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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓ O.A/T.A No. 313/2005

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet. O.A. 313/2005 Pg. 1 to 3
2. Judgment/Order dtd. 27/10/2006 Pg. 1 to 13 Disposed
3. Judgment & Order dtd. Received from H.C/Supreme Court
4. O.A. 313/2005 Pg. 1 to 54
5. E.P/M.P. Pg. to
6. R.A/C.P. Pg. to
7. W.S. Respondents Pg. 1 to 12
8. Rejoinder Pg. to
9. Reply filed by Applicant Pg. 1 to 6
10. Any other Papers Pg. to
11. Memo of Appearance
12. Additional Affidavit
13. Written Arguments
14. Amendement Reply by Respondents
15. Amendment Reply filed by the Applicant
16. Counter Reply

SECTION OFFICER (Judl.)

(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 312/05

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant(s)

Respondent (S)

Advocate for the Applicants

Advocate for the Respondent(S)

~~CGSC~~

✓ Rly St. Counsel

Notes of the Registry Date _____ Order of the Tribunal _____
 _____ United a Mr. Just.

Application is in form
is filed/C.F. Form No. 10-
disposed vide P.O.
No. 266/317702
Dated 12.12.05

Dy. Registrar

Steps taken with envelopes:

19. 12. 2005

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

Heard Mr. G. Rahul, learned counsel
for the applicant and Mr. J.L. Sarker,
learned standing counsel for the Railway.

Issue notice to show cause as to why this application shall not be admitted. .

Post on 1.2.2006.

Vice-Chairman

1.2.2006

Await service. post on 6.3.2006.

vice-Chairman

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

5166

Contd.

6.3.2006

Mr.G.Rahul, learned counsel for the applicant and Dr.J.L.Sarkar, learned Railway Standing counsel are present.

The applicant has been removed from service. The appeal filed by him before the Appellate Authority was rejected. Revision was also rejected. The contention of the applicant is that the disciplinary proceeding that has been followed in this case is not in tune with the rules and regulations and therefore the said orders are challenged before this Tribunal in this proceedings.

Considering the issue involved, in this removal from service and since it is disciplinary matter ^{and} elaborate adjudication is required, the O.A. is admitted. Six weeks time is granted to the respondents to file reply statement after completion of service. Respondents are also directed to produce the records while filing reply statement.

Post on 24.4.2006.

Vice-Chairman

bb

24.4.2006

Mr. K.K. Biswas, learned railway counsel submits that he has already filed reply statement and vakalatnama. The Registry is directed to accept the same if otherwise in order. The applicant is granted four weeks time to file rejoinder, if any. Post on 25.5.2006.

Vice-Chairman

mb

25.05.2006

When the matter came up for hearing, Mr. K.K. Biswas, learned counsel for the respondents submitted that he would like to have some time to file reply

Cancel

Notice duly served on resp. No. 2.

25/11/06

31-1-06

① Notice duly served on R. No. 2, other respondents are awaited.

② No. Reply has been filed

2/2/06

Notice duly served on resp. No. 5.

3-3-06

No WLS has been filed.

21-4-06

No WLS has been filed.

Written statement has been filed by the respondents. ^{with} vakalatnama. ^{MS} 26-4-06.

24-5-06


No Rejoinder has been filed.

O.A. 313/2005

27.10.2006

Judgment pronounced in open Court, kept in separate sheets.

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


Vice-Chairman

/bb/

8/11/06
Copy of the
Judgment handed
over to the phy.
Prudgy Council and
C-Copy has been
collected by the
L/adv. for the
applicant.
AL

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

.....

313 of 2005

O.A. No.

DATE OF DECISION 27.10.2006

Sri S.N. Borah

..... Applicant/s

Mr K.N. Choudhury, Sr. Advocate, Mrs. R.S. Chowdhury, Mr G. Rahul and
Mr P.N. Goswami

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

- Versus -

Union of India & Others

..... Respondent/s


Mr K.K. Biswas, Railway Advocate

..... Advocate for the
Respondents

CORAM

HON'BLE SRI K.V. SACHIDANANDAN, VICE-CHAIRMAN
HON'BLE SRI GAUTAM RAY, ADMINISTRATIVE MEMBER.

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


Vice-Chairman/Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 313 of 2005.

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

The Hon'ble Sri K.V. Sachidanandan, Vice-Chairman.
The Hon'ble Sri Gautam Ray, Administrative Member.

Sri Surendra Nath Borah
S/o Late Joyram Bora
New Guwahati, Bamunimaidum,
District - Kamrup, Assam (781124).

... Applicant

By Advocate: Mr K.N. Choudhury, Sr. Advocate, Mrs. R.S.
Chowdhury, Mr G. Rahul and Mr P.N. Goswami,
Advocates.

- Versus -

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

... Respondents.

By Advocate: Mr K.K. Biswas, Railway Advocate.

.....



ORDERGAUTAM RAY, MEMBER (ADMN.)

By this Application under Section 19 of the Administrative Tribunals Act, 1985, the Applicant is praying for setting aside and quashing the impugned order dated 03.02.2003 under No. TP/3/LM/1-4/2002 issued by the Divisional Mechanical Engineer (P), N.F. Railway, Maligaon (Annexure - 'G'), whereby the Applicant has been removed from service as well as the consequential orders passed by the Appellate Authorities, and also for setting aside and quashing the disciplinary proceeding initiated against the Applicant in connection with the head-on collision between 5658 Dn Kanchanjanga Express and Up LMG Food Grain Train at Kamakhya Station on 28.01.2002. The Applicant further prays that he may be reinstated in service with all service benefits.

2. In a nutshell the case of the Applicant is that while he was serving in the N.F. Railway as a Diesel Assistant Driver, on 28.01.2002 he was asked to take charge of the Up Lumding Food Grain Train as a Diesel Assistant Driver from Bongaigaon. While the Applicant was approaching the Kamakhya Station, the indication of the Up Distance Signal was showing Yellow Aspect and the Up Home Signal was also showing Yellow Aspect. The Home Signal was placed in Driver's side which was not visible to the Applicant due to sharp curve in between the Distant Signal and the Home Signal. Moreover, the engine had a longhood. Accordingly, the train of the Applicant proceeded with caution and the Applicant relied on the Driver about the aspect of the Up Home Signal which was showing Yellow. The Applicant then saw light on the Line No. 1 in which the Applicant was

proceeding and he realized that another train was either approaching or standing on the other side of the same line. The Applicant and the Driver tried their level best to reduce the speed of the Train but due to failure of A-1 valve, the Emergency Brake did not work and ultimately collided with 5658 Dn Kanchanjangha Express. The Commissioner of Railway Safety conducted an inquiry about the incident and submitted his report. The Applicant was placed under suspension on 29.01.2002 under Order No. TP/3/LM/1-4/2002 of the Divisional Mechanical Engineer (P). On 13.06.2002, the Divisional Mechanical Engineer (P) proposed to hold an inquiry against the Applicant under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 and accordingly issued charge sheet. The Applicant submitted that the Inquiry Officer did not take into consideration several relevant and material aspects and finally the Disciplinary Authority imposed the penalty of removal from service vide order dated 03.02.2003. The Applicant thereafter approached the Appellate Authority for reviewing the order of the Disciplinary Authority. The said appeal was rejected by the Appellate Authority which was communicated to the Applicant by the Divisional Mechanical Engineer (P) vide his No. TP/3/LM/1-4/2002 dated 15.05.2003 (Annexure - 'I'). The Applicant filed a representation for review of the impugned order of removal before the Chief Operating Manager, N.F. Railway, which was also rejected by the Revising Authority vide No. CME/SS/2/3 dated 04.11.2004 (Annexure - 'K'). Being aggrieved by these orders, the Applicant has preferred this Original Application challenging the legality and validity of the penalty of removal from service so imposed on him.

3. The Respondents have filed a detailed written statement contesting the claim of the Applicant. The case of the Respondents is that the Applicant received punishment due to his carelessness and lack of sense of responsibility in performing his duty. The Applicant is fully aware about the gravity of the offence he had committed for not fulfilling the duties entrusted to him while running a train. The Respondents submit that a procedure for dealing with safety related to disciplinary cases issued by the Ministry of Railways, Railway Board vide letter No. E(D&A)2003/RG.6-5 dated 19.02.2003 is followed in dealing and deciding a departmental proceeding case and the same has been followed in the instant case and there was no violation of any Rule and system. The Respondents have issued necessary quantum of punishment required to be imposed upon according to the Circular of the Ministry of Railways, Railway Board under No. 99/Safety(A&R)/6/1 dated 23.04.1999. The Commissioner ~~for~~ Railways Safety, after careful consideration of all the factual material and circumstantial evidences at his disposal, came to the conclusion that the said head-on collision that occurred due to the passing of train at danger point was because of the 'failure of the Railways staff' and hence the punishment imposed upon the Applicant was absolutely in accordance with the Disciplinary Rules, 1968. The Applicant is fully responsible for the charges ~~leveld~~ ^{levelled} against him. The Applicant was given ample opportunity to defend ~~this~~ ^{his} case. The Respondents further state that Kamakhya Station is provided with Central Panel Interlocking Signalling System where there is no possibility to take "OFF" the Up Home Signal into "YELLOW" as alleged by the Applicant. As per the Employment Regulation Rules, 10 hours' duty at a stretch is specified for a running

staff. On the date in question, no demand from the Applicant Claiming For Rest was received. Hence, the allegation for performing excess duty by the Applicant has no basis at all. Further, the Driver of the train in which the Applicant was a Diesel Assistant Driver himself stated that the brake power was good and he tested it en route. The brake power was jointly tested by SSE, CNG/NCG, TI/GHY and SSE (Signal)/GHY after the incident and it was found to be 92%. This is also in conformity with the CRS inquiry report. The Applicant was not alert to the required degree while working in Up LMG Food Grain Train as a result of which head-on collision occurred for which the Applicant cannot escape his liability and responsibility. The charges of his failure to correct signalling aspect with the Driver as well as his lack of alertness during duty on the material date and time were established in the departmental inquiry which was conducted fairly by the Inquiry Officer. No running staff is booked for duty without completion of prior road learning over any section. Had it been so, the Applicant should have objected and submitted written representation before his booking or performing such duty. The Applicant was removed from service after observing all formalities necessitated as per Discipline and Appeal Rules and after giving him all reasonable opportunities for his defence as required under the law on the subject. Therefore, according to the Respondents, the application is not tenable in the eye of law and the same is liable to be dismissed with cost.

4. The undisputed facts of the case are that the Applicant joined the N.F. Railway as a Khalasi in 1981 and was ultimately promoted as Diesel Assistant Driver. While he was working as Diesel

Assistant Driver/NGC was issued with a Charge Memo dated 13.06.2002 by the 5th Respondent herein for the following charges :-

"On 28-01-2002, 5658 DN Kanchanjunga Express train collided with UP LMG F/G on Line No. 1 at KM-401/8 at KYQ Station of GHY-AGT BG Single line non-electrified section. As a result, coach Nos. NRVPU-16836 & NFVPU-16820 alongwith wagon No. NFBCNL-36567 got derailed and capsized.

The accident took place due to disregarding of the 'RED' aspect of the UP Home signal and passing signal at danger bursting the Point No. 71(X) by your train UP LMG F/G.

Being the Assistant of the driver of the same goods train you are also held responsible for not being vigilant in observing the correct aspects of approach signals and passing the Home signal at danger for which you are charged for violation of GR- 3.78(1)(a), (b)&(4) and also Rule -3(1)(ii) of Service Conduct Rules of Rly. 1966."

5. The said Charge Memo is enclosed as Annexure - 'B' to this Original Application hereinafter referred to as 'O.A.'

6. The Applicant submitted his written statement of defence on 29.06.2002 which is enclosed as Annexure - 'C' to this OA. After completion of inquiry, the Inquiry Officer submitted his report. The DME(P)/LMG (Respondent No. 5) sent to the Applicant the report of the Inquiry Officer vide his No. TP/3/LM/1-4/02 dated 20.12.2002 (Annexure - 'E') to this OA. The Applicant submitted his reply to the said report vide his letter dated 23.01.2003. The Disciplinary Authority considered the inquiry report, the representation of the Applicant and passed its order imposing the penalty of removal from service vide order dated 03.02.2003 (Annexure - 'G' to the OA). The

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relevant part of the order of the Disciplinary Authority is extracted below:-

"Going thoroughly the case alongwith all relevant documents including appeal/representation of Sri S.N. Borah, DAD/NGC submitted against Show Cause Notice, I found no reason or any such point to be exempted him from the charges brought against him.

DAD, Sri Borah, equally held responsible with the driver for the accident as he failed to exchange correct signaling aspects with the driver during duty which reveals his lack of alertness as well as sincere devotion to duty. This has also been proved in the DAR Enquiry reports/findings submitted by the E.O.

Hence, Sri S.N. Borah, DAD/NGC is imposed a penalty of REMOVAL FROM SERVICE with immediate effect.

An appeal against this order lies to Sr. DME/LMG, the next higher authority within 45 days on receipt of this office letter."

7. The Applicant preferred appeal against the order of the Disciplinary Authority on 20.02.2003 which can be seen at pages 39-44 of this O.A. (Annexure - 'H'). The appeal was considered by the Appellate Authority, i.e. ADRM/LMG which was communicated to the Applicant by the 5th Respondent through his letter dated 15.05.2003 (Annexure - 'I' to the OA). The order of the ADRM/LMG is reproduced herein below: -

"I have also gone through the appeal of Shri S.N. Borah, DAD/NGC and the entire DAR proceedings. After thorough and careful study of the same case, I find no additional points to consider the case.

It has been established on relevance of the documents produced on accident enquiry and also DAR enquiry that the accident occurred due to negligence of duty as he was not vigilant for observing the correct aspects of approach signals due to which train passed the home signal at danger and head-on-collision took place. It reveals his lack of

1981

alertness as well as sincere devotion to the duty. I, therefore, consider that the punishment of removal from service imposed by DA against Shri S.N. Borah holds good."

8. The Applicant filed revision petition which was disposed of by the Revision Authority by confirming the penalty imposed by the Disciplinary Authority and also affirmed by the Appellate Authority.

9. Being aggrieved by this order of the Disciplinary Authority, the Applicant has approached this Tribunal seeking the following reliefs: -

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

8.2 Set aside and quash the Disciplinary Proceeding against the applicant in connection with the head-on collision between 5658 Dn Kanchanjanga Express and Up LMG Food Grain at Kamakhya Station on 28/1/2002. ✓

8.3 Direct the respondent authorities to reinstate the applicant in his post with all service benefits including for the period from 03/02/2003 till date.

8.4 Cost of the application.

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

10. The competency of the authority who passed the order(s) is not questioned by the Applicant. It is seen from the counter reply filed by the Respondents that the Applicant participated in the inquiry as and when held. The Applicant also exhausted all the remedies

228
E

available to him prescribed under the rules before approaching this Tribunal.

11. A perusal of the inquiry report (enclosed as Annexure - 'D' to this OA) would show that the Inquiry Officer found that the charge ^{levelled} ~~leveled~~ against the Applicant for violation of Rule 3(1)(ii) of the Service and Conduct Rules of Railway, 1966, is established and the charge of violation of GR-3.78(I)(a)(b) against Shri Borah, the Applicant, as not established.

12. The relevant part of the findings of the Inquiry Officer is reproduced herein below:-

"As per GR 3.78(I)(a)(b) the responsibility to obey every signal and be vigilant and cautious purely depend upon the Driver. However, 3.83(2) and (3) indicates that the DAD will assist the Driver in respect of signal, when not otherwise engaged and the responsibility solely depend upon the Driver in respect of signal.

Considering all the relevant facts and evidence it has reasonably appeared to the undersigned that Shri S.N. Borah, DAD/NGC was not alert to the required degree while working Up Lmg Foodgrain and as a result of which the aforesaid train entered Kyq station despite 'RED' aspect of Up Home Signal. As such, the charge for violation of 3(I)(ii) of Service Conduct Rules of Rly is established.

At the same time violation GR 3.78 I(a)(b) against Shri Borah is not established as the Rule is fully dependant upon the Driver.

13. It, therefore, apparent from the findings of the Inquiry Officer's report read with the order of the Disciplinary Authority that the Disciplinary Authority deferred with the findings of the Inquiry Officer in regard to the charge of violation of GR 3.78 I(a)(b) against the Applicant and said that "I found no reason or any such

point to be exempted him from the charges brought against him" and held the Applicant responsible for the charges and passed its order imposing penalty of removal from service. The Applicant has raised this point in his revision petition dated 03.06.2003, which is enclosed as Annexure - 'J' to the OA. The Appellate Authority did not consider this aspect. In fact, the order of the Appellate Authority is not a speaking one. Under Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968,

"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 proposed to impose is one of the penalties specified in clauses (v) to (ix)

2/8

of Sub-rule (1) of Rule 6 and an inquiry 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 and 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 Sub-rule (1) of Rule 6 and an inquiry under Rule 9 has already been held in the case, the appellate authority shall, after giving the appellant a reasonable opportunity, as far as may be in accordance with the provisions of sub-rule (5) of Rule 10, of making a representation against the penalty proposed on the basis of the evidence adduced during the inquiry, make such orders as it may deem fit; and

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

(a) where the enhanced penalty which the appellate authority proposes to impose is the one specified in clause (iv) of sub-rule (1) 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";

[R.B.'s No. E(D&A)70RG-6-41 of 4-12-71, N.R.S.N. 5545]

(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 provisions of Rule 11, of making a representation against such enhanced penalty."

14. In terms of Railway Board's Instruction E(D&A) 87 RG 6-151 dated 04.04.1996 RBE 33/96, when Disciplinary Authority disagree with the findings of the Inquiry Authority the reasons for such disagreement must be communicated to the charged officer with the report of the inquiry so that the charged officer can make effective representation.

15. A plain reading of the order passed by the Appellate Authority would show that the order is not passed in accordance with the above rule/instruction. The Appellate Authority has failed to consider as to whether the charged officer was communicated with the note of disagreement of the Disciplinary Authority in order to afford him an opportunity to defend his case before passing its order.

16. In this context, it is relevant to refer to the judgment of the Hon'ble Supreme Court of India in the case of Narain Misra v. State of Orissa reported in 1969 (3) SLR 657 where it was held that whenever Disciplinary Authority disagree with the findings of the Inquiry Officer, it should communicate the reasons for disagreement to the charged officer and consider his comments before imposing the penalty.

17. In view of the above, we are of the view that the ends of justice would be met in remitting the case back to the Appellate Authority to consider as to whether the charged official, i.e. the Applicant herein, was communicated with the notes of disagreement of the Disciplinary Authority to make effective representation before it passed the order of penalty and pass appropriate order.

28

18. Accordingly, we quash and set aside the order of the Appellate Authority communicated vide letter dated 15.05.2003 (Annexure - 'I' to the OA) and Revisionary Authority dated 04.11.2004 (Annexure - 'K' to the OA). The case is remitted back to the Appellate Authority which shall consider the above aspect and pass appropriate order as per Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 read with Railway Board's Instruction dated 04.04.1996 (supra) within a period of two months from the date of receipt of a copy of this order.

19. The instant O.A. is disposed of accordingly with no order as to costs.



(GAUTAM RAY)
ADMINISTRATIVE MEMBER



(K.V. SACHIDANANDAN)
VICE-CHAIRMAN

/mb/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No. 313 of 2005

Sri Surendra Nath Borah

... Applicants.

- VERSUS -

Union of India & Ors.

... Respondents.

INDEX

<u>SL. NO.</u>	<u>PARTICULARS</u>	<u>PAGE</u>
	Synopsis	
	List of Dates	1 - 16
1	Application	17
2	Verification	18-22
3	Annexure - A	23-26
4	Annexure - B	27-31
5	Annexure - C	32 - 35
6	Annexure - D	36
7	Annexure - E	37
8	Annexure - F	38
9	Annexure - G	39-44
10	Annexure - H	45
11	Annexure - I	46-48
12	Annexure - J	49-50
13	Annexure - K	51-53
14	Annexure - L	54
15	Annexure - M	

Filed by

P.N. Goswami
Advocate

Filed by the Applicant,
P.N. Goswami,
Advocate,

70

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

Sri S. N. Borah.

... Applicant

-VERSUS-

Union of India & Ors.

... Respondents

SYNOPSIS

The Applicant herein has been serving the Indian Railways as a Diesel Assistant Driver. On 28/01/2002 the applicant was asked to take charge of the Up Lumding Foodgrain train as a Diesel Assistant Driver from Bongaigaon. On their while the applicant was approaching the Kamakhya station the indication of the Up Distance Signal was showing Yellow aspect and the Up Home Signal was also showing Yellow aspect. Be it stated herein that the Home Signal was placed in Drivers side which was not visible to the applicant due to the sharp curve in between the Distant Signal and the Home Signal, moreover the engine had a longhood. Accordingly the train of the applicant proceeded with caution and the applicant relied on the driver about the aspect of the Up Home Signal which was showing yellow. After passing 'Up Home Signal' the applicant saw light on the Line no.1 in which the applicant was proceeding and he realized that another Train was either approaching or standing on the other side of the same line. Having realized the same the Applicant and the driver tried their best to reduce the speed of the train but due to failure of A-1 valve, the Emergency Brake did not work ultimately collided with the 5658 Dn Kanchanjangha Express. After the accident, the Commissioner of Railway Safety conducted an inquiry about the said incident and submitted his report on the basis of which the charges were framed against the Applicant and the Applicant was placed under suspension on 29.1.2002. The inquiry proceeding so conducted by the Inquiry Officer against the Applicant did not take into consideration several relevant and material aspects of the report submitted by the Commissioner of Railway Safety. Without considering such aspects, the Inquiry Officer submitted his report and the Disciplinary Authority imposed the penalty of removal from service vide order dated 3.2.2003. The Applicant, therefore, approached the Appellate authority for reviewing the order of the Disciplinary Authority. However, the appeal of the Applicant was rejected vide order dated 25.1.2005. Further, the revision so prayed for by the Applicant was also rejected vide letter dated 11.2.2005. Being highly aggrieved by the impugned order dated 3.2.2003 passed by the Disciplinary Authority as well as the consequential orders passed by the Appellate authority, the Applicant has preferred this Original Application challenging the legality and validity of the penalty of removal from service so imposed on the Applicant.

21

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

Sri Surendra Nath Borah ... Applicant

-VERSUS-

Union of India & Ors. ... Respondents

LIST OF DATES

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

03/02/2003:- The Divisional Mechanical Engineer (P), issued the impugned Order whereby the penalty of removal from service has been imposed on the Applicant.

 (ANNEXURE-G, Pg)

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

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

(ANNEXURE-I, Pg)

03/06/2003:- The applicant filed an appeal for review of the Impugned Order of removal before the Chief Operating Manager, N.F.Railway

(ANNEXURE-J, Pg)

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

(ANNEXURE-K, Pg)

02/03/2005:- The applicant submitted a representation before the General Manager, N.F. railway and requested for reviewing the Order dated 04/11/2004.

(ANNEXURE-L, Pg)

29/03/2005:- The Sr. Divisional Mechanical Engineer issued a letter to the applicant that the representation dated 25/01/2005 could not be considered by the authority in view of the Railway Boards notification that once a revision has been denied, no further revision lies to any of the authority.

(ANNEXURE-M, Pg)

23
Filed by the Applicant
Suren Dra Nath Borah
Through, P-12/12/05

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

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

ORIGINAL APPLICATION NO. 313 /2005

BETWEEN

1. Sri Surendra Nath Borah
S/o Late Joyram Bora,
New Guwahati, Bamunimaidum.
Railway Quarter No. 618/G
District – Kamrup, Assam (781124)

... Applicant

- VERSUS -

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

... Respondents.

DETAILS OF THE APPLICATION:

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

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

2. **JURISDICTION OF THE TRIBUNAL:**

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

3. **LIMITATION:**

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

4. **FACTS OF THE CASE:**

- 4.1 That the applicant is a citizen of India and as such entitled to all the rights, privileges and protections guaranteed to the citizens of India under the Constitution of India and the laws framed thereunder.
- 4.2 That the applicant joined in the N.F. railway as a Khalasi in 19981 and was ultimately promoted to the post of Diesel Assistant Driver in the N.F.Railwayj and was Head Quartered at New Guwahati.
- 4.3 That, prior to narrating the facts of the case, the Applicant deems it fit and proper to place on record certain technical points with regard to the signaling system, which is followed by the Railways with regard to the Goods/Passenger Trains. The Applicant states that prior to approaching a station, a train crosses two signals, first is known as Distant Signal which normally determines the platform/line which the train has to take. The Distant

25

S.N. Borsak

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

- 4.4 On 27/01/2002 the applicant was booked by Dn BTPN and reached New Bongaigaon at 6 hours on 28/01/2002. On that day the applicant worked for total 14 Hrs and 15 Mts., whereas as per duty limit 10 hours has been specified. That on 28/01/2002 the applicant was asked to take charge of the Up Lumding Foodgrain train as a Diesel Assistant Driver from Bongaigaon. On the arrival of the train at Bongaigaon at 16.00 hours the applicant took over the charge of the said train and at 16.20 started from Bongaigaon. Sri B. Appa Rao was the Driver of the said train. On their way to Lumding the applicant reached Azara at 22.00 hours wherein the train was detained for 15 minutes till 22.15 hours for line clearance and thereafter proceeded towards Kamakhya Station.
- 4.5 That while the applicant was approaching the Kamakhya station (in Railway parlance, Kamakhya is referred to as KYQ Station), the Up Distance Signal was showing Yellow aspect and the Up Home Signal was also showing Yellow aspect. Be it stated herein that the Home Signal was placed in Drivers side which was not visible to the applicant due to the sharp curve in between the Distant Signal and the Home Signal, moreover the engine had a longhood. It is also pertinent to mention that when the Distant Signal is at Yellow the Home Signal may either be at Yellow or at Red. So it conveys that the speed of the train should be controlled to observe the next aspect of Home Signal. Accordingly the train of the applicant proceeded with caution and the applicant relied on the driver about the aspect of the Up Home Signal which was also showing yellow. Seeing the above

aspect of the signal the applicant kept on proceeding towards the station and after crossing 'Up Home Signal' the applicant saw light on the Line no.1 in which the applicant was proceeding and he realized that another Train was either approaching or standing on the other side of the same line. Having realized the fact that some mistake has occurred somewhere, the Applicant and the driver tried their best to reduce the speed of the train and applied the Emergency Brake but due to failure of A-1 valve, the Emergency Brake did not work and could not completely stop the train and ultimately collided with the 5658 Dn Kanchanjanga Express. After the collision the applicant got down from the train and found that the engine was derailed, and then the applicant went to inform the Station Master about the accident.

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

4.7 That at paragraph 7.3.8 of the CRS report it has been stated that the Goalpara line was constructed by the Construction Organization of N.F. Railway including the addition/alterations at Kamakhya Station where the Goalpara line has converged with the main line. The B.G. Line No.1 was to be isolated from the line of GHY-JPZ-NBQ section at Azara end by normal setting of Derailing Switch No. 71X as the B.G. Line No1 is an important loop line of the main line then the less important line of Goalpara Section. In such a situation the Orientation of the Derailing Switch No 71X should have been in the facing direction from Azara side and trailing direction from Guwahati side whereas it is actually laid in the other way. At paragraph 7.5.(i) the CRS report has admitted that if

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

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

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

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

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

4.10 That on 01/07/2002 the applicant submitted his written statement of defence to the aforesaid Charge Sheet as well as Article of Charges. In the said written statement the applicant denied all the charges leveled against him and stated that the accident took place due to no fault of the applicant and he neither disregarded the Red aspect of the Home signal nor passed the signal at danger. The applicant categorically stated that the Up Home Signal at Kamakhya from Azara side was showing the Yellow aspect, accordingly the train passed the signal at a regulated speed. As the Home Signal was

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

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

A copy of the written statement of defence dated 01/07/2002 is annexed herewith and marked as ANNEXURE-C.

- 4.12 That on 29/07/2002 the Disciplinary Authority appointed the Assistant Divisional Mechanical Engineer, New Guwahati as the Enquiry Officer. In the said enquiry the applicant was represented by a presenting officer. On 27/11/2002 the enquiry officer submitted his report wherein it is stated that whenever a train is being received on line no 1 from Guwahati, then the yellow aspect of home signal for receiving any train coming from Azara is not possible as per interlocking system of Kamakhya Station. Regarding the deposition made by the applicant that the aspect of the Home signal could not be visualized from his side the Enquiry Officer held that the applicant cannot shift his responsibility to the driver and he should have drawn the attention of the driver. The responsibility to obey every signal and be vigilant purely depend upon the driver but G.R. 3.83 (2) and (3) indicates that the DAD will assist the driver in respect

of signal, when not otherwise engaged and the responsibility solely depend upon the driver in respect of signal. The Enquiry officer also held that the applicant was not enough alert. Accordingly the charge of violation of 3(1),(ii) of the service and conduct rules of Railway was stated to be established. It is pertinent to mention that violation of GR 3.78 1 (a) (b) against the applicant was not established as the rule was only concerned with the Driver. In the enquiry report it was stated that the accident could be avoided if the derailing switch No 71 X be fitted in normal condition, i.e. facing point for the train coming from Azara, in such cases the train would have been derailed if the signal is disregarded.

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

- 4.13. That vide letter dated 20/12/2002, the Divisional Mechanical Engineer (P) furnished a copy of the Enquiry Report to the applicant and asked the Applicant to submit his written representation against the enquiry report before the Disciplinary Authority within 15 days of the receipt of the letter. It is worth mentioning that in the forwarding letter there was not a whisper about the tentative determination of mind of the Disciplinary Authority. As such the applicant could not properly give his reply to the Enquiry Report and on 23/01/2003 the applicant submitted a short written representation against the enquiry report. The applicant in the said representation stated that although as per the enquiry report there was no possibility to take off the home signal into yellow aspect for trains approaching from Azara as 5658 Dn was entering and about to stop in line no 1 as per the principles of interlocking signaling system but when there is failure of system there is possibility of taking place of such type of incidents. Some examples of such type of incidents were already submitted by the defence counsel of the applicant. In the said representation the applicant also requested the Disciplinary Authority to take into consideration of the submissions made by his defence counsel.

Copies of the letter dated 20/12/2002 and the representation dated 23/01/2003 is annexed herewith and marked as **ANNEXURE-E & F respectively..**

- 4.14. That to his utter shock and surprise, the applicant found that on 03/02/2003 the Divisional Mechanical Engineer (P), with out applying his mind to the relevant factors, issued an Order under No.TP/3/LM/1-4/2002 whereby the penalty of removal from service with immediate effect has been imposed on the Applicant.

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

- 4.15 That immediately after receipt of the impugned removal order dated 03/02/2003 the applicant on 20/02/2003 preferred an appeal before the Sr. Divisional Mechanical Engineer, Lumding. In the said appeal the applicant alleged that the Enquiry Officer and the Disciplinary Authority erroneously appreciated the evidence and improperly applied the Rules. The applicant in his appeal also stated that the charges were framed arbitrarily in as much as both the Driver and the applicant were similarly charged for the violation of the same rules, whereas the provisions governing their duties and responsibilities were totally different in the General rules. The applicant also stated that the Enquiry Officer in his report has come to an erroneous and confusing conclusion regarding the burden of responsibility on correct reading of signal aspect. However, on assessing the evidence of the applicant, the Enquiry Officer should have exonerated him because of the fact that the Home Signal was placed in Drivers side which was not visible to the applicant due to the sharp curve in between the Distant Signal and the Home Signal, the applicant relied on the driver about the aspect of the Up Home Signal. The Enquiry officer also failed to assess the alert and quick action on the part of the applicant in application of the emergency brake as soon as he noticed the train. Although the charges were based on the CRS report but the deficiencies of the wrong system at Kamakhya pointed in the CRS report were not given due regard. In fact, the charges were founded on partial appreciation of the CRS report. The applicant in his appeal also alleged that the authorities relied on the sufficiency of interlocking system of signaling at Kamakhya but failed to take note of the fact that there may be failure of signaling system. Even the examples cited by the defence counsel of the applicant regarding the signal failure in interlocking system were not countered by the Enquiry Officer. The Enquiry Officer also declined to give his finding regarding the physical state of the brake in regard to VA-IB release valve sticking up at half position despite application of the brake before collision. It was also stated by the Applicant in his appeal, that the evidence of the guard of Up Lumding food grain about the derailing switch being in intact condition after the accident, was ignored. The applicant also stated that the applicants train could proceed on line no 1 only as the point was set on to that line on signal because if the point was not set to line no 1 the train would have derailed at the point where the Azara side line meet the line no 1. The disciplinary authority acted in a predetermined manner and relied only on those facts which fulfilled their oblique motive.

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

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

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

- 4.17 That the applicant immediately thereafter on 03/06/2003 filed an appeal for review of the Impugned Order of removal before the Chief Operating Manager, N.F.Railway alleging interalia that the Disciplinary Authority failed to apply its mind to the Enquiry Report and the penalty of removal was arbitrary and punitive in nature. It was contended by the applicant that had the facing point of the derailing switch been towards the Azara side, the train would have derailed and the accident could have been avoided. As such if any loss has been done to the railway property same cannot be attributed to the applicant. The applicant also stated that in his 22 years service carrier there is not a single instance of any deficiency of service on his part. And the punishment of removal would bring untold miseries to the applicant and his entire family.

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

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

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

- 4.19 That being aggrieved by the aforesaid non consideration of the appeal/ revision of the applicant by the competent authority, on 02/03/2005 the applicant submitted a

32 ✓
S.N. Borah

representation before the General Manager, N.F. railway and requested for reviewing the Order dated 04/11/2004 passed by the Chief Mechanical Engineer, N.F. Railway. However, on 29/03/2005 the Sr. Divisional Mechanical Engineer issued a letter to the applicant wherein it was stated that the representation dated 25/01/2005 could not be considered by the authority in view of the Railway Boards notification that once a revision has been denied, no further revision lies to any of the authority. By the aforesaid letter the applicant was asked to submit a petition to the President of India.

Copies of the representation dated 02/03/2005 and letter dated 29/03/2005 are annexed herewith and marked as **ANNEXURE-L & M respectively.**

4.20

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

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

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

4.21

That the applicant as a Diesel Assistant Driver was not acquainted with the Bongaigaon –Guwahati Section and the applicant was asked to work in the said Section without issuing any Acquaintance/Proficiency Certificate, which is highly irregular from the

safety point of view. As such without the said Certificate of Acquaintance the applicant should not be held responsible.

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

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

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

Enquiry Officer is based partly on evidence and partly on Surmises and Conjectures, it would stand viated. As the rule of reasonable doubt is a rule of prudence, no action can be taken on the basis of mere belief or suspicion. As such the impugned action on the part of the respondents is discriminatory, illegal, arbitrary and malafide and is also violative of Articles 14 and 16 of the Constitution of India.

- 5.4 For that, from the CRS report it is well established that secondary responsibility was fixed on Signal & Telecommunication department of Construction Department instead of Mechanical Department. At paragraph 7.3.8 of the CRS report it has been stated that the Goalpara line was constructed by the Construction Organization of N.F. Railway including the addition/ alterations at Kamakhya Station where the Goalpara line has converged with the main line. The B.G. Line No.1 was to be isolated from the line of GHY-JPZ-NBQ section at Azara end by normal setting of Derailing Switch No. 71X as the B.G. Line No.1 is an important loop line of the main line then the less important line of Goalpara Section. In such a situation the Orientation of the Derailing Switch No 71X should have been in the facing direction from Azara side and trailing direction from Guwahati side whereas it is actually laid the other way. At paragraph 7.5.(i) of the CRS report, it has been admitted that if the derailing Switch No. 71X had been correctly oriented i.e. in the facing direction from Goalpara side and trailing direction from Guwahati side, possibly the collision could have been averted or at least its consequences could have been minimized. The CRS has also stated that the accident could have been averted if the B.G. Line No.1 was isolated from the line of Guwahati-Jogighopa-New Bongaigaon section at Azara end by providing 'sand hump' in lieu of existing Derailing Switch No 71X so that if a train from Goalpara passes the Up Home Signal at danger it would enter the sand hump. As such, the accident cannot be solely attributed to the applicant. Hence, the impugned order of removal from service imposed on the Applicant by the respondents is liable to be interfered with by this Hon'ble Tribunal.
- 5.5 For that several other drivers had also complained of the signaling system of the Kamakhya Station prior to the accident but the respondents without applying their mind to these relevant factors have proceeded to inflict punishment on the applicant with a predetermined mind.
- 5.6 For that the Enquiry Officer as well as the Disciplinary Authority failed to appreciate the fact that the Home Signal was placed in Drivers side which was not visible to the applicant due to the sharp curve in between the Distant Signal and the Home Signal. As such, the applicant relied on the driver about the aspect of the Up Home Signal which

35
S.N. Borah

was showing yellow. Moreover the Enquiry Officer in his report has stated that the responsibility to obey every signal and be vigilant purely depend upon the driver but G.R. 3.83 (2) and (3) indicates that the DAD will assist the driver in respect of signal, when not otherwise engaged and the responsibility solely depend upon the driver in respect of signal. Accordingly the violation of GR 3.78 1 (a) (b) against the applicant was not established as the rule was only concerned with the Driver. The Disciplinary Authority with a predetermined mind ignored the above aspect of the Enquiry Report and issued the impugned Order removing the applicant from service. As such, the same warrants interference by this Hon'ble Tribunal.

- 5.7 For that the guard and the Driver of the train have not stated that the Up Home signal was at Red which supports the statement of the applicant that the Up Home Signal was showing Yellow aspect when the train approached the station. The accident has occurred as the authorities failed to set the loop line into the line no.2 at Kamakhya station at the time of the accident. As has already been stated herein above the trains coming from Goalpara have to take the platform no.1 and cannot be diverted to any other line. The authorities have failed to take in to consideration all theses aspects of the matter. The disciplinary authority acted in a predetermined manner and relied on the fact which fulfills their oblique motive. Hence, this Hon'ble Tribunal in exercise of its power may be pleased to set aside the impugned removal order and the consequential orders thereto.
- 5.8 For that the Inquiry Officer and the Disciplinary Authority erroneously appreciated the evidence and improperly applied the Rules. Although the charges were based on the CRS report but the deficiencies of the wrong system at Kamakhya pointed by the CRS report were not given due weightage/regard. In fact, the charges were founded on partial appreciation of the CRS report. The applicant in his appeal had also alleged that the authorities relied on the insufficiency of interlocking system of signaling at Kamakhya but failed to take note of the fact that there may be failure of signaling system. Even the examples cited by the defence counsel of the applicant regarding the signal failure in interlocking system were not countered by the Enquiry Officer. The Enquiry Officer also declined to give his finding regarding the physical state of the brake in regard to VA-IB release valve sticking up at half position despite application of the brake before collision. As such, the same has resulted in grave and serious prejudice to the Applicant in addition to the fact that such impugned action is discriminatory and highly shocking to judicial conscience.

- 5.9 For that two separate Charge Sheets were issued in the Standard Form No.5 to the applicant as well as to the Driver in terms of the Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 which indicates that there should be separate proceedings or simultaneous proceedings. However, the Inquiry Officer proceeded to hold common proceedings in total disregard of the aforesaid Rule-13 of the Railway Servants (Discipline & Appeal) Rules, 1968. As a result, the Enquiry proceeding itself is void ab-initio and the applicant has suffered grave and serious prejudice because of the same and was put to a disadvantageous position in the inquiry.
- 5.10 For that the entire disciplinary proceeding is vitiated on account of violation of the principles of Natural Justice. The applicant was not afforded with reasonable opportunity to refute the findings of the Enquiry Report. This is evident from the fact that the Enquiry Report was forwarded to the applicant without any tentative view of the Disciplinary Authority. The probable decision which might even lead to the removal of the applicant from service was also not communicated to the applicant and as such the applicant submitted a simple representation against the Enquiry Report. The applicant states that had he known the tentative view of the Disciplinary Authority, he would have submitted a detailed representation against all material aspects of the matter. Not having known such tentative view of the Disciplinary Authority has hence gravely prejudiced the applicant. Moreover the applicant was not served with the entire copy of the said CRS enquiry report whereas the inquiry officer and the Disciplinary Authority entirely relied on the said report of the CRS.
- 5.11 For that the Disciplinary Authority before issuing the impugned Order of Removal should have taken into consideration that the applicant as a Diesel Assistant Driver was not acquainted with the Bangaigaon -Guwahati Section and the applicant was asked to work in the said Section without issuing any Acquaintance/Proficiency Certificate, which is highly irregular from the safety point of view. As such the applicant should not be held responsible for the accident which is not solely attributable to him. In view of the same the imposition of major penalty of Removal from service is highly disproportionate. Hence, the same is liable to be set aside and quashed.
- 5.12 For that in the backdrop of the facts and circumstances that have been narrated hereinabove, it is apparent that the impugned action on the part of the respondents is clearly in violation of Articles 14, 16 and 21 of the Constitution of India in addition to being totally opposed to the settled principles of service jurisprudence.

37

S.N.Boorah

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

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

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

6. **DETAILS OF REMEDIES EXHAUSTED:**

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

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

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

8. **RELIEF SOUGHT FOR:**

Under the facts and circumstances stated above, the applicant prays that this application be admitted, records be called for and notice be issued to the Respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and upon perusal of the records be pleased to grant the following reliefs: -

- 8.1 Set aside and quash the impugned Order dated 03/02/2003 under No. TP/3/LM/1-4/2002 issued by the Divisional Mechanical Engineer (P, N.F.

Railway, Maligaon where by the applicant has been removed from service as well as all consequential orders passed by the Appellate Authorities.

- 8.2 Set aside and quash the Disciplinary Proceeding against the applicant in connection with the head-on collision between 5658 Dn Kanchanjangha Express and Up LMG Food Grain at Kamakhya Station on 28/01/2002.
- 8.3 Direct the respondent authorities to reinstate the applicant in his post with all service benefits including for the period from 03/02/2003 till date.
- 8.4 Cost of the application.
- 8.5 Any other relief(s) that the applicants may be entitled to under the facts and circumstances of the case and/or as may deem fit and proper considering the facts and circumstances of the case.

This application is filed through the Advocate.

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

- i) I.P.O. : 266 317702
- ii) Date : 12.12.05.
- iii) Payable at :

10. **LIST OF ENCLOSURES:**

As stated in the index:

3

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

I, Sri Surendra Nath Borah, S/o Late Joyram Bora, aged about 45 years, resident of New Guwahati, Bamunimaidum. Railway Quarter No. 618/G within the district of Kamrup, Assam, do hereby solemnly affirm and verify that I am the Applicant in the instant application and as such, I am fully conversant with the facts and circumstances of the case.

The statements made in Paragraphs-^{1,2,3,4,5,4.2,4.3,4.4,4.5,4.6 (Fact), 4.7 (Fact)}
^{4.10, 4.11, 4.12 (Fact), 4.13 (Fact), 4.15, 4.17, 4.19, 4.21, 4.22, 5, 6, 7.} are true to my knowledge and those made in
 Paragraphs-^{4.6 (Fact), 4.7 (Fact), 4.8 (Fact), 4.9 (Fact), 4.11 (Fact), 4.13 (Fact), 4.14, 4.16, 4.18, 4.20.} are matters of records derived there
 from, which I believe to be true and the rest are my humble submissions before this Hon'ble
 Tribunal.

And I sign this verification on this the/6th day of December, 2005 at Guwahati.

Suren Dra Nath Borah.

SIGNATURE OF THE APPLICANT

7.3.5

Visibility of Up approach signals during day and at night time

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

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

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

7.3.6

Physical condition of crew of Up LMG F/G

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

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

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

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

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

7.3.7 Role of Crew of Up Lumding Foodgrain:

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

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

42-20-

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

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

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

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

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

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

JB - 21 -

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

7.4

Cause of the accident:

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

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

7.5

Could this accident have been averted:

The accident could have been averted :-

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

7.6

Other matters brought to light :

7.6.1

Standard Time:

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

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

VIII. CONCLUSION

8.1 Cause of the accident:

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

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

8.2 Responsibility:

8.2.1 Primary :

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

8.2.2 Secondary :

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

8.2.3 Blameworthy:

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

ANNEXURE—B.

FORM OF CHARGESHEET.

N.F.Rly

(STANDARD FORM NO.5.)

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

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

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

Place of Issue) LMG Dated 13-6-2002

MEMORANDUM.

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

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

3. Shri S.N.BURAH is further informed that he may if, he so desired, take the assistance of any other Rly.servant an Official or Rly.Trade Union (who satisfied the requirements of Rule:9(13) of the Rly.servants(Discipline and Appeal)Rules, 1968 and Note:1 and / or Note:2 there under as the case may be) for inspecting the documents and assisting him in presenting his case before the inquiring authority in the event of an Oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Rly.servant of Rly.Trade Union official(s) Shri S.N.BURAH should obtain an undertaking from the nominate(s) that he(they)is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case(s) if any, in which the nominee(s) had already undertaken to assist the undertaking should be furnished to the undersigned ~~through General Manager~~ N.F. Railway along with the nomination.

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

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

5. Shri S.N.BURAH is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or/each articles of charge.

Certified to be true copy

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

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

8. The receipt of this Memorandum may be acknowledged.

Encls. 5---

~~By order and in the name of~~
~~the President.~~

Signature, M. D. DME (P) / LMG
Name and designation of the
competent authority
Divisional Mechanical Engineer (P)
F. Railway, Lumding

TO:

Shri Surendra Nath Borah,

Through SSE (Loco) / NGC

DAD/NGC

Designation and place.

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

▲ Strike out which ever is not applicable.

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

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

£ Where the president is the Disciplinary authority.

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

• To be used wherever applicable see Rule:16(1) of the RS(DA) Rules:1968. Not to be inserted in the copy sent to the Rly. servant.

Corrected - 3/-

47-25-

: 4 :

Annexure: III

List of documents by which the articles of charge framed against Shri S.N.BURAH, DAD/NGC are proposed to be sustained.

1. Photo copies of the relevant points of the CRS Enquiry Report submitted by Sr.DSO/LMG in 5.

[Signature]
17/6/07
1. श्री रत्ने, कामरुप
Divisional Mechanical Engineer (P)
J. P. Railway, Lumding

Annexure: IV.

List of witnesses by whom the articles of charge framed against Shri S.N.BURAH, DAD/NGC are proposed to be sustained.

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

[Signature]
17/6/07
1. श्री रत्ने, कामरुप
Divisional Mechanical Engineer (P)
J. P. Railway, Lumding

14/632000.

...

: 3 :
N.F.RLY.

ANNEXURE TO STANDARD FORM NO. 5.

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

ANNEXURE: I.

Statement of articles of charge framed against Shri S.N.BURAH,
DAD/NGC

ARTICLES: I.

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

On 28-01-2002, 5658 LN Kanchanjunga Express train collided
with UP LMG F/G on Line NO.1 at KM-401/8 at KYQ Station of GHY-AGT BG
single line non-electrified section. As a result, coach Nos. NRVPU-
16836 & NFVPU-16820 alongwith wagon No. NFBCNL-36567 got derailed
and capsized.

The accident took place due to disregarding of the 'RED'
aspect of the UP Home signal and passing signal at danger hursting
the Point No.71(X) by your train UP LMG F/G.

Being the Assistant of the driver of the same goods train
you are also hold responsible for not being vigilant in observing
the correct aspects of approach signals and passing the Home signal
at danger for which you are charged for violation of GR-3.78(1)(a),
(b) & (4) and also Rule-3(1)(ii) of Service Conduct Rules of Rly.,
1966.

17/6/02
श्री सी रेखा, लुमडीन
Divisional Mechanical Engineer (F)
M. F. Railway, Lumding

Statement of imputations of misconduct or misbehaviour in
support of the articles of charge framed against Shri S.N.BURAH,
DAD/NGC

----- As above -----

17/6/02
श्री सी रेखा, लुमडीन
Divisional Mechanical Engineer (F)
M. F. Railway, Lumding

D-27-

ANNEXURE—C

To

The Divisional Mechanical Engineer(P)
N.F. Railway/Lumding.

Dated at New Guwahati the 29th June/2002.

Sub : Written Statement of Defence.

Ref : No. TP/3/LM/1-4/2002 dated 13-6-2002.

Sir,

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

1. That Sir, being the Assistant of the Driver of the goods train I was fully vigilant and alert throughout the journey and that the accident took place not because of my fault in disregarding of the 'Red' aspect of the Up Home Signal; and that I did not pass the signal at danger with my train.
2. That the Up Home Signal at Kamakhya from Azara side was showing the yellow aspect when my train was approaching it, which was less discernible from my side as the train has to cross a big turn during the distance from distant signal to the Home Signal and the Engine being longhood. However, as soon as it was discernible I relayed it to the Driver of the train.
3. That I was totally alert during the duty hours on train and could discern the Up Distant Signal showing yellow and consequently the speed was ^{to be} reduced to within regulation limit on-wards of Up Distant.

Contd....2

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4. That I neither violated CR-3 78(1) (a), (b) & (4) nor there was any occasion for doing so to pass the signal at danger as the fact was that the signal was showing yellow.
5. That I did not violate Rule 3(1) (ii) of SCR, 1966 ; That I am a loyal and capable workman under the Railways having 22 years of experience at various stages and have never failed in my duty as a DAD including offering whole hearted assistance to the Driver of the train.
6. That I was not found to have taken alcohol a fact that was adequately established by blood test at FSL/GHY at the behest of the Railway authorities.
7. That I did not take alcohol enroute nor by or near the time the accident took place and consequently I was fully normal, alert and vigilant while on duty in train a fact also corroborated at CRS report.
8. That nothing was wrong with my conduct in passing the Up Home Signal can also be seen from the guard's observation in statistical train report. (Xerox copy enclosed in Annexure-I). There the guard Shri P.N. Pandey has not stated that the Up Home Signal was at 'RED' aspect; That thus guard's this observation is proof of my statement that the Up Home Signal was showing yellow.
9. That the point to pass on from Jogighopa-Pancharatna line, along which my train was coming, to line No.1 and this was commensurate with the yellow aspect of the Home Signal and that this also establishes my innocence by showing my adherence to the yellow aspect.
10. That the regulation measure supporting my position in Para-9 can be found in S.R.-3.39/8 (General Rules 1976 for Indian Railways) which is quoted below :
S.R.3.39/8 Setting of points against blocked lines.

Contd.....3

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

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

11. That the magnitude of the accident is not ^{my} ~~any body's~~ creation is also seen from the avoidance by authorities from observing the regulation quoted at Para-10 above, because the loopline onto main line No.2 at Kamakhya was not set at the time of the accident.

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

Contd.....4

13. That any body including myself can be made a scape-goat of the accident scenerio by inherent lack in the system as is found in the absence of isolating point KYQ to isolate BG Line No.1 from the line of GP section and also by wrong orientation of derailing switches as observed by CRS report (at Para 7.3.8) and the Scenerio is such that the staff is made liable to definite consequence of accident, if one takes place, by anybody's omission or commission.

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

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

16. That the Up Home Signal was showing yellow at the time was also supported by the Driver of the train Sri B. Appa Rao who was the first man to see the Distant Signal showing yellow due to the reason as mentioned above in Para-2.

17. That the CRS enquiry was much after the accident for obvious reasons and before CRS enquiry, competent Rly. sources maintained that the cause of the accident was wrong signalling a fact that was reported in local press which was not refuted.

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

- 5 -

I state that I shall like to be personally heard and take assistance of Sri B.C. Bordoloi, Sr. LI, Diesel/NGC, and Sri A. Paswan, Sr. LI/NBQ and also to call witness in my support namely, Sri P.N. Pandey, Guard/NBQ and Sri B. Appa Rao, Driver Up LMG Goods train during further proceedings, if any.

1/7/02
Dated : 29/6/2002.

Yours faithfully,

Sri Surendra Nath Bora
(Surendra Nath Bora)
DAD/NGC.

R
1/7/02

Report of enquiry in connection with the Head-on-collision between 5658 Dn and Up Lmg foodgrain at KYQ station on 28-1-02, Major case No.TP/3/LM/1-4/2002 issued against Shri S.N.Borah, DAD/NGC.

Shri S.N.Borah, DAD/NGC under SE/Loco/NGC was issued Major Charge sheet vide DME/P/LMG's No:TP/3/Lm/1-4/2002 dated 13-6-02

The undersigned was appointed as Enquiry Officer vide SF/7 no:-TP/3/Lm/1-4/2002 dated 29-7-2002 (S.N.41)

The Head on collision between 5658 and Up LMG foodgrain was occurred on 28-1-02 at KYQ and Shri Borah reported sick HOD under Sr.DMO/MLG ref-29.1.02 being injured. The Suspension Order (SN.2) could be served by SE/LOCO on 04-03-02 to Shri Borah and since then Shri Borah has been showing under suspension.

The article of charge against Shri Borah was as under-

Annexure-I

Articles-1.

"On 28-1-02, 5658 DN Kanchanjungha Express train collided with Up Lmg F/G on line no.1 at km-401/8 at Kyq Station of Guwahati-AGT BG single line non. Electrified section. As a result, coach No. NRVPU-16836 and NFVPU-16820 along with Wagon No. NFBCNL-36567 got derailed and capsized

The accident took place due to disregarding of the Red aspect of the Up Home Signal and passing signal at danger bursting the point no. 71(X) by your train Up Lmg F/G.

Being the Assistant of the Driver of the same Goods train you are also held responsible for not being vigilant in observing the correct aspect of approach signal and passing the Home Signal at danger for which you are Charged for violation of GR-3.78(i)(a),(b) & (4) and also Rule-3(i)(ii) of Service Conduct Rules of Rly, 1966."

Annexure-II

(Same as appeared in Annexure-I)

The Charge has been framed on the basis of the report of the Hon'ble CRs, N.E. Circle, Kolkata who conducted the enquiry into the head-on-collision between 5658 and Up Lmg foodgrain at kyq on 28-1-02. The prosecution witness by whom the articles of Charge framed were-

- 1) Shri P.N. Pandey, Guard/NBQ
- 2) Asm on duty at Kyq

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P.N. in.

57

The crux of the charge as framed against Shri S.N. Borah vide article -I of annexure-I of the AF/S is that the collision between 5658 Dn and Up Lmg Foodgrain took place due to disregarding of the RED aspect of Up home signal/Kyq, on which Shri Borah's contribution was that, he was not vigilant in observing the correct aspect of approached signals/Kyq.

In reply to the charge sheet Shri Borah has submitted his defence on 01.07.02 (SN - 28 to 32) wherein Shri Borah stated that he never violated the provision of GR 3.78 (i)(a),(b) & (4) and Service Conduct Rules No: 3(i)(ii) of 1966.

Shri Borah has submitted 2 (two) names of defence counsels with their consent letters. But as per the priority in preference by the Charged Officer, Shri Arjun Paswan, SLI/NBQ under DME/NBQ acted as defence counsel of Shri Borah.

In course of preliminary enquiry Shri Borah did not admit the charged which has been brought against him vide Major memorandum No:TP/3/LM/1-4/2002 dated 13.06.2002.

The following dates of enquiry were fixed by the undersigned:

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

Shri Arjun Paswan, DC

5

4	31-x-02	Shri S.N. Baruah, DE Shri A. Ghatak, SE/SIG/Kyq Shri Arjun Paswan, DC Shri B. A. Rao, DE	All attended Enquiry held accept Shri B.A. Rao
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The undersigned could not be fixed any dates of enquiry during the month of Sept/02 for wants of relevant rerecords demands of by Defence counsel of Shri Borah.

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

Gist of evident produced by the management:

The charged was basically framed on the strength of the report of Hon'ble CRs/N.F. Circle/Kolkata who conducted the enquiry into the Head-on-collision between 5658 DN and up Lmg F/G at Kyq. on 28-1-02.

Most of the witnesses stressed upon the aspect of Home Signal to be 'red' at the time entering Kyq by Up Lmg F/G.

There was no possibility to take 'off' the Up Home Signal into 'yellow' aspect in favour of Up Lmg Food Grain for line No.1 at Kyq, as because 5668 Dn was entering and about to stop in L/No -1. This is as per the principle of interlocking signaling system exists at Kyq.

Gist of evident produced by the charged employee:

- 1) Shri S.N. Borah in his deposition stated that he found nothing irregularities in respect of running of Up Lmg F/G by the driver right from NBQ (Ann to Qno-6 SN-72). Shri Borah has further told that he could followed the Up Distant Signal/Kyq in 'yellow' aspect, but so far the aspect of Up Home Signal/Kyq he could not see because of long hood of engine as well as sharp curve.
- 2) Shri Rao exchanged the signal aspect of Up Home Signal/Kyq with Shri Borah when Up Lmg F/G passed it.

Shri Borah also stated that the responsibility of any signal confirmation vested upon the Driver as per GR 3.83(3). (SN-73 of Q no-5)

Assessment of evidence produced by the management and charged employee:

- 1) According to interlocking signaling system exists in Kyq, whenever a train occupied Line No.1 (i.e. 5658 Dn) than further 'yellow' aspect of Up Home signal/Kyq for the train coming from Azara for Line No.1 was totally absurd. Further, no evidence was there for any kind of Malfunctioning of the aforesaid Home Signal of Kyq for Up Lmg F/G. As such, the claim for 'yellow' aspect by the crew of Up Lmg F/G was not possible from the technical point of view.
- 2) Shri S.N. Borah, DAD in his deposition stated that the aspect of Home Signal could not visualized from his side due to sharp curve and long hood of the engine. However, he further stated that his Driver Shri B.A. Rao called out the Up Home Signal aspect but he could not confirmed it because the train already passed the aforesaid Signal (Ann to Q no 4 SN-73).

In this stage DAD Shri Borah cannot shift his responsibility by giving the whole importance to Driver Shri B.A. Rao. Shri Borah could have confirmed the vital signal before entering Kyq station then he could have draw the attention of the Driver before committing a serious mistake for Up Lmg F/G and thus he violated service and conduct Rules of Rly No: 3(I) (ii)

- 3) As per GR 3.78 (I) (a)(b) the responsibility to obey every signal and be vigilant and cautious purely depend upon the Driver. However, 3.83(2) and (3) indicates that the DAD will assist the Driver in respect of signal, when not otherwise engaged and the responsibility solely depend upon the Driver in respect of signal.

Considering all the relevant facts and evidence it has reasonably appeared to the undersigned that Shri S.N.Borah, DAD/NGC was not alert to the required degree while working Up Lmg Foodgrain and as a result of which the aforesaid train entered Kyq station despite 'RED' aspect of Up Home Signal. As such, the charge for violation of 3(I)(ii) of Service and Conduct Rules of Rly is established.

At the same time violation GR 3.78 1(a)(b) against Shri Borah is not established as the Rule is fully dependent upon the Driver.

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

No. Ame/NGC/DA/7-Pt-II
Dated-27/11/02

Sd/ eligible

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

No: TP/3/LM/1-4/02.

Office of the
DRM (M)/LMG. Dt-20.12.02.- 36-
50

ANNEXURE - E


To,
(1) Sri B. Appa Rao. DR/Gds/NGC.
(2) Sri S. N. Borah. DAD/NGC.

Through: - SSE(LOCC)/NGC.

Sub: - DAR enquiry in connection with
Head on collision betn. up NBQ/
LMG/FG and 5658 Dn Kanchan Jungha
Express at KYQ on 28.01.02.

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

DA- As above.


DME(P)/LMG.

Received
10.1.03

Certified to be true copy
P.N. Li

51
To,

The DME (P)/ Lmg

N.F.Rly.

Through:- Proper Channel

Subject:- Representation

Reference:- Your Letter No TP/3/LM/1-4/02 dated 20/12/02.

Respected Sir,

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

That Sir, EO officer furnished in his report that there was no possibility to take off the Home Signal into Yellow aspect in favour of UP LMG Fg for L-1 at KYQ as because 5658 DN was entering and about to stop in L.No-1 as per the principles of interlocking signaling system.

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

So submission of my DC may be given due cognigence as it is a judicious one at time of considering the action and oblige.

Thanking You,

Your's Faithfully

Surendranath Borah

DAD, NGC.

23/1/03.

Certified to be true copy.

P.N.C.

NOTICE OF IMPOSITION OF PENALTY OF REMOVAL FROM SERVICE:

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

Office of the
DRM(M)/LMG, Dated: 03.02.2003

TO

Name	: Shri S.N. Borah
Father's Name	: Shri Jovram Borah
Department	: Mechanical
Date of appointment	: 19.02.1981
Basic pay	: Rs. 4590/-
Scale of pay	: Rs. 3050 - 4590/-
Designation	: DAD
Station	: NGC

Your explanation, dated: 01.07.2002 and your reply, dated: 23.1.2003 in response to the charge sheet vide NO. TP/3/LM/1-4/2002, dated: 13.6.02 and Show Cause Notice NO. TP/3/LM/1-4/2002, dated: 20.12.2002 have been gone through very objectively. DME(P)/LMG, being the disciplinary authority has also kept in mind all possible factors and circumstances while considering your explanation; but in view of the following reasons the same could not be accepted:

CHARGES:

On 28.01.2002, 5658 DN Kanchanjungha Express train collided with UP LMG F/G on Line NO.1 at KM-401/8 at KYQ Station of GHY-AGT BG single line non-electrified section. As a result, Coach Nos. NRVP-16836 and NFVPU-16820 along with W/NO. NFBCL-36567 got derailed and capsized. The accident took place due to disregarding of the 'RED' aspect of the UP Home signal and passing signal at danger brusting the point NO. 71(X) by your train UP LMG F/G.

Being the Assistant of the driver of the same Goods Train you are also held responsible for not being vigilant in observing the correct aspect of the approaching signal and passing the H/signal at danger for which you are charged for violation of GR-3.78(1)(a), (b) & (4) and also Rule -3(1)(ii) of SCR of Rly., 1966.

ORDERS OF THE DISCIPLINARY AUTHORITY:

Going thoroughly the case along with all relevant documents including appeal/representation of Shri S.N. Borah, DAD/NGC submitted against Show Cause Notice, I found no reason or any such point to be exempted him from the charges brought against him.

DAD, Shri Borah, equally held responsible with the driver for the accident as he failed to exchange correct signalling aspects with the driver during duty which reveals his lack of alertness as well as sincere devotion to duty. This has also been proved in the DAR Enquiry reports/findings submitted by the E.O.

Hence, Shri S.N. Borah, DAD/NGC is imposed a penalty of REMOVAL FROM SERVICE with immediate effect.

An appeal against this order lies to Sr. DME/LMG, the next higher authority within 45 days on receipt of this office letter.

DME(P)/LMG

Copy to:- Sr. DPO/LMG, APO/GHY & SSE(Loco)/NGC for information and necessary action accordingly please.

Certified to be true copy
P.N. W.

DME(P)/LMG

To

The Sr.Divl.Mechanical Engineer,
N.F.Rly/Lumding.

Sub : Appeal.

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

Sir,

With due respect and humble submission I beg to state that, I have been imposed the penalty of removal from service w.e.f. 3-2-2003 on charges mentioned in the above quoted letter. I submit this appeal against the said order of penalty on the following grounds:

1. That both the findings of the Enquiry Officer and the decision of the Disciplinary authority were based on erroneous appreciation of evidence and improper application of rules.
2. That the charges were framed arbitrarily so far as both the Driver and myself were similarly charged by the same words and imputation of violation of the same rules whereas the provisions governing their duties and responsibilities were totally different and segregated in the General Rules. Thus the charges are to be set aside at the first instance.
3. That both the above authorities could not lawfully take note of all the factors that can make the interlocking system of signalling at ^y/_X to go wrong.
4. That the train LMG F/G could proceed to line No.1 only when the point was set on to that line on signal. They also failed to take note of the fact that if the point was not set on to line No.1 the LMG F/G would have derailed at the point.

Contd....

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P.N.W.

where the Azara side line met the line No.1. They chose to confirm one-sidedly that event which goes against us, namely, the bursting of the point at the impact of the LMG F/G but didn't delve into the other factors that can contribute to the bursting of that point.

5. & That I have been all along maintaining that the Up Home Signal was not discernible from my side because of the long curvature and I was assured about the Up Home Signal when I asked the Driver about the Signal aspect and he called out Up Home Yellow. Thus the above Officers can not come to the conclusion that I was at fault for disregarding the Signal aspect.

6. That the E.O. at his Enquiry report at Para-3 has come into an erroneous and confusing conclusion about the burden of responsibility on correct regarding of Signal aspect. E.O. has stated there that as DAD I was to assist the Driver in respect of Signal when not otherwise engaged and the responsibility solely depended upon the Driver in respect of Signal quoting G.R. 3.83 (2) & (3). However assessing my evidence on the physical inability of regarding the signal aspect because of the long curvature and long Engine hood and my confirming about the Up Home Yellow aspect from the Driver who called out Up Home Yellow on my query, the E.O. should have without reservation exonerated me from the responsibility of the collision which he has failed to do and thus could not give me justice because of bias to the understanding of the rules by him.

7. The E.O. has also failed to assess my alert and quick application of the emergency brake as soon as I noticed the train

Contd.....3

light of 5658 Dn and unfortunately came to the conclusion that I could have confirmed the vital signal before entering KYQ Station and that I have violated SCR No.3 (1) & (2) in spite of the evidence about the long curvature and the long Engine hood that made me unable to notice the signal aspect, vide enquiry report at Para-2.

8. That they also failed to assess the relevance of the S.R. 3.39/8 of G.R. 1976 for Indian Railway and thus failed to find out the true causes of the collision in perspective.

9. That there was no independent witness during the Enquiry for evidence on S.R. 3.39/8 of G.R. as submitted by me.

10. The E.O. has not mentioned in his report all the examples of failure of signalling systems cited by D.C. during enquiry and thus knowingly avoided assessment of comparison of probabilities in different cases of collision. He thus left the disciplinary authority in the dark about vital facts that might have reasoned for a fresh enquiry in the mind of the disciplinary authority.

11. That the CRS Kolkata in his enquiry report clearly mentioned about his examination of the lobby Register and of the calling on counter Register. But during the enquiry these two Registers were not placed before my D.C. and thus deprived me of reasonable opportunity for complete defence and thus violated the principle of natural justice.

12. That G.R. 3.78(4) as applied to the crew of LMG F/G does not require my assistance in imparting knowledge about the system

Contd....4

of working location of signals and other working knowledge etc. and neither I am a qualified Rly. servant for the purpose of G.R. 3.78(4).

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

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

Contd.....5

In the second stage of avoidance of collision the principles of justice would require that the penalty for passing the signal at danger to be imposed must be lesser than the one in case of collision which is recognised in the rule itself. Now, since the collision was not avoided inspite of my application of the emergency brake and the collision was not avoided also for the contributing factors these two grounds must be considered in choosing the quantum of punishment which the Disciplinary authority has failed to consider.

15. That the evidence by Shri R.K. Goswami ASM KYQ before CRS Kolkata as stated in Para-5.12 of that report was not assessed and independently verified by E.O. That witness stated there that both distant and Home Signals were possible to have in Yellow aspect when route is indicated by Signalling to Line No.2 or Line No.3. Thus the probable compounding of mistake and or malfunctioning of the signalling for LMG F/G was not verified though our train proceeded on Line No.1 because of setting the point on to there.

16. That the above authorities failed to assess my exact handicap produced by the very nature of the system of alignment, location of signals and longhood of the Engine, and my confirming the signal aspect from the driver and thus failed to place my responsibilities and working ability in perspective. They have also failed to note my attempt at stopping the collision by the application of the emergency brake at the first opportunity.

17. That the collision is the only unfortunate circumstance in my long service life of 22 years and that the present collision

Contd.....6

4 took place because of contributing factors and that the collision could not be avoided inspite of my attempt because of contributing factors which have not been assessed by the disciplinary authority in imposing the punishment.

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

Dated : 20-2-03.

Yours faithfully,

Surendra Nath Bora

(Surendra Nath Bora)

DAD/NGC.

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

Office of the
DEM(M)/LMG, Dated: 16.5.2003.

TO

Shri S.N. Borah, DAD/NGC
Through SSE(Loco)/NGCSub:- Action by revisioning authority in
connection with head-on collision
betn. 5658DN Kanchanjunga Express &
UP LMG F/G at KYQ on 28.01.2002.Ref:- i) NIP issued from this office vide
even No. of this letter, Dt: 3.2.2003.
ii) Your appeal submitted on 20.2.2003.

.....

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

Orders passed by ADM/LMG may be noted as under:-

" I have also gone through the appeal of Shri S.N. Borah, DAD/NGC and the entire DAR proceedings. After thorough and careful study of the same case, I find no additional points to consider the case.

It has been established on relevance of the documents produced on accident enquiry and also DAR enquiry that the accident occurred due to negligence of duty as he was not vigilant for observing the correct aspects of approach signals due to which train passed the home signal at danger and head-on collision took place. It reveals his lack of alertness as well as sincere devotion to the duty. I, therefore, consider that the punishment of removal from service imposed by DA against Shri S.N. Borah holds good."

[Signature]
DEM(P)/LMG

Copy to:- Sr. DPO/LMG
APO/GHY &
SSE(Loco)/NGC

I For information and n/a please.

I
I

DEM(P)/LMG

Certified to be true copy.

P.N. Li

To

The Chief Operating Manager,
N.F. Railway, Maligaon,
Guwahati-781011

(Through proper Channel)

Respected Sir,

Sub :- Appeal for review:- *Action by*
Revisioning Authority in connection
with the case of head-on collision
between 5658 Dn and up IMG F/G at
KYQ on 28.01.2002.

Ref :- DME(P)/IMG's letter No.
TP/3/LM/1.4/2002 dt. 15.05.2003.

I am deeply shocked to receive the notice under
reference and beg to submit the following few lines for
favour of your kind consideration and an early sympathetic
orders please.

That Sir, vide DME(P)/IMG's Charge sheet (S.F.No.5)
No.TP/3/LM/1-4/2002 dt. 13.06.2002 for alleged causing
collision between 5658 Dn and up IMG F/G on L/No.1 at KYQ
on 28.01.2002 due to disregarding of Red aspect of up Home
Signal at danger. An enquiry was held in the matter and
the learned E.O vide his Report dated 27.11.2002 forwarded
vide DME(P)/IMG's letter dated 20.12.2002 held that I was
not alert to the required degree while working up IMG F/G
and as a result of which the aforesaid train entered KYQ
Station despite 'RED' aspect of the up Home Signal. As such
the Charge for violation of 3.1(ii) of Service conduct Rules
of Rly. is establ

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P.N.L.

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At the same time violation of G.R. 3.78(1)(a)(6) against Shri Bora is not established as the rule is fully dependant on the Driver."

That Sir, the above notice not being served in accordance with the Rly. Bd's instructions dated 4.4.96 circulated under GM(P)/NERly/s No.DAC/541 dated 30.05.96 I submitted a simple representation on 23.01 2003 with the high hope that the judicious Disciplinary Authority will surely examine the E.O's Report as per laid down procedure to find that the learned E.O. held me responsible only partly i.e. for violation of Rule 3.1(ii) of Service Conduct Rules, 1966 and exonerating me from the charge of violating GR 3.78 (1) (a)(6) and (4) which is attributable to Drivers only.

That Sir, for reason not known the judicious Disciplinary Authority failed to apply his proper mind in the E.O.'s Report and imposed on me the penalty of Removal from Service stating (vide 2nd para) of his order dated 03.02.03) that :-

"DAD, Shri Borah, equally held responsible with the driver for the accident as he failed to exchange correct signalling aspects with the Driver during duty which reveals his lack of alertness as well as sincere devotion to duty. This has also been proved in the DAR Enquiry reports/findings submitted by the E.O" which is but unkind since the Driver is a Driver and DAD is a DAD

and as such their duties and responsibilities cannot be equal. In this connection I would like to draw your kind attention to the learned E.O.'s assessment of the evidence produced vide para -3 of page -5 of his report stating—

"As per GR3.78(1)(a)(b) responsibility to obey every signal and be vigilant and cautious purely depend upon the Driver . However, 3.83(2) and(3) indicates that the DAD will assist the Driver in respect of signal when not otherwise engaged and the responsibility solely depend upon the Driver in respect of signal.

That Sir, your judicious honour will surely realise that the punishment of Removal for violation of Rule 3.1(11) of the Rly.Services (conduct) Rules, 1966 is not only harassment and unkind but it leaves no scope for me to improve my performances and prove my devotion to duty. Rather, it will bring a disaster on me and the members of my family consisting of wife , two sons, two U/M daughters and a dependant U/M sister.

That Sir, born in 1959 I was appointed in the Rly. on 09.02.1981 I have been serving the Rly for more than 22 years without inviting any complain and this drastic action at this age is bound to ruin me and all my future plan for the family and, therefore, I would pray to your benevolent honour to be honour to be gracious honour kindly to pass necessary orders setting aside the punishment of removal arbitrarily imposed on me and for which act of your kindness I shall remain grateful. I take this opportunity to assure you that I will improve my working and leave no scope to complain about my devotion to duty.

With regards.

Dt. 03.6.2003
New Guwahati.

Yours faithfully

Suman Lata Nath Borah

(S.H. Borah)

DAD/NGC under orders of Removal.

Recd. and forwarded
to M.D./long for
consideration
18/6/2003
(S.H. Borah)

कार्यालय

मुख्य यांत्रिक इंजीनियर

मालीगांव, गुवाहाटी - 781011, असम

No. CME/SS/2/3

Shri S. N. Borah,
Ex. DAD/NGCOffice of the
Chief Mechanical Engineer
Maligaon, Guwahati - 781011, Assam

November 4, 2004

Sub : DAR Case against Shri S. N. Borah, Ex. DAD/NGC in connection with head-on collision between 5658 Dn and Up LMG Foodgrain at KYQ on 28.01.02

Ref : Appeal of Shri S. N. Borah, Ex. DAD/NGC dated 03.06.03, addressed to CME

I have carefully gone through the appeal dated 03.06.2003 of Shri S. N. Borah, Ex. DAD/NGC and also the entire relevant papers/documents of the DAR proceedings against him as a sequel to which he was awarded the punishment of Removal from Service.

Shri S. N. Borah in his appeal dated 03.06.03, addressed to the Revisionary Authority has sought setting aside the punishment of "Removal from Service" on the following grounds.

- I. He has stated that the Inquiry Officer has held him only partly responsible for violation of Rule 3(1)(ii) of Service Conduct Rules, 1966 and exonerated him from the charge of violating GR 3.78 (1) (a) (b).

The Inquiry Officer in his Inquiry Report has clearly brought out that -

- (a) Shri S. N. Borah, Ex.DAD/NGC can not shift his responsibility by giving the whole importance to Driver Shri B. A. Rao. Shri Borah could have confirmed the vital signal before entering KYQ station. Then he could have drawn the attention of the Driver before committing a serious mistake for Up LMG Food-grain and thus he has violated Service Conduct Rules 3(1)(ii).
- (b) Shri S. N. Borah, DAD/NGC was not alert to the required degree while working UP LMG Food-grain as a result of which the train entered KYQ station despite 'RED' aspect of UP Home Signal. As such the charge for violation of 3(i)(ii) of Service Conduct Rules is established.

It is true that Shri S. N. Borah has been held guilty of violation of only Rule 3(1)(ii) of Service Conduct Rules, 1966. This however, does not in any way mitigate the severity of the offence of causing the accident.

Contd....P/2

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P.N. W.

- (2)
- II. Shri S. N. Borah, Ex. DAD/NGC in his appeal to the Revisionary Authority has further stated that he has served the Railways for 22 years and the punishment imposed on him will bring a disaster to him and his family.

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

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


(S. K. Suri)
Chief Mechanical Engineer

Advance copy sent Direct.

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

(Through proper channel)

Respected Sir,

Sub: Prayer for revising the order passed by CME/N.F. Rly/MLG.
Ref: CME/N.F. Rly./MLG's decision on Revision petition conveyed under his letter No.TP/3/LM/1-4/02 of 24.11.04 for removal from service.

I have the honour beg to submit that I was ordered for removal from service by DME(P)/LMG and on revision petition submitted to CME/N.F. Rly./MLG, the same order for removal from service was allowed to stand by CME/N.F. Rly./MLG any revision petition.

That Sir, the above order of CME is too harsh in as much as in consequence of which all my service herewith been forfeited.

i) That the allegation of violating GSR No.3.78(i)(a)(b)&4 which laid down the responsibilities of Engine Crew in respect of Signal has been withdrawn. Because the RED ASPECT of home signal which was disregarded was placed in Drivers side which was not visible to me due to existing of sharp curvature. Hence no punishment is attributed to me for disregard of signal. When I applied the Emergency Brake when I approached to just near to the signal yet the train could not be controlled. Engine was working with long hood. It may be mentioned here that due to failure of A-1 valve Emergency Brake did not work.

ii) The home signal was the first stop signal and also was the only stop signal of the KYQ station for section New Bongaigaon Kamakhya.

iii) That Sir, I am Head-Quartered at New-Guwahati. I was booked by DN BTPN on 27.1.02 called 16/45, sign on at 16/- and reached New Bongaigaon at 6 hours on 28.1.02 and Sign off at 6 hrs and thus I worked for total 14 hrs and 15 mts, which violated the 10 hrs rule specified by the administration for running staff's duty limit.

iv) On the return trip of up/LMG food grain, the train involved in accident was called at New Bongaigaon at 14/45 hrs Sign 'on' at 14/-. An '8' hrs specified rest at running room at New Bongaigaon not given to me. It was only 7 hrs and 45 mts thus resting period fell short by -15". This was a violation of rest rules. I had to work the train with underrest.

Contd.....2.

Received at
9.30 hrs on
04.3.2005.

Section Engineer (Loco)
N.F. Railway, New Guwahati

Certified to be true copy

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v) That the allegation of bursting of point No. 71(X) which was a derailing switch was not true. The fact was that the signal and telecommunication department installed this point in trailing condition instead of facing condition as would be seen in CRS's accident report for which S&T Department was held responsible secondarily by the CRS.

vi) That GSR rule book falls under the proviso of Indian railway Act' 1890 under section 47. The system of working of this particular section from New Bongaigaon to New Guwahati was to be regulated under GR 8.01. Sub-rule 1(c) stipulated a condition that line on which the train was to be received should be kept clear up to first stop signal. And Sub-rule 2(b) stipulated that over and above there should be an adequate distance further, usually called 'signal over lap' up to 180 meters in case of signal line. This provision of adequate distant from first stop signal was also mandatory and it should not be less than 180 meters length. This adequate distance was to be demarcated by installing a derailing switch.

vii) The provision of derailing switch was intended for a derailment of a train, in the event, a driver failed to stop at signal and disregard the same, so that the train instead of collided with other train, it would got derailed itself and would avert any possible collision with far little impact.

viii) That the condition of Brake Power was weak for which the Station Master/New Jalpaiguri attached an instruction in the back side of the Brake Power Certificate. Immediate after accident the same was seized by Sri S.K. Chowdhury, AME/Loco/HDQ/MLG which was never produced before enquiry. This weak Brake Power also caused failure of emergency Brake application.

ix) That Sir, I submitted my revision petition to Chief operation Manager as per existing rule. This rule was reiterated in Rly.Board's letter No.E(g)EC 1-1 of 22.9.04 which was re-iterated by GM(P)/MLG's circular No.80/E/107/RS Pt.XI(c) of 3.11.2004. But instead of dealing my revision petition by COM, the same was dealt by the Chief Mechanical Engineer which was against the rule and therefore the decision of CME stand invalidated.

x) That in the departmental Enquiry held under D.A. Rules,1968, no resonable opportunity and Natural justice to refute the charges was given. For Example, Enquiry report was sent to me without tentative views of the Disciplinary Authority i.e. without communicating me the probable decision which might led to removal of service. This was envisaged in Rly.Board's letter circulated by GM(P)/MLG vide No.DAC/591 of 11.9.2002. It was an latter violation of procedures.

Contd.....3

xi) Your attention is drawn to GM(P)/MLG's circular No.E/74/OP/XVI© of 12.11.2004 wherein the minimum penalty specified in respect of passing signal at Danger and the punishment could have been reduced specially keeping in view exemption given to me by withdrawing charges of violation of GR 3.78(1)(a)(b) and 4, within the scope of this set of instruction contained in GM(P)'s afore-said letter.

xii) Finally, the validity of Brake-certificate, as I knew, it was for 2000 km from the station of origin. To my knowledge it crossed the distance of 2000 km. In this case. The Brake-Power liable to get deteriorated causing un-successful of application of Emergency Brake.

From my above submission, your benevolent honour would find that no justice could be received from Disciplinary, appellate and revisionary Authority. There had been flouting of D.A. Rule, 1968 provisions. That Sir, since the secondary responsibility of the accident was the department of Signal & Tele-communication which committed mistake to adhere to a fundamental Rules under Rly. Act, 1989, vis-a-vis by installing point No.71(X) in trailing position instead of facing position, which was not taken into consideration. Had the matter was duly taken into account, the penalty inflicted upon me could have been reduced.

In the context of what were mentioned in the para (i) to (xii), your honour will relieve me from the punishment and will pass an order to re-instate me into my former service.

It is also requested to your honour to allow me for an personal hearing in which a trade-union official will assist me.

For this act of kindness, I shall ever pray.

Thanking you,

Dated: New-Guwahati,
2nd March, 2005.

Yours faithfully,
Suren dra Nath Borah
(Sri S.N. Bora)
Ex-DAD/New Guwahati
Under Sr. Loco Foreman
New Guwahati.

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ANNEXURE M

N.F. RAILWAY

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

Office of the
DRM (M)/Lund'ng,
Dated: 29.03.2005

TO

Shri Surendra Nath Borah, Ex-DAD/NGC
Through SSE (Loco)/NGC

Sub:- Disposal of appeal.

Ref:- Your appeal submitted on 2nd March, 2005
forwarded under SSE (Loco)/NGC's NO. LM/4,
Dated: 24.03.2005.

.....

Please refer to the above and note that vide Railway Board's NO. 3(D&A)/79/RE-6/48, Dated: 18.8.81, Railway Board has clarified that once a revision has been done by any of the authorities under the aforesaid rules, no further revision lies to any of the other authorities. However, the aggrieved employee/ has the right under Rule NO. 31 of Rly. Servants (D&A) Rules, 1968 to submit a petition to the President of India which will be dealt with in the Rly Board in accordance with the extant instructions, in consultation with UPSC.


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


For Sr.DME/LMG

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

//
For Sr.DME/LMG

Certified to be true copy

P.N. 

4/4/06
24/4/06
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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

2 APR 2005

गुवाहाटी न्यायपीठ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

O.A.No.313 of 2005.

Sri S.N.BorahApplicant.

-Vrs-

The Union of India and others ... Respondents.

WRITTEN STATEMENT ON BEHALF OF THE
RESPONDENTS.

The answering Respondents most respectfully shweth,

1. That they have gone through the copy of the application filed by the above named Applicant and understood the contents thereof. Save and except the statements which have been specifically admitted herein below or those which are borne on records all other averments/allegations made in the application are hereby emphatically denied and the Applicant is put to the strictest proof thereof.
2. That for the sake of brevity meticulous denial of each and every allegation/statement made in the application has been avoided. However the answering Respondents confined their replies to those points/allegations/averments of the Applicant which are found relevant for enabling a proper decision on the matter.
3. That the application suffers for want of valid cause of action to redress the Applicant of his troubles and punishment received for his own careless and callous and irresponsible duty as will be clearly evident from the statements made in the relevant paragraphs below. The Applicant knows fully well how grave the offence he had committed for not fulfilling the duties entrusted to him while running a train under his care and likely to be controlled on all circumstances and odds as per Rules.
4. That the Respondents beg to state that for want of the valid cause of action for the Applicant the application merits dismissal as the application suffers from wrong representation and lack of understanding of the basic principles followed in the matter as will be clear and candid from the statements made hereunder:

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

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Filed Under:
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Division of Personnel Office.
Railway Board
New Delhi

under Letter No.E(D & A) 2003/RG.6-5 dated 19.2.2003 is followed in dealing and deciding a Department proceeding case, and the same has also been followed in the instant case and there was no violation of any Rule and system.

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

4.3. That the Applicant begs to submit that the Commissioner for Railways Safety in his report have observed and made findings after carefully considering the factual, material and circumstantial evidences at his disposal that the Head-on-Collision between 5658 DN Kanchanjanga Express and UP Lumding Foodgrain, on line No.1 at Kamakha 401/8 at Kamakha Railway Station of Guwahati-Agthori Broad Gauge single line non qualified Section of Lumding Division of the North East Frontier Railway which occurred at 22.35 hrs. on 28.1.02 was due to driver of UP Lumding Foodgrain for disregarding the "RED" aspect of the UP Home Signaling and the Train passing signal at danger point was because of the "failure of the Railway Staff" and for which the Applicant Sri B.Appa Rao In/Charge of the said Goods Train and this Applicant were held primarily responsible for their violation of General Rules of running duties and, hence the punishment imposed upon the Driver and the Applicant was absolutely in accordance with the Rules which were made and imposed to the Applicant after observing all formalities and giving him all reasonable opportunities for his defence as per the Disciplinary Rules, 1968.

4.4. That it is submitted that in the 'Brief' dated 22.2.03 submitted by the Applicant to the Senior Divisional Mechanical Engineer, N.F.Railway, Maligaon as submitted by him as Annexure-I in his application that confirms "since the only allegation of my disregarding the alleged red aspect of the signal is made suspect by the uncountered facts raised in my defence" it is evidentially proved that the Applicant was very much aware of

Nizode Basu Das
Divisional
N.F. Railway, Lumding

his offence committed in disregarding the said signal and caused the Head-on-collision accident which could have been averted, had he applied his care, caution, diligence and full responsibility in running the train which a Driver ought to do, and thus he is fully responsible for the charges leveled against him and the quantum of punishment imposed upon him was fully in order and according to the Rules.

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

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

57
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Divisional Personnel Office,
S. F. Railway, Lending

5. THE PARAWISE COMMENTS IN REGARD TO FACT:

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

5.2. That as regards paragraph-4.2 made by the Applicant it is submitted that the Applicant joined in the Railway Service on 19.12.81 and was promoted to Diesel Assistant Driver on 26.4.96.

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

5.4. That as regards the statement made under paragraph 4.4 by the Applicant the Answering Respondents submit that as per Hours of Employment Regulation Rules, 10 hours duty at a stretch is specified for a running staff, but if in case a running staff is unwilling to perform his duty more than 10 hours at a stretch, he could Claim For Rest (CFR) serving a Notice (Memo) well in advance to the concerning authorities for arrangement for his relief. On the date in question, no such demand was placed from the Applicant's side and, hence, when the allegations for performing excess duty as brought by the Applicant has no basis at all and, hence, it is denied. It is further reiterated that on 28.1.02, as per operational planning as Scheduled, three Trains i.e. 5622 UP, UP Lumding Foodgrain and 5658 DN Kanchanjanga Express had to be receipt and dispatch around 22 hours to 22.30 hours at Kamakhya Railway Station. So UP Lumding Foodgrain Train detained for 15 minutes at Azara and the line cleared for the said train was given by ASM, Kamakhya (PRJ) at 22.05 hours.

5.5. That as regards the statement at paragraph-4.5 it is submitted that Kamakhya Station is provided with Penal Interlocking Signaling System. Practically whenever a Train is received on line No.1 from Guwahati-end then obviously "YELLOW" aspect on

Home Signal at Kamakhya for any train coming from Azara is not at all possible as per the working principle of Interlocking System which was prevailing at Kamakhya Station. In this connection it is further submitted that the Driver of the Train in which the Applicant was a Diesel Assistant himself stated that the brake power was good and he tested it reroute. The Guard of the said Train also confirm the same and quitting from Brake power certificate he mentioned that the Air Pressure in the Loco was 5 kg/cm square while in the Brake found it was 4.8 kg/cm square, out of 41,39 Cylinders were in operative condition.

The Brake Power of UP Lumding/Foodgrain Train was tested jointly by SSE, CNG/NCG, TI/GHY and SSE(signal) /GHY after the accident on 29.12.02 at Azara Station and found it to be 92%. It is, therefore, confirmed that the train had prescribed Brake Power on its entire run from New Bongaigaon to Kamakhya Station. This is in conformity with the CRS Enquiry Report also.

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

5.7. That as regard the statement made under para-4.7 by the Applicant, the answering Respondents beg to submit that the joint observation has made by the SSE(Signal)/GHY, SSE(P/Way) GHY, SSE (Mech) and TI, Guwahati after the accident confirmed with by the No.67 A was in normal condition i.e. set in favour of Azara side and had no hitting mark or any other defect. It was also found that the derailing switch No.71 X which is in the facing direction from Guwahati side and in trailing direction from Azara side was found to be in damaged condition. Both the driving and locking rods were bend. There were a gap of about 2". The switch of 71X was bend apparently due to trailing through this index with the trap point No.71X was in open condition.

The above observation made it clear that the goods train trailed through the open derailing switch and forcibly tried to close but during the passage of which caused extensive damage to the switch. There was no sign or mark of derailment before the derailing switch No.71X. But in fact that point was damaged as a result of the derailment.

CRS while drawing his conclusion as to the cause of **Head-on-collision** accident, fixed responsibility with the Applicant and Driver at their fault as the accident was purely and absolutely due to **Human failure**. The Applicant was served the complete copy of the CRS Enquiry Report.

5.8. As regards Paras- 4.8 & 4.9 of the Applicant's statement the Respondents beg to state that those are matter of records and, hence admitted.

5.9. That as regards statements made under paragraph 4.10 by the Applicant it is submitted that the Applicant had submitted his written defence on 1.7.02; but the defence was not satisfactory and so the appropriate action in the matter was taken.

5.10. That as regard the statement made in para 4.11 it is submitted that Shri Parimal Chandra Dey, Loco Inspector/New Guwahati being the counselor of the Applicant was held responsible and accordingly, the was WARNED for the first time to be more careful in future regarding proper Counseling to avoid recurrence of such lapses, albeit it was the choice of the Applicant to engage him as his Defence Counsel.

5.11. That as regards the statement made in para-4.12 the Respondents beg to state that the Enquiry Officer, Assistant Divisional Mechanical Engineer /New Guwahati established the charges of violation of Rule 3.1(ii) of Service Conduct Rule. It was proved in the Enquiry that the Applicant was not alert to the required degree while working in UP Lumding Foodgrain Train as Diesel Assistant Driver and as a result of which the Train had entered at Kamakhya Station despite "RED" aspect of UP Home Signal which caused the averted accident. Thus the Applicant can not escape his liability and responsibility.

5.12. That as regards the statement made under Para-4.13 by the Applicant the answering Respondents submit that in response to the Divisional Mechanical Engineer (Power)/ Lumding's letter dated 20.12.02 the Applicant submitted his written representation on 23.1.03. The CRS Enquiry Report, it is reiterated here, says that the Panel Interlocking System was in order at Kamakhya Station and, hence, the contention of the Applicant is not tenable.

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D. P. Railway, Lumding
Divisional Personnel Office
D. P. Railway, Lumding
D. P. Railway, Lumding

5.13. That with regard to para4-14 it is submitted that the Penalty was imposed against the Applicant by DME(P), Lumding, in accordance with the gravity of the offence of the case. The charges of his failure to exchange correct signaling aspect with the driver as well as his lack of alertness during duty on the material date and time were established in the departmental enquiry; which was conducted fairly by the nominated Enquiry Officer, Additional Divisional Mechanical Engineer, New Guwahati.

5.14. That in regard to the statements made by the Applicant under Para-4.15 and 4.16 it is submitted that the Competent Authority, i.e. Additional Divisional Railway Manager, Lumding, being the Appellate Authority went through the Appeal of the Applicant dated 20.2.03 and confirmed the penalty of **removal from Service**. Which was imposed by the Disciplinary Authority after observing all Rules and formalities required as per DAR 1968.

5.15. That as regards Paras-4.17 and 4.18 of the statements made by the Applicant it is submitted that his appeal dated 3.6.03 addressed to the Chief Mechanical Engineer, N.F.Railway Maligaon was gone through by the Appellate Authority who upheld the penalty of **removal from service** which was imposed by the Disciplinary Authority.

In this connection it is further submitted that the penalty was imposed against the Applicant by the Disciplinary Authority, i.e. the Divisional Mechanical Engineer (P) Lumding agreeing to the gravity of the case as the charges brought against the Applicant for facing signal at DANGER bursting the Point No.71(X) at Kamakhya Station on 28.1.02. The charges were established with justified reasons in the departmental enquiry conducted as per the prevailing Systems, Procedures and Rules.

It is further submitted that cases of passing signal at DANGER are grave in nature and it can not be viewed leniently at all from the safety point of view. That the very fact that a signal is at DANGER implies that the Section ahead is occupied by any train or train's Engine/Load and if the train's Crew/Driver disregards this safeguard it may definitely lead to collision. So it is to be viewed as Breach of Safety and accordingly, the appropriate punitive action should be taken against any defaulting staff/train's Crew irrespective of the cases whether a collision is taken place or not. Railway Administration can not allow the disaster to happen.

Further, action has been taken on the basic grounds gone through the reports of

the Departmental Enquiry Officer as well as CRS, N.F. Railway, Kalikata in accordance with the Railway Board's norms as prescribed. The relevant instruction of the Ministry of Railways, Railway Board in this connection would be produced before the Hon'ble Tribunal at the time of Hearing.

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

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

5.18. That as regards Para-4.21 it is submitted that very fact is that no running staff is allowed booking for working over any section without proper Road Learning. Moreover, if he had no Road learning on the particular section he could have objected for his booking in that particular section on that material date and time for working in the said train. Hence, the allegation as brought against this para has no basis at all and it is denied.

5.19. That as regards statement made in paragraph-4.22 it is submitted that charges of failure to correct signaling aspect with Driver as well as lack of alertness with his Diesel Assistant on duty as brought against the Applicant was established in the Departmental enquiry and accordingly the punishment imposed upon him by the competent authority as per Rules and Norms prescribed by the Railway Board.

5.20. That as regards the statements made under para-5.1 and 5.2 the Respondents beg to submit that the allegations of the Applicant have no basis and therefore in the eye of law are not tenable and, hence, denied altogether.

That the Kamakhya Station is provided with Panel interlocking signaling System. On 31.01.2002, the interlocking of Kamakhya RRI (BG) was jointly tested by CRS(S & T)/Kalkata, STM (safety)/Maligaon and Sr. DSTE/LMG and found that the interlocking

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Nizade Baran Das
कर्मिक अधिकारी
पु. सी. रेल्वे, कामाख्या
Divisional Personnel Officer
E. P. Railway, Kamakhya

was in proper working order. A test was carried out by stimulating the condition prevailed at the time of accident on 28.01.2002. i.e. line No.1 being occupied by a train and attempting to receive a train from Azara side to Line No.1; but UP Home Signal of Kamakhya at Azara side remained in danger condition with distant signal showing signal YELLOW aspect.

Further, yellow aspect of the signal signifies that the concerned Train should approach the station/platform concerned with caution at speed of not above 15 KMPH. The speedometer of the Engine shows that the UP LMG Food Grain train manned by Driver Shri B.Appa Rao and the Applicant was with the speed of 40 KMPH. Hence, the plea of the Applicant that the signal was yellow does not stand good.

Moreover, it is clear that the claim made by both of the Driver and the Applicant of the goods. Train as both of Distant and Home Signals were Yellow is false with a motive to mislead the enquiry.

5.21. That as regards the statement made under paragraph-5.3 this is submitted that the action was taken on the basis of the CRS enquiry as well as Departmental Enquiry Report. So there was no lapse on the part of the Respondents according to DA Rules.

5.22. That as regards the statement made under para-5.4 and 5.5 it is submitted that as per the CRS Enquiry Report the Panel Interlocking Signaling System was in order at Kamakhya Station during the material time of causing averted accident on Head-on-Collision. While drawing the findings of the Enquiry, CRS fixed primary responsibility with the driver and the Applicant and accordingly, similar punitive action was taken against both the Charged Official for their fault of gross neglect of duty, carelessness, irresponsibility and misconduct. Hence, the allegation as brought against these paras by the Applicant have no basis at all.

5.23. That in regard to the statement made under para-5.6 the Respondents state that the important Role of the Assistant of the Train's Driver can not be ignored any how as he has to carry out with the Driver in all respects, particularly in exchanging proper and all right signaling aspect all the time so as to operate the working of the train smoothly and safely. But the Applicant failed to do so and he was found equally held responsible with the Driver for his failure to exchange correct signals with the Driver of UP Lunding Food Grain Train on 28.1.02 which reveals his lack of alertness as well as sincere devotion to duty and hence he was punished with the quantum of punishment required as per Rules for such gross misconduct and neglect of duty.

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D. P. B. Rao
Divisional Personnel Officer.

5.24. That as regards statements made under 5.7 and 5.8 the Respondents submit that during the DAR Enquiry conducted by the Enquiry Officer the witness, namely, S/Shree Sankar Sen, P.Das, Station Master (RRI, Kamakhya), R.K.Goswami (Assistant Station Master, Kamakhya) and A.Ghatak, Section Engineer, Kamakhya asked, made emphasis about the UP Home Signal "RED" while UP Lumding Food Grain Train was entering at Kamakhya.

Practically whenever a train is received on Line No.1. from GHY end then obviously "YELLOW" aspect of Home Signal of Kamakhya for receiving any train coming from Azara is not at all possible as per the working principle of interlocking system which was prevailing at Kamakhya Station. It may be pointed out that Line No.1 at Kamakhya was occupied by 5658 Dn Kanchanjungha Express.

On 31.01.2002, the interlocking of Kamakhya RRI (BG) was jointly tested by CRS (S & T)/Kalkata, STM (safety)/Maligaon and found that the interlocking was in proper working order. A test was carried out by stimulating the condition prevailed at the time of accident on 28.01.02 i.e. line No.1 being occupied by a train and attempting to receive a train from Azara side to line No.1. But the UP Home Signal of Kamakhya (Azara Side) remained in danger condition with distant signal showing single yellow aspect.

Hence, the allegations as brought against these Paras herein have no basis at all and, hence, they are denied.

5.25. That as regards the statement made under para-5.9 by the Applicant the Respondent have already submitted their submission in the foregoing paras and need not feel it to be expedient to reiterate the same.

5.26. That as regards paragraph-5.10 this is submitted that the Applicant was given all reasonable opportunities at every stage of the Departmental Proceeding while the DAR process was on going. The Applicant was served with the copy, of the Enquiry Officer's Report and to submit his representation with the help of his Defence Counsel for proving his innocence and there remained no lapses or latches on the part of the Respondents, according to the DAR, 1968 and the Rules framed by the Railway Board for dealing with the accident cases as per prevailing system and DA Rules 1968. The Applicant was also served with the complete copy of the CRS Enquiry Report. Hence, the contention made in this para is not tenable at all.

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Nizoddyo B. Das
Station Master
Divisional Railway Office
S. F. Railway, Lumding

5.27. That with regard to the paragraph-5.11 the Answering Respondents beg to submit that the allegations as brought against this para has no basis at all as no running staff is booked for duty without completion of his prior Road Learning over any Section. Had it been so, the Applicant should have objected and submit written representation before his booking for performing such duty as he was put to do during the material date and time and in the said Train.

5.28. That as regards the statement made under paragraphs 5.12, 5.13, 5.14 and 5.15 the Respondents beg to reiterate that the action against the Applicant was taken on the basis of the finding of the Departmental Enquiry Officer as well as CRS, N.F. Circle, Kolkata and all necessary formalities were observed in the case as required under DAR 1968 and according to the prevailing Rules and System of the Railway in such **Head-on-collision** accident cases and all reasonable opportunities were given to the Applicant and thus the penalty of **REMOVAL FROM SERVICE** was imposed upon the Applicant was in order and as per Rules and Norms prescribed by the Railway Board.

6. That the Respondents beg to state that the averment made by the Applicant is denied. That the present application has no merit at all and it deserves to be dismissed with cost to the Respondents.

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

8. That the averments, allegations and statements made by the Applicant are baseless and somewhere concocted, frivolous and, therefore, are not tenable in the eye of law and hence, the punishment imposed upon the Applicant while he was in service was at par with rules and after observing all formalities necessitated as per DAR and other Rules and System and also after giving him all reasonable opportunities for his defence as required under the law of the land.

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

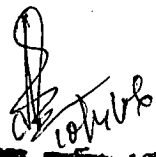
Contd....P/12... Verification....

65-
27
Nizoddin Raza
Divisional Enquiry Officer
S. F. Railway, Lucknow

-VERIFICATION-

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

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


For and on behalf of
Union of India and other Respondents.
Divisional Personnel Office
S. P. Railway, Lumding

To

The Dy. Registrar,
Central Administrative Tribunal,
Guwahati.

Filed By: The Applicant
THROUGH:- P.N.
Advocate,

IN THE MATTER OF:

Original Application No. 313/2005

Sri Surendra Nath Borah

.... Applicant

-Versus-

Union of India & Ors.

...Respondents

-AND-

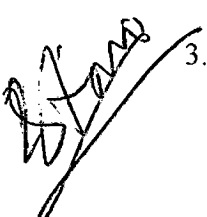
IN THE MATTER OF:

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

AFFIDAVIT - IN - REPLY / RE JOINDER

I, Sri Surendra Nath Borah, son of Late Joy Ram Borah, aged about 45 years, resident of New Guwahati, Bamunimaidam, Railway Quarter No. 618/G within the district of Kamrup, Assam do hereby solemnly affirm and state as follows.

1. That, a copy of the written Statement so filed on behalf of the Respondents has been duly served upon the Applicant through his Counsel. The Applicant has gone through the same and understood the contents thereof. Save and except the statements, which have been specifically admitted herein below, all other averments/Statements made in the Written Statement shall be deemed to have been denied by the Applicant/Deponent.
2. That, with regard to the statements made in paragraphs 1 and 2 of the Written Statement, the Deponent/Applicant has no comments to offer.
3. That, the Deponent/Applicant categorically denies the statements made in paragraph 3 of the Written Statement and reiterates that the Constitution of India enshrines within itself the right of a citizen to redress his grievances before the appropriate forum and as such, the Applicant has approached this Hon'ble Tribunal for the same.



4. That, with regard to the statements made in paragraphs 4.1 and 4.2 of the Written Statement, the Deponent has no comments to offer since, the copies of the circulars dated 19.02.2003 and 23.04.1999 have not been annexed with the Written Statement to enable the Applicant to defend his case appropriately. And accordingly. As such, the Respondents are put to strictest proof thereof. However, the Applicant further states that any circular issued by the Railway Authorities cannot preclude the Disciplinary Authority/Appellate Authority to apply its mind to the peculiar facts and circumstances of any given case. In view of the facts and circumstances of the instant case, the punishment imposed on the Deponent/Applicant is grossly dis-proportionate.
5. That, while categorically denying the statements made in paragraphs 4.3, 4.4 and 4.5 of the Written Statement, the Deponent/Applicant humbly reiterates the statements made in paragraph 4.15 of the Original Application and further states that the fact that the Up-Home Signal at Kamakhya Station was not functioning properly is also amply evident from the fact that prior to the accident of the Applicant's Up Lumding Food Grains Train with the 5658 Down Kanchanjunga Express, on 22.12.2001, another accident had also taken place on the same line and at the same Platform at 'Kamakhya' Station between Up Lumding Food Grains Train and Down Rajdhani Express. It is categorically stated herein that to the best knowledge of the Applicant, the said accident had also taken place due to the same problem of Up Home Signal, which continued to show 'Yellow' aspect despite the fact that another train was occupying the line No.1 at the Platform at Kamakhya station. Be it further stated herein that the Driver of the said Up Lumding Food Grains, viz. Sri S. C. Dey and the Diesel Assistant Driver, viz. Sri R. Barman were also proceeded against by the department and after a departmental enquiry, a minor punishment of withholding the increment was imposed upon them. As such, in comparison and considering the fact that the inquiry proceedings against the Applicant were pari-materia, the quantum of punishment so imposed on the Applicant is no way justified.
6. That, while denying the statements made in paragraphs 4.6 of the Written Statement, the Deponent/Applicant humbly states that the Disciplinary And Appeal Rules, 1968 as applicable in the instant case, envisages punishment/penalty being imposed by the Disciplinary Authority. Subsequently, the punishment/penalty is subject to the jurisdiction of the Appellate Authority and if the Appellate Authority decides against an incumbent, the next authority is the Revisional Authority. Once the Revision Petition is rejected, the channel for redressal of grievance before the Railway Authorities is exhausted and the incumbent has no other remedy except for

approaching this Hon'ble Tribunal. It is evident from the statements made in the said paragraph, i.e. 4.6 of the Written Statement that any petition made to the President of India is only a Mercy Petition and cannot in any way take away the right of the Applicant to approach this Hon'ble Tribunal. As such, the statements made contrary thereto shall be deemed to have been denied by the Deponent/Applicant.

7. That, with regard to the statements made in paragraphs 5.1 and 5.2 of the Written Statement, the Deponent/Applicant has no comments to offer.
8. That, with regard to the statements made in paragraph 5.3 of the Written Statement, the Deponent/Applicant once again reiterates the statements made in paragraph 4.3 of the Original Application and paragraph 5 of the instant affidavit.
9. That, with regard to the statements made in paragraphs 5.4 and 5.5 of the Written Statement, the Deponent/Applicant humbly states that the Answering Respondents have failed to understand the contention of the Deponent that the so called inter-locking signal system at Kamakhya Station was faulty and as such, the statements made to the said regard are denied. The statements with regard to the brake power of the train as made in the Written Statement do not disclose and/or deny the contention of the applicant with regard to the failure of the A-1 valve of the train. As such, the same shall be deemed to have been accepted by the Answering Respondents.
10. That, with regard to the statements made in paragraphs 5.6 and 5.7 of the Written Statement, the Deponent/Applicant once again reiterates the statements made in paragraphs 4.6 and 4.7 of the Original Application. At paragraph 7.5 (ii), the CRS report itself contemplates that "if the derauling switch No.71X had been correctly oriented, i.e. in the facing direction from Goalpara side and trailing direction from Guwahati side, possibly the collision could have been avoided....." As such, the action of the Enquiry Officer and the authority in assigning the blame solely on the Deponent/Applicant and the driver of the train, cannot hold ground and as such, is liable to be rejected by this Hon'ble Tribunal.
11. That, with regard to the statements made in paragraphs 5.8 and 5.9 of the Written Statement, the Deponent/Applicant has no comments to offer.
12. That, with regard to the statements made in paragraph 5.10 of the Written Statement, the same do not corroborate and/or deal with the statements made

by the Deponent/Applicant in paragraph 4.11 of the Original Application and as such the Deponent/Applicant refrains from commenting on the same.

13. That, with regard to the statements made in paragraphs 5.11 and 5.12 of the Written Statement, the same are mere repetition of the Enquiry report dated 27.11.2002 and hence, the Deponent/Applicant refrains from commenting on the same since the same have been suitably dealt with in the Original Application.
14. That the Deponent/Applicant denies the statements made in paragraphs 5.13 and 5.14 of the Written Statement to the extent they are contrary to the records of the case.
15. That, the statements made in paragraphs 5.15 and 5.16 of the Written Statement are denied by the Deponent/Applicant in so far as they are contrary to the records of the case. The Deponent/Applicant further reiterates the statements made in paragraphs 4.17 and 4.18 of the Original Application.
16. That the Deponent/Applicant categorically denies the statements made in paragraph 5.17 of the Written Statement and further states that it is a fact that separate charge sheets were issued to the Applicant as well as the driver of the train i.e. Sri B. Appa Rao and the Enquiry reports submitted were also separate for the charged officers. However, the fact remains that the enquiry proceedings so conducted was a joint/common proceeding which would be evident from the records of the enquiry proceedings wherein the signature of both the charged officers has been recorded on every sitting of enquiry on the same piece of paper. As such, the statements made contrary thereto are categorically denied and the records of the case would reveal that the enquiry officer proceeded to hold a common proceeding in the matter resulting in gross lapses and/or laches as per the Railway Disciplinary and Appeal Rules, 1968.
17. That, with regard to the statements made in paragraphs 5.18 and 5.19 of the Written Statement are denied by the Deponent/Applicant.
18. That, the statements made in paragraphs 5.20 of the Written Statement are categorically denied by the Deponent/Applicant. The Deponent/Applicant humbly contends that the test so carried out on 31.01.2002 was done after a gap of 3 days during which period the signaling aspect could have been corrected and/or set right by the authorities concerned in order to escape the liability and make the Deponent/Applicant as well as the driver of the train, the scapegoat in the matter. This is further certified by the fact that as stated

herein above, another accident had taken place on the same line due to the same confusing 'Yellow' aspect of the Up Home Signal at 'Kamakhya' station. Hence, another accident on the same line due to the same faulty Up Home Signal, could have harmed/prejudiced the officials who were responsible for such Signal control and hence in order to escape liability, the same has been conveniently attributed to the Applicant and the Driver of the Train. As such, the statements contrary thereto are denied by the Applicant/Deponent.

19. That, the statements made in paragraphs 5.21, 5.22 and 5.23 of the Written Statement are denied and the grounds set forth in paragraphs 5.4, 5.5 and 5.6 of the Original Application are reiterated.
20. That, while denying the statements made in paragraph 5.24 of the Written Statement, the Deponent/Applicant states that the Authorities failed to take into consideration the fact that the moment the Engine of a Train crosses the Home Signal, the Signal automatically goes to 'Red' aspect. Hence, it is only the Driver and the Diesel Assistant Driver of a Train who could correctly state the position of the Signal before the train passes through it. Hence, the statements made by the witnesses cannot be relied upon since, by the time the witnesses saw the Signal, the Engine of the Up Lumding Food Grains Train having already crossed the Home Signal, the Signal had automatically turned to 'Red'. Further, as stated herein above, the test so carried out on 31.01.2002 was carried out after a gap of 3 days after the accident, which leaves room for manipulation and/or correction of the Signal. It is further pertinent to mention herein that the records of the case would reveal that the Signal of 'Kamakhya' station was sealed only at about 8.00 a.m. in the morning following the accident. As such, the same ought to have been given due weightage by the Railway Authorities.
21. That, the Applicant/Deponent categorically denies the statements made in paragraphs 5.25 and 5.26 of the Written Statement. It is once again reiterated that the entire CRS report was never served on the Applicant and as such; the Applicant was never in a position to defend himself suitably.
22. That, the statements made in paragraph 5.27 of the Written Statement are categorically denied by the Applicant/Deponent. The authorities cannot shirk their responsibilities by placing the blame on the Applicant/Deponent of not having objected before he was asked to work in the Bongaigaon-Guwahati section. It is the duty and responsibility of the authority to issue acquaintance and/or proficiency certificate prior to assigning duties to a Railway officer and

as such, not having done the same has led to gross injustice being meted out to the Applicant/Deponent.

23. That, the statements made in paragraph 5.28 of the Written Statement are denied by the Applicant/Deponent to the extent to which they are contrary to the records of the case.
24. That, the statements made in paragraphs 6, 7 and 8 of the Written Statement are categorically denied by the Applicant/Deponent. The Applicant humbly states that the grounds put forth in the Original Application are good and tenable grounds for this Hon'ble Tribunal to intervene in the matter and accordingly, grant appropriate relief to the Applicant as has been stated in the Original Application.
25. That, the statements made in this paragraph and in paragraphs 1 to 24 are true to my knowledge and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this affidavit on this 27th day of June, 2006 at Guwahati

Identified by me :

Suren Chandra Borah

DEPONENT

Advocate's Clerk.