

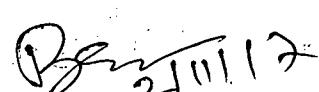
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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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21/11/17
SECTION OFFICER (Judl.)

FORM NO. 4
(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No. 119-105

Misc. Petition NO.

Cobtempo petition No.

Review Application No.

Applicants.

B. Bhanu das

Respondents:

4-017 905

Advocates for the Applicant. G. M. Paul, S. Bhuyan

Advocates of the Respondents. Farley Counsel

Notes of the Registry	Dated	Order of the Tribunal
	31.5.05.	Judgments delivered in open Court.
This application is in form is filed C.F. for Rs. 50/- deposited vide I.P. /B No. 206133/70		Kept in separate sheets. Application is disposed of. No costs.
Dated 12.5.05.		<i>Rao</i> K. Balakrishna Member
Sett. Dy. Registrar <i>Rao</i>	1m	<i>Rao</i> Vice-Chairman
<i>Bondamrao Rao Advocate</i> 8.6.05		
8.6.05 Copy of the Judgment handed over to the Court on the same date		

8.6.05
Copy of the Judgment
handed over to the
L/Advocates for the
parties.
JCP

CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH.

O.A. No. 119 of 2005

DATE OF DECISION: 31-05-2005.

Shri Bridaban Bihari Das

APPLICANT(S)

Mr. G. M. Paul

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

U.O.I. & Ors.

RESPONDENT(S)

Mr. S. Sarma, Railway counsel

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE CHAIRMAN

THE HON'BLE MR. K. V. PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether the judgment is to be circulated to the other Benches?

Judgment delivered by Hon'ble Vice-Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.119 of 2005.

Date of Order: This the 31st Day of May, 2005.

HON'BLE MR.JUSTICE G.SIVARAJAN, VICE-CHAIRMAN
HON'BLE MR.K.V.PRAHLADAN, ADMINISTRATIVE MEMBER.

Sri Brindaban Behari Das,
Son of Late Sridam Kumar Das
ACCI/Grade-1
SE/AC/DBRT
Office of the AEE/Coaching/DBAT.
N.F.Railway, P.O. & District-Dibrugarh.

Applicant.

By Advocate Mr.G.M.Paul, Mr.S.Bhuyan.

-Versus-

1. Union of India;
Represented by the Secretary,
To the Government of India in the
Railway Deptt. New Delhi
2. The General Manager
N.F. Railway, **Maligaon**
Guwahati-781011.
3. Senior Divisional Elect. Engineer
N.F.Railway, Tinsukia (Assam).

Respondents

By Advocate Mr. S. Sarma, Railway counsel.

ORDER (ORAL)

SIVARAJAN,J (V.C):

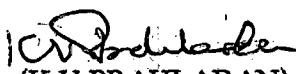
Having heard Mr. G. M. Paul, learned counsel for the applicant and Mr.S.Sarma learned counsel for the Railway appearing on behalf of the Respondents, we are of the view that this application can be disposed of at the admission stage itself.

The applicant while working as ACCI/Gr.-1 under N.F.Railway was charge sheeted for misconduct of attempting to molest a lady passenger named Lt. Sandhya Suri of Indian Navy on 17.09.99 in Kamrup Express Train. After conducting disciplinary proceedings the disciplinary authority passed an order stopping his two years increments with cumulative effect from his next date of increment. The applicant being aggrieved by the said order filed an appeal (Annexure IX) before the 2nd respondent which was acknowledged by the said respondents on 31.5.04 (Annexure 10).

[Signature]

2. Mr. G. M. Paul learned counsel appearing on behalf of the applicant submits that though more than one year has passed since the filing of the appeal the same has not so far been disposed of. Mr. S. Sarma, learned counsel for the Respondents submits that if the appeal has not so far been disposed of the same will be disposed of within a reasonable time. We find that it is on this day in the year 2004, the 2nd respondent has received the appeal on 31.5.04. If, in fact, the appeal has not so far been disposed of, in the absence of valid reasons, the delay cannot be justified. However, we direct the 2nd respondent to dispose of the appeal (Annexure IX) as expeditiously as possible at any rate within a period of two months from the date of receipt of this order. The order must be a speaking one. The applicant will produce this order before the 2nd respondent for compliance within two weeks from to day.

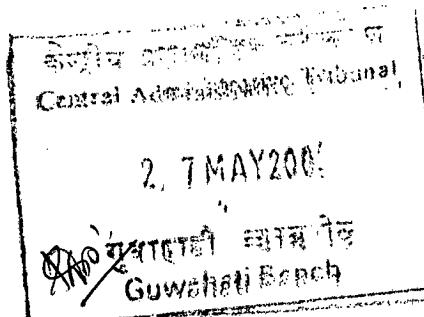
The application is disposed of as above at the admission stage.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER


(G.SIVARAJAN)
VICE-CHAIRMAN

LM

81-5-05



2,7 MAY 2001

Guwahati Branch

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

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

original application 119.../05

Sri Brindaban Behari Das
... Applicant.

- Vs -

Union of India & others.

... Respondents.

Synopsis/ List of Dates

<u>Sl.</u>	<u>Date</u>	<u>Particulars</u>	<u>Annexure</u>	<u>Page</u>
1.	18/9/99	<p>The applicant holds a permanent post of ACCI/Gr-I under the N.F. Rly. On 17/9/99 & 18/9/99 he was on duty boarding 5959 up Kamrup Express running from Howrah to Dibrugarh. One Lt. Sandhya Suri of Indian Navy boarding in the train lodged an FIR with O/C, GRP/NJP station dt. 18/9/99 alleging that on the night of 17/9/99 and following morning the applicant outraged her modesty. The GRPS/NJP registered as case vide GD No. 626, dated 18/9/99. Police failed to make any headway with the case and the applicant not prosecuted by laying any chargesheet before a competent court of law.</p>	<u>Annexure-I</u> Copy of the FIR dated 18/9/99.	10-11

Contd..2

2. 22/9/99 The Disciplinary Authority on 22/9/99 place the applicant under suspension. Annexure-II 12

Suspension
Order dated
22/9/99

3. 30/9/99 The Disciplinary Authority issued a chargesheet ~~on~~ with a Memorandum and the article of charge on 30/9/99. Annexure-III & IV 13-14

Memorandum and
articles of
charge respec-
tively . 15

4. The Disciplinary Authority appointed an enquiry officer and he examined only one witness for the Disciplinary authority who is not an eye witness.

5. 17/1/04 The enquiry officer examined the applicant on 17/1/04. He denied the charges brought against him. Annexure-V 16-17

Recorded
statement of
the applicant
on 17/1/2004.

6. 28/1/2000 The Disciplinary Authority on 28/1/2000 revoked the order of suspension w.e.f. 29/1/2000. Annexure-VI 18
(Suspension
revocation
order dated
28/1/2000).

7. 9/3/04 The Enquiry Officer, Submitted his report, dated 9/3/04 holding that the charges against the applicant was not proved. Annexure-VII 19
(Enquiry report dated 9/3/04)

8. 3/5/04 The Disciplinary authority surprisingly on 3/5/2004 stop 2 years increment with stopped with cumulative effect from his next date of increment. Annexure-VIII 20
order dated 3/5/2004
(Impugned order)

9. 31/5/04 The applicant preferred an appeal /representation against the impugned punishment to the appellate authority at Maligaon, Guwahati and the same was received at the office on 31/5/05. The authority did nothing till date and hence the applicant file this petition. Annexure-IX & X 21-22
Copy of Appeal/
representation 23
and postal re-
ceipt respectively.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

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

Original application/05

Sri Brindaban Behari Das

... Applicant.

- Vs -

Union of India & others.

... Respondents.

I N D E X

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Filed by ,
Subrata Bhuyan
Advocate

Filed by
the applicant

Brindaban Behari Das
through
Subrat Bhuyan
Advocate
26.5.03

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

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

Original Application No...../ 2005

1. Particulars of the Applicant:

Sri Brindaban Behari Das

Son of Late Sridam Kumar Das

ACCI / Grade - I

SE / AC / DBRT

Office of the AEE / Coaching / DBAT,

N.F. Railway, P.O. & District – Dibrugarh.

2. Particulars of the Respondents:

1. Union of India,

Represented by the Secretary to the Government of India in the

^{Dept.}
Railway, New Delhi

2. The General Manager,

N. F. Railway, Maligaon,

Guwahati – 781011.

3. Senior Divisional Elect. Engineer,

N. F. Railway, Tinsukia (Assam).

3. Particulars of the Order against which the application is made:

This application is made against No. LV / D – 25 / DAR / G – 15 / 53 dated 03.05.04 from the respondent No. 3 stopping 2 (two).

years' increment with cumulative effect from the next date of increment and for not giving full service benefits as if on duty during the suspension period around four months ten days from 22.09.1999.

4. Jurisdiction of the Tribunal:

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

5. Limitation:

The applicant declares that the present application is within the Limitation prescribed in Section 21 of the Administrative Tribunal Act, 1985.

6. Facts of the Case:

6.1 That the applicant is a citizen of India and a permanent resident of Dibrugarh, Assam. Being a citizen of India he is entitled to all fundamental rights guaranteed under the Constitution of India and other legal rights framed thereunder.

6.2 That the applicant holds a permanent post of ACCI / Gr. S_r – I under the N. F. Railways. On 17.09.99 and 18.09.99 he was on duty boarding 5959 UP Kamrup Express running from Howrah to Dibrugarh. He was on duty on Coach No. A/I. One Lt Sandhya Suri of the Indian Navy boarding the train on seat No. 23 lodged an FIR with o/c, GRP / NJP Station on 18.09.99 alleging that on the night of 17.09.99 and the following morning the applicant outraged her modesty. The GRPS / NJP registered a case at 07.50 hrs on 18.09.99 vide G.D No. 626, dated

Brinda Devi Devi

Bimla Deo Deo

18.09.99. Police failed to make any headway with the case and the applicant was not prosecuted by laying any charge-sheet before a competent court of law.

A Xerox copy of the FIR is annexed hereto and marked as Annexure: - I to the application.

6.3 That the Disciplinary Authority vide No. LV /D -25/ DAR / G - 15 / 46, dated 22.09.99 placed the applicant under suspension with immediate effect pending disciplinary proceedings against him.

A photocopy of the suspension order is annexed hereto and marked as Annexure: - II.

6.4 That the Disciplinary Authority vide its No. LV /D – 25 / DAR / G-15/47, dated 30.09.99 issued a Charge-sheet against the applicant with a memorandum and the article of charges. The articles of charge are on two counts, viz.

- a) alleged attempt to molest a lady passenger named Lt. Sandhya Suri of Indian Navy on 17.09.99 on the Kamrup Express, A/C 2 tier while the applicant was on duty;
- b) GRPF personnel at N.J.P junction on receipt of a FIR from Smti Sandhya Suri failed to locate him, although for that purpose the train was detained there for 15 (fifteen) minutes.

Xerox copies of the memorandum and articles of the charge are annexed herewith and marked as Annexure: - III & IV respectively.

6.5 That the Disciplinary Authority appointed an enquiry officer and he examined only one witness, namely Sri S.K. Mukherjee, TTE / NJP for the Disciplinary authority. He is not an eye-witness. He is a hearsay witness. No other witness was examined to corroborate the evidence of Sri Mukherjee.

6.6 That on 17.01.2004 the Enquiry Officer examined the delinquent officer, viz the applicant. The applicant denied the charges brought against him. As regards the charge of not being traceable by the GRP personnel at N.J.P. Railway Station the applicant stated that at the time he was on duty at the RR Unit.

A Xerox copy of the recorded statement of the applicant before the enquiry officer is annexed hereto and marked as Annexure: -

V.

6.7 That the Disciplinary Authority vide No. LV / D - 25 / DAR / G - 15 / 3, dated 28.01.2000 revoked the order of suspension with effect from 29.01.2000.

A Xerox copy of the suspension revocation order is annexed hereto as Annexure: - VI.

6.8 That the Enquiry Officer submitted his report, dated 09.03.04 holding that the charges against the applicant was not proved for lack of evidence.

A Xerox copy of the enquiry report is annexed hereto and marked as Annexure: -

VII.

Bhimade Lalmuni Singh

6.9. That the Disciplinary Authority by No. LV / D -15 / DAR / G – 15 / 53 dated 03.05.2004 communicated to the applicant that “ His 2(two) years increment should be stopped with cumulative effect from his next date of increment”.

A Xerox copy of the order communicating punishment is annexed hereto and marked as

Annexure: - VIII.

6.10. That on receipt of the order of punishment having been passed illegally the applicant preferred an appeal against the punishment to the appellate authority, at Maligaon, Guwahati, and the same was received at his office on 31.05.04. But inspite of persuasions many times the appellate authority ignored to dispose off the appeal / representation with intimation to the applicant.

A Xerox copy of the appeal / representation and postal receipt of thereof are annexed hereto and marked as **Annexure: - IX & X** respectively.

6.11. That the suspension period of the applicant has not yet been regularized. The applicant humbly submits that in the facts and circumstances of the case his suspension period has to be held as on duty and the difference between the amounts paid to him during his suspension period and the amounts to which he would have been entitled had he not been placed under suspension has to be paid to him by the department authority i.e. the respondents.

Brinda Lom Lohi

7. **Grounds for Relief with Legal Provision: -**

Being highly aggrieved by the illegal actions of the respondents the applicant prefers this application interalia on the following grounds: -

- (A) For that in the departmental inquiry no eye-witness including the complainant Lt. Sandhya Suri having not appeared and the only witness Sri S.K. Mukherjee, TTE / NJP not being a eye-witness to the alleged occurrence there was no substantive evidence against the applicant. The applicant in law has been punished with no evidence on record. The impugned orders of punishment is liable to be set aside;
- (B) For that the Disciplinary Authority having failed to produce any eye-witness including the complainant before the enquiry officer the applicant was deprived of cross-examination to refute the allegations brought against him. The punishment inflicted upon the applicant was utterly violative of the principle of natural justice. Giving natural justice to a delinquent officer is a sine quo non in a departmental proceeding;
- (C) For that the enquiry officer in his report gave the findings that the charges laid in the charge-sheet against the applicant was not proved. The impugned order of punishment is bad in law;
- (D) For that what made the Disciplinary Authority to impose punishment upon the applicant disagreeing with the report of the enquiry officer was not stated to the applicant, nor is there any indication to that effect in the

/Bimindaleem bhai Des.

Bhawna Leon bhu' son

impugned order communicated to the applicant. The order of punishment is cryptic and illegal for lack of transparency and being violative of the rules of natural justice;

(E) For that the applicant having been not found guilty in the departmental enquiry his suspension period was required to have been regularized holding him on duty and paying him full salary for the period. The applicant was paid only subsistence allowance. No-payment to the applicant full salary for the suspension period has been bad in law;

8. Details of the remedies exhausted: -

The applicant preferred appeal/ representations before the General Manager, N.F. Railway, Maligaon, Guwahati and the same was received at his office on 31.05.04 but nothing has been done till date. The applicant has no other alternative remedy except approaching this Hon'ble Tribunal. The applicant demanded justice which has been denied by the respondent authorities.

9. Matters not previously filed or pending in any other Court or Tribunal: -

The applicant declares that the subject matter of this application is not pending before any Court of Law, or any other branch of the Hon'ble Tribunal.

10. Relief Sought: -

The applicant, therefore, prays that this Hon'ble Tribunal may be pleased to -

(I) Direct the respondents to release full salary benefits minus the subsistence allowance already paid to him for his suspension period.

(II) Set aside the order of punishment passed in the departmental proceeding initiated against the applicant.

(III) Any further or other order / orders as this Hon'ble Tribunal may deem fit and proper for appropriate reliefs to the applicant.

11. Interim order if any prayed for:

The applicant prays no interim relief in this case.

12. Particulars of I.P.O.

I.P.O. Number	- 206133170
Date of Issue	- 26.5.05
To whom payable	- The Registrar, CAT
Payable at	- Guwahati

13. Documents.

Detailed particulars of the documents are indicated in the Index of this Application.

....Verification

Bindu Kumar Deka

VERIFICATION

I, Sri Brindaban Bihari Das, Son of late Sri Golam Kumar Das.....
aged about 48 years, resident of Kadamani, Kalibari Road, P.O & Dist - Dibrugarh
, Assam do hereby state that the statements made in paragraphs
6.1..... are true to my knowledge and
the statements made in paragraphs 6 (2 to 10)..... are
true to my information derived from the records which I believe to be true.
And I sign this verification on this the 25th day of May 2005.

Brindaban Bihari Das.

Signature

LT. SANDHYA SURI, INDIAN NAVY, DAUGHTER
OF SRI S.N. SURI, DATE OF BIRTH - 5 MAY 1972
242/SS, INS., JYOTI C/O. FLEET MAIL OFFICE
MUMBAI 907. VISHAKHAPATNAM), 10 SEPT, 1999

9

To

The OC/GRP/NJP Station,
New Jalpaiguri (WB)

Lodging of Complaint :/Sri B.B. Das, ACCI/Gr-II, I/C No. 051424
on duty staff in A/C of 5959 UP of 17-09-99 Ex. HWH.

- 1) I was travelling from HWH to NJP via T/No. 030-6493284
(PNR) and boarded 5959 UP Kamrup Express on 17-09-99, Seat
No. 23, Coach No. A/1.
- 2) At about 23.00 hrs. he, Mr. B.B. Das passed by my seat and
passed his hands over my leg.

Assuming it to be an over sight on his part I
let it be. The same occurred after an hour and he passed his
hands on my chest and walked on. At third time Mr. Das came
up to me and woke me up. He was reeking of alcohol. He had
a pillow in his hand and asked me if he could not sleep till
Maldo, I refused and asked him to go away. Yet again at about
03/15 hrs. on 18-09-99 morning he came across and deliberately
passed his hands over my chest again.

I got up and took the assistance of Captain
K.Y. Datto, 19 Wing AF to lodge a Complaint with Sr. Q.K.
Mukhopadhyay, TTE, Mr. Das, i.e. he has asked for and upon
the advice of the TTE this formal complaint is being lodged
against Sri Das at NJP Railway Station where I alight.

- 3) It is requested that a fine and corrective action be taken
against Sri B.B. Das for :-
 - a) Harassment and Intentional, physical abuse.
 - b) for being in a drunken state whilst on duty.

Thanking you,

Yours sincerely,

Sd/-

(SANDHYA SURI)

Contd..P/2

Attested
Suri

((2))

I sign it as fully correct and correct and no witness.

SD/CAPT. K.Y. Dole, O/C 3 AF Pu, I/D

19 Wing A.F. Guwahati, AF Station

RNR - 630-6368153, B/No. 07 in A/C 2 TR (MLDT-GIY)

FIR Lodged at GRPS/NJP at 7.50 hrs. on 18-09-99.

G.D. No. 626, Dt/- 18-09-99.

*Notified
8/10/99*

ORIGINAL FORM NO. 3
Standard Form of Order of Suspension (to the Govt. of India (R&A) Rules, 1908).

No. LV/D-25/DAR/6-15/146.

Address: M.P. Railway,

Place of issue: Tinsukia

Date: 22.9.09.

Q.B.R.R.

Whereas disciplinary proceeding
against Shri Brijabhan Bhatt, Dms.
ACII/DBRT.

(Name & designation of the Railway
servant) is contemplated/pending.

Name of the servant Shri Brijabhan

Official Name

ACII/DBRT

(Name & designation of the Railway Servant)
in respect of a criminal offence in under
investigation/inquiry/trial.

Now, therefore, the President/the Railway Board/the undersigned the
Authority/competent to place the Railway Servant under suspension in terms
of the Schedule I, II and III appended to R&A Rules, 1908/an authority
mentioned in provision to rule 4 of the R&A Rules, 1908) in exercise of
the powers conferred by rule 4/provision to rule (61) of the (R&A) Rules 1908,
hereby places the said Shri Brijabhan Bhatt, Dms.
under suspension with immediate effect from 22.9.09

It is further ordered that during the period this order shall remain in
force, the said Shri Brijabhan Bhatt shall not leave the
headquarters without obtaining the previous permission of the competent authority.

Signature

Name Shri B.P. Roy General Secretary
(designation of the authority)

Copy to: Shri B.B.Dms, ACII/DBRT,

Through SE/AG/DBRT

(Name and designation of the suspended Railway servant)

Copy to: DRA/(P)/TSK

Copy to: ACII/Coaching/DBRT

*Attested
Biju*

NORTH EAST FRONTIER RAILWAY

STANDARD FORM OF CHARGE SHEET.

STANDARD FORM NO. 5

(Rule 9 of the Rly. Servants Disciplinary and Appeal Rule, 1964.)
NO. LV/D-25/DAR/G-15/47 Dt. 30.9.98

Office of Sri Divl. Inspector, Enviroor, Tinsukia

Place of issue Tinsukia Date 30.9.98

MEMORANDUM

1. The President/Rly. Board/undersigned propose(s) to hold an inquiry against Shri B.B. Dg. under rule 9 of the Rly. servants (Disciplinary and Appeal) Rules, 1964. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I).

A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II).

A list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexure-III & IV).

Further, copies of documents mentioned in the list of documents as per Annexure-III are enclosed.

2. Shri B.B. Dg. is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure-III) at any time during office hours within ten days of receipt of this memorandum.

For this he should contact Sri. Dg/Tsk. immediately on receipt of this memorandum.

3. Shri B.B. Dg. is further informed that he may, if he so desires, take the assistance of any other Rly. servant/nd official of Rly. Trade Union (who satisfies the requirements of Rule (9) 13 of the Rly. Servants Discipline and Appeal Rules, 1964 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 Inquiry/13th April 1999 at the Office of the General Manager, N.E.R.R. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Rly. servant(s) or Rly. Trade Union official (s) Shri B.B. Dg. should obtain an undertaking from the nominee(s) that he (they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other cases if any, in which the nominee(s) had already undertaken to assist and the undertaking should be furnished to the undersigned/General Manager, N.E.R.R. along with the nomination.

Attested

B.B. Dg.

4. Shri Brindaban Bihari Das, AGC/I/DBRT. In behalf of party he or she has the unbroken right to written statement of his defense within ten days of receipt of this memorandum, if he does not require to inspect or inspect for the preparation of his defense 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 add the names and addresses of the witnesses if any, whom he wishes to call in support of his defense.

5. Shri B.B.Das,

The hearing in Inquiry will be held only in respect of those articles of charge in case which he should, therefore, specifically admit or deny in respect of each charge.

6. Shri B.B.Das,

It is further informed that if he does not submit his written statement of defense within the period specified in para 2 or does not appear in person before the inquiry authority or authorizes him or refuses to comply with the provisions of Rule 19 of the Railway Services (Adjudication and Appeal) Rules, 1966 or the orders/ proceedings issued in pursuance of the said rule, the inquiry authority may hold the inquiry ex parte.

7. The action of Shri B.B.Das, member invited to Rule 20 of the Railway Services (Conduct) Rules, 1966 under which no Railway 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 representative is received on his behalf from another person in respect of any matter dealt within those proceedings, it will be presumed that Shri B.B.Das 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 Railway Services (Conduct) Rules, 1966.

8. The receipt of this memorandum may be acknowledged.

Enclosed herewith

To/ Shri Brindaban Bihari Das, AGC/I/DBRT.

Designation Through - SE/AS/DBRT Station

Copy to DM/P/TSR.

Attested
S. B. Das

4. Sri Brindaban Bihari Das, ACCI/1/DBRT.

Is hereby directed to submit to the undersigned a written statement of his defence within 10 (ten) days of receipt of this memorandum, if he does not require to inspect the 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 to furnish the names and address of the witnesses if any, whom to refer to call in support of his defence.

5. Shri B.B.Das, that an inquiry will be held only in respect of those articles of charges he should therefore, specifically admit or deny the memorandum of charge.

6. Shri B.B.Das that if he does not submit his written statement of defence

specified in para 2 or does not appear in person before the enquiry authority or otherwise fails or refuses to comply with the provision of Rule 9 of Rly. servants(Discipline and Appeal) Rules 1968 or the orders/directions framed in person or the said rule, the enquiry authority may hold the enquiry ex parte.

7. The attention of Shri B.B.Das,

further invited to Rule 20 of the Railway Services(Conduct Rules) 1966 under which no railway 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 proceedings, it will be presumed that Shri B.B.Das 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 Railway Services (Conduct) Rules, 1966.

8. The receipt of this memorandum may be acknowledged.

Enclosure:

To

Shri Brindaban Bihari Das, ACCI/1/DBRT.

Designation Through-SE/AC/DBRT Station

Copy to DRM/P/TSK.

Sd/

ANNEXURE TO GRANT OF PO. NO. 145

MEMORANDUM OF CHARGE FOR OFFICER OF THE RAIL. (B & A) RAIL. 1903.

ANNEXURE - I

Statement of article of charge framed against Shri Brindaban

Bihari Das, AGC/I/DBRT.

ARTICLE - I

That said Shri B.B. Das,

while functioning as AGC/I/DBRT,

during the period 17.9.99 to 18.9.99, committed an offence of Misappropriation & misconduct.

ARTICLE - II

That during the aforesaid period while functioning as the aforesaid officer, the said Shri B.B. Das,

ANNEXURE - II

Statement of imputations of misconduct of misbehaviour in support of the article of charge framed against Shri B.B. Das, AGC/I/DBRT.

(Name and designation of the Railway Servant).

ARTICLE - I

Allegation of charges

Shri B.B. Das, AGC/I/DBRT while escorting Karur Express in A.C. 2 tier Sh. B.M.I to NJP on 17.9.99 tried to molest one lady passenger on berth No. 23 named Lt. Sandhya Suri 5F Indian Navy.

Lt. Sandhya Suri Lodged FIR with GRP/NJP stating that Shri B.B. Das touched her and passed his hand over her chest 3 times within one hr. time. GRP personal tried to locate Shri Das at NJP, but he left the A.C. coach and was not traceable through P.A. system.

The train was detained for 15 mins. on this account at NJP.

This is a gross offence on the part of Shri B.B. Das on duty AGC/I/DBRT and which amounts to serious misconduct.

ANSWER

ARTICLE - II

ANNEXURE - III List of documents by which the articles of charge framed against Shri B.B. Das (Name & Designation) that propose to be sustained.

ANNEXURE - IV List of witness by which the articles of charged framed against

Shri B.B. Das

(Name and designation of the Railway Servant) to be sustained.

Attested
Ramya

Proceeding of the DAR enquiry held in the DEE/Tsk's office on 12-1-04 against charge sheet no. LV/D-25/DAR/G-15/47 dt. 30.9.99

The CO Shri B.B. Das along with Shri J.N. Saikia, DC attended at the enquiry.

Statement of Shri B.B. Das, C.O.

(1) There is a allegation against you vide DEE/Tsk's letter No. LV/D-25/DAR/G-15/47 dt. 30.9.99 are you agreed?

Ans:- I am not agreed.

(2) Describe in brief what happened on that particular day while you are on duty in 5959 Up on 17/18.9.99.

Ans:- At MLDT station at about 2.00 A.M. one side of the 2 tier coach was hot as I heard some passengers are talking about. I attended the portion and set right the panel and returned to my waiting place (on the vacate berth). While I was going to attend the panel one of the blanket was fallen and due to this I was going to be safety on the corridor but somehow I managed to stay by holding the curtain. That particular portion was dark throughout the night lamps were "ON".

One of the lady passenger who was occupying the berth No. 23 asked me who I am while I returned I answered her that I am an AC staff.

After some time the on duty conductor called me and asked me to show my identity, I showed my Card pass and the conductor kept the Card pass in his custody. He also informed me that the lady passenger complained against me that I was passed my hand over her chest.

At NJP station the lady passenger, the conductor lodged complain against me at GRP/NJP thana.

(3) How did you know that they lodged complain in the GRP thana against you?

Ans:- At NJP station I asked the conductor to return my Card pass then he informed me that they are going to lodged complaint against me to GRP/NJP thana without returning my Card pass.

(4) Are you asked the lady passenger why she complaint against you?

Ans:- I did not ask her why she had complained against me.

(5) Do you know why she complain?

Ans:- I do not know why she complain, it is known to the lady.

(6) Are you agree with her complaint?

Ans:- No I am not agreed.

(7) Do you know that there is any announcement for you at NJP station?

Ans:- Yes, there was an announcement in the station. I heard the announcement while I was working in the RC UNIT before the train left the station.

(8) Was there any detention of train at NJP?

Ans:- No I did not know.

(9) Do you know where about the conductor while incident was happened?

Ans:- The conductor was on the berth no.4 of the same coach (2 tier).

Attested
B. B. Das

11/10/2004
(B. B. Das)



17-

✓

Page- 2

Shri J.N. Saikia, Defence Counsel has raised the following points for taken into consideration:-

- (1) The cause of action of DAR case against Shri B.B. Das, ACCI/I/DBRT was of 17.9.99, e.g. about 4 years and 4 months.
- (2) The SLE/S dt. 30.9.99 served against Shri B.B. Das, was procedurally lapsed such as 4 annexure were not properly enclosed.
- (a) Statement in brief, (b) Allegation in detail, (c) List of relied upon documents and (d) List of witness to be relied upon.
- (3) Complainant has not attended in the DAR enquiry despite letters issued by the administration.
- (4) The DAR case initiated against Shri B.B. Das was against the very spirit of Rly Board's order No. E(C & A) 6 RG 6- 45 dt. 10-10-1961 where in stated that No. DAR action should be initiated where written FIR was lodged either in police or GRP. In this case FIR was lodged with GRP/NJP vide case No. GDF/626 dt. 18.9.99.

Further, the order of Rly. Board of 1974 stated that if any DAR case was initiated, should be kept pending till disposal of the case by the court of Law.

In view of the above, the DA through the EO is requested to take ex-party decision of the case in favour of the charged employee.

12/8/09
J.C.

Attested
Bhupen

STANDARD FORM NO. 1

STANDARD FORM OF ORDER FOR REVOCATION OF SUSPENSION ORDER S(5) OF R.R.(D&A)

NO. IN/D-25/DRN/G-15/2

Dated: 20-01-2000

N.F.Rly. : Name of Rly. Min.
DRN(ELMPT)/TSK Office : Place of Issue.

ORDER

Whereas in order placing Shri Brindababu Behari Das,
(Name and designation of the Rly. Servant) under suspension was made/was
to have been made by ~~DR. AEE/TSK~~ on 22-9-99.

Now, therefore, the undersigned (the authority which made on is
deemed to have made the order of suspension or any other authority which
that authority is subordinate) in exercise of the powers conferred by
clause (J) of the Sub-Rule (5) of Rule-5 of the R.R. (D & A) Rule 1008,
hereby revoked the said order of suspension with immediate effect w.e.f.
22-01-2000.

Signature (Name, Designation of
the Authority making order). 28/1/2000

Copy to: Shri Brindababu Behari Das, AGCI/Gr. I/DBRT.

(Name & Designation of suspended Railway servant).

Through: SE/AC/DBRT
C/DRN(P)/TSK - for information and necessary action.

O/ - for information & necessary action.

Attested
Shyam



-19-

Annexure - VII

29
13/11

INQUIRY REPORT

1.0. In the case of Sri Brindaban Bihari Das, ACC/Gr.I/DBRT.
1.1. Under sub Rule 9(2A) of rule 1968, I am appointed by ADRB/PSK as the enquiry authority to inquire into the charge framed against Sri Brindaban Bihari Das, ACC/Gr.I/DBRT vide his letter No. L.V.D. 25/DAR/015 dt. 31.10.03. I have since completed the inquiry and on the basis of statement of C.O. and documentary evidence before I prepared my inquiry report as under.

2.0. Participation by the charge officer in the Inquiry and defence assistance available with him.

2.1. Defense assistance - Sri J.H. Sardar.

3.0. Article of charge as substance of imputation of misconduct or misbehavior.

3.1. The following charge have been framed against Sri Brindaban Bihari Das, ACC/Gr.I/DBRT under 3E/ACC/DBRT Statement of imputation of misconduct or misbehavior in support of which charge framed against Sri Brindaban Bihari Das, ACC/Gr.I/DBRT. Sri Das while escorting Komip-Express in AC 2 tier EX. 11WII to DAR on 17.9.99 tried to molest one lady passenger on berth no. 23 named Lt. Sandhya Suri of Indian Navy.

Lt. Sandhya Suri, Lodge EIR with GRP/NJP stated that Sri B.D. Das touched her and passed his hand over her chest 3 times with in one hr. time. GRP personal tried to locate Sri Das at NJP, but he left the AC coach and was not traceable though announced through PA system. The train was detained for 15 min. on this account at NJP. This is a great offence on the part of Sri B.D. Das on duty ACC/Gr.I and which tantamount to serious misconduct.

4.0. Analysis and assessment of evidence

4.1. Sri B.D. Das, ACC/Gr.I/DBRT was examined and his statement was taken from which the following are revealed -

4.1.1. In the first statement of Sri Das at SH-1, where he admitted that he had fallen on Lt. Sandhya Suri who was a lady passenger traveling while she was sleeping on berth no.23 due to the blanket fallen on the passenger. But in the statement obtained on 12.1.04 at SH-09, he denied that he had not fallen over the said passenger and even fallen on the corridor but some how he managed to stay by holding the ceiling.

... Hence both the statements are contradictory.

4.1.2. Berth no. 23 is in the middle of the coach and night lamps were switched "off". So the fallen blanket in the passage can be seen.

... Hence the plea of fallen by the fallen blanket can not be accepted.

4.1.3. Lt. Sandhya Suri of Indian Navy was informed vide this office letter No. L.V.D. 25/DAR/015 dt. 31.10.00, 16.6.2000 and 8.12.03 of SH-37, 40 and 60. But she neither attended nor give any information against the above reference. It may be the reason that she may not received any letter or as she lodged the FIR against Sri B.D. Das vide GD no. 626 dt. 18.9.99. As she wanted the case may be finalized at court it self.

4.1.4. From the statement of Sri B.D. Molhopadhyay, EIR/NJP, it revealed that he was not present at the incidence spot as he was sitting at D1 and the incidence was happened at D3/23 of the same coach.

4.1.5. On duty ACCA of the coaches were also not known any things regarding the incidence as per their statement.

4.1.6. Lt. GRP/NJP, who requested vide the office letter no. L.V.D. 26/DAR/015 dt. 9.1.2003 of SH-09 to submit the present status of the case by register post but till date no reply is received.

5.0. Finding.

5.1. On the basis of the statement of Sri B.D. Das, ACC/Gr.I/DBRT and the evidence in the case file, it is revealed that Sri B.D. Das has given contradictory statement and the plea of darkness due to fallen down is not acceptable. More over Lt. Suri had Lodge EIR to GRP/NJP and Sri Das applied for security protection of SH-37 and 40. Hence it is true that he had done wrong with Lt. Sandhya Suri.

For the molesting with Lt. Suri can not be proved due to the lack of evidence.

C
SRI B.D. Das
E.Q.

Attested
Biju

ENQUIRY REPORT

- 1.0 In the case of Sri Brindaban Behari Das, ACCI/Gr. I/DBRI,
- 1.1 Under sub rule 9(2) of rule 1968 I am appointed by ADEE/ISK as the enquiry authority to inquire into the charge framed against Sri Brindaban Bihari Das, ACCI/Gr. I/DBRT vide his letter No. LV/P-25/DAR/G-15, dated 04.11.03 I have since completed the inquiry and on basis of my inquiry report as under.
- 2.0 Participation by the charge officer in the inquiry and defence assistance available with him.
- 2.1 Defence assistance - Sri J.M. Saikia
- 3.0 **Article of charge as substance of imputation of misconduct or misbehaviour.**
 - 3.1 The following charge have been framed against Sri Brindaban Bihari Das ACCI/Gr. I/DBRT under SE/AC/DBRT. Statement of imputation of misconduct or misbehaviour in support of which charge framed against Sri Brindaban Bihari Das, ACCI/gr. I/ under SE/AC/DBRT escorting Kamrup Express in AC2 tier FX HWH to DBRT on 17.09.99 tried to molest one lady passenger on berth No. 23 named Lt. Sandhya Suri of Indian Navy. Lt. Sanjhy Suri Lodge FIR with GRP/NJP stated that Sri B.B. Das touched her and passed his hand over her chest 3 times within one hr. time. GRP personal tried to locate Sri Das at NJP but he left the AC Coach and was not traceable through PA system.

The train was detained for 15 mins on this account at NJP. This is a great offence on the part of Sri B.B. Das on Duty ACCI/gr. - I and which tantamount to serious misconduct.
- 4.0 **Analysis and assessment of evidence.**
 - 4.1 Sri B.B. Das, ACCI/gr-I DBRT was examined and his statement was taken from which the following are revealed
 - 4.1.1 In the first statement of Sri Das at SN-1 where he admitted that he had fallen on Lt. Sandhya Suri who was a lady passenger traveling. While she was sleeping on berth No. 33 due to the blanket fallen on the passage. But in the statement obtained on 12.01.04 at SN - 02 he denied that he had not fallen over the said passenger and even fallen on the corridor but somehow he managed to stay by holding corner.

Hence both the statements contradictory itself.

4.1.2 Berth No. 23 is in the middle of the coach and night lamp were switched "ON" so the fallen blanket in the passage can be seen. Hence the plea of fallen by the fallen blanket cannot be accepted.

4.1.3 Lt Sandhya Suri of Indian Navy was informed vide this office letter No. 1 V/D - 25/DAR/H-15 dated 05.01.2000, 16.06.2000 and 08.12.2003 at SN - 37, 40 and 60. But she neither attended nor give any information against the above reference. It may be the reason that she may not received any letter or as she lodge the FIR against Sri B.B. Das vide G.D. No. 626 dated 18.09.99. So she wanted the case may be finalised at Court itself.

4.1.4 From the statement of Sri S.K. Mukhopadhyay TTE/NJP, it revealed that he was not present at the incidence spot as he was sitting at RD and the incidence was happened at B/23 of the same couch.

4.1.5 On duty ACCA of the coaches, were also not known any things regarding the incidence as per their statement.

4.1.6 OC GRP/NJP was requested vide this office letter No. IV/P-25/DARH-15 dated 09.12.03 at SN-9 to submit the present status of the case by register post but till date no reply is received.

5.0. Finding.

5.1. On the basis of the statement of Sri B.B. Das ACCI/Gr. I/DBRT and the evidence in the case file, it revealed that Sri B.B. Das has given contradictory statement and the plea of darkness due to fallen down is not acceptable. Moreover Lt. Suri had lodge FIR to GRP/NJP and Sri Das applied for security protection at SN 15 and 36. Hence it is true that he had done wrong with Lt. Sandhya Suri.

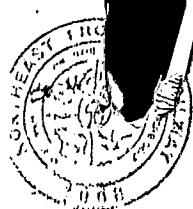
But the molesting with Lt. Suri cannot be proved due to the lack of evidence.

Sd

Sishir Das

EQ

09.03.04



80-

Amendments - 32

NEERALAYA

NOTICE OF IMPOSITION OF PENALTIES UNDER ITEM (I), (II) & (III) RULES 6 (I) AND ITEMS (I) & (II) OF RULES G (V) OF DAR/68.

Office of the
Sr. Divn. Elect. Engineer
N.E. Railway, Tinsukia.

No. LV/D-25/DAR/G-15/53

Dated :- 3.5.04

Name :- D.B.Das
Designation :- AC/Div/Gr-1
Through :- SE/AC/DBRT

With reference to your explanation to the charge sheet
No. LV/D-25/DAR/G-15/47 dated 30.09.99 you are informed that your explanation
is not considered satisfactory and the ADER has passed to the following order:-

**"His 2(Two) years increment
should be stopped with cumulative
effect from his next date of increment."**

Signature & Designation of
Disciplinary authority
(Sri B.P. Roychowdhury) 3/5/04

C/- DRN(P)/TSK & CC/Cadre(Elect) through DRN(P)/TSK.

When the notice is issued an authority other than the Disciplinary authority here quote the
authority passing order. Here quote the acceptance or rejection of explanation of penalty
imposed.

An appeal against this lied to the authority
Passing the order.

(Next immediate superior)

ACKNOWLEDGEMENT

THIS PORTION MUST BE DETACHED, SIGNED & RETURNED TO THE OFFICE OF
ISSUE

To,
Sr. DEE/TSK.

I hereby acknowledge receipt of your NIP No. LV/D-25/DAR/G-15/53 dated 3.5.04
conveying the orders passed on my explanation to the charge sheet.

No. LV/D-25/DAR/G-15/47 dt 30.09.99

Station:- DBRT

Dated:-

Signature or Fingerprint
of Employee & designation

*Attested
Bhagyan*

TO,

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

2. The Senior Divisional Electric Engineer,
N.F. Railway, Tinsukia, Dist. Tinsukia.

Dated December ____th, day of
May, 2004.

SUBJECT : Representaion with a prayer to review and rescind
the order passed by the sri B.P. Roy Chowdhary,
disciplinary authority imposing penalty of stoppage
of 2 years increment.

Ref : order vide memo no. L.V/D-25/DAR/G-15/53, Dated
3.5.04.

SIR,

With befitting honour and due respect, I beg the following
few lines for your honour's kind perusal, consideration
and necessary action thereof please.

1. That sir, I have been working as ACCI/G-I under your kind authority and since my date of joining in the service I have been performing my duties diligently without any blemish from any quarter.
2. That to my greatest unfortune, I was placed under suspension vide order no. LV/D-25/A DAR/G-15/46 W.e.f 22.9.99 and charged misconducts on lodging of a F.I.R. with G.R.P./NJP bearing false, baseless, concocted and vexation statements by one lady passenger namely Lt. Sandhya Suri of Indian Navy
3. That I appeared before the Enquiry committee on receipt of notice in due process and the allegations made against me vide the aforesaid F.I.R was not substantiated and proved at all for lack of evidence. Although my suspension order was revoked with effect from 29.01.2000, penalty of stoppage of 2 years increment with cumulative effect from my next date of increment imposed by the disciplinary Authority which is against the principles of natural justice and equity
4. That I most humbly beg to submit that all the allegations made against me are fabricated under wrong conception about the alleged incident which had put me under suspension for long period since 22.9.99 to 29.01.2000. During that period I was paid with subsistence allowances and still I am deprived off the remaining part of my salary amounting to Rs. 16,881.00 (Rupees sixteen thousand, eight hundred and eighty one) which has not been paid to me till date.
5. That the enquiry officer in his findings of the enquiry clearly holds that the charge of Rape molestation as alleged has not been proved at all and held me liable for misconducts only on mere presumption. It may be stated here imposing punishment or disciplinary action on mere presumption will amount to denial of justice in as much as severe penalty was imposed upon me on mere presumption only.
6. That I hereby for review /rescind the order passed vide LV/D-25/DAR/Gm -15/53, dated 3.5.04 on the following grounds amongst others :-

GROUND IN PAGE NO 2.

Attested
Ranjan

GROUNDS

1. That the charges framed against me on a F. I. R. which bears false, baseless, concocted, frivolous and vexatious statements.
2. That the Disciplinary Authority failed to produce the Informant LT. Sandhya Suri and other witness namely Capt. K.Y. DOLE of A.F. Guwahati for examination and cross examination which is a full denial of reasonable opportunity under natural Justice as shrined under article 311 of the constitution of India.
3. That the other witness namely sri S.K. Mukarjee, TTE/ NJP deposed before the enquiry committee as a prosecution witness, it is clearly revealed in his statement that he was not an Eye witness and learnt about such an incident from others. So, as per provision of Indian Evidence Act, his evidence could not be considered as the evidence of hearsay witness is not evidence at all under the statute.
4. That the holding of the Enquiry officer about my contradictory statement has also bears no value in a process of law. The evidence adduced in course of statutory departmental Enquiry is final and except that no statement, if made any by any person anywhere under no circumstances, could be considered. Hence my statement given on 12.1.04 is only final.
5. That S.F./S dated 30.9.99 was not properly filled as annexure II was not at all filled up, Annexure III, the list of Documents upon which the entire case relies also not at all duly filled and further Annexure IV, list of witness also not all filled up. It is gross violation of the rules of DAR enquiry.
6. That as per standing order passed by railway Board, no proceeding could be Initiated if F.I.R. lodged to the police or G.R.P till decision of court of law.
7. That the Enquiry is hitherto barred under law of limitation as the cause of action allegedly arose on 17.9.99 and there is a lapse of more than 205 days which is a gross violation of Rly. Board's order dated 8.9.94.
8. And various other ground or grounds.
9. That natural justice is denied to me by the enquiry committee by not considering the above facts, circumstances and law points and hence this appeal.
10. That this appeal is preferred bonafied and for ends of Justice.

In view of the above facts and circumstances, it is most humbly may be pleased enough to consider the above circumstances and Quash the entire proceeding and the order passed vide LV./ D-25/DAR /G-15/53 dated 3.5.04 and allow continuance of increment as I am Entitled for in usual procedure in the interest of justice, equity and good conscience.

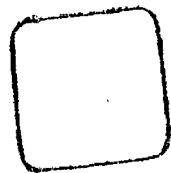
Attested
Bhup

23-

Annexure - X

INDIAN POSTS AND TELEGRAPHS DEPARTMENT

Address Sender's



35

K 07 Date Stamp
 Sri Brindra Ban Baba ~~sab~~
C/o Md. Nasir Khan
Advocate, of M.R. Road
(Kawripatty) Nalapooch
P.O. & Dist. Dibrugarh

DEPOSITION

ACKNOWLEDGEMENT

Received a Registered Letter/Postcard/Packet/Parcel No.
INSURED

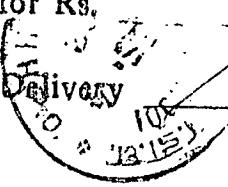
in General Manager

Addressed to (Name)

N.F. Railway,
P.O. - Maligaon,
Dist. - Maligaon

Insured for Rs.

Date of Delivery


8716124
 Signature of addressee

Attested
Bhupen