC/GHY Rly. Stn.

D/C

Forwarded
Beween 10/12/2002
Guwahati 10/12/2002

Northeast Frontier Railway

Annexure — XI

Notice of imposition of penalty or reduction to a lower service, grade or post, or in a lower time scale, or in a lower stage in a time scale, for specified period.

(Ref : SR-21 under rule - 1715-II)

NE:C/C:ON/L^M/Misc/96(NLK-HTC-GHY)

DT. 03/2/03.

To,
Shri Narayan Lal Karn, H.d. TC/GHY.

(Through : SM(GAZ)/GHY.)

Father's Name	:	Shri Charbnuji Lal Korn.
Designation	:	Hd. TC/GHY.
Date of birth	:	2/1/46.
Date of Appointment	:	21/3/73.
Present pay and scale	:	Rs. 5900/-
Date of superannuation	:	31/1/2005.

Ans: 1. Your explanation dated 6/12/2002 to the show cause notice NO:C/CON/LMV/Misc/96(NIK-HTC-GHY) dt. 23/10/02 has been accepted by DCW/LMG. The following charges were brought against you which have been proved during the course of enquiry.

Charge(s)

Shri Narayan Lal Karn, whixa xreab & dxandx formaking xmx Id. IC/GHY being off duty, after performing duty from 17:30 hrs. to 21:00 hrs at GHY, unauthorisedly granted reservation to two passengers against BJU quota in 2 AC-A-2 coach of train No. 2423 DN. of 21/6/95 despite refusal by on duty CTI/GHY.

He granted Reservation beth the above passengers as mentioned in Article-I, on acceptance of illegal gratification of Rs. 100/-

He did not co-operate the vigilance team of Rly. Board and ran away when call for in presence of CTI/GIV on duty.

2. You are hereby informed that in accordance with the orders passed by DCM/IMG(observation of DCM/IMG in Annexure-'A') you are reverted to the post of Jr. TC at the initial pay. for 30 months (N.C) with immediate effect.

3. (a) The above penalty shall not operate to postpone your future increment on restoration to your former grade in the existing pay scale.

The above penalty shall take into effect from the date of issue of this order.

(Joseph Fair)

Encl. : Observation of DCM/LMG in Annexure 'A'. Name and designation of the Disciplinary Authority.

Shri. Gurmeet Singh Manager
मु. श्री. गुरेत खानिंग
M. P. Bellary/Bengaluru

Certified to be true Copy
Raficel Galore

Advocate,
Date :

✓ complainant not examined.

Copy to : 1) DRM(P)/Lumding for information and necessary action please.

2) APO/GHY for information and necessary action please.

3) DY.CVO/T/MLG for information. This is in reference to his letter No.Z/VIG/94/1/119/95 dt. 16/11/1995.

10/12/03
(J. Janir)
Divl. Commercial Manager

दस्त आजिम रमेश
Divl. Commercial Manager
दू. श्री. रमेश. आजिम
M. P. Railways/Passenger

Please note the instruction below :-

1. An appeal against these order lies to DRM (next immediate superior) to the authority passing the orders within 45 days time.
2. The appeal may be withheld by an authority not lower than the authority whose orders it is preferred.
 - a) It is a case in which no appeal lies under this rules.
 - b) It is not preferred with the stipulation time on which the appellant was informed of the order appealed against and he reasonable cause is shown for the delay.
 - c) It does not comply with the various provisions and limitations stipulated in the rules.

Annexure 'A'

O B S E R V A T I O N

I have gone through your representation and findings of the E.O. The charges brought against you are proved.

I therefore impose upon you the penalty of reversion to the post of Jr. IC at the initial grade for 30 months (N.C.) with immediate effect.

63/103
(J. Jamir)
Divisional Commercial Manager,
N.F. Railway-Lumding.

U/103
Div. Commercial Manager
D. B. R. & C. M. Lumding
D. B. Railways/Boarder

From: Narayan Lal Karna,
Hd. TC/Guwhati

Dated, 24-03-03

To
Divisional Rly. Manager,
N.F.Railway,
Lumding
Through proper channel

Sub:- Appeal under Rule 18(ii) of RS(D&A) Rules, 1968, against the order of DCM/Lumding imposing the penalty of reduction in rank to the post of Jr. TC as well as reduction of pay to the initial stage of Jr. TC for 30 months (NC).

Ref:- DCM/Lumding's N.I.P. communicated under memo No.C/Con/LM/Misc/96 (NLK-HTC-GHY) dated 03-02-03 served on 07-02-03.

Sir,

Respectfully, I submit that being aggrieved by the order of the disciplinary authority, DCM/LMG, imposing upon me the penalty of reduction in rank from the post of Hd.TC in scale Rs.5000-8000/- to the lowest post of TC in grade Rs.3050-4590/- as well as further imposing the penalty of reducing my pay from Rs. 6050/- in scale Rs.5000-8000/- to Rs. 3050/- in scale Rs. 3050-4590/- for a period of 30 months without cumulative effect, I am constrained to come in appeal to you in terms of Rule 18(ii) and Rule 21 of RS(D&A) Rules, 1968. I submit below a brief history of the case, material statements and arguments relied upon in terms of Rule 21(2) of RS(D&A) Rules, 1968, and submissions for your kind and judicious consideration and appropriate orders in accordance with law.

A. Brief history of the case

1. While I was serving as a Head Ticket Collector in scale Rs.5000-8000/- at Guwahati station I was served with a major penalty charge memorandum No.C/Con/LM/Misc/96(NLK-HTC-GHY) dated 12.2.96 alleging that I allegedly being off duty after performing duty from 17.30 hrs. to 21.00 hrs. of 20.6.95 unauthorisedly granted reservation to two passengers against BJU quota in 2AC coach of 2423 Dn Rajdhani Express of 21.6.95 despite prohibition by on duty CTI/GHY; that I allegedly granted the above reservations on acceptance of illegal gratification of Rs. 100/- from them; and that I allegedly did not cooperate with the vigilance team of Rly. Board and rank away when called in presence of CTI/GHY on duty. It was alleged, ibid, that by the aforesaid acts I allegedly failed to maintain absolute integrity, devotion to duty and acted in a manner which was unbecoming of a railway servant violative of Railway Service (Conduct) Rule, 1966. A list of 9 documents and a list of 7 witnesses were cited vide Annexure III and IV, respectively of the charge memorandum to sustain the charge.

2. In my statement of defence I denied the charges, whereupon inquiry was ordered into the charges. The inquiry was held by Shri A. Saikia, Enquiry Officer/HQ/Maligaon who submitted his report on 10.4.2002 to the disciplinary authority. A copy of the inquiry report was supplied to me for making representation vide DCM/LMG's letter dated 23.10.02. On submission of the representation, finally DCM/Lumding passed the impugned order. Hence, this appeal on the following grounds.

B. Material statements and arguments relied upon under Rule (Contd...2)

Certified to be true Copy

Rafael Salazar

Advocate,

Date:

(2)

21(2) of RS(D&A) Rules, 1968, against the inquiry report and the order of the disciplinary authority.

1. Inquiry report

(1) Article I of the charge proceeds on the hypothesis that my duty hours were from 17.30 hrs. to 21.00 hrs. on 20.6.95 and as such I was off duty when I granted reservation to two passengers in 2AC of 2423Dn of 21.6.95 unauthorisedly. I submit that this allegation or hypothesis is not supported by the roster prescribed by DCM/LMG vide DRM(P)/LMG's letter dt. No. N. F. Railway is supposed to work in a three and a half hours shift as this charge presumes. According to the rostered duty hours of staff at TC office GHY my rostered duty hours were from 14.00hrs. to 22.00hrs. on 20.6.95. Hence, the presumption that the grant of reservation by me allegedly at 21.30hrs. was unauthorised because it was done after 21.00hrs. after expiry of my duty hours at 21.00hrs. is not borne out by the duty roster supplied by the DRM(P)/LMG as aforesaid.

The whole case is built upon this hypothesis proved wrong by an official document. However, it is manifest on the face of record that over-awed by the mere presence of a Railway Board vigilance official CTI/GHY, D.Brahma falsely deposed that my duty hours ended at 21.00hrs. as the vigilance official wanted him to depose. The said vigilance official, Gurdip Singh, II(vig), Rly. Board did not appear in the inquiry nor he was tendered for cross examination.

The status of an inquiry officer is not merely to act as an umpire between two contesting parties, but to ascertain the truth. But from his report it is evident that he was just interested in establishing the guilt on the basis of statements of witnesses only. As an officer of this railway with a personnel Branch background he should have known that the allegation of hours of duty of the charged official from 17.30hrs. to 21.00 hrs. could not have been true as normal duty hours of a Hd.TC according to the duty roster is 8 hours daily and not 3.5 hours, and according to the roster provided the duty hours in this shift are from 14.00hrs. to 22.00hrs.

Further, in terms of para 108, IRCM, vol.I, station masters and other supervisory staff must ensure that all staff work strictly in accordance with their rostered duty hours, and unauthorised changes in duty hours are not allowed. Since a roster for duty hours has been supplied which provides for duty hours from 14.00hrs. to 22.00hrs., no amount of oral arguments of CTI/GHY or any other official can over-ride the provision just for the sake of building a case against a railway servant.

Once it is established that the duty hours are from 14.00hrs. to 22.00hrs. allotment of berths on the available vacancies in the chart can neither be termed unauthorised nor malafide. The inquiry officer has therefore erred in mechanically reproducing the contents of the statements of imputations in this respect which was in turn based on the draft charge sheet sent by the vigilance organisation on wrong assumption of facts. Hence, the inquiry report in this respect was mechanical and was indicative of total non-application of mind by the inquiry officer.

The disciplinary authority was required to apply his mind in regard to the rostered duty hours of Hd.TC/GHY which in the first place was supplied by his office. He should not have mechanically accepted the finding of the inquiry officer in this respect.

(Contd....3)

21/3/63

(2) Another imputation is that I allegedly granted reservation to the two passengers against BJU quota in 2423Dn of 21.6.95 on acceptance of illegal gratification of Rs. 100/-. This charge was based on a complaint dated 21.6.95 allegedly lodged by one Manoj Khurana and one Poonam Gupta. This complaint was addressed to vigilance inspectors, Rly. Board, at Guwahati. If the complaint was lodged on 21.6.95 then how come allegedly at 21.30hrs or so the said Gurdip Singh examined the chart on 20.6.95, collected statements from D.Brahma, CTI/GHY, N.C.Kakati, CTI/II/GHY, M.C.Das, Hd.TC/GHY, R.R.Das, CO/GHY, on 20.6.95. This demonstrates that all these statements were extracted from these staff by the vigilance officials of Rly. Board and to bolster up their case a so called complaint dated 21.6.95 was also added to justify the vigilance enquiry on presumption of unauthorised grant of reservation whereas there were no suspicious and unauthorised acts committed.

The authenticity and genuineness of the complaint dated 21.6.95 supposed to have been given by the two passengers, viz. Manoj Khurana and Poonam Gupta is doubtful. Indubitably this document was obtained behind the back of the charged official. To prove the contents of the said document the production of the two complainants in the inquiry was essential so that if they had given such a complaint they should say so in presence of the charged official and after saying so their statements could have been tested on the anvil of cross examination. But they did not appear in the inquiry, nor their statement made in the complaint was affirmed by them, nor were they tendered for cross examination.

However, the inquiry officer has relied on the statement of one of the vigilance inspectors, A.Dewakar, PW-7, who appeared in the inquiry. Shri Dewakar's testimony only proves that such a statement may have been given. But neither the witness Dewakar nor anybody else was a witness to the transaction alleged to have been taken place in the complaint. Whether the complainant was stating the truth, whether the contents of the complaint were true or not could only be established by the appearance of the complainants in the inquiry, their affirmation of their previous statement made in the complaint could only have established that such a complaint was in fact made and their testimony on this aspect could be subjected to cross examination by the defence. Without meeting these conditions precedent to acceptance of the complaint for the purpose the contents of the complaint could not have legitimately be concluded as proved. But the inquiry officer has erroneously held that as per extant provisions in departmental enquiry it is not necessary to produce the complainant to prove the complaint. That this view of the inquiry officer is incorrect is incorrect and violative of principles of natural justice is evident from the principles of law declared by the honourable Supreme Court.

Railway Board vide its letter No.E(D&A)76 RG6-28 dated 3.7.1976 (CPO/MLG's DAC/303) on the subject of standard of proof required in departmental inquiries forwarded a copy of the honourable Supreme Court's judgment in Union of India vs. Sardar Bahadur, (1972) 4 SCC 618 where the apex Court held in para 9 & 10 of the judgment thus:

"In M/s. Barailly Electricity Supply Co.Ltd., vs. The Workmen and others (2), the scope of the above observation was considered and this is what Jagannathan Reddy, J. said:

"But the application of principles of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross examination by the party against whom they are sought to be used. When a document is produced in a court or a Tribunal the

(Contd...44)

questions that naturally arise is, is it a genuine document, what are its contents and are the statements contained therein true."

"10. We do not think that the statements should have been received in evidence as the appellant had taken no steps to produce the persons who made the statements for cross-examination of the respondent. It was the duty of the appellant to have produced these persons whose statements were sought to be proved for the cross-examination of the respondent. In State of Mysore vs. S.S. Makasur (3), this Court said that the purpose of an ~~enquiry~~ examination in the presence of a party against whom an inquiry is made, is sufficiently achieved, when a witness who has given a prior statement is recalled, that statement is put to him, and made known to the opposite party, and the witness is tendered for cross-examination by that party. As the persons whose statements were sought to be relied on were in Delhi and as they were not produced and tendered for cross-examination by the respondent, we think that the Inquiring Officer was right in refusing to act upon the statements relied on by the appellant."

From the above principle of law declared by the Supreme Court, principles of law declared by which is binding on all courts throughout the territory of India by virtue of Article 141 of the Constitution, and by reason of Article 144 of the Constitution, all authorities, civil and judicial, are ~~bound~~ duty bound to act ~~as~~ in aid of the Supreme Court, it is evident that prior statement of a person cannot be relied on to establish the charge unless the maker of the statement is produced in the inquiry, he affirms his previous statement and he is tendered for cross-examination. Since the complainant, Manoj Khurana, did not appear in the inquiry his statement contained in the complaint that I granted reservation in exchange of Rs. 100/- as illegal gratification was not proved. However, the inquiry officer relied on two other statements to come to the conclusion of the guilt of the charged official. Firstly, he relied on the statement of D. Brahma, CTI/GHY, in Ans. to Q.No.10 which was a leading question put by the inquiry officer, where D. Brahma stated that he saw me taking something from the passenger. Shri D. Brahma claimed to have come on duty at 21.00 hrs. He claimed that when he noticed me writing something in the reservation chart it was the only occasion when he found me handling the chart. How then he recognised the passenger as Manoj Khurana himself so as to be able to depose that he saw Khurana giving something to me. For the purpose of this inquiry, it is a very important piece of his testimony which the inquiry officer in his zeal to drive home the charge ignored.

Then the inquiry officer relied on my statement given to the vigilance officials in the Ry. Board on 1.8.95 where I had stated that while going to purchase tickets from the Booking Office Khurana had sought a loan of Rs. 100/- from me as he was just short of this amount and after purchasing the ticket he returned the money. Inquiry Officer is relying on that part of my statement where I stated that I took my money back from him but rejected the other part of the same statement which disclosed the whole transaction where I had stated that I had loaned this amount to him earlier and I was getting the loan back. Had I been guilty I would have denied the acceptance of Rs. 100/- outrightly and nobody could have done anything about it. But truth is the first casualty in vigilance cases as a transaction conducted in the most innocent and honest of ways is termed dishonest and suspicious on flimsiest pretext. The inquiry officer has termed my statement regarding taking back my money from Shri Khurana as an admission of acceptance of Rs. 100/- as illegal gratification and closed his mind on receiving further proof on this point.

(Contd..5)

21/3/83

94

In this connection, the principle of law declared by the Supreme Court in Jagdish Prasad Saxena vs. State of Madhya Pradesh, AIR 1961 SC 1070, is pertinent where the court held as follows:

"No presumption of guilt from admission during preliminary enquiry. The departmental enquiry is not an empty formality; it is a serious proceeding intended to give the employee a chance to meet the charge and to prove his innocence. In the absence of enquiry it would not be fair to strain facts against an employee and to hold that in view of the admission the enquiry would not serve any useful purpose. This is a matter of speculation which is wholly out of place in dealing with cases of orders passed against employees terminating their services."

From the above principle of law declared by the apex Court it is evident that there can be no presumption of guilt from admission during preliminary enquiry. There was no evidence before the inquiry officer rebutting my claim that the said passenger Khurana had taken a loan of Rs. 100/- from me for purchasing the tickets and after purchasing the ticket he repaid the loan. But the Enquiry officer acting as a prosecutor believed the vigilance claims that I granted the reservation for consideration of Rs. 100/- as illegal gratification. As such, the inquiry officer based his finding on this charge on the basis of his suspicion which cannot take the place of proof in disciplinary proceeding. Again, I rely on the principle of law declared by the apex Court (Constitution Bench) in Union of India vs. H.C. Goel, AIR 1964 SC 364, where the Court held as follows:

"(2) ... In the course of his conversation with Mr. Rajagopalan it is alleged that he apologised for not having brought "rasagullas" for the children of Mr. Rajagopalan. A little later, during the course of the interview, it is alleged that the respondent took out from his pocket a wallet and from it produced what appeared to Mr. Rajagopalan to be a folded hundred rupee note.

"(25) Then, as to the hundred rupee note which, according to Mr. Rajagopalan, was taken out by the respondent from his wallet, Mr. Rajagopalan has admitted that the said note was folded double. He says that he noticed that its colour was blue and that its size was bigger than the usual ten rupee or five rupee note. Mr. Rajagopalan who appears to be a straightforward officer gave his evidence in a very honest way. He frankly told the enquiry officer that it could not be said that the hundred rupee note which he thought the respondent took out from his wallet had been offered to him by the respondent, but he thought that the whole thing had to be viewed in the context of the matter..

"(26) The respondent, on the other hand, suggested that in reply to the question which Mr. Rajagopalan put to him he took out some papers from his pocket to find out the letter of his appointment, and as soon as Mr. Rajagopalan appeared to discourage him, he put the said paper in his pocket.

"(27). Now, in this state of the evidence, how can it be said that the respondent even attempted to offer a bribe to Mr. Rajagopalan. Mr. Rajagopalan makes a definite statement that the respondent did not offer him a bribe. He merely refers to the fact that the respondent took out a paper from his wallet and the said paper appeared to him like a hundred rupee note double folded. Undoubtedly, Mr. Rajagopalan suspected the respondent's conduct, and so, made a report immediately. But the suspicion entertained by Mr. Rajagopalan cannot, in law, be treated as evidence against the respondent even though there is no doubt that Mr. Rajagopalan is a straightforward and an honest officer. Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should

(Contd... 6)

2/12/63

(6)

not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules of which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that by punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules..."

Viewed in the light of the above principle of law declared by the apex Court, the mere declaration by CTI/GHY, D.Brahmo that he saw me taking something from the passenger does not constitute an evidence of the charge that I received illegal gratification from the said passenger for granting him reservation. There was no rebuttal of my statement that I loaned him the amount of Rs. 100/- which the passenger returned after purchasing tickets. Hence, the inquiry officer's finding that the charge of acceptance of illegal gratification was established is illegal and it is a mechanical finding. Further, it is a perverse finding based on no evidence at all. An insinuation of guilt is no proof of the guilt. Hence, on the basis of evidence adduced during the inquiry, the charge of acceptance of illegal gratification is not proved.

The disciplinary authority also did not apply his mind as to the evidence adduced during the inquiry in relation to this charge and has mechanically accepted the finding of the inquiry officer which is perverse in the first place for being based on no evidence adduced in the inquiry.

(3) The third imputation is that I did not cooperate with the vigilance team and ran away when called at 21.30hrs. or so of 20.6.95. This imputation itself was based on surmises and conjectures. No evidence was adduced during the inquiry that I was told by somebody that vigilance team required my cooperation, and that knowing this ran away from the scene to avoid meeting the vigilance team. On the contrary, from the evidence adduced in the form of D.Brahmo, CTI/GHY, again, it is established that I was called and I turned and did not come to him stating that I was off duty (Ans. to Q.No.12 put by I.O.). From this evidence it is evident that I was not told that I was called by vigilance team, and that for what purpose I was called was not intimated to me. By no stretch of imagination this constitutes non-cooperation with the vigilance team. I further state that there is no rule enjoining the railway servants to cooperate with the vigilance officials failure to observe which would entail penal disciplinary action.

I submit that this charge is not proved.

(4) I submit that the inquiry officer's finding on each article of charge is perverse, based on no evidence, and is such that no reasonable man acting reasonably would have arrived at it on the basis of evidence adduced during the inquiry.

2. Disciplinary order

(1) In respect of the disciplinary order passed by the DCM/LMC, I make the following submissions.

(2) ~~DCM/LMC~~ The charge memorandum No.C/Con/LM/Misc/96 (NLK-HTC-GHY) dated 12.2.96 was issued and signed by Shri J.L. Darkim, Senior Divisional Commercial Manager, Lumding, who was a JA Grade Officer. Once the disciplinary proceeding was instituted by a JA Grade Officer, an officer subordinate to him was neither authorised nor empowered to either appoint the inquiry officer nor an officer subordinate to a JA Grade Officer could consider and pass final order after the inquiry. But in this case, after the charge sheet was issued by a JA grade Officer, the proceedings were hijacked by DCM/Lumding, who is inferior in rank to the original disciplinary authority. DCM/LMC also appointed the inquiry officer vide order dt.10.3.2000 and

(Contd...7)

(7)

finally passed the order imposing the penalty appealed against. In terms of the extant orders of the Rly. Board, final orders should also be passed by the authority who initiated proceedings. As such, the appointment of the inquiring authority as well as the final order passed by the DCM/Lumding in a proceeding initiated by Sr.DCM, LMG is illegal, unlawful and void.

(3) I further submit that DCM/Lumding, as apart from being acting without jurisdiction in disposing of the proceeding finally, has given no reasons for imposing the penalty. His order is cryptic, mechanical and suffers from non-application of mind. In terms of Rule 6 of RS(D&A) Rules, 1968, a penalty can be imposed for good and sufficient reasons only. When the order of the disciplinary authority is not supported by any reason, it is quite clear that the order is arbitrary and capricious. Railway Board vide its letter No.E(D&A)72 RG 6-11 dt.3.3.78 enjoined all the disciplinary authorities that while imposing any of the penalties laid down in D&A rules, speaking orders including the reasons for imposing a particular penalty must be passed. In view of this, the order of DCM/Lumding is violative of Rule 6, ibid., and on this ground alone the order of DCM/Lumding imposing penalty is liable to be set aside.

(4) DCM/Lumding in the order imposing penalty has imposed two penalties, namely, reduction in rank from the post of Hd.TC/GHY to Jr. TC which is a penalty prescribed under Rule 6(vi) of the rules and also imposed the penalty of reduction of pay to the initial grade of TC which is a distinct penalty under Rule 6(v) of the rules. Imposition of two penalties is illegal, ultra vires the Rule 6, ibid. and it suffers from the vice of double jeopardy. As such the order is liable to be set aside and quashed.

(5) I further submit that the order of reduction in rank from the post of Hd.TC to Jr.TC imposed by DCM/LMG is illegal and unconstitutional in that I was promoted to the post of Hd.TC by Sr.DCM/LMG and no authority subordinate in rank to Sr.DCM/LMG can remove from the post of Hd.TC to a lower post. Thus, the order is violative of Article 311(1) of the Constitution and as such the order imposing the penalty is liable to be set aside and quashed.

C. Submission

In view of the foregoing, I pray that the order of DCM/LMG imposing the two penalties on me may kindly be set aside and quashed and the charges framed against me may kindly be dropped.

Thanking you,

Yours faithfully,

(N. L. Karn)

Hd.TC/GHY

reduced to Jr.TC/GHY

✓ Copy to DCM/Lumding for his kind information and necessary action in terms of Rule 21(3), ibid.,.

Narayana Lal Karn

(N. L. Karn)

Hd.TC/GHY

reduced to Jr.TC/GHY

N.F. Railway

Office of the
Divi. Railway Manager(S),
Lumding.

No.C/CCN/LM/Misc/93(NLK-HTC-GHY)

Dt. 22.07.98.

To,

Sirri N.L. Karan
Ad. TC/GHY now Jr. TC/GHY.

Thre :- CTI/GHY.

Reviewing Authority (ADRM/LMG) after carefully examination of the case and Penalty order of D.A. (DCM/LMG) has decided to imposed the Penalty of reduction to lower stage for 3 years with loss of Seniority.

You are hereby given an opportunity of making representation of the penalty proposed. Such representation, if any, should be made in writing and submitted ~~xxx~~ so as to reach the undersigned within a period of ten days from the date of receipt of this notice.

W/o
(J. Jamir)
Divl. Commercial Manager
N.F.Railway, Lumding.

At 7 Retirement
31.01.2006

Certified to be true Copy
Rafiqul Islam

Advocate,
Date :

Office of the
Divl. Railway Manager (C),
Lumding.

No.C/CON/LM/Misc/96(NLK-Hd.TC-GHY)

dt. 19.09.2003

To,

Shri N. L. Karn,
TC/GHY.

Thre:- SM/GHY(Gaz)

Sub :- Representation to the show
cause notice No.C/CON/LM/
Misc/96(NLK-Hd.TC-GHY),
dt.22/07/2003.

Ref :- Your representation dated.
2/08/2003.

...

ADRM/LMG (Revisioning Authority) having gone
through the case considered that the gravity of your offence
warrants severe form of punishment and reviewed the Penalty
by an enhance Penalty of reduction to lower stage i.e. grade
for 2.5 years with loss of seniority (G.E.)

The above Penalty shall take effect from 1.08.03.

199
(J. Jamir)
Divl. Commercial Manager
N.F.Railway, Lumding.

Copy to:- 1. DRM/P/LMG (ET/Cadre & ET/Bill) for information and necessary action please. This is in reference to earlier NIP No.C/CON/LM/Misc/96(NLK-Hd.TC-GHY) dt.3.02.2003.

2. APO/GHY for information and necessary action please, This is in reference to earlier NIP No.C/CON/LM/Misc/96 (NLK-Hd.TC-GHY) dt.3.02.2003.

3. Dy.CVO/T/MLG for information in reference to his letter No.Z/Vig/94/1/119/95 dt.26.06.2003.

4. SM/GHY(Gaz)/GHY for information. He is advised to handover this letter to the staff Concerned obtaining acknowledgement and send the same to this office.

199
(J. Jamir)
Divl. Commercial Manager
N.F.Railway, Lumding.

*To staff concerned
with acknowledgement*
Certified to be true Copy
Rajendra Palam
Advocate
Date : 1

N.F.Railway

Office of the
Divl. Railway Manager(G),
Lumding.

No.C/COR/LM/Misc/96 (NLK-HTC-GHY)

Dt.31/10/2003

To,

Shri N. L. Karn,
Hd. TC/GHY now Jr. TC/GHY.

To whom:- SM/GAZ/GHY.

In supersession to this office letter No.C/COR/LM/Misc/96 (NLK-HTC-GHY) dt.26/07/2003 Revising Authority (ADR/ LMG) has decided to impose the Penalty of reduction to lower grade (Rs.4000-6000) at initial Scale of Pay for 2.5 years with loss of Seniority.

You are hereby given an opportunity of making representation of the Penalty proposed. Such representation if any, should be made in writing and submitted so as to reach the undersigned within a period of ten days from the date of receipt of this notice.

Divl. Commr. Manager/IC,
N.F.Railway, Lumding.

Certified to be true Copy
Rajeev Islam

Advocate,
Date:

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N.F. Railway

Office of the
Divl. Railway Manager (C),
Lundin.

No.C/CON/LM/Misc/96(NLK-HTC-GHY)

Dt. 2.12.2003.

To,

Shri N. L. Karm,
Hd. TC/GHY (now TC/GHY).

(Thro:- SM/GAZ/GHY)

In ~~xx~~ Supersession to this office letter No.C/CON/LM/MISC/96(NLK-HTC-GHY) dt.16.09.2003 Revisioning Authority (ADM/LMG) has passed the following orders:-

I have gone through appeal of Shri N.L.Karm and full case again. Punishment proposed i.e. reduction to lower grade (Rs.4000-6000) at initial scale of pay for 2.5 years with loss of seniority holds good.

The above penalty shall take effect from 1.02.03.

(J. Jamir)
Divl. Commr. Manager,
N.F. Railway, Lundin.

Copy to:- 1. DRM/P/LMG (ET/Cadre & ET/Bill) for information and necessary action please. This is in reference to your letter No.ES/1-N(T) dt.7.10.2003.
2. APO/GHY for information and necessary action please. This is reference to earlier letter No.C/CON/LM/Misc/96(NLK-Hd. TC-GHY) dt.16.09.03.
3. SM/GAZ/GHY for information. He is advised to handover this letter to the staff Concerned obtaining acknowledgement and send the same to this office.

(J. Jamir)
Divl. Commr. Manager,
N.F. Railway, Lundin.

Certified to be true Copy
Rafiqul Islam

Advocate,
Date:

To,

The Divisional Commercial Manager,
N. F. Rly, / Lumding

Sub :- My appeal Dated 27-03-04 & 21-6-04 preferred to DRM / Lumding

Ref :- Your letter No. C / Con / LM / Misc / 96 (NLK - HTC - GHY) dated 13-7-04.

Sir,

Respectfully while acknowledging your communication dated 13-07-04, advising me to approach CCM / MLG, I beg to submit that so long in this case DCM / LMG (Your honour) was Disciplinary authority and reverend ADRM / LMG was Appellate authority, no justice reached me rather injustices have been enhanced.

DAR / 1968 :- Rule 18(III), 19(II), & 25(V) (a to d) provide me a last chance to approach the principal authority of the Division (DRM / LMG), when reverend ADRM (enhanced the Penalty) will act as Disciplinary authority of the case.

DRM / LMG and CCM / HQ / MLG both hold the same rank. In this case, in particular, the entire matter related to my duties performed at the Division, obviously DRM / LMG would be the appropriate final Appellate authority to render justice to me. Rules are specific, DRM / LMG being the final authority may confirm, modify, set-aside the impugned order of punishment of even No. dated 8-12-03, or remand the case to any other higher authority (if thought necessary).

It is therefore requested that your kind honour may be pleased to arrange put- up both of my appeals dated 27-03-04 and dated 21-06-04. before respected DRM / LMG, for the sake of justice and fair play.

A line at your end is eagerly awaited.

COPY to : ADRM/LMS.

Dated 22-09-04

Yours faithfully,

Narayan Lal Karn

N. L. Karn
Hd. TC / GHY

Forwarded
Chd.
स्टेशन प्रबन्धक
पू. सी० रेलवे, गुवाहाटी
Station Manager
N. F. Rly, Guwahati

Certified to be true Copy
Rajen Dalam

Advocate,
Date : 1

Advance copy send direct

To,

The Chief Commercial Manager,
N. F. Rly / Maligaon.

Through proper channel.

Sub :- An appeal praying revocation of punishment

Ref :- DCM / LMG'S Letter No. C / Con / LM / Misc. / 96 (NLK-HTC-GHY)

Dated : 8/12/2003 & letter of even No. dated 13.07.2004 advising me to approach
(CCM / MLG) your kind honour.

Sir,

Respectfully I beg to submit that having exhausted the channel at Disciplinary Authority (DCM / LMG) as well Appellate Authority (ADRM / LMG), and having been aggrieved by their incoherent punishment orders, I beg to prefer this humble appeal under advice of DCM/LMG, and having recourse to Rule 18(iii), 19(ii) & 25(v) (a to d) of DAR' 1968, against the following amongst others :-

- 1) That there is no denial to the fact reiterated times and again that on 20/6/95, I performed evening shift duty scheduled to be terminated at 21.00 hrs. On that day about 20/30 to 20/40 hrs, one familiar person (commuter) sought my help in getting to board 2423 Dn Rajdhani Express of 21/06/95. As per reservation chart available at Guwahati (additional chart form HQ not reached till then) he and one his company had no confirm but wait list tickets. On being insisted by them and with the express permission of then shift In-Charge CTI Sri B. Aich, I consulted the chart and found (2) two berths of BJU Quota were available from GHY to upto BJU. The commuter requested me to allot those two berths to them; accordingly I issued slip for procurement of tickets. By that time, night shift staff started reaching duty to be commenced from 21 hrs, so also did Sri Brahma CTI. I told Sri Brahma to kindly arrange entry of two names in the chart to whom I issued slip. But surprisingly, Sri Brahma not only declined but also suggested me not to make any entry. Sri Brahma's suggestion did not console my sense of duty, coupled with human obligation to a familiar person, particularly when I already involved myself by issuing them slip for tickets, had to complete the process with entry of their names in the chart even with little detention for that time being. Although I was in hurry to attend my daughter suffering from mental derangement (photocopy enclosed), had to make time close by going personally to ticket counter, where I found the commuter killing time for an exchange of mere Rs. 100/- (cost of the tickets Rs. 2,100/-). I helped him with Rs. 100/- and return to office with their names and tickets to make entry in the chart, after completion of work I went out of office by about 21/40 hrs and handed over tickets to the commuter, when he returned me Rs. 100/- with thanks. Soon after I departed the commuter and approached the gate to exit, one gentleman (latter, known Sri Gurdeep Singh, II/Vig/SS/Rly-BD) called hello to me from distance behind. I looked back and found Sri Brahma CTI approaching beside that gentleman. I had reason to think and I thought that the new chap might be in need of similar some assistance, and Sri Brahma CTI was enough to help him. I did not pay further attention, because I was already late, and left for my daughter in hurriness.

Contd... 2

*Certified to be true Copy
Rajesh Salam*

*Advocate,
Date : 1*

2) That my innocent indifference to the call of an anonymous (till then) was seriously viewed, followed by the inception of the case under reference is ramification of whims and fancies of II/Vig/SS/RB team. This they processed to give me a lesson, being interested to satiate their ego & career, and seeing me a soft target. A piece of paper written by an anonymous (PD/3 of the case) they cooked up on 21/6/95, entailing a hideous complaint addressed only to them (?) but none of GHY or of N.F. Rly, lodged (as if) by passengers whom I helped on 20/6/95 in course of my duty in the evening of the day before. A copy of the complaint (PD/3) is enclosed herewith.

3) That your prudent honour will certainly appreciate the necessity of strictest test, upholding the Rule / Law / Ground reality, in keeping no room for surmise and conjecture for the complaint (PD/3) made serious in nature. It is possible by strictly disallowing the proxy witness maintaining the principle "**An interested witness is no witness**", and consulting only those relevant key witnesses, whose invariable attendances are obviously indispensable at the fact finding enquiry to reach the truth. It is equally warranted at chapter "**WITNESSES**" under Rule 14 of DAR, as well Law of the land.

4) **That the instant case brought 3 (three) fictional allegations under 3 articles (I, II & III) of charges, have 3 (three) aspects (Rule, Law and Ground reality) with 3 (three) relevant key witnesses, one for each Article as under :-**

(a) Article I, "Sri N.L. Karn, HTC/GHY being off duty after performing duty from 17/30 to 21 hrs at GHY, unauthorisedly granted reservation to two passengers against BJU Quota in Ac-2 coach of train No. 2423 Dn of 21/6/95, despite refusal by on duty CTI / GHY."

Point raised :- Work complied under Rule, can not be read otherwise as "Unauthorisedly". The very fact "Refusal by on duty CTI/GHY" at night shift, enough signified my retention beyond 21 hrs to complete the specific task already initiated with the consent of evening shift CTI/GHY Sri B. Aich. That, granting the (alleged) particular reservation became part of my duty in order to "maintain devotion to duty" enshrined under Rule 3(1) (ii) of Rly service conduct Rule 1966. Rule 3(1) reads-Every Rly servant shall at all times (i) maintain absolute integrity (ii) maintain devotion to duty, and (iii) do nothing which is unbecoming of a Rly servant.

Witness:- Sri B. Aich CTI / GHY, evening shift In-Charge of 20/6/95, who permitted me to do the job. Despite mentioned and recorded, but neither DA nor EO thought it fit to interrogate Sri Aich.

(b) Article II:- "He granted reservation to both the above passengers as mentioned in Article-I, on acceptance of illegal gratification of Rs. 100/-"

Point raised:- The very basis of the allegation was the so-called complaint dated 21/6/95 (as if) of passengers (PD/3). Obviously never owned up by any of the passengers. Remained a cooked-up fiction, concocted at the behest of the vigilance team amongst themselves. **Can not stand in the eye of law.**

Witness:- Sri Manoj Khurana (PW/4), the so-named complainant shown on PD/3. DA as well EO with repeated utmost efforts even rendering all possible facilities, could not secure his appearance to own up the complaint (In fact, PD/3 been cooked up, the so-said complainant does not exist).

(c) Article III:- "He did not co-operate the vigilance team of the Rly Board and run away when called for in presence of CTI / GHY on duty".

Point raised:- No Rule or Law supported framing such aberrant allegation, which explicitly exposed the whims and fancies of the vigilance team. **Very much ignored the ground reality** that an off-duty staff having personal exigency, can not be implicated with an unwarranted distant-call from an anonymous. Such an uncalled-for oral call ordinarily can not have any bearing either with the office or with duty demanding co-operation from staff already left office.

Witness:- Sri Gurdeep Singh (PW/6), one of the member of the team. Who (then anonymous to me) called me (for alleged Co-operation) from distance behind. DA as well EO could not make him present even for single day before the prolonged enquiry.

- 5) That barring the aforesaid 3(three) relevant key witnesses, all other witnesses are irrelevant though appeared and deposited **nothing contrary to what already submitted by me in my statement out-set, supported by all the produced so-said prosecution documents** (except, the cooked up complaint PD/3, brought by the interested party). **On the face of Rule / Law / Ground reality, together with the absence of relevant key witnesses, obviously turned all the charges baseless / invalid, and sufficiently on this grounds alone all the allegations should and must have been dropped / dismissed.**
- 6) **That reverend Enquiry Officer (EO) conspicuously in keeping no importance for the relevant key witnesses, as well no cognizance to the norms and principles of Natural Justice, went under prejudice with mind to oblige the team of II/Vig/SS/RB, took shelter under surmise and conjecture as much as architecturally concluded his fallacious report stating "All the allegations are proved". Consequently the whole process of enquiry went repugnant to Natural Justice and in total violation of EO's official propriety in holding an enquiry. The conclusion thus derived by EO, seriously suffered from ostensive aberration and utter ineptness, as well bad in law, had to be abjured.**
- 7) That in the premiss aforesaid, it is most respectfully prayed that your kind prudent honour will be pleased to appreciate the fact that the penalty imposed and enhanced beyond my retirement on 31-01-06 "with reduction to lower grade (Rs. 4000-6000) at initial scale of pay for 2.5 years with loss of seniority, shall have effect from 1/8/03" taking into account of aforesaid report of EO, is bound to be repugnant to Natural Justice, and bad in law. When I being an innocent humble employee do not want any favour, abreast must not be denied justice and fair play. Hence, this humble appeal to your kind noble honour to be pleased to pass an order to exonerate me from undue punishments, or pass such order/orders as deemed fit and proper. For this act of kindness your humble employee shall ever pray.

DA = Two (Mental derangement Certificate of my daughter & (PD/3) the complaint)

Yours faithfully,

Dated :- 09-02-05

(N. L. KARN)
Head TC / GHY

64

N.F.Railway

SC/

Confidential
Office of the
Divl. Railway Manager(C),
Lumding.

Dt.03.06.2005.

No.C/CON/LM/Misc/96 (NLK-HTC-GHY),

To,
Sri N. L. Karn,
TC/GHY.

(Through: - SM/Gaz/Guahati.)

Sub: - Appeal against imposition of penalty No. C/CON/LM/Misc/96
(NLK-HTC-GHY), Dt.08.12.2003.

Ref: - Your appeal dated.09.02.2005, addressed to CCM/Maligaon.

...

The Appellate Authority (CCM/MLG) having gone through your appeal
has passed the following orders: -

"I have gone through the relevant papers and the appeal carefully. I find
no reason to alter the orders passed earlier, therefore, the order passed by ADRM/LMG
stands"

(S. C. Kumar)
Sr. DCM/LMG.

Copy to: - 1. DRM/P/LMG (ET/Cadre, ET/Bill) for information and necessary
action please.
✓ 2. SM/Gaz/GHY for information and necessary action please.
3. APO/GHY for information and necessary action please.

Handwritten Signature
Sr.DCM/LMG.

Certified to be true Copy
Rafiqul Islam

Advocate,
Date:

केन्द्रीय प्रशासनिक नियमों के अनुसार
Central Administrative Tribunals Rules
10 JUL
गुवाहाटी बैचनी
Guwahati Bench
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Filed by
Mr.
(Dr. M. C. Sarker)
Advocate

Sudhir Chandra Kumar

विराट मंडल यांशुलिङ्ग

पू. सी. रेलवे/सामाजिक

Sr. Divl. Commr. M. A. Sarker

.....

PO/7/06

Received by me
Refined Islam
of Divocali

IN THE MATTER OF

O.A.303/2005

Shri Narayan Lal Karn

Applicant

Versus

Union of India & Others

Respondents

AND

IN THE MATTER OF

Written Statement on behalf of the Respondents.

The answering respondents respectfully SHEWETH :

1. That the answering respondents have gone through a copy of the application filed and have understood the contents thereof. Save and except the statements which have been specifically admitted hereinbelow or those which have been borne on records all other averments/allegations as made in the application are hereby emphatically denied and the applicant is put to the strictest proof thereof.
2. That for the sake of brevity meticulous denial of each and every allegation/statement made in the application has been avoided. However, the answering respondent has confined his replies to those points/allegations/averments of the applicant which are found relevant for enabling the Hon'ble Tribunal to take a proper decision on the matter.
3. That the application suffers from want of a valid cause of action. The ~~परिक्रमा~~ application therefore merits dismissal. It will be clear from the submissions made in subsequent paragraphs that the applicant unauthorisedly gave reservation to two New Delhi bound passengers upto Barauni on the Guwahati-New Delhi Rajdhani Express train although his duty hours were over and in spite of his supervisor clearly advising him not to do so. He knew well that the passengers would be stranded at Barauni as the berths were for Barauni quota (roadside) with priority in allotment for Barauni-New Delhi passengers. A written complaint was submitted by the passengers who alleged that the applicant had taken from them an extra sum of Rs.100/- as illegal gratification (illegal money).
4. It was a coincidence that a vigilance team of the Railway Board was checking the reservation chart of the Rajdhani Express of 21.06.2005 in the evening of 20.06.2005. They found an irregularity in the chart

as the New Delhi bound passengers were allotted two berths in the Barauni quota by the applicant whose duty hours were already over. The supervisor stated before the team that the applicant allotted the berths by picking up the chart from the table of the supervisor despite the supervisor clearly advising him not ~~to~~ to do so. In the circumstances, the Railway Board team called for the applicant for enquiry but the applicant reportedly fled away. The applicant was thereafter called to the Railway Board where his statement was recorded.

The Railway Board team was informed by the CTI/I/ Guwahati, the supervisor on duty on the evening of 20.06.95, that the applicant was on duty at the entrance gate of the station from 17-30 hours upto 21-00 hours. The applicant was in no way entrusted with the job of maintaining the reservation chart. The CTI informed the team that the applicant entered the names of the two passengers in the chart at 21-30 hours (when he was not on duty) in total disregard of his instruction. The CTI identified the applicant before the Railway Board team who wanted to talk to him and called him. However, the applicant reportedly ran away from the platform through the exit gate in presence of the supervisor.

The Railway Board's team also talked to the passengers concerned on 21.06.1995 and they gave a written complaint that a sum of Rs.100/- was taken from them as sox called service charge (illegal money) for the berths upto Barauni against his waiting list No.11 and 12. They requested for action against the offending staff as a preventing measure.

A copy of the complaint dated 21.06.95 written by the complainant is annexed herewith and marked ANNEXURE-A

On the basis of the complaint and on account of the report by the Railway Board's vigilance team the applicant was departmentally proceeded against by issue of a major penalty memorandum. He was afforded the required opportunity to defend himself in the departmental enquiry which found that all the charges were proved against him. Based on this report the applicant was asked to show cause as to why he should not be issued a major penalty. On receipt of his reply, the applicant was punished with reduction in rank for 2½ years with cumulative effect.

It would thus be seen that the applicant has no cause of action and the application merits dismissal.

4.1. That the application suffers from a wrong understanding of the role of a Railway servant towards the travelling public who deserve to be helped in the course of their journey and not exploited by taking advantage of the difficulties they face. The respondents submit that unless exemplary punishment is meted out to such undesirable elements the travelling public will continue to suffer. As the departmental DAR enquiry found the applicant guilty of the charges framed against him, he had to be punished by following the extant procedure, which was done. The application therefore merits dismissal.

5. Parawise comments:

5.1. That in regard to paragraph 4.1 the respondents beg to state that the service life of the applicant as Head Ticket Collector of Guwahati Railway station has been under unfavourable attention for some time. In one case of serious misconduct revealed by a decoy check of corrupt practice involving passengers the applicant was chargesheeted on 15.01.98. In that case, after following due DAR procedure, the applicant was penalised by reversion as Junior Ticket Collector for one year with cumulative effect on 16.09.2004. The applicant has challenged this punishment before the Hon'ble Tribunal under O.A.290/2005.

It is submitted that the service life of the applicant is far from clean.

5.2. As regards paragraph 4.2, the respondents have no remarks to offer.

5.3. As regards paragraphs 4.3 and 4.4, respondents beg to state that the applicant has himself admitted that in the evening of 20.06.95 his duty was at the entrance gate of the station from 17-30 to 21-00 hours. His duty did not include allotment of berths in trains. However, at about 21-30 hours, when he was not on duty, the applicant entered the names of two passengers in the reservation chart of next morning's Rajdhani Express in total disregard of the instruction of the CTI, his supervisor. As regards the timing the applicant himself has stated "By that time the night staff started attending duty to be commenced from 21-00 hours". The pleas of "moral obligation" and "sense of passion" etc. are nothing but attempts at covering his guilt. The applicant has clearly admitted "He had completed the entire process and issued reservation to the said person" although he had no authority and he did so although his duty hours were over.

As regards the illegal gratification of Rs.100/-

the applicant has cleverly tried to cover up the transaction stating that what he received from the passenger was the return of the sum given by him to the passenger who could not buy the ticket for want of change. This story could not be accepted as the same passenger complained that the applicant had charged him Rs.100/- as illegal money (service charge).

5.4. That as regards paragraph 4.5 the respondents have no remarks to offer as the same is part of the records.

5.5. That as regards paragraph 4.6 the respondents beg to state that in the interrogation in the Railway Board's office the applicant admitted his misconduct by a recorded statement there.

5.6. That as regards paragraphs 4.7 and 4.8 the respondents deny that the list of documents and the list of witnesses were not sent to the applicant along with the memorandum of charges. The applicant has admitted that he was again sent the same subsequently. As regards the presence of the complainant in course of the enquiry, respondents repeatedly tried to obtain his presence by sending letters in his New Delhi address along with necessary first class passes to cover the journey. However, as the complainant had already given his complaint in writing to the vigilance team of the Railway Board at Guwahati station on 21.06.95 and as the witness could not be forced to attend the enquiry as a member of the public the enquiry had to be completed with other witnesses being present for vital evidence.

5.7. That as regards paragraphs 4.9 and 4.10 the respondents beg to state that the Enquiry Officer deals with a large number of cases arising out of vigilance cases and he is an ex-cadre officer liable to be transferred due to exigency of service. Therefore, when Shri K.Saha, the incumbent Enquiry Officer was transferred his place was taken in posting by Shri A.Saikia and he was automatically to enquire the applicant's case. There was nothing irregular in the same. As regards time taken, it is stated that no rule was violated and time taken was considered reasonable considering the fact that a large number of witnesses had to be covered and the defence counsel had to be called from interior area of Bihar where ^{he} settled after retirement.

5.8. That as regards paragraphs 4.11 and 4.12, the

respondents beg to state that the departmental enquiry was conducted in a correct manner by keeping the rules and procedures in view and by affording opportunity to the charged official to defend himself in compliance with the demands of natural justice. The Disciplinary Authority had applied his mind in going through the enquiry report and imposed the penalty of reversion of the applicant to the post of Junior Ticket Collector for 30 months.

5.9. That as regards paragraphs 4.13, 4.14 and 4.15, the respondents beg to state that when cases of serious offence arising out of vigilance investigations arise, the disciplinary authority's order of punishment is reviewed by a competent authority. In this case the order of punishment issued by the DCM/Lumding was reviewed by the next higher authority and annexure XIII of the O.A. was issued on this account. The applicant was given an opportunity to make his representation against the proposed penalty. Annexure XIV of the O.A. reduced the penalty period to 2½ years but made the punishment cumulative. This letter did not mention the grade to which the applicant was reduced and hence Annexure XV had to be issued to remove the technical flaw of the letter at Annexure XIV of the O.A.

5.10. That as regards paragraph 4.16, the respondents beg to state that orders of punishment issued by the Disciplinary authority is examined by a higher authority to find out if the level of punishment is commensurate with the offence committed. This examination is different from the technical consideration of statutory appeal for which there are specified rules in the DAR procedure. It was technically necessary that the statutory appeal submitted by the applicant should have been disposed of by issued of an order. It was under these requirements that Annexure XVI of the O.A. was issued. It is submitted on behalf of the respondents that the disposal of the appeal was as per rule.

5.11. That as regards paragraphs 4.17 and 4.18, the respondents beg to state that the appellate authority on orders of DCM is ADRM according to schedule of power and hence the appeal of the applicant was disposed of by the ADRM/Lumding. As the next review in such cases lies with the Chief Commercial Manager, Maligaon, the applicant was advised to submit his review petition to that official.

Thm

...P.6...

Div. Commr. Manager
N.D. Lumding

(6)

The Chief Commercial Manager upheld the order of punishment issued by the ADRM/Lumding after having gone through the appeal of the applicant and all other relevant papers.

This was done as per rule and adhering to the principles of natural justice.

In the circumstances narrated above the respondents beg to state that the applicant has endeavoured to mislead the Hon'ble Tribunal by misrepresenting the facts and has failed to show any cause of action. It is therefore submitted that the O.A. has no merit and deserves to be dismissed with costs.

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

VERIFICATION

I, Shri S. C. Kumar, son of Smt. Jay Nayak, aged about 35 years and at present working as Ex. C.M., do hereby solemnly affirm that the contents of paragraph Nos. 1 to 5.11 are true to the best of my knowledge and are based on record which I believe to be true and the rest are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the _____ day of _____, 2006.

Sudhir Chandra Kumar
Signature

परिषद् मंत्री सामित्र दिव्य
Designation: श्री. रेणदेला मित्र
Ex. Civl. Comml. Manager
N. P. Kly, Lumding

(7)

ANNEXURE - A.

True Copy

1) MANOJ KHURANA
SN- 26/126, West Patel Nagar
New Delhi at Guwahati
New Delhi-110008

2) POONAM GUPTA
as above

To,

The Vigilance Inspector
Railway Board
New Delhi at Guwahati

One TC of Guwahati met me and told me that he will get me a confirmed ticket for Barauni since I was not having a confirmed ticket. He told me that you can get it extended within the train. Later I came to know that one can not extend a ticket in Rajdhani Express and I had to go to New Delhi. I was in W.L - 11 & 12 in AC-2 tier and I got it cancelled and that TC gave me a slip through which I bought a ticket till Barauni in AC- 2 tier for Rs 2180/- on 20-6-95 for journey on 21-6-95 by Rajdhani Express. He took Rs 100/- as service charges(illegal money) from me . Please take necessary action against him so nobody in future has to face so much of trouble.

Thanking you.

- Sd-

21-6-95

संकायक वाणिज्य प्रबन्धक
Assistant Commercial Manager
मु. सौ. रेलवे, लानिङ
N. F. Railway, Lumding