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

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 135/2006

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SECTION OFFICER (Judl.)

Bahin  
23/10/17

FROM No. 4.  
( See Rule 42 )

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDERSHEET

1. Original Application No. 135/06
2. Misc Petition No.
3. Contempt Petition No.
4. Review Application No.

Applicant(S) Arindam Kalita

Respondants W.O.P. Form

Advocate for the Applicant(S). B. B. Mahagohain, R.S.L. Kalita, U.S. Sarker

Advocate for the Respondant(S)... Railway Counsel, K.K. Brioway

Notes of the Registry                      date                      Order of the Tribunal

13.06.2006 Present : Hon'ble Sri K.V. Sachidanandan  
Vice-Chairman.

This application is in form  
is filed/C.F. for Rs. 50/-  
d. passed vide P.O. No. 26/22443  
Dated 2.6.06

                      
Dy. Registrar

Steps taken with  
envelops.

The applicant was appointed as Sub-Emergency peon in N.F. Railway. According to the applicant, he fell sick w.e.f. 24.2.2005 to 12.4.2005 and he was unauthorisedly absent from duty during the said period. The applicant submitted application on 12.4.2005 for leave. However, the authority did not allow him to resume his duties and vide order dated 04.05.2005 charges were framed against the applicant. The applicant submitted written statement. After preliminary inquiry, the applicant was removed from service. The applicant filed appeal on 27.10.2005. But the appeal was rejected on the ground that charges against the applicant were proved. Aggrieved by the said action of the respondents, he has filed this application.

Contd

08 125/06

Contd/-

13.06.2006

Heard Mr. B. Buragohain, learned counsel for the applicant and Dr J.L. Sarkar, learned standing counsel for the Railways.

Considering the major penalty imposed on the applicant, I am of the view that the O.A. has to be admitted. Admit. Issue notice to the respondents.

Six weeks time is given to the respondents to file reply statement.

Post on 27.07.2006.

Vice-Chairman

Notice & order sent to D/Section for issuing to resp. nos - 1, 2, 3, by regd. A/D post and another resp. no. 3 received by hand. D/No = 663 to 665 27.07.2006  
30/6/06. DT = 4/7/06.

26.7.06

Notice issued on 4.7.06. Service Report awaited.

22.8.06

Wfs. filed by the Respondents. mb

29.8.06

The counsel for the respondents prays for time to file written statement. Let it be done post the matter on 23.10.2006

Vice-Chairman

In

23.10.2006

Learned Counsel for the Applicant wanted one week time to file rejoinder. Let it be done.

Post on 01.11.2006.

Vice-Chairman

28.8.06

18.10.06

Wfs filed so far. Wfs has been filed.

/mb/

1.11.2006

It is submitted that pleadings are complete and the applicant has not in employment and therefore there is urgency in the matter. It is also submitted that Mr.K.K.Biswas, learned Railway counsel is hospitalised. Hence post after four weeks.

post on 1.12.2006.

Repointer filed by the applicant

21  
30.11.06.

Vice-Chairman

bb

1.12.06.

Post the matter before the Division

Bench.

Vice-Chairman

lm

28.2.2007

Heard Mr.B.Buragohain, learned counsel for the Applicant and Mr.K.K.Biswas, learned counsel for the Railways.

Hearing concluded, order is reserved.

ce  
Member (A)

Vice-Chairman

/bb/

1.5.07.

Judgment delivered in open Court.  
Kept in separate sheets. Application is allowed.  
~~dismissed~~ No costs.

Vice-Chairman

lm

16.5.07

certified copy  
has been collected  
by the A/Adm  
for the applicant on  
3.5.07.

file.

Recd: copy for Rlys.  
R.K. Biswas  
07/05/07  
Rly Counsel  
CAT - Guwahati

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A. No.135 of 2006

DATE OF DECISION: 01.05.2007

Sri Hriday Kalita

.....Applicant/s

Mr.B.Buragohain

..... Advocate for the  
Applicant/s

- Versus -

U.O.I & Others

.....Respondent/s

Mr.K.K.Biswas, Railway Counsel.

.....Advocate for the  
Respondents

CORAM

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

THE HON'BLE MRS. CHITRA CHOPRA, MEMBER (A)

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 & other Benches ? 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.135 of 2006.

Date of Order: This, the 1st day of May, 2007.

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

HON'BLE MRS.CHITRA CHOPRA, ADMINISTRATIVE MEMBER

Sri Hriday Kalita  
Son of Late Nani Kalita  
Resident of Village: Ulaguri  
P.S: Kamarkuchi  
P.O: Bijulighat, Dist: Nalbari.

..... Applicant.

By Advocates Mr.B.Buragohain & Mrs. Rita B. Bora.

- Versus -

1. Union of India  
Represented by the Secretary  
Govt. of India, Ministry of Railways  
New Delhi.
2. General Manger (P)  
North East Frontier Railways  
Maligaon, Guwahati-11
3. Assistant Personnel Officer  
North Eastern Frontier Railways  
Station Road, Guwahati-1.

..... Respondents.

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


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ORDER

SACHIDANANDAN, K.V. (V.C.) :


The Applicant was appointed as Emergency Substitute Peon in N.F.Railway on 06.11.2001 and was attached to one Sri R.N.Kalita, Ex.CGM/G and while Shri Kalita was transferred to the post of OSD, Guwahati on 15.2.2005 he was also directed to continue to work with Shri Kalita vide order dated 17.2.2005. Vide order dated 22.2.2005 the Applicant was directed to report OSD, Guwahati for further orders. Accordingly, he reported for duty on 23.02.2005. But on 24.2.2005 he fell ill and was advised to take bed rest. On 12.4.2005 the Applicant received physical fitness certificate from the Doctor. During the time of illness the Applicant failed to give application for leave and the APO, Guwahati issued letter dated 5.4.2005 to show cause for the unauthorized absence for duty from 25.2.2005. The Applicant submitted application along with medical fitness certificate dated 12.04.2005 but the authority did not allow him to resume duty and charge sheet dated 04.05.2005 was issued to him for which he has given reply and the enquiry proceeding was held on 23.06.2005 and the enquiry report dated 30.8.2005 went against him. The Applicant filed representation before the authority on 9.9.2005 which was rejected and order of removal was issued to him. Thereafter, Applicant filed appeal against the removal order



which was also rejected. Therefore, he has filed this Original Application seeking the following main reliefs:-

“This Hon’ble Tribunal may be pleased to set aside the impugned removal order dated 15/2/06 issued by the Assistant Personnel Officer, N.F.Railway, Guwahati and may reinstate the applicant in service as Sub-Emergency Peon under N.F.railways, Maligaon and may count the absence period of service on leave period on medical ground and to pay all the arrears due to the applicant from the date of dismissal.”


2. The Respondents have filed detailed reply statement contending that the Applicant was appointed as Substitute Emergency Peon in the pay scale of Rs.2550-3200/- attached to one Shri R.N.Kalita, Ex-Secretary to the General Manager (P), N.F.Railway, Maligaon. Consequent upon the promotion of Shri R.N.Kalita to Chief Commercial Manager (G), N.F.Railway, Guwahati, the Applicant was also transferred to Guwahati in his existing pay and reported on 24.2.2005. Thereafter he neither reported for duty nor filed any application for leave and was absent from duty till 05.04.2005 without any authority and intimation to whom he was attached. Thereafter, show cause notice was issued to him under DAR for unauthorized absence. He submitted an application with a non-Railway medical certificate Tuberculosis Centre, Kamrup, Kalapahar stating therein that he was suffering from “acute Bronchitis with Hapesatisis” w.e.f. 25.2.2005 and he was certified to





be medically fit to resume duty w.e.f. 13.04.2005. In the application he asked for grant of leave w.e.f. 25.2.2005 for 47 days, but he never approached to resume duty. Since his intention was not to resume duty, he was issued memorandum of major penalty charges for unauthorized absence from duty by Personnel Officer, N.F.Railway. In his defence he again attached a medical certificate and sought for further extension. Thereafter, DAR proceeding was initiated and the Applicant was found guilty and since he was in prolong absent, major penalty was imposed and removal from service was ordered. The Applicant was not loyal and his action was unlawful. His action is unbecoming of a Govt. servant that warrants his removal from service and the O.A. has no merits and the same to be dismissed.

3. The Applicant has filed a rejoinder to the reply statement filed by the Respondents reiterating his contentions in the O.A. and further contended that he was admitted in hospital for his treatment and after recovery of his illness he went to the office for resuming his duty but the concerned authority did not allow him to join duty. Since the Applicant hails from a remote area of village:-Ulaguri, district: Nalbari and was residing alone. While he was ill, one of his neighbour took him for treatment in the hospital, and therefore, he could not inform the authority about his illness and after recovery when the came to office to resume duty, he was not allowed to join.



4. We have heard Mr.B.Buragohain, learned counsel for the Applicant and Mr.K.K.Biswas, learned counsel for the Railways. Learned counsel for the Applicant submitted that the Applicant is an illiterate person and is living in a remote and uncivilized village where communication is very poorer and therefore, there was no willful intention of himself absenting from duty and punishment, so imposed, is disproportionate to the gravity of offence. Mr.K.K.Biswas, on the other hand, submitted that on enquiry it is borne out that the absence of the Applicant was willful and no Govt. servant with such an attitude is desirable to continue in his job and the punishment cannot be said to be disproportionate since the Applicant deserves the same.

5. Learned counsel for the parties have drawn our attention to various pleadings, materials and evidence placed on record and we have given due consideration to the above.

6. It is borne out from the records that the Applicant was transferred with the officer with whom he was attached as Emergency Substitute Peon and accordingly he reported for duty on 24.02.2005. It is the case of the Applicant that on 25.2.2005 for 47 days he fell sick and he could not attend the office. The medical certificate the Applicant has produced is reproduced as under:-

“ CERTIFICATE



THIS is to certify that Sri Hriday Kalita an employee of Office of the N.F.Rly, Ghy is suffering from Pulmonary tuberculosis/ acute Bronchitis and is under treatment at District Tuberculosis Centre, Kamrup, Guwahati since 25/2/05 to exclude Kochi.

He is advised rest and recommended leave on medical ground for a period of forty seven (47) days with effect from 25/2/05.


He has reasonable chance of recovery and to be fit for duty afterwards. He is physically fit to resume duty from 13/4/05.

Sd/- illegible 12/4/05  
Sr.Divisional Medical & Health Officer  
i/c District Tuberculosis Centre Kamrup  
Guwahati."

The said certificate has been issued by the District Tuberculosis Centre, Kamrup, Kahilipara, which is a Government Dispensary. In the show cause notice he has given explanation and filed this certificate. But the case of the Applicant is that he was not permitted to resume duties and thereafter as admitted by both parties a charge sheet was issued. The Article of Charge against the Applicant is reproduced below:-

"That the said Sri Hriday Kalita, while functioning as Subs. Emergency Peon attached to Chief Area Manager, Guwahati during the period from 23.2.05 un-authorisedly without any intimation to the Office in-charge or controlling Officer.


The above act on the part of Sri Hriday Kalita, subs. Emergency Peon tantamounts to serious misconduct, lack of devotion and sincerity



to his duty violation of Rule 3(1) (i) (ii) and (iii) of the Railway Service (Conduct) Rules-1966."


It is the case of the Respondents that the Medical Certificate that has been produced by the Applicant is not from the Railway Doctor but from the ordinary Government Hospital (Annexure-E). But on going through the Annexure-E certificate it is found that there is nothing suspicious to doubt the contents of the said document and the certification therein. Therefore, it cannot be said that the Applicant was willfully absent from his duties. There is another Medical Certificate produced on 17.05.2005 (Annexure-I) from a Homeo Doctor who certified, "*Sri Hriday Kalita an employee of the office of the N.F.Railway Ghy is suffering from acute attack of Rhumea with severe knee joint pain since 14.04.2005 and he is now under my treatment.*"

7. The Respondents was good enough to produce the file relating to enquiry proceeding and records. On going through the said file and materials on record we find that Respondents had never asked the Applicant to report to a Railway Hospital to ascertain whether the Applicant is genuinely sick or not. Therefore, we are of the considered view that willfulness in absenting himself from duty cannot be attributed in this case, though there may be laches on the part of the Applicant. Further, we find that the Applicant's defence counsel has withdrawn his consent to act as defence counsel and



practically the enquiry was conducted without proper defence represented. It is also borne out that the Applicant is illiterate and does not understand/follow the proceeding and the language in which enquiry was conducted. Therefore, it cannot be said that enquiry was ~~fall~~ proof and it is in the absolute understanding of the Applicant. However, the Applicant cannot take advantage of his own commissions and omissions in not reporting the matter to the Respondents in time and not reporting to the Railway Hospital. The Respondents have argued that as per the Indian Railway Establishment Manual, Vol-I if an employee keeps himself absent unauthorisedly for more than 10 days that will entail for dismissal from service and therefore, the rule permits for imposition of major penalty for such misconduct.

8. Learned counsel for the Respondents has taken our attention to the decisions rendered in the cases of North-Eastern Karnataka Rt Corporation vs. Ashappa, reported in (2006) 5 SCC 137 and State of Rajasthan & Another vs. Mohd, Ayub Naz, reported in (2006) 1 SCC 589 wherein the Hon'ble Supreme Court upheld the punishment of dismissal from service for willful absence for three years. The facts of the cited cases are different from the instant case since the delinquents therein were willfully absented from duty for three consecutive years without intimation. In the instant case the absented period was only for 47 days that too on production of




Medical Certificates and therefore, the present case cannot be equated with the cited cases.

The learned counsel for the Applicant has relied on a decision rendered in the case of Syed Zaheer Hussain vs. Union of India & Others, reporting in (1999) 9 SCC 86 wherein the Hon'ble Supreme Court observed that the punishment which involves a substantial monetary loss to the appellant would meet ends of justice and would be sufficient corrective measure for the appellant to remain careful in future.


It is also profitable to quote a decision rendered in the case of Dev Singh vs. Punjab Tourism Development Corporation and Another (2003) 8 SCC 9 the Hon'ble Supreme Court held that if the punishment shocks the judicial conscience, Court can interfere with the punishment and mould the reliefs.

9. In view of the above rulings and considering the fact that the Applicant's absence for 47 days and other facts and circumstances of the case in its totality we are of the view that punishment of removal from service imposed upon the Applicant is too harsh and disproportionate with the gravity of the offence and the same touches the judicial conscience of this Court. Therefore, the impugned order of removal from service is not sustainable in law and the same is liable to be set aside and quashed. Accordingly, we



set aside the impugned order dated 15.2.2006 and direct the Respondents to reinstate the Applicant in service forthwith. The Applicant will not be entitled for any back wages or any other attending benefits but the absented period shall be reckoned for the purpose of pensionary benefits on notional basis, if the Applicant is eligible for pension on retirement. The exercise of complying the orders shall be carried out by the Respondents within a period of one month from the date of receipt of this order.

11. The Original Application is allowed to the extent indicated above. There shall, however, be no order as to costs.

  
(CHITRA CHOPRA)  
ADMINISTRATIVE MEMBER

  
(K.V.SACHIDANANDAN)  
VICE CHAIRMAN

/BB/

District- Nalbari

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

O. A. No. 135 / 2006

Sri Hriday Kalita

Applicant

-Vs-

Union of India & ors

Respondents

SYNOPSIS

The applicant was appointed as Sub-Emergency Peon in N. F. Railways, Maligaon on 06/11/2001 by the Assistant Personnel Officer, Administration. He was attached to Sri R. N. Kalita, Ex CGM/G and while Sri R. N. Kalita was transferred to the post of OSD/GHY on 15/2/05, the applicant was also directed to continue to work with Sri R. N. Kalita vide order dated 17/2/05. Vide order dated 22/2/05 issued by the Sr. Assistant Deputy General manager the applicant was directed to report OSD/GHY for further order. Accordingly he reported OSD/GHY and resume duty on 23/2/05. But on 24/2/05 he felt ill and he was advised to take bed rest. The applicant received physically fit certificate from the doctor on 12/4/05. During the time of illness the applicant failed to give application for leave hence the APO/GHY issued letter on 5/4/05 to show cause for the unauthorized absent from duty w.e.f. 25/2/05. The applicant submitted an application for leave along with a medical certificate dated 12/4/05. But the authority did not allow him to resume his duty and charge sheet dated 4/5/05 was issued against him. He gave reply to that charge sheet and enquiry



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proceeding was held on 23/06/05 and the enquiry report dated 30/8/05 issued by the Enquiry Officer gone against him and he filed appeal before the authority against the said enquiry report on 9/9/05. But the APO/GHY issued removal order against him on 13/9/05 on the basis of said enquiry report. The applicant filed appeal against the removal order dated 13/9/05 but the APO/GHY uphold the removal order dated 13/9/05 on the basis of the enquiry report dated 30/8/05. Therefore, the applicant found no other alternative and come to this Honble Tribunal for a direction to the respondent authority to reinstate the applicant in service and to pay the arrear as well as current salary due to him.

#### LIST OF DATES

Date	Particulars
06/11/01	Date of appointment and date of joining.
17/2/05	Applicant was directed to continue to work with Sri R. N. Kalita, OSD/GHY.
22/2/05	Order issued by the Assistant General Manager.
12/4/05	Medical certificate was issued by the Sr. Medical and Health Officer of DTB Centre.
5/4/05	Show cause notice issued by the APO.GHY for the unauthorised absence of the applicant.
8/5/05	Memorandum of Charge-sheet.
17/5/05	Written against the charge sheet dated 4/5/05 submitted by the applicant.
23/06/05	Enquiry proceeding was held and the statement of the applicant was recorded.

30/6/05

Enquiry Officer appointed Defense Counsel in the DAR case.

30/8/05

Finding of the Enquiry Officer was submitted.

9/9/05

Appeal filed by the applicant against the findings of the Enquiry Officer before the APO.

13/9/05

Removal order issued by the APO/GHY.

14/9/05

Removal order intimated/ forwarded to the applicant.

27/10/05

Appeal filed by the applicant against the removal order dated 14/9/05.

15/2/06

Impugned order issued by the APO/GHY, the penalty of removal from service uphold,

Filed by-

Rita B. Bora  
Advocate

DISTRICT :: NALBARI

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A. NO. 135 /2006

Sri Hriday Kalita ..... Applicant  
- Vs. -  
Union of India & Ors. .... Respondents,

CATEGORY OF CASE ::

CATEGORY CODE ::

I N D E X

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Filed By -

*Rita B. Bora*

Advocate.

District -Nalbari

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:  
GUWAHATI BENCH

(An application under section 19 of the Administrative Tribunal Act,  
1985)

O. A. No. 135 /2006

Sri Hriday Kalita - Applicant

-Vs-

Union of India and ors - Respondents

Details of the application:

1) Particulars of the applicant:

Sri Hriday Kalita

S/O Lt. Nani Kalita

Resident of village Ulaguri

P.S. Kamarkuchi

P.O. Bijulighat, Dist. Nalbari

2) Particulars of the respondents:

1. Union of India

Represented by the Secretary,

Govt. of India, Ministry of Railways

New Delhi.

2. General Manager (P)

East

North Frontier Railways

Maligaon, Guwahati-11

3. Assistant Personal Officer

Filed by -

Sri Hriday Kalita

- Applicant

Through

Rita B. Bora

Advocate

Sri: Hriday Kalita

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East  
North Frontier Railways RB  
Station Road, Guwahati-1

**3) Particulars against which the application is made.**

- a) Charge-sheet vide memo No. E/74/GHY/HK dated 04/05/05 issued by the Assistant Personnel Officer, N. F. Railways Guwahati, thereby Major Penalty has been imposed to the applicant on 30/8/05 w.e.f. 25/2/05 by the Enquiry Officer, the Chief Personnel Inspector N. F. Railways, Guwahati.
- b) Proceeding of enquiry report dated 30/8/05 submitted by Chief personnel Inspector N. F. Railways, Guwahati in respect of major Penalty against the charge sheeted employee. RB
- c) Order No. E/74/GHY/HK dated 15/2/2006 issued by Sri G. K. Kakati APO/GHY upholding the earlier termination order (Major penalty) dated 30/8/05..

**4) Jurisdiction of the Tribunal**

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

**5) Limitation**

The applicant declares that the application has been within the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985. B

Sri: Hriday Kakati

6) Facts of the Case:

- a) That the applicant is a citizen of India and a permanent resident of District Nalbari, Assam and as such he is entitled to all the rights and privileges guaranteed by the Constitution of India and the laws framed thereunder.
- b) That the applicant states that vide order No. E/227/1/8-B/Q dated 06-11-2001 issued by the Assistant Personal Officer Administration for General Manager (P) the petitioner was appointed as Sub-Emergency Peon in the scale of Rs.2550-3200 against an existing vacancy in N. F. Railway Maligaon and on the same day the petitioner submitted his joining report to the Secretary to General Manager N. F. Railway, Maligaon.

A copy of the appointment order dated 06-11-01 is annexed as ANNEXURE-A and copy of the joining report dated 06-11-01 is annexed as ANNEXURE- B.

- c) That the applicant states that from the date of appointment he has been serving as Sub-Emergency Peon and attached to Sri R.N. Kalita, Ex-CGM/G. But while Sri R. N. Kalita Ex-CGM/G was transferred to the post of OSD/GHY vide GM(P)'S Memo No. E/41/176(T)/ OP<sup>tg</sup> dated 15/2/5 and accordingly the vide office order No. E 227/1/8-B(Q) dated 17-02-2005 issued by the SPO(NG) for GM(P) MLG the petitioner was also directed to continue to work with Sri R. N. Kalita, OSD/GHY.

Sri: Hridaya Kalita

R3

A copy of the office order dated 17-02-2005 is annexed as ANNEXURE-C

- d) That the applicant states that vide ~~another~~ Order No. Z/265/6/pt-XII dated 22-02-2005 issued by the Sr. Asstt. Deputy General Manager the applicant was directed to report OSD/GHY for further order. Accordingly the applicant reported OSD/GHY and resumed duty on 23-02-05.

A copy of the order dated 22-02-2005 is annexed as ANNEXURE- D.

- e) That the applicant states that on the night of 24-02-05 he felt severe chest pain with an acute broncocough accompanied with high fever. As per the advice of a local physician the applicant was admitted to the DTB Center, Kalapahar, Guwahati. There the applicant took treatment for pulmonary Tuberculosis for a couple of days. The Senior Medical and Health Officer of the DTB Center issued a medical certificate on 12-04-05 declaring him physically fit and to resume duties from 13-04-05.

A copy of the medical certificate dated 12-04-05 is annexed as ANNEXURE-E.

- f) That the applicant states that while under treatment he failed to give any application seeking leave for his ailment and because of that vide letter No. E/74/GHY/HK dated 05-04-05 Sri G.K. Kakati APO/GHY issued a letter to show cause for the unauthorized absence from duty w.e.f. 25-02-05.

Sri: Kakati Kakati

R2

A copy of the notice 05-04-05 is annexed as ANNEXURE-F.

- g) That the applicant states on receiving the said show cause notice dated 05-04-05 and after receiving the aforementioned physically fit certificate from the Sr. Medical and Health Officer the applicant submitted an application for leave for his absence with medical certificate dated 12/4/05.

A copy of the application is annexed as ANNEXURE-G.

- h) That the applicant states that because of his absence he was not allowed to resume his duties and vide Memorandum of charge sheet No. E/74/GHY/HK dated 04-05-05 charges were framed against the applicant for his absence and directed the applicant to submit written statement on his defense within 10 days from the date of receipt of the memorandum of charges.

A copy of the memorandum of charges dated 4/5/05 is annexed as ANNEXURE-H.

- i) That the applicant states that against the memorandum of charges in the memorandum framed against him, the applicant on 17-05-06 submitted written statement in his defence stating the facts and circumstances leading to his absence from duty. In the written statement he also prays the authority not to remove him from service as because the situation for his absence is beyond

Sd/- Haidy Kohila

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control. Further he submitted the medical certificates to show the cause of absence in duty.

A copy of the written statement and medical certificate dated 17-05-05 is annexed as ANNEXURE-I.

- j) That the applicant states that against the memorandum of charges an enquiry proceeding was held on 23-06-05 and the applicant attended the enquiry on that day. In the said enquiry four members of questions were put to him and the reply of the same given by the petitioner were recorded by the enquiry officer.

A copy of the recorded statement of the petitioner are annexed as ANNEXURE-J.

- k) That the applicant states that on 30/6/05 vide memo. No. WB/GHY/MISC the Chief Personal Inspector, N. F Railways Guwahati-1, appointed Mr. A. M. Patgiri, after receiving consent letter dated 27/6/05 from him, to act as Defense Counsel in the DAR CASE of the applicant against charge-sheet No. E/74/GHY/HK dated 4/5/05.

A copy of the appointment letter dated 30/6/05 is annexed as ANNEXURE-K.

- l) That the applicant states that on 19/8/05 Mr. A. M. Patgari, Defense Counsel, prayed to withdraw his consent to act as Defense Counsel from the case due to his ill health and the

Sae: Hriday Kalita

*gov: Haidah Kakati*

applicant appeared before the enquiry without defense Counsel and he has not given sufficient time to engage another defense counsel. But in the enquiry report it had been stated that the applicant did not want to nominate any counsel to act as defense counsel.

- m) That the applicant states that finally after enquiry, the enquiry officer come to the findings on 30-08-05 that the applicant accepted the charges framed against him as such the charges framed against him is proved.

A copy of findings of the enquiry officer on 30-08-05 is annexed as ANNEXURE- L.

- n) That the applicant states that against the finding of the enquiry officer the petitioner filed an appeal memo on 9/9/05 stating inter alia that the report is arbitrary, and the applicant was not allowed to defend him in a proper manner.

A copy of the appeal memo filed on 9/9/05 is annexed as ANNEXURE- M.

- o) That the applicant states that inspite of filing the appeal memo on 9/9/05 on the basis of the enquiry report vide order No. E/74/GHY/HK dated 13-09-05 issued by Sri G. K. Kakati, APO/GHY N.F. Railway Guwahati removed the applicant from service with immediate effect and vide letter No. E/74/GHY/HK dated 14-09-2005 the same was intimated/forwarded to the applicant and also instruction was given to the applicant that

against the aforementioned notice imposition of penalty appeal lies before the DPO/IC/LMG within 45 day from the date of receipt of the letter dated 14-09-05.

A copy of the Notice for imposition of Penalty dated 13-09-05 and letter dated 14-09-05 are annexed as ANNEXURE- N and O respectively.

See: Haiday Kakati

- p) That the applicant states that against the Notice for imposition of penalty No. E/74/Ghy dated 13/09/05 the applicant filed an appeal memo on 27-10-05 stating that there is no negligence on his part but because of unavoidable circumstances he remained absent from his duty and prayed for his reinstatement in service.

A copy of the appeal memo dated 27/10/05 is annexed as ANNEXURE-P.

R3

- q) That the applicant states that vide impugned order No E/74/GHY/HK dated 15-02-2006 issued by Sri G.K. Kakati APO/GHY stated that his appeal is not entertained and because the charges against him are proved and the penalty of removal from service is uphold.

A copy of the Order dated 15/02/06 is annexed as ANNEXURE- Q.

7) Relief Sought For:

- a) To set aside the enquiry report dated 30/8/05 issued by the Enquiry Officer, the Chief Personnel inspector, N. F. Railways.

- b) To set aside the dismissal order dated 15/2/06 issued by the Assistant Personnel Officer, N. F. Railways.
- c) To take back the applicant in service by considering the leave application along with medical certificate dated 12/4/05.
- d) To pay the arrear salary due to the applicant w.e.f. 25/2/05 to till date forthwith by regularizing his leave period on medical ground.

8) The above relief are sought for on the following amongst other -

#### GROUNDS

- a. For that the learned enquiry officer without considering the representation and medical certificate given by the petitioner in a most illegal and perverse manner has passed the Major Penalty Order dated 15/02/06 which has caused miscarriage of justice. Therefore the order dated 15/02/06 is liable to be set aside.
- b. For that the Assistant Personnel Officer, N. F. Railways, Guwahati passed the dismissal order dated 15/2/05 on the basis of enquiry report dated 30/8/005 without considering the appeal dated 27/10/05 is illegal.
- c. For that while the Assistant Personnel Officer, N. F. Railways taking decision for dismissal from service of the applicant has not applied his judicious mind and taken such decision casually.

Sd/-: Haidy Kalita

- d. For that while dismissing the applicant from service the authority have taken into irrelevant records and which was not relevant for taking decision.
- e. For that the enquiry was conducted by the enquiry Officer without giving sufficient opportunity to the applicant to defend his case and as such the findings of the enquiry Officer is totally perverse.
- f. For that while dismissing the service of the applicant the authority concerned has totally avoided the departmental procedure and rules.
- g. For that the authority in one hand has initiated departmental proceeding against the applicant and framing irrelevant charges and finding of enquiry is totally bias.
- h. For that while conducting the enquiry the enquiry Officer submitted his enquiry report in pre-decision manner without considering the relevant records.
- i. For that while conducting the enquiry the Enquiry Officer not applied his judicious mind and coming into a conclusion that the charges framed against the applicant is proved.
- j. For that the Enquiry Officer <sup>ad</sup>act illegally and arbitrarily by taking into consideration irrelevant materials which was off the record.

case history ka bita

gov: Hrisatya Kalita

k. For that the Enquiry Officer while conducting the enquiry nothing has been discussed in respect of unauthorized absence of the delinquent employee from the duty and have taken into a consideration that the medical certificate produced by the delinquent employee is not proper.

l. For that the Disciplinary Authority has been issued the impugned order dated 15/2/06 on the basis of enquiry report not on the basis of applying his judicious mind.

m. For that Disciplinary Authority while disposing the appeal have not considered the legal aspects of the matter and the same has been issued only on the basis of enquiry report.

n. For that the Disciplinary Authority has taken decision of dismissal the applicant from service only to accommodate some other person in his place.

o. For that in any view of the matter the impugned order dated 15/2/06 is liable to be set aside and /or quashed.

9) Interim relief sought for:

No interim prayer is made.

10) Details of the remedies-

This Hon'ble Tribunal may be pleased to set aside the impugned removal order dated 15/2/06 issued by the Assistant Personnel Officer, N. F. Railways, Guwahati and may reinstate the applicant in service as Sub-Emergency Peon under N. F. railways, Maligaon and may count the absence period of service

on leave period on medical ground and to pay all the arrears due to the applicant from the date of dismissal.

11) Matters filed in any other Court:

No application or petition has been filed before any other Court in any other Court.

12) Particulars of the postal order:

I.P.O. No. 26G - 324443 dt 2/6/06

13) List of documents:

As per index

VERIFICATION

I, Sri Hriday Kalita, S/O Lt. Nani Kalita, resident of village Ulaguri, P.S. Kamarkuchi, P.O. Bijulighat, Dist. Nalbari do hereby verify that the statements made in paragraphs 3 to 6 are true to my knowledge and belief and those made in paragraphs — are true to my information based on records and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this verification on this the 2<sup>nd</sup> day of June 2006.

*Sri: Hriday Kalita*

SIGNATURE

- 13 -

ANNEXURE :- A 32

NORTHEAST FRONTIER RAILWAY

Office of the,  
GENERAL MANAGER (P),  
Maligaon, Guwahati-11.

No.E/227/1/8-B(Q)

Dated: 16/11-2001.

To,  
Shri Hriday Kalita,  
Sub. Emergency Peon  
attached to Socy. to G.M.

Sub. Engagement of Sub. Emergency Peon  
in scale Rs.2550-3200/- attached to Socy. to  
G.M. / N.F.Railway, Maligaon.

On being found medically fit, you are hereby engaged  
as Sub. Emergency Peon on pay Rs.2550.00 p.m. in scale Rs.2550-  
3200/- w.e.f. 06-11-01 against an existing vacancy  
under G.M. / N.F.Railway/ Maligaon on the following terms and  
conditions :-

1. Your engagement will not confer upon you any right to claim for further appointment on this Railway and you are liable to be discharged without any notice when your services will not be required by the Administration or on the expiry of the currency of the post against which you are engaged or in the event of posting of approved hand.
2. You will be transferred with the officer for whom you are engaged as Substitute Emergency Peon or you will be discharged in the event of the officer for whom you are engaged expresses his unwillingness to take you on transfer along with him.
3. The engagement of the Sub. Emergency Peon at the first instance will be for a period of three months only and will be extended further on receipt of a certificate from the Controlling Officer that the services of the Sub. Emergency Peon are satisfactory and that he can be continued further.
4. This has the approval of the General Manager.

(S.DEVI)  
AFO/ADMN.

Copy forwarded for information & necessary action to:-

- 1) FA & CAO/MLG.
- 2) Socy. to GM
- 3) OS/EG(G)/Bill.
- 4) OS/G.Br. with staff concerned copy.
- 5) P/Case & S/Boo2.

Certified to be true copy

*Rita B. Bora*

ADVOCATE

*for*  
6-11-01  
for GENERAL MANAGER (P)



- 14 -

To  
Secretary to GM  
N.F. Railway,  
Maligaon

Sir,

Sub : Joining report.

Ref : GM(P)/MLG's L/No. E/227/1/8-B(Q) dt. 6.11.2001.  
-----

In terms of above letter I intend to work under you.

I shall be grateful if you would please allow me to work.

Yours faithfully,

*Sri: Hriday Kalita*

(Hriday Kalita)  
06.11.2001

Copy to :

1. Chief OS/GM Office.
2. OS/EQ(G)/Bill.

*Certified to be true copy*

*Rita B. Bala*

ADVOCATE

N. F. Railway.

Office Order.

Consequent on transfer of Shri R.N.Kalita, ex-CCM/G to the Post of OSD/GHY, his Sub-E/Peon Shri Hriday Kalita who was initially attached to him on 6.11.01 while working as Secy. to GM, but since not yet completed 5(five) years service as E/Peon is hereby posted as Sub-E/Peon in scale B.2550-3200/- to continue to work with Shri R.N.Kalita, OSD/GHY against the work-charged Post of Sub-E/Peon in scale B.2550-3200/- varied from CCM/G to OSD/GHY as issued vide GM(P)'s memo No.E/41/176(T)/Optg. dt. 15.2.05.

This issues with the approval of the Competent Authority.

( N. N. Thakur )  
SPO(NG)  
for General Manager(P)MLG.

No.E/227/1/8-B(Q).

Dated: 17-2-2005.

Copy forwarded for information and necessary action to:

1. FA&CAO/MLG.
2. CM/CON/MLG.
3. CCM/MLG.
4. DRM(P)/LMG.
5. OSD/GHY.
6. SPO(T)- This is in reference to his memo. cited above.
7. DGM/G.
8. Sr.ADCM.
9. APO/GHY.
10. Staff concerned.
11. P/Case.
- ✓ 12. LO/MLG.
13. APO/Bill/MLG.

*Mak*  
17.02.05  
for General Manager(P)MLG.

*CS/low*  
Pl. keep in relevant file

*mk*  
21/2/05  
AL

Certified to be true copy

*Rita B. Bora*

ADVOCATE

N.F.RAILWAY

OFFICE OF THE  
GENERALMANAGER  
MALIGAON:GUWAHATI:11

No.Z/265/6/Pt-XII

DATED: 22 - 2 - 2005

To  
Sri Hriday Kalita,  
Sub/E/Peon.


Sub:- Sparing order.

Ref:- GM(P)MLG's office order No E/227/1/8-B(Q) dt. 17.2.2005.

In terms of GM/P's above order you are hereby spared from this office on 22.2.05 (FM) and directed to report OSD/GHY for further order.

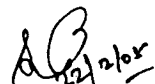
Shri Hriday Kalita availed Pass, PTO, CL and R/H following during the years 2005.

Casual Leave	= 5 days leave due.
Restricted Holiday	= Not availed.
Pass & PTO	= Not availed.

  
Sr. Asstt.Dy. General Manager

Copy to:-

Chief OS/GM's office,  
OS/G. Law Office,  
OS/EQ/G, SPO/Bill,  
✓ OSD/GHY

  
Sr. Asstt.Dy. General Manager

Certified to be true copy

Rita B. Bora  
ADVOCATE

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(Typed copy)

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ANNEXURE - E

OFFICE OF THE DISTRICT TUBERCULOSIS CENTRE : KAMRUP :

GUWAHATI

Mo. DTC/K

Dated Guwahati 12<sup>th</sup> April 2005

**CERTIFICATE**

THIS is to certify that Sri Hriday Kalita an employee of Office of the N. F. Rly, Ghy is suffering from Pulmonary tuberculosis/ acute Bronclotes and is under treatment at District Tuberculosis Centre, Kamrup, Guwahati since 25/2/05 to exclude Kochi.

He is advised rest and recommended leave on medical ground for a period of forty seven (47) days with effect from 25/2/05.

He has reasonable chance of recovery and to be fit for duty afterwards

He is physically fit to resume duty from 13/4/05.

Sd/- illegible 12/4/05

Sr. Divisional Medical & Health Officer

i/c District Tuberculosis Centre Kamrup

Guwahati.

*Certified to be true copy*

*Rita B. Bora*  
ADVOCATE

Office of the District Tuberculosis Centre : : : Kamrup : : : Guwahati

No. DTC/K/

Dated Guwahati the

21st April 1980

CERTIFICATE

This is to Certify that Friday Kalita

his index No.

an employee of Office of the

N.F. Kly, Gt. Y.  
Route 1, Bongaigaon

is suffering from Pulmonary Tuberculosis

and is under treatment at District Tuberculosis Centre, Kamrup, Guwahati since 25/2/80 to exclude Koch's

He/She is advised rest and recommended leave on medical ground for a period of forty seven (47) days with effect from 25/2/80

He/She has reasonable chance of recovery and to be fit for duty afterwards.

If he is physically fit to resume duty (Dr. S. Barua)  
12/4/80  
Sub-Divisional Medical & Health Officer-1  
I/c. District Tuberculosis Centre, Kamrup,  
Guwahati

(AGP) 35.2001 (Health) 2.000 2-3-2001

12/4/80

Certified to be true copy  
Rita B. Barua  
ADVOCATE

19  
N.F. Railway

Office of the  
Asstt: Personnel Officer  
Station Road, Guwahati-I/

No-E/74/GHY/HK

Dated: 5/4/2005

To  
Sri Hriday Kalita,  
Subs. Emergency Peon, N.F. Railway,  
C/O SRI JATIN DEKA (CARPENTER)  
UTTAR JYOTI NAGAR  
P.O. BAMUNIMAI DAN  
GUWAHATI-781021.

Sub:- Un-authorised absence.

As spared by Sr. ADGM/MLG vide his letter No-2/265/6/Pt.XII dated 22.2.05, you resumed duty on 23.2.05 at 17-00 hrs. But after attending on 24.2.05 you have remained absent from duty unauthorisedly w.e.f. 25.2.05 till now.

You are hereby directed to show cause to the undersigned with 3 days why no action will be taken against you under DAR for the un-authorised absence from duty.

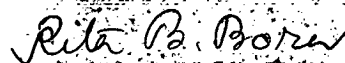
  
( G.K.KAKATI )  
APC/GHY

Copy forwarded for information to:-

- 1) GM(P)/MLG,
- 2) Chief Area Manager/GHY.

( G.K.KAKATI )  
APC/GHY

Certified to be a true copy

  
ADVOCATE

17-20-

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ANNEXURE -G

To,  
The Assistant Personnel Officer,  
Station Road, Guwahati.

Sub;- Submission of application for leave w.e.f. 25<sup>th</sup> Feb' 05 to 12<sup>th</sup>  
April 05, 47 (forty seven) days only.

Ref :- Vide Your L. No. E/74/GHY/HK dated 3/4/05

Sir,

With reference to the subject cited above, I have the honour to  
submit herewith my application for leave for 47 (forty seven) days  
w.e.f 25<sup>th</sup> Feb' 05 for favour of your kind granting my leave.

I failed to attend my duties due to my physical cause (the  
attending physician's certificate is enclosed herewith), for which I was  
under treatment.

I hereby again request you to be kind enough to grant my leave  
for which act of your kindness I shall remain ever grateful to you.

Your's Faithfully

Hriday Kalita

12/4/05

Enclosure :- one photostat copy of the physician's certificate.

Certified to be true copy

Rita B. Borra  
ADVOCATE

STANDARD FORM FOR CHARGE SHEET  
(Rules of the Railway Servants (Discipline and appeal Rules - 1969)

No. E/74/GHY/HK ..... Date 04.05/2005 .....  
 ..... APO/GHY ..... (Name of the Railway Administration).  
 Place of issue : ..... at .....

M E M O R A N D U M

The president/Railway Board/Undersigned propose (3) to hold an Enquiry against Shri Hriday Kalita, Subs. Emergency Peon attached to G.M/G.M. under rule -9 of the Railway servants (Discipline and Appeal Rules-1968. The substance of the imputations of misconduct or misbehaviour in respect of which the enquiry is proposed to be held is set out in the enclosed statement of articles of charges (Annexure-I). A statement of the imputation of misconduct or misbehaviour in support of each articles of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed in the list of documents as per Annexure - III are enclosed.

Shri Hriday Kalita, Subs. E/Peon, ..... is hereby informed that if he desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure - III) in any time during office hours within 10 days of receipt of this Memorandum. For this purpose he should contact APO/GHY ..... immediately on receipt of this Memorandum.

3. Shri Hriday Kalita, Subs. E/Peon, ..... is further informed that he may if he so desires, take the assistance of any other Railway servants an official of Railway Trade Union (who satisfies the requirements of rule (9) (13) of the Railway Servants (Discipline and Appeal) Rules-1968 and note 1 and or note 2 thereunder as the case may be for inspecting the documents and assisting him in presenting his case before the enquiring authority in the event of an oral enquiry being held. For this purpose, he should nominate one or more persons in order to preference. Before nominating the assisting Railway servant (s) of Railway Trade Union official (s) Shri Hriday Kalita, Subs. E/Peon, ..... should obtain an undertaking from the nominated (s) that he (they) is (are) willing to assist him during the Disciplinary proceedings. The undertaking should also contain the particulars of other case (s) if any in which the nominee (s) had already undertaken to assist and the undertaking should be furnished to the undersigned, General Manager..... Railway along with the nomination.

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

Contd....2.

Certified to be true copy

Rita B. Bora

ADVOCATE

1/5/05  
 सहायक कार्यालय अधिकारी  
 प. सी. रेलवे, गुवाहाटी  
 Asstt. Personnel Officer  
 N.F. Railway Guwahati



5. Shri Hriday Kalita, Subs. E/Peon. is informed that an enquiry will be held only in respect of those article of charges are not admitted. He should, therefore, specifically admit or deny each article of charges.

6. Shri Hriday Kalita, Subs. E/Peon...... 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 Enquiring authority or otherwise fails or refuse to comply with the provisions or rules-9 of the Railway Servant(Discipline and (Appeal) Rules-1963 on the orders/direction issued in pursuance of the said rules, the enquiring authority may hold the enquiry ex parte.

7. The attention of Shri Hriday Kalita,..... is invited to Rules-20 of the Railway Servants(Conduct) rules-1963, under which no Railway servant shall bring or attempt to bring any political or other influence to bear upon any superiors Authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Shri. Hriday Kalita, S/E/Peon, is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of rules of the Railway services conduct Rules-1963.

8. The receipt of this memorandum may be acknowledged.

Encl: 3 (Three) Sheets

By order and in the name of the President.

Signature. (CGK KAKATI)  
Name and designation of the Competent authority.

To  
Shri Hriday Kalita, Subs. Emergency Peon,  
Designation C/O Sri Jatin Deka, Uttar Jyotinagar,  
(Through: Bamunimaidan, Guwahati-781021.)

Copy to Shri Hriday Kalita, Subs. E/Peon, (Name and designation of the lending authority) for information  
Strike out whichever is not applicable  
To be deleted if copy is given/not given with the Memorandum as the case may be.

\*\* Name of the authority (This would imply that whenever a case is referred to the disciplinary Authority the investigation authority or any authority who are in the custody of the documents or who would be arranging for inspection of documents to enable that authority being mention in the draft memorandum whereas the President is the disciplinary authority.  
To be retained wherever President or the Railway Board is the competent.

1/5/05  
सहायक कार्यालय अधिकारी  
पू. सी. रेलवे, गुवाहाटी  
Asstt. Personnel Officer  
N.F. Railway Guwahati

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N.F. Railway

Annexure to Standard Form No.5  
Memorandum of Charge sheet under Rules-9 of the R.S.

( D & A ) Rules - 1968.

Statement of Articles of Charge framed against Sri Hriday Kalita,  
Substitute Emergency Peon attached to Chief Area Manager/GHY

Statement of Articles of the charges framed against Shri  
Hriday Kalita, Subs. Emergency Peon attached to CAM/GHY.....  
( Name and designation of the Railway Servant.)

ARTICLE - I

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

That the said Sri Hriday Kalita, while functioning as Subs.  
Emergency Peon attached to Chief Area Manager, Guwahati during the period  
from 23.2.05 till date absenting from duty w.e.f. 25.2.05 un-authorisedly  
without any intimation to the Office in-charge or controlling Officer.

The above act on the part of Sri Hriday Kalita, subs. Emergency  
Peon tantamounts to serious misconduct, lack of devotion and sincerity  
to his duty violation of Rule 3(1) (i) (ii) and (iii) of the Railway  
service(Conduct) Rules-1966.

ANNEXURE - II

Statement of imputation of Mis-Conduct/Misbehaviour in  
support of the charges framed against Hriday Kalita, Subs. E/peon,

ARTICLE - I

Statement of imputation of misconduct or mis-behaviour in support of  
the Articles of charges framed against Sri Hriday Kalita, Subs. Emergency  
Peon attached to Chief Area Manager/Guwahati during the period from 24.2.05  
till now and was absent from duty from 25.2.05 without any authority.

The above act on the part of Sri Kalita, tantamounts to serious  
misconduct lack of devotion and integrity and violation of Rules-3(1)  
(i) (ii) and (iii) of the Railway services(Conduct) Rules-1966.

1/5/05  
सहायक कार्यालय अधिकारी  
प. सी. रेलवे, गुवाहाटी  
Asstt. Personnel Officer  
N.F. Railway Guwahati

Annexure-III.

List of documents by which the articles of the charge framed against Shri .....are proposed to be sustained.

**List of documents by which articles of charges framed against Sri Hriday Kalita, Subs.Emergency Peon are proposed to be sustained.**

1. Master Roll for the period ending of 5.3.05, 5.4.05.

Annexure-IV.

List of witnesses by whom the articles of the charge framed against Shri .....are proposed to be sustained.

**List of Witnesses by whom the articles of charge framed against Sri Hriday Kalita, Subs.Emergency Peon are proposed to sustained.**

- A) Witness- Nil
- B) Documentory evidence.

- 1) Muster Roll,
- ii) Letter No-E/74/GHY/HK dtd.5.4.05 issued by APO/GHY.

1/5/05  
सहायक कार्यालय अधिकारी  
पू. सी. रेलवे, गुवाहाटी  
Asstt. Personnel Officer  
N.F Railway Guwahati

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13 - 25 -

ANNEXURE - I

To,  
The assistant Personnel Officer  
N. F. Railway  
Guwahati

Sir,

Sub:- "MEMORANDUM" OF charges.

Ref:- charge sheet No. E/74/GHY/HK st. 4/5/05.

In reference to your above quoted "MEMORANDUM" OF charges, I beg to submit my following representation as called for under Para (4).

Rejoinders to statement of Articles of Charges framed against me.

Reg, article-1 (Annexure I, I & III)- It is submitted before you that at the midnight of 24/2/05, I felt severe chest pain with acute broncoconough accompanied with high temperature. A local physician after call attended me and advised my guardian to take me to DTB Centre, Kalaphar, Guwahati suspecting me to be inflicted with Pulmonary Tuberculosis and accordingly I was taken to DTB Centre Guwahati. The DTB Centre carried out several clinical and radiological tests upon me for a protected period and undertook medical treatment of my ailment. The Sr. M. & H. O., DTB Centre excluded my illness from chest Kochi and issued a Medical Certificate declaring me to resume duty w.e.f. 13/4/05. A copy of the Medical Certificate is enclosed for your kind perusal. However with this sick/fit certificate I

Certified to be true copy

Rita B. Bora

ADVOCATE

attended in your Office and by producing the same I requested to allow me to resume duty after D.F.C.

That office did not took it to allow me by under taking exercise of necessary office procedures for issuance of D.F.C. for the reasons better known to them. At this I got serious psycho quake and again I have fallen ill seriously. Now I have been under going medical treatment and the moment my physician will declare me physically fit I will resume duty. Necessary sick certificate will fallen.

Submissions:- (i) I have come from poor family living under BP2. My job as Sub emergency Peon in the railway is only core source of my livelihood. As Your Excellence is well aware of the fact that Sub- emergency Peon can expect his job for livelihood at the choice of the Employer which has made me victim of the imperial legacy pushing me to dash from post to pillar crying for a bowl of meal. Alas! The President of India herein is being drawn to the picture of such a phenomenon to snatch away my bread and butter with holding the immunity protected under articles 311 (A) (B), 14, 16 and 226 of the Constitution of India.

(ii) It is submitted before Your excellency that during the performance of my job as Sub-Emergency Peon for more than 4 ½ years there has been no record of alleged charge of negligence of duty, service misconduct, lack of devotion and sincerity of my duty. Hence the alleged charge of violation of Rule 3(i), (ii) and (iii) of RS (Service) Rules 1966 is not maintainable and may kindly be kept aside.

(iii) It is further put forth before your good self that I have under medical treatment and as such attending of duty without proper

certificate of fitness followed by DFC is beyond my control as per "IRMM".

(iv) The administration has issued major charge sheet against me under Rule 9 of D. A. Rules (RS), 1968 contemplating D.A.R. Enquiry against me. I am not absconding nor deserting from the Govt. job but under compelled circumstances of ill ness I could not attend office and as such it may be considered not to remove me from service in the plea of absentia repugnant to the proviso of "IREM".

(v) Necessary Medical Certificate for my illness is submitted herewith for your kind and sympathetic consideration.

(vi) It is also submitted before you to consider whether I may be entitled to appear before the proposed DAR Enquiry as I am under medical treatment.

In circumstances as elucidated above, I would request you kindly to consider my case sympathetically as prayed for below in the light of the facts submitted in the foregoing paras.

(i) Be gracious to accept my sick report with sick certificate/s.

(ii) Be gracious to consider to pass favourable administrative order to regularize my sick period by granting leaves due to my credit/or leave not due as the case may be admissible after I resume duty with certificate of fitness.

(iii) Be gracious to pass favourable order on "SUO-MOTTO" motion to expunge the charges framed against me in the statement of

imputation of charges in the above MEMORANDUM on humanitarian and compassionate ground as a very special case.

(iv) Be gracious to pass favourable order to allow me to resume duty after my attending physician declare me fit to resume duty.

With profound respect,

DA:- 17/5/05

Yours faithfully

Hriday Kalita

Sub-E/ Peon / APO-GHY

21-29.

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ANNEXURE-I

LAKHIMI HOMOEOPATHIC MEDICAL

Dr. Dhiraj Sharmah  
DHMS (BHSM) FWT

To Whom It May Concern

This is to certify that Sri Hriday Kalita an employee of the office of the N. F. Railway Ghy is suffering from acute attack of Rheuma with severe knee joint pain since 14/04/05 and he is now under my treatment.

Sd/- illegible

17/05/05

*Certified to be true copy  
Rita B. Bora  
Advocate*



# LAKHIMI HOMOEOPATHIC MEDICAL

Opposite East Point Tower  
Bamunimaidam,  
Guwahati - 21

Dr. Dhira Sharmah  
DHMS (BHSN) FVIT  
Phone No.: 0361-252226  
Regd. No.: A-118, M-98690-41570

Visiting Hours: Morning: 9 to 12 AM, Evening: 5 to 8 PM

To whom it may concern.

This is to certify that Sri Hriday Kalita  
an employee of office of the N.P.R. by City  
is suffering from acute attack of Rheuma-  
tism with severe knee joint pain since -  
14/04/05 and he is now under my treat-  
ment.

*[Signature]*  
17/05/05  
*[Signature]*

certified to be  
true copy

Q1. Do you accept the charges?

Ans. No, I do not accept the charges framed against me.

Q2. When you entered the service as Sub-Emergency Peon?

Ans. I have been appointed as Sub-E/ Peon in the Railway w.e.f. 26/11/01, vide GM(P) /MLG's letter No. E/227/1/8-B(Q) dated 26/11/01 and attached to the then Secy. to GM/ NF Rly and thus I have completed about 5 years of continuous service.

Q3. When you have been engaged as Sub E/peon to Chief Area Officer Ghy?

Ans. I have been engaged as SuB- E/Peon w.e.f. 24/2/02 and ordered to function as such under the control of Chief Area Manager Ghy. Accordingly, I reported to him for duty, but he was not inclined to accept me as Sub E/Peon on the ground that a new man is engaged unofficially with understanding to appoint him in my place.

Q4. Why did you not report to Office for duty and remained absent w.e.f. 25/2/05?

Ans. On the midnight of 24/2/05 I seriously fell ill and my guardian took me to DTB on the advice of a local physician attended me. The Sr. M. and H. O. /DTB Centre Ghy after intensive clinical and radiological examination declared me fit to resume duty w.e.f 13/4/05. A copy of medical certificate is already submitted along with the rejoinder to the Memorandum of Charges under reference. Accordingly I reported to office for duty with sick/fit certificate issued by DTB Center Ghy. But refused to allow me to resume duty by issue of DFC.

The official action of not allowing me to resume duty on the basis of sick/fit certificate issued by the Govt. Doctor severely shocked me and I again fell sick from 14/4/05 and still I am undergoing medical

Certified to be true copy

Rita B. Bora  
ADVOCATE

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treatment. A sick certificate has also been submitted to the administration.

Submission by D/C as follows-

13/3/05 - He fell sick from 24/2/05 and reported to office for resuming duty on by submitting sick/fit certificate issued by the Sr. M. and H. O. / DTB Centre/ Ghy but the officer refused him to allow him to resume duty by issue of DFC. The total sick period is only 18 days and as such he should have been allowed to resume duty. The phenomenon of sickness is beyond the control of a man. From the action it appears that a simmering net work of contemplation was there to throw him out of his service as Sub. E/Peon. Had the administration allowed him to resume duty w.e.f. 13/3/05 there had not been any more consequential psycho illness w.e.f. 14/3/05 on the part of charged employee.

In such case the administration should avoid to torture a Sub. E/Peon mentally and psychologically and the present day society calls upon to assist to avoid such malafide in the administration.

The D/C urged upon the administration to allow C/O to resume duty after submission of fit certificate accordingly.

NO: WB/GHY/MISC /

Dated: 30/6/2005

TO  
SRI A.M. PATGIRI,  
Ex.OS/Gr.I under  
COM's Office/Maligaon,  
Add: C/O- Railway Qr.No-279/B,  
East Goshala, Maligaon,  
Guwahati-II

Sub:- Consent letter to act as Defence Counsel in  
the DAR Case of Sri Hriday Kalita, E/Peon  
attached to Chief Area Manager, Guwahati  
against charge sheet No-E/74/GHY/HK dtd.  
4.5.2005.

Ref:- Your consent letter dtd. 27.6.05.

As per your consent letter dated 27.6.05 mentioned under reference, it is seen that you have given your consent to act as Defence Counsel in favour of the DAR Case of Sri Hriday Kalita, E/Peon attached to Chief Area Manager, Guwahati. Your consent has been accepted with the clarification that you should not have more than 3 pending Disciplinary cases on your hand if you are not a Official of recognised Railway Trade Union. The date of ending has been fixed on 5.7.05 at 11-00 hrs in the Welfare section, Guwahati. Accordingly, you are asked to attend in the enquiry positively.

*(Signature)*  
30/6/05  
( A.P. SARMA )  
CHIEF PERSONNEL INSPECTOR )  
N.F. RAILWAY, Guwahati- I  
N.F. Railway, Guwahati-I

Certified to be true copy

*Rita B. Bora*

ADVOCATE

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Document No. 1

ANNEXURE L

N.F. Railway

Office of the  
Asstt: Personnel Officer-  
Station Road, Guwahati-I

NO: E/74/GHY/HK


Dated: 30/8/05

TO  
Sri Hriday Kalita,  
Emergency Peon attached  
to Chief Area Manager,  
N.F. Railway, Guwahati.

Sub: - Memorandum for Major Penalty dtd. 4.5.05.

The enquiry of the above memorandum for major penalty has been completed and the findings of the enquiry report is sent herewith for your comments.

Your reply must be reached within 10 days from the date of receipt of this Office letter otherwise action will be taken accordingly as per rule.

  
( G.K. KARATI )  
Asstt: APO/GHY  
Stn. Rd. Road, Guwahati  
Asstt. Personnel Officer  
N.F. Railway, Guwahati-I

Certified to be true copy

Rita B. Bora

ADVOCATE

The undersigned has been nominated as Enquiry Officer vide AFO/GHY's letter No-E/74/GHY/HK dated 26.5.05 in the case of Sri Hriday Kalita, Emergency Peon/GHY attached to CAM/GHY who was served with a Major Memorandum No-E/74/GHY/HK dated 4.5.05 due to unauthorise absent from duty with effect from 25.2.05. The Major Memorandum was duly acknowledged by him on 6.5.05. The charge framed against Sri Hriday Kalita are as under-

Sri Hriday Kalita was absent from duty w.e.f.25.2.05 unauthorisedly without any intimation to his controlling Officer under whom he was working which is tantamounts to serious misconduct, lack of devotion and sincerity to his duty violation of Rules, 3.1(i) (ii) & (iii) of the Railway service conduct Rules-1966 ).

The Relied upon documents to prove the chargesheet-Muster Roll.

Proceedings of the enquiry

The date of enquiry fixed to be held on 23.6.05 at 11-00 hrs. at Welfare Section, Guwahati which was intimated to Sri Hriday Kalita under my letter No-WB/GHY/MISC dated 13.6.05.

Accordingly Sri Hriday Kalita attended the enquiry in the fixed date.

During the course of enquiry Sri Hriday Kalita was asked some questions and the same were questionwise replied which has been attached proceedings at Annexure-'A'. The enquiry on the day could not be completed as the accused Railway servant desired to give Defence Counsel. The name of Defence Counsel given on 27.6.05 showing the name Sri A.M.Patgiri, Ex.05 under COM's Office, Maligaon the consent letter of which is placed at SN-1.

The next date of enquiry was fixed on 5.7.05 vide letter No-WB/GHY/MISC dated 23.6.05, but as per request of the Defence Counsel the date has been deferred without holding any enquiry. However next date of enquiry fixed again on 28.7.05 which intimated to Sri Hriday Kalita and Sri A.M.Patgiri Defence Counsel vide letter No-WB/GHY/MISC dated 18.7.05. But the enquiry could not be conducted as both Sri Hriday Kalita and Defence Counsel Sri A.M.Patgiri failed to attend in the enquiry. Another date for holding the enquiry was fixed on 4.8.05 under letter No-WB/GHY/MISC dtd. 28.7.05 which was acknowledged by the A.M.Patgiri and Sri Hriday Kalita, but in this time also enquiry could not be conducted due to the absence of both Defence Counsel and the employee.

On 16.8.05 the next date was fixed for holding the enquiry vide letter of even number dated 8.8.05, but the Defence counsel A.M. Patgiri has sent a letter showing his inability to attend in the enquiry.

The next and final date was fixed on 19.8.05 for holding the enquiry vide letter No-WB/GHY/MISC dtd.16.8.05. But in this time Defence Counsel Sri A.M.Patgiri prayed to withdraw

contd..2

- 2 -

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his consent to act as Defence Counsel in this case due to his ill-health vide his letter dated 19.8.05 at SN-2.

Finally the charged employee Sri Hriday Kalita has been asked some questions. The reply of which alongwith questions have been furnished at proceedings at Annexure-'B'. He has also expressed that no other Defence Counsel he will be nominated in this case.

#### FINDINGS

From the above case it is clear that although the charge Official remain absent from duty he has accepted the charge framed against him due to unauthorise absence from duty with effect from 28.2.05. The charged employee were given sufficient opportunities to give his defence, but he failed to do so. His statement recorded during the course of enquiry itself is self-explanatory to prove the charged framed against him as he himself admitted it.

From the above it is seen that the charges framed against him is proved.

*W. S. Srinivas*  
30/8/05  
Chief Personnel Inspector,  
N. S. Railway, Bangalore-1  
Enquiry Officer

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ANNEXURE - M

To

The Asstt. Personnel Officer  
N.F. Railway,  
Guwahati.

MEMO OF APPEAL

Sub :- Memorandum for Major Penalty dated 4-5-05.

Ref :- Vide letter No. E/74/Ghy/HK dated 30-8-05  
alongwith the enquiry report, issued by  
the Asstt. Personnel Officer, N.F. Railway  
Guwahati for written comments on the above  
mentioned subject.

Dear Sir,

With above reference and subject I beg to submit  
the following few lines for your sympathetic order -

1) That Sir, I have received the aforesaid letter  
dated 30-8-05 along with the enquiry report regarding major  
penalty dt. 4-5-05, issued by your honour on 30-8-05 by which,  
you have stated that the enquiry of the above Memorandum  
for major penalty has been completed, and the findings of  
the enquiry report was sent therewith for my comments.

A copy of the notice dated 30-8-05 issued by APO,  
Guwahati and the enquiry report ~~are~~ are enclosed  
herewith and marked ~~and~~ Annexed a DOCUMENT 1 and 2  
respectively.

2) That Sir, regarding the alleged charge of absence  
from my duties w.e.f. 25-2-05 unauthorisedly, I have already  
Certified to be true copy

Rita B. Bora  
ADVOCATE

contd...



submitted a representation in connection with the Chargesheet No. E/74RSGHY/HK dated 4-5-05 of Memorandum of charges on 17-5-05 before your honour stating already that I am quite innocent and I was never absent from my duties unauthorisedly w.e.f. 25-2-05.

3) That I had clearly stated in my representation dated 17-5-05 against the article of Charges framed against me that at the midnight of 24-2-05, I felt a severe chest pain with an acute bronocough accompanied with high temperature. As per the advice of a local physician who attended to me, my guardian took me to the DTB Centre, Kalapahar, Guwahati suspecting me to be inflicted with Pulmonary Tubirenucis and accordingly the DTB Centre carried out several clinical and radiological test upon me for a protected period and undertook medical treatment of my ailment. The Senior Medical & Health Officer of the DTB Centre excluded by illness from Chest Kochi and issued a medical certificate and declaring me to resume duties from 13-4-05. However with the said sick/fit certificate I have attended your office, and by producing the same I requested you to allow me to resume duties after DFC but the office did not take it to allow me by undertaking exercise of necessary office procedures for issuance of DFC for the reasons better known to them. At this I got serious phychoquake and again I had falen ill seriously. Thereafter I have been undergoing medical treatment for acute attack of Rheumatism with sever Knee joint paid since 14-4-05 and the moment my attending physician would declare physically fit, I would resume duty.

contd...

A copy of the representation dated 17-5-05 against the Memorandum of Charges alongwith two medical certificate dated 12-4-05 and 17-5-05, issued by the Sub-Divisional Medical & Heal Officer, District Tuberculosis Centre Kamrup, Guwahati and Dr. Dhiraj Sarma of Lakshmi Homeo Medical, Guwahati-21 are enclosed herewith as DOCUMENT No. 3, 4, & 5 respectively for your kind perusal.

4) That under the above facts & circumstances, it is therefore confirmed that I was never absent from my duties w.e.f. 25-2-05 unauthorisedly without any intimation to my controlling officer but due to my aforesaid continuous serious illness of pulmonary tuberculosis for which I was suffering from continuous chest pain and immediately I was admitted to the DTB Centre, Kalapahar, Guwahati for my treatment w.e.f. 24-2-05 to 13-4-05, thereafter again I was suffering from serious psychoquake as I was not allowed by your office to join in my duty on 13-4-05 and also due to my serious acute attack of Rheumatism with severe knee joint pain since 14-4-05 for which I was under Homeo treatment continuously and as such I could not attend my duty w.e.f. 25-2-05 due to my aforesaid unavaodable circumstances without any negligence on my part, for which I am not liable to be punished for serious misconduct, lack of

contd...

devotion and sincerity to my duty by violating rules, 321(i), (ii) and (iii) of the Railway service contract rules 1966, as alleged by your honour.

5) That Sir, I have reiterated and reaffirmed my earlier statements of para (ii) of my representation dated 17-5-05 that during the performance of my job as Subs Emergency peon for more than 4 1/2 years, there has been no record of alleged charge of negligence of duty, service misconduct, lack of devotion and sincerity of my duty. Hence the alleged charge of violation of rule 3(i), (ii) and (iii) of RS (Service) Rules 1966 is not maintainable which is liable to be set aside.

6) That Sir, since I have been under medical treatment w.e.f. 24-2-05 due to my continuous serious illness of pulmonary tuberculosis and chest pain to 13-4-05 and subsequently again I was suffering from serious psychoquake and acute attack of Rheumatism with severe knee joint pain w.e.f. 14-4-05 and as such attending of duty without proper certificate of fitness followed by DFC is beyond my control as per "IRNM".

7) That Sir, you had issued major chargesheet against me under Rule 9 of D.A. Rules (RS), 1968 contemplating DAR enquiry against me without any proper enquiry and giving me any

contd...

opportunity to be heard before issuing such major charge sheet. From the aforesaid facts and circumstances, it is confirmed that I am not absconding nor deserting from the Govt. job but under compelled circumstances of illness, I could not attend office and as such it may be considered not to remove me from service in the plea of absentia repugnant to the proviso of "IRMM" otherwise I shall suffer irreparable loss and injury.

8) That Sir, it is pertinent to mention ~~xx~~ here that I have been discharging my duties very sincerely and honestly without any blemish from whatsoever since the date of appointment i.e. w.e.f. 6-11-01 with my officer Sri R.N. Kalita, EX-CCM/G and due to his transfer, I was also allowed to work in G.M. Section at Maligaon Head Quarter till 17-2-05 as office peon and I have been regularly paying monthly salary till February, 2005 and since I could not attend office w.e.f. 25-2-05 due to medical ground as mentioned above and as I am still in my service and as such I am entitled to receive monthly salary w.e.f. March '05 till date. Thereafter, S.P.O. (NG) Sri N.N. Thakur had issued a letter/office order on 17-2-05 by which I was again allowed to work with my previous officer, Sri R.N. Kalita and accordingly I went to his residence on 18-2-05 and worked there till 20-2-05; but thereafter I was not allowed to work in his residence by my officer, Sri R.N. Kalita without assigning any reason. Finding no alternative, I had duly informed to my Controlling officer

contd...

for not allowing me to work in his residence. Thereafter I was again allowed to work as office peon till 23-2-05.

In the meantime, I was suffering from serious disease w.e.f. 24-2-05 as already mentioned in the foregoing paras of the representation due to which I was compelled for not attending my office w.e.f. 25-2-05 which is my beyond control.

Since I have been drawing salary like a regular employee and have been continuously working for 41/2 year without any break in service and also an account has been deducted from my salary as provident fund and as such I may not be terminated from my service.

9) That Sir, the enquiry report dated 30-8-05, on the basis of which the major penalty is going to be imposed upon me is quite irregular arbitrary and I was not given opportunity to defend myself through my defence counsel, although I had engaged a defence counsel, Sri A.M. Patgiri to defend me in proper manner and I was not even allowed to adduce evidence in my support.

From the enquiry report, it is also confirmed that while my defence counsel Sri A.M. Patgiri, had withdrawn his consent to act as Defence counsel in this case due to his ill health vide his letter dated 19-8-05 at the eleventh hour, thereafter I was not given any opportunity to engage another defence counsel to defend me in proper manner in the instant proceeding by the enquiry officer without

contd...

assigning any valid reason as a result of which I was debarred from my legitimate right of defending myself in proper manner i.e. without giving me any opportunity to be heard with due procedure of law which amounts to a clear violation of my fundamental right and principles of natural justice as enshrined in the Constitution of India and other provisions of the relevant laws of the country.

It is pertinent to mention here that I was also not allowed to verify the original documents at the time of enquiry by the enquiry officer. Moreover, I was never referred to Railway Medical Board or Hospital to prove my aforesaid disease before enquiry nor the enquiry officer had examined the concerned Doctors who had examined me and as such the whole enquiry report is vague and arbitrary for which the same is liable to be set aside for the ends of justice.

Moreover, during the course of the enquiry I was asked some questions and the same were question wise replied which has been attached as proceedings at ANNEXURE-A & B respectively as stated in the enquiry report by the enquiry officer but the said Annexure-A and Annexure-B have not yet been furnished along with the enquiry report till date by the enquiry officer and as such I was also debarred from knowing about the said question wise reply made by me to the enquiry officer at the time of enquiry this depriving me of the assistance of the defence counsel to contest me in proper manner in the instant proceedings for which the whole enquiry report is liable to be set aside for the ends of justice.

10) That Sir, I belong to a poor family. My job at subs emergency peon in the railway is the only source of my livelihood and my whole family members including my old ailing father are depending on my sole income and in the event of terminating me from the said post I along with my whole family members shall suffer irreparable loss and injury and as such the major penalty on the basis of the said arbitrary enquiry report is going to be impose upone me, is liable to be set aside.

Under the above facts and circumstances it is therefore prayed that you will be graciously pleased to consider to pass favourable administrative order to regularise my sick period by granting medical leave due to my credit/or leave not due as the case may be admissible after I resume duty with certificate of fitness, and the enquiry report on the basis of which the major penalty is going to be imposed upon me may be set aside for the ends of justice and I may be allowed to join in my said post of subs Emergency peon as early as possible and I may be allowed to draw my regular salary w.e.f. March till date by regularising my leave period on medical grounds and for this act of your kindness I shall be grateful to you.

Thanking you.

Yours faithfully,

Sd/-  
( HRIDAY KALITA )  
Subs Emergency Peon/  
APO Guwahati.  
9-9-05.

ANNEXURE 15 N

-45-

Notice for imposition of Penalty under item No-3.1 (i) (ii) (iii) of Rule 1808(1) and items (i) & (ii) of Rule(2) R1.

( Ref:- SR9 Under Rule 1716-R1 )

NO. E/74/GHY/RK

Dated.13.09.05

From- APO/GHY  
N.F.Rly.

To: Sri Hriday Kalita,  
Emergency Peon attached to  
Chief Area Manager/N.F.Rly  
Guwahati.

With reference this Office charge sheet No-E/74/GHY/RK dated 4.05.05, you are hereby informed that your explanation dtd.17.5.05 was not considered satisfactory by the Disciplinary Authority and it was decided to hold an enquiry. Accordingly Sri A.P.Sarma, CPI/GHY was appointed as enquiry Officer and held enquiries on 23.6.05, 5.7.05, 4.8.05, 16.8.05 and 19.8.05 to prove the charges.

Sri A.P.Sarma, CPI/GHY who act as an enquiry Officer has submitted his enquiry with the remarks that you were absence from duty unauthorisedly from 25.2.05, is proved.

Accordingly the enquiry report was sent to you which was received by you personally on 30.8.05 giving 10 days time i.e. upto 9.9.05 to submit your remarks if any about the enquiry report. But no remarks has been received till 12.9.05 by the disciplinary authority and it presumes that you have no remarks to submit and therefore accepted the enquiry report. The enquiry report is accepted by the disciplinary authority.

Following factors are considered while awarding quantum of punishment.

1. It is proved that you were absent from duty from 25.2.05 to 6.5.05 i.e. till date of receipt of the charge sheet unauthorisedly.
2. You never cared to perform your duty sincerely considering your nature of duties till submission of your defence dtd 17.5.05.
3. The above act on your part as subs.Emergency Peon tantamounts to serious misconduct, lack of devotion and sincerity to your duty and violation of Rule-3.1.(i) (ii) & (iii) of the Railway service(conduct) Rules-1966.

Considering the all factors i.e. defence, enquiry proceeding and enquiry report, the undersigned has finally imposed the following penalty upon you.

" Removed from service with immediate effect ".

Acknowledgement

Sri Hriday Kalita,  
Subs.Emergency Peon  
Attached to Chief Area Manager/GHY  
C/O Jatin Deka(Carpenter)  
Uttar-Jyotinagar  
P.O.Bamunimaidan, Guwahati-781021

Copy forwarded to-

1. CAM/GHY
2. COS (P)/GHY at Office.

13/9/05  
( G.K.KAKATI )  
APO/GHY  
Disciplinary Authority

पू. श्री. रेलवे, गुवाहाटी  
Asstt. Personnel Officer  
N.F. Railway Guwahati

Certified to be true copy

Rita B. Barua

ADVOCATE

( G.K.KAKATI )  
APO/GHY



N. F. Railway

Office of the  
Asstt:Personnel Officer  
Station Road,Guwahati

No:- E/74/GHY/HK

To-

Sri Hriday Kalita,  
Subs.Emergency Peon  
Attached to CAM/Guwahati

Dated: 14/09/2005

Sub:- Notice for imposition of Penalty.

Ref:- This office notice for Imposition of penalty No-E/74/GHY/HK dtd. 13/09/0

In continuation to thos office Notice for Imposition of penalty forwarded to you vide No- E/74/GHY/HK dtd. 13/09/05 it is for your instruction that appeal lies against the NIP to DPO/IC/LMG within 45 (forty five) days from the date of receipt of this letter.

(G.K.KAKATI)

APO/GHY

Disciplinary Authority ~~अधिकारी~~

पू. सी. रेलवे, गुवाहाटी

Asstt. Personnel Officer  
N.F. Railway Guwahati

Copy forwarded to:-

1. CAM/GHY
2. COS(P)/Bill/GHY

( G.K.KAKATI )  
APO/GHY

*Certified to be true copy*

*Rita B. Bora*

ADVOCATE

*Registered*

*Minor Penalty  
Major Penalty*

7  
- 47 -  
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ANNEXURE - P

To, The DPO/IC/LMG  
N.F Railway

27/10/05

Sub: An appeal against the Notice for imposition of penalty No. E/74/GHY, dated 13-09-05 and vide letter No.E/74GHY/HK dated 14-09-05, issued by Sri G.K. Kakati, APO/GHY, Disciplinary Authority.

Dear Sir,

With above subject and reference. Most humbly and respectfully, I beg to submit this Appeal against the notice for imposition of penalty on me issued by the Disciplinary Authority as follows:-

1) That Sir, I have duly received the aforesaid Notice for imposition of penalty No. E/74/GHY/HK dated 13-09-05 and the letter dated 14-09-05 issued by the Disciplinary Authority Sri G.K. Kakati on 15-10-05.

Copies of the letter/Notice dated 13-09-05 and 14-09-05 are enclosed herewith as DOCUMENT No. A and B.

2) That Sir, to my utter surprise, I have come to know from the aforesaid notice that I was removed from my service with immediate effect.

3) That Sir, the allegation which is given against me through the letter dated 13-09-05 issued by the concerned APO, Guwahati, Sri

*Certified to be true copy*

*Rita B. Bora*

ADVOCATE

G. K. Kakati that I did not submit my written remarks against the enquiry report dated 30-08-05 is not correct. I had duly attended in 09-09-05 in the office of the Area Manager, Platanbazar, Guwahati i.e. within 10 days in order to submit my written remarks/Memo of Appeal against the said report dated 30-08-05 before the concerned APO, Guwahati, Mr. G.K. Kakati at about 4 p.m. Since he was not said available in the office at the time of submitting my said written remark, for which I went to submit my written remarks to another APO, Mr. Sarma of the same office, but he also refused to accept my said written remarks without assigning any reason. The next date was holiday i.e. the Saturday, for which I could meet Sri G.K. Kakati, the concerned APO on 12-09-05 at said office of Area Manager, N. F. Railway in order to submit my written remarks. On receiving me said written remarks, he had gone through my written remarks, but refused to accept the Written remarks from me and he instructed me to send my said written remarks/ Memo of Appeal by way of registered post and accordingly, I had also sent the said written remarks by way of registered post to the concerned APO/Guwahati, Mr. G. K. Kakati on the next day i.e. on 13-09-05, which was duly received by you. In my said Memorandum of Appeal i.e. written Remarks, I had clearly stated all the real facts and grounds in detail in connection with the said enquiry report. Sir, I have reiterated and reaffirmed all the statements made in my said Memorandum of appeal against the said enquiry report dated 30-08-05 for your Honour's perusal, the relevant portion of which are described as follows:-

i) That Sir, I have received the aforesaid letter dated 30-08-05 along with the enquiry report regarding major penalty dated 04-05-05 issued by your honour on 30-08-05 by which you have stated that the enquiry of the above Memorandum for major penalty has been completed and the findings of the enquiry report was sent therewith for my comments.

A copy of the notice dated 30-08-05 issued by APO, Guwahati and the enquiry report are enclosed here with and marked as DOCUMENT 1 and 2 respectively.

ii) That Sir, regarding the alleged charge of absence from my duties w.e.f. 25-02-05 unauthorisedly, I have already submitted a representation in connection with the Charge sheet No. E/74/GHY/HK dated 04-05-05 of Memorandum of charges on 17-05-05 before your honour stating clearly that I am quite innocent and I was never absent from my duties unauthorisedly w.e.f. 25-02-05.

iii) That, I had clearly stated in my representation dated 17-05-05 against the article of charge framed against me that at the midnight of 24-02-05 I felt a severe chest pain with an acute broncocough accompanied with high temperature. As per the advice of a local physician who attended to me, my guardian took me to the DBT Center, Kalaphar, Guwahati suspecting me to be inflicted with pulmonary Tuberculosis

and accordingly the DBT Center carried out several clinical and radiological test upon me for a protected period and undertook medical treatment of my ailment. The Senior Medical and Health Officer of DBT Centre excluded my illness from chest kochi and issued a medical certificate and declaring me to resume duties from 13-04-05. However with the said sick/fit certificate I have attended your office and by producing the same I requested you to allow me to resume duties after DFC but the office did not take it to allow me by undertaking exercise of necessary office procedures for issuance of DFC for the reasons better known to them. At this I got serious psychoquake and again I had fallen ill seriously. Thereafter, I have been undergoing medical treatment for acute attack of Rheumatism with sever knee joint pain since 14-04-05 and the moment my attending physician would declare me physically fit, I would resume duty.

A copy of the representation dated 17-05-05 against the Memorandum of charges along with two medical certificates dated 12-04-05 and 17-05-05 issued by the Sub-divisional Medical and Health Officer District Tuberculosis Center Kamrup, Guwahati and Dr. Dhiraj Sarma of Lakhimi Homeo Medical, Guwahati-21 are enclosed here with as

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DOCUMENT NO. 3, 4 and 5

respectively for your kind perusal.

iv) That under the above facts and circumstances, it is therefore confirmed that I was never absent from my duties w.e.f. 25-02-05 unauthorizedly without any intimation to my controlling officer but due to my aforesaid continuous serious illness of pulmonary tuberculosis for which I was suffering from continuous chest pain and immediately I was admitted to the DTB Center, Kalaphar, Guwahati for my treatment w.e.f. 24-02-05 to 13-04-05, thereafter, again I was suffering from serious psychoquake as I was not allowed by your office to join in my duty on 13-04-05 and also due to my serious acute attack of rheumatism with sever knee joint pain since 14-04-05 for which I was under treatment continuously and as such I could not attend my duty w.e.f. 25-02-05 due to my aforesaid unayoidable circumstances without any negligence on my part for which I am not liable to be punished for serious misconduct, lack of devotion and sincerity to my duty by violating Rules 3.1(i), (ii) and (iii) of the Railway Service (Contract) Rules 1966 as alleged by your honour.

v) That Sir, I have reiterated and reaffirmed my earlier statements of para (ii) of my representation dated 17/5/05 that during the performance of my job as Sub-Emergency Peon for more than 4 and half years, there has been no record of alleged charge of negligence of duty, service misconduct, lack of devotion and sincerity of my duty. Hence the alleged

charge of violation of Rule 3(i), (ii) and (iii) of Railway Service (Contract) Rules 1966 is not maintainable, which is liable to be set aside.

vi) That sir, since I have been under medical treatment w.e.f. 24-02-05 due to my continuous serious illness of Pulmonary tuberculosis and chest pain to 13-04-05 and subsequently again I was suffering from serious psychoquake and acute attack of rheumatism with severe knee joint pain w.e.f. 14-04-05 and as such attending of duty without proper certificate of fitness followed by DFC is beyond my control as per "IRMM".

vii) That Sir, you had issued major charge-sheet against me under Rule 9 of D. A. Rules (RS), 1968 contemplating DAR enquiry against me without any proper enquiry and giving me any opportunity to be heard before issuing such major charge sheet. From the aforesaid facts and circumstances, it is confirmed that I am not absconding nor deserting from the Govt. job, but under compelled circumstances of illness, I could not attend office and as such it may be considered not to remove me from service in the plea of absent is repugnant to the proviso of 'IRMM', otherwise I shall suffer irreparable loss and injury.

viii) That sir, it is pertinent to mention here that I have been discharging my duties very sincerely and honestly without any blemish from whatsoever since the date of appointment i.e. w.e.f. 06-11-01 with my officer, Sir R. N. Kalita, Ex-

CGM/G and due to his transfer, I was also allowed to work in G. M. section at Maligaon Head Quarter till 17-02-05 as office peon and I have been regularly paying monthly salary till February, 2005 and since I could not attend office w.e.f. 25-02-05 due to medical ground as mentioned above and as I am still in my service and as such I am entitled to receive monthly salary w.e.f. March '05 till date. Thereafter, SPO (NG), Sri N .N. Thakur had issued a letter/ office order on 17-02-05 by which I was again allowed to work with my previous officer, Sri R. N. Kalita and accordingly I went to his residence on 18-02-05 and worked there till 20/2/05, but thereafter I was not allowed to work in his residence by my officer, Sir R. N. kalita without assigning any reason. Finding no alternative, I had duly informed to my Controlling officer for not allowing me to work in his residence. Thereafter I was again allowed to work as office peon till 23-02-05.

In the mean time, I was suffering from serious disease w.e.f. 24-02-05 as already mentioned in the foregoing paras of the representation due to which I was compelled for not attending my office w.e.f. 25-02-05, which is my beyond control.

Since I have been drawing salary like a regular employee and have been continuously working for 4 and half years without any break in service and also an amount has



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been deducted from my salary as provident fund and as such I may not be terminated from my service.

ix) That Sir, the enquiry report dated 30-08-05, on the basis of which the major penalty is going to be imposed upon me is quite irregular arbitrary and I was not given opportunity to defend myself through my defense counsel, although I have engaged a defense counsel, Sri A.M. Patgiri to defend me in proper manner and I was not even allowed to adduce evidence in my support.

From the enquiry report, it is also confirmed that while my defense counsel Sir A.M. Patgiri, had withdrawn his consent to act as defense Counsel in this case due to his ill health vide his letter dated 19-08-05 at the eleventh hour, thereafter I was not given any opportunity to engage another defense counsel to defend me in proper manner in the instant proceeding by the enquiry officer without assigning any valid reason. As a result of which I was debarred from my legitimate right of defending myself in proper manner i.e. without giving me any opportunity to be heard with due procedure of law which amounts to be a clear violation of my fundamental right and principles of natural justice as enshrined in the Constitution of India and other provisions of the relevant laws of the country.

It is pertinent to mention here that I was also not allowed to verify the original documents at the time of enquiry by the Enquiry Officer. Moreover, I was never referred to Railway

Medical Board or hospital to prove my aforesaid disease before enquiry nor the Enquiry Officer had examined the concerned doctors who had examined and as such the whole enquiry report is vague and arbitrary for which the same is liable to be set aside for the ends of justice.

Moreover, during the course of the enquiry, I was asked some questions and the same were question wise replied which has been attached proceedings at ANNEXURE A AND B respectively as stated in the enquiry Officer but the said ANNEXURE and Annexure -B have not yet furnished along with the enquiry report till date by the Enquiry Officer and as such I was debarred from knowing about the said question wise reply made by me to the Enquiry Officer at the time of enquiry thus by depriving me to take assistance of the defense counsel to contest me in proper manner in the instant proceedings for which the whole enquiry report is liable to be set aside for the ends of justice.

A copy of the said memo of Appeal/ written remarks in connection with the enquiry report along with postal receipt dated 13/9/05 are enclosed herewith and marked as document No. C and D respectively.

- 4) That Sir, under the above facts and circumstances, it is therefore confirmed that I was never absent from my duty w.e.f

25/2/05 to 6/5/05 i.e. till the date of receive of the charge-sheet unauthorisedly as alleged in the letter dated 13/9/05, issued by G. K. Kakati, APO, Guwahati, but due to my continuous serious illness as mentioned above, I could not attend my duties w.e.f. 25/2/05 to 6/5/05.

5) That moreover I also strongly denied that, I never cared to perform my duty sincerely considering my nature of duties till submission of my defense dated 17/5/05 as alleged by APO, Guwahati in his letter dated 13/9/05. That sir, I have been discharging my duties very sincerely and honestly without any blemish from whatsoever since the date of my appointment as sub-Emergency Peon i.e. w.e.f. 6/11/2001, which is confirmed from office record.

6) That Sir, under the above facts and circumstances, I am never liable to be punished for serious misconduct, lack off devotion and sencerety to my duty and violation of Rule 3.1(i), (ii) aand (iii) of the Railway service (contract) Rules, 1966 as alleged by the said APO, Guwahati, dated 13/9/05 and as such the said removal order dated 13/9/05 issued by APO, Guwahati may kindly be set aside.

7) That Sir, although there was no negligence on my part in attending duties w.e.f. 25/2/05, but due to my said serious illness, I could not attend my duties w.e.f. 25/2/05, but even then if I commit any wrong on my part by not attending in my duties, I may kindly be excused for not attending my duties w.e.f. 25/2/05 by considering my said serious illness as well as my previous records

and I may be reinstated in my previous job as Sub emergency peon and also I may be allowed to draw my regular salary w.e.f. March 2005 till date by regularizing my leave period on medical ground as per law by setting aside the said removal order dated 13/9/05 or any other job, keeping in view of my qualification and experience in your department. Because I belong to a very poor family and my whole family members including my old ailing father are depending on my sole income. Therefore your honour may kindly save my whole family members including me from starvation by reinstating me in my previous job i.e. Sub emergency peon or any other job as per my qualification and experience.

And for this act of kindness, I shall remain ever grateful to you.

Thanking you

Yours faithfully

Hriday kalita

27/10/05

Sub-Emergency Peon

APO, Guwahati

- 58 -  
N. F. RailwayOffice of the  
Asstt: Personnel Officer  
Station Road, GuwahatiNo-E/74/GHY/HK

Dated: 15/2/2006

To  
Hriday Kalita,  
Ex.Subs.Emergency Peon  
Attached to Chief Area Manager,  
N.F.Railway, GuwahatiC/o-Jatin Deka (Carpenter)  
Uttar Jyotinagar  
P.O-Bamunimaidan,  
Guwahati-781021Sub: - Removal from service.  
Ref: - Your appeal dated 27/10/05.

In reference to your appeal mentioned above the Appellate authority has passed the following order-

'I have read the charges written defence of the CO, enquiry report NIP appeals submitted by the C.O. The C.O had only submitted medical certificates from private medical practitioner stating that he was under treatment. Nowhere in the record shows that he was hospitalised and admitted in the hospital. He could have easily informed the officer about his treatment.

Therefore, the charges against him are proved and the penalty of 'removal from service' still holds'.

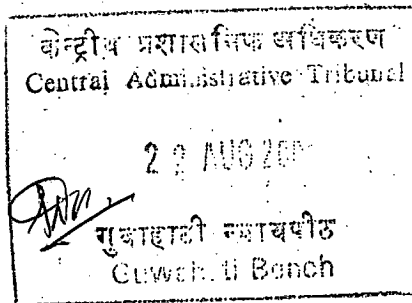
This is for your information.

  
(G.K.KAKATI)  
APO/GHY

*Certified to be true copy*

*Rita B. Bora*

ADVOCATE



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,  
GUWAHATI.

O.A.No. 135 of 2006.

Sri Hriday Kalita ... Applicant.

-Vrs-

Union of India and others... Respondents.

WRITTEN STATEMENT BY THE  
RESPONDENTS.

The answering Respondents most respectfully sheweth,

1. That the answering Respondents 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 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. That the answering Respondents most humbly submit the case history on the subject above of the Applicant as under which is the crux of the case.

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A. Kishor  
Dy. Chief Personnel Officer/IR  
I. F. Railway, Maligaon  
Guwahati-11

File & Put  
22/8/06  
Advocate

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Sri Hriday Kalita was appointed as Substitute Emergency Peon ( Un-approved) in Scale Rs.2550-3200/- attached to Sri R.N.Kalita, Ex.Secretary to General Manager (P)/N.F.Railway, Maligaon vide letter No.-E/227/1/S-EO dated 06.11.2001 with effect from 6.11.01.

Consequent on transfer of Sri R.N.Kalita, Ex.Secretary to G.M. N.F.Railway, Maligaon who was subsequently promoted to Chief Commercial Manager (G), NF.Railway and to the post of Officer On Special Duty, N.F.Railway, Guwahati, the Substitute Emergency Peon Sri Hriday Kalita attached to him was also transferred to Guwahati in his existing pay, scale and capacity vide General Manager (P)/N.F Railway, Maligaon's letter No.-E/227/1/8-B(Q) dated 17.2.2005. and was spared on 22.2.2005. The post of Officer on Special Duty subsequently was redesignated as Chief Area Manager, N.F.Railway Guwahati.

Sri Hriday Kalita reported to Chief Area Manager, N.F.Railway, Guwahati's Office at 17-00 hrs on 23-02-2006. He was directed to work to Sri R.N.Kalita, Chief Area Manager, N.F.Railway, Guwahati where he reported on 24.02.2005 ( for a few hours). Thereafter neither he reported to Chief Area Manager, N.F.Railway, Guwahati Office nor to Sri R.N.Kalita, CAM/GHY.

As reported by Sri R.N.Kalita, Chief Area Manager, N.F.Railway, Guwahati vide his Office Note No-CAM/Establishment/GHY/25 dated 05.04.2005 that Sri Hriday Kalita, substitute Emergency Peon ( un-approved) was absent from duty till 5.04.05 without any authority and intimation to whom he was attached or to CAM/GHY's Office.

A photo copy of CAM/N.F.Rly/ GHY's above Note is enclosed as ANNEXURE-A.

Accordingly Sri Hriday Kalita was issued show cause notice as to why DAR action will not be initiated against him due to his un-authorised absence from duty vide Assistant Personnel Officer, N.F.Railway, Guwahati's letter No-E/74/GHY/HK dated 5.04.2005. He acknowledged the receipt on 9.04.2005.

On getting the Show Cause Notice on 9.04.2005 he submitted an application with a non-Railway medical certificate Tuberculosis Centre, Kamrup situated at Kalapahar, Guwahati stating that he was suffering "Acute Bronchitis with Hapesatisis" with effect from 25.02.2005. According to Doctor of the said

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A. K. Kishor  
Asst. Personnel Officer / 1A  
N.F. Railway, Maligaon  
Guwahati-781001

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A. K. Kipootha  
Dy. Chief Personnel Officer/IR  
N.F. Railway, Maligaon  
Guwahati-781001

Centre he was physically fit to resume duty with effect from 13.04.2005. In his application dated Nil Sri Kalita asked to grant leave with effect from 25.02.2005=47 days, but he never approached for to resuming duty.

Since his intension not to resume duty, he was issued memorandum for major penalty charges for unauthorized absence from duty by Assistant Personnel Officer , N.F.Railway, Guwahati vide No.E/74/GHY/HK dated 4.05.05 which Sri Hriday Kalita acknowledged on 6.05.2005.

Sri Hriday Kalita submitted his defence against the Memorandum of Major Penalty Charges where he again by attaching a medical certificate issued by Dr. Dhiraj Sarma, OHMS FWT of Lakhimi Homeo Medical, Bamunimaidan stating that he was suffering from acute attack of Rheumatism with severe knee joint pain since 14.04.05. It was then decided to constitute a DAR enquiry by the Disciplinary Authority.

Accordingly Sri A.P.Sarma, Chief Personnel Inspector, N.F.Railway, Guwahati was appointed as Enquiry Officer vide Assistant Personnel Officer, N.F.Railway, GHY's letter No-E/74/GHY/HK dated 26.5.05. The enquiry was held on 23.06.05(1<sup>st</sup> date). After preliminary enquiry held on 23.06.05, Sri Hriday Kalita has appointed Sri A.N.Patgiri as Defence Counsel.

The next date of enquiry was fixed on 5.7.06. But the date has been adjourned with the consent of charged official and Defence counsel.

The next date of enquiry was fixed on 25.7.05 and 4.8.05. But neither nor his Defence Counsel attended the enquiry nor submitted any official limitation. The next date was fixed on 16.8.05. In this date DC informed his unablness to attend enquiry and then had withdrawn to act as Defence counsel vide his application dated 19.8.05. Accordingly the CO was asked to depute another DC in the enquiry dated 19.8.05. But the CO has expressed that he has got no other DC. The Enquiry then proceeded with the Charged Official and the conclusion of the same was conveyed to the C.O by the Enquiry Officer to which the C.O. agreed to and put his signature on 19.8.2005.

The enquiry report submitted by the Enquiry Officer on 30.8.06 was sent to Sri Hriday Kalita vide APO/GHY's office letter No.-E/74/GHY/HK dtd. 30.8.05 with to submit his remarks if any within 10 days from the date of receipt of the letter. He himself received the later on 30.8.05.

But as no remark submitted by the C.O, the Disciplinary Authority has

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issued NIP as "Removal from service with immediate effect" giving 45 days time to submit a Notice of Imposition for Penalty his appeal to Appellate authority.

Sri Hriday Kalita C.O. submitted an appeal which was received by the office on 3.11.05. Though it was time bared appeal yet it was put up to the Appellate Authority i.e. Divisional Personnel Officer/In-charge/N.F. Railway, Lumding.

The Appellate authority upheld the NIP issued by the Disciplinary Authority and the order of Appellate authority was communicated to C.O vide letter No.E-74/GHY/HK dated 15.2.06. And then the said Charged Official has approached this Hon'ble Tribunal

4.1. That with regard to the paragraphs-6-a,b,c,d, of the above O.A. the answering Respondents beg to submit that these are all matters of records and there can not be any question of denial in the matter.

4.2. That so far the statements made by the Applicant under para-6-e,f,g,h, the Respondents submit that the Applicant himself had admitted that on 24.2.05 he was taken to the DTB Center, Kalapahar, Guwahati, for diagnosis and treatment of his "acute Bronco cough accompanied with high fever" and was released by the Senior Medical and Health Officer of the said Center declaring him physically "fit" and to resume duty from 13.4.05. after giving treatment only for "a couple of days" of his admission on the night of 24.2.05. The Applicant did not submit any medical certificate nor submit any report during the intervening period from 24.2.05 till 12.4.05 when the Medical officer issued a certificate **"declaring him physically fit and to resume duty from 13.4.05"**. The Applicant remained absent without any intimation to his employer with whom he was associated i.e. OSD/NF Railway/GHY or his office at Guwahati which he passed several times on his going from home at Nalbari to DTB Center at, Kalaphar, Guwahati and back. It is pertinent to mention here that although he never expressed about his ill health to the Administration before issue of the Show Cause Notice dated 5.4.05, he submitted an Application to regularize his absent period but not to resume duty with medical certificate showing treatment rendered to him by the Senior Medical and Health Officer, District Tuberculosis Center, Kalapahar, Guwahati. A

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certificate of which was issued on 2.4.05. Though he was declared fit, but he never applied for his resumption to duty. Since the Applicant remained absent unauthorisedly for quite a considerable period of time it was felt by the Respondents that a DAR Proceeding be initiated against the Applicant for his remaining prolong unauthorized absence and a memorandum of major penalty of charge was issued to him vide No.E/74/GHY/HK dated 4.4.05.

4.3. That with regard to the statement made under Para-6.i made by the Applicant in his Written Statement that the Applicant it is submitted that his defence along with a medical certificate issued by Dr. Dhiraj Sarma of Lakhmi Homeo Medical, Bamunimaidan showing his sickness with effect from 14.4.05. became contradictory with the two different Doctors diagnosis & treatment he had consulted, as it postulates to be of two different names of deceases and treated by two different Doctors at the same time which is significant to note after receiving fit certificate from the Central Medical officer, Kalapahar a Specialised in Tuberculosis who advised to resume him duty on 13.4.05 However, the Applicant might be sick after 13.4.2005 and got himself treated by a Homeopathic Doctor at Bamunimaidan and obtained a certificate on 14.4.05 regarding his sickness but he should, at least, have intimate3d his ooffice on time stating the cause of his absence and prayed for leave well in time, that is, the moment he first fell ill on 24.2.05. But it was not felt either by him or any body of his relatives until he received the memorandum of charges for Major Penalty. Thus the conduct of the Applicant to evade resumption of duty. His employment, his defence was not considered and it was decided to hold enquiry of the charges levelled against him by the Disciplinary Authority.

4.4. That with regard to statement made under Para6.j & k by the Applicant the Respondents submit that these are all matters of records and the Applicant himself filed photo copies of the same as ANNEXURES-J & K.

4.5. That with regard to the statement made under paragraph-L it is stated that the enquiry was fixed on 5.7.05 when with the consent of the Charged Official his Defence Counsel prayed for an adjournment and the case was adjourned till

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A. K. Bhowmik  
Dy-Chief Personnel Officer / IR  
N.F. Railway, Maligaon  
Guwahati-11

25.7.05. But neither the Charged Official nor his Counsel attended the enquiry on that date nor submitted any letter of intimation for their absence. The next date was fixed on 16.8.05. On that date also the Defence Counsel of the Charged Official informed his incapability to attend enquiry. Resultantly the next date was fixed on 19.8.05. On that date the Defence Counsel had withdrawn his consent to act as defence Counsel and the Charged Official was asked whether he would like to appoint any other Defence Counsel to conduct the enquiry, but the Charged Official, herein the Application, expressed in a negative way.

Copies of letters given by the Defence Counsel and the Charged Official are annexed as ANNEXURES—B & C.

4.6. That with regard to the statement made under paragraphs-m, n, o, p of the Application it is submitted that the enquiry report of the DAR proceeding was sent to the Charged Official for his information and offering remarks, if any within 10 days from the date of the receipt of the report i.e. within the 9.9.05. But since no reply was received till 12.9.05, a Notice for imposition of penalty was issued to him on 13.9.05. The Disciplinary Authority without receiving any reply from the Charged Official, herein the Applicant, after careful consideration of all aspects was satisfied to issue the penalty of removal from service and the matter was communicated to him vide Letter No.E/74/GHY/HK dated 15.2.06.

4.7. That with regard to the statement made under paragraph 6-Q by the Applicant the Respondents submit that the Appellate Authority upheld the punishment imposed by the Disciplinary Authority after holding necessary DAR Proceedings and gave all reasonable opportunities to the delinquent official, herein the Applicant.

4.8. That the Respondents respectfully state for filing this O.A. the Applicant exceeded the limit beyond decency and decorum in filing a case before the Court of Law. In his statement, it is found that his allegations are not against his controlling officer, the Assistant Personnel Officer, Guwahati, but against the person who held the said Post during the material time and acted as his Disciplinary Authority. This is highly prejudicial and the matter of grave concern.

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4.9. That it is stated that the entire proceedings of departmental action was caused and necessary action in the matter was taken by the Disciplinary Authority upon an office note issued by the Chief Area Manager, NF.Railway, Guwahati on 5.4.05 with whom the Applicant was attached to for performing his duties, but it revealed that the Applicant was unauthorisedly absent for 40 days till that date, and even after that it did not feel it to be expedient for informing his employer or his officer.

4.10. That it is stated that had the Applicant actually been ill and had he taken any course of medical treatment, whether from a Allopathic Doctor or from a Homeopathic, he should have as a matter of prevailing Service Conduct Rules intimated to his Controlling Officer or to his office by a Written letter or atleast by a Telephonic intimation regarding his ailments and cause of his remaining absent unauthorisedly his conduct would not have been averted to be of misconduct, disobedient, unlawful and hostile, to avoid the performance of his duties. The Applicant while attending the Doctors, whether Allopathic or Homeopathic, had to pass the side where his office is situated; but by passing his office and without intimating his cause of illness or remaining absence for a considerable period he warranted DAR Proceedings against his conduct and taking appropriate action in the matter as per Rules to which he had to suffer loss by losing his job by the punishment of removal from service. The matter of removal from service of one person, no doubt painful for everybody, but it is also admissible to be taken into consideration that an employee must be loyal, lawful and diligent and sincere to his duty and bound to carry out the lawful orders of his employer and under no cause any such act in any way which may cause his unbecoming of a government servant for violation of the prevailing Service Conduct Rules. It is, therefore, submitted that the cause of incident caused by the Applicant himself warrants his removal from service and it is humbly stated that this Original Application may be dismissed in limine.

4.11. That it is submitted that the Applicant has brought allegation against the Enquiry Officer under "grounds" for imposing punishment of major penalty order. But he has misconstrued and not went through the DAR Proceedings that

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A. K. Kipote

By: Chief Personnel Officer/IR  
1. Railway, Maligaon  
Guwahati-78

the Enquiry Officer was not the Discipline Authority or the authorities competent to impose or pass any kind of penalty, major or minor, under the framework of the Rules. His prime duty is only to conduct the enquiry lawfully and highlight his findings after hearing both the parties and examining their statements and report the matter to the knowledge of the Disciplinary authority for taking appropriate action in the matter. The Enquiry Officer had no role in imposing any kind of punishment to the Applicant and the Applicant's submission of the Grounds for bringing this Original Application before this Hon'ble Tribunal is, therefore, not tenable in the eye of law and therefore liable to be rejected.

4.12. That the Applicant was given several chances for attending the enquiry with his Defence Counsel and put forward the necessary documents in support of his defence, but the Applicant remained absent and finally expressed his negative attitude to cooperate with the Enquiry Officer and the authorities holding such departmental enquiry which have already expressed in the foregoing paras. Consequently, the Disciplinary Authority after initiating the DAR Proceeding as per Rules had no other alternative but to went through the findings of the Enquiry Officer and after careful consideration of all matters and without being bias or influenced by any extraneous considerations imposed the punishment appropriate under Rules for the Charged Official, herein the Applicant, for his misconduct and misbehavior and remaining absent for a considerable period of time to warrant adverse consequences and without making any intimation to his Controlling Officer. It is, therefore, submitted that the Disciplinary Authority according to the Railways' own set of Rules, imposed punishment upon the Charged Official, herein the Applicant, which was in order and there was no violation of any Rules or denial of any reasonable opportunities and Natural Justice to the delinquent official, herein the Applicant, during the trial of the Disciplinary proceedings initiated against him for his prolong unauthorised absence. It is, therefore, stated that the O.A. is to be dismissed with cost.

4.13. That the Respondents crave leave of this Hon'ble Tribunal to submit their Additional Written Statement/Re-joinder, if any.

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-VERIFICATION-

I, Sri A. K. Kipotta ..... S/O Lali Andreas Kipotta ..... at present  
working as Dy. C.P.O. IR N.F. Railway, Maligaon ..... do hereby solemnly  
affirm and state that the statements made in the paragraphs 4 to 4.13 are derived  
from the records and true to my knowledge, information and belief and the rest  
all are my humble and respectful submission and I have not suppressed any  
material facts.

And I sign this verification on this.....th day of August, 2006, at  
Guwahati.

A. Kipotta  
SIGNATURE  
Dy. Chief Personnel Officer / IR  
Railway, Maligaon  
Guwahati-11

To  
The Deputy Registrar,  
Central Administrative Tribunal,  
Guwahati

VERIFICATION

I, \_\_\_\_\_, of \_\_\_\_\_, do hereby  
certify that the foregoing is a true and correct  
copy of the original as the same appears in the  
records and true to my knowledge and belief and the  
it is my duty and responsibility to see that  
the same is true and correct.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

NOTARIAL

To the County Registrar  
of the County of \_\_\_\_\_  
State of \_\_\_\_\_



Annexure IV

(A)

N.F. RAILWAY

Office of the  
Chief Area Manager,  
Guwahati

Dt.05.04.2005

Office Note No.CAM/Establishment/GHY/25

Sub: Unauthorised absence by Shri Hriday Kalita E/Peon under CAM/GHY.

Shri Hriday Kalita who was posted as E/Peon under me vide Office Order No.E/227/1/8-B (Q) dt. 17.02.2005 and spare vide No.Z/265/6/Pt.XII dt. 22.02.2005 to join under me, resumed duty on 23.02.2005 (evening) and attended duty for a few hours on 24.02.2005.

However, from 25.02.2005, he has been absent without authority and intimation to me, till date (40 days). Please initiate necessary action against Shri Kalita under DAR immediately.

APO/GHY

*(Signature)*

(R.N.KALITA)  
Chief Area Manager,  
Guwahati

*allied  
M.P. 22/8/06  
Advocate*

*Handwritten numbers and scribbles at the bottom left corner.*



Annexure - XIV

To  
E.O / CAM's office,

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Dear Sir,

Sub: - D.A. Enquiry of Krishna Kalita  
~~at~~ 24/8/05 attached  
to CAM / Enq.Ref: - your letter No WB/Enq/mis  
dt 16.8.2005

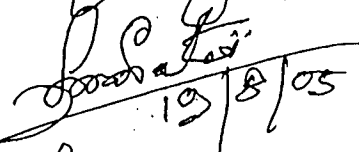
Reference to the above I would  
like to inform you that I am quite  
disinclined to act as Df in the above D.A.  
case from to-day due to my ill health.

I would, therefore, request you  
to please record any reference with me on this score  
and oblige.

With kind regards.

dt 19/8/05

Yours faithfully,

  
19/8/05

(A.M. Patgir)  
Rd. 03/Gr-I  
Com's office / NFI

Noted  
27/9/06  
Advocate

Annexure X2

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PROCEEDINGS OF THE FINAL ENQUIRY HELD ON 19/8/2005 AGAINST  
SRI HARIDAY KALITA, R/PERSON ATTACHED TO CAM/GHY AT APO/GHY'S  
CHAMBER IN CONTINUATION OF THE ENQUIRY HELD ON 23/6/05. DURING  
COURSE OF ENQUIRY THE FOLLOWING QUESTIONS WERE PUT-UP AND  
ACCORDINGLY QUESTIONWISE REPLIED AS UNDER:-

Ques. No-1. Do you know that your Defence counsel has with-  
drawn his consent to act as Defence counsel in fa-  
vour of you ?

Answer : Yes.

Question 2: Do you like to depute another Defence Counsel ?

Answer : No.

Ques. No-3. As per record you were absence from duty since  
25.2.05 without any intimation. Is it true ?

Answer : Yes.

Ques. No-4: Do you know the consequence of unauthorise absence?

Answer : No-

The enquiry Officer then explained that the emple-  
yee may be removed or terminate from service.

Ques. No-5: Do you agree with the rule ?

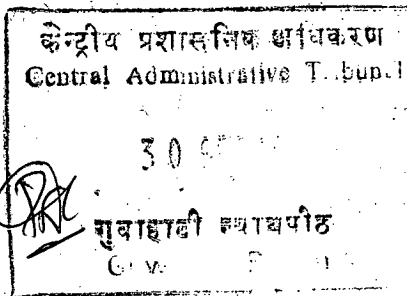
Answer : Yes.

Though the question was asked in English by the  
Enquiry Officer, however he translated the same in  
my mother Language (Assamese) I came to know that  
all the facts of the above question.

Hariday Kalita

19/8/2005

Ambika Prasad Sarma  
19/8/05.  
CPI/GHY



Filed by:-  
Sri: Hriday Kalita  
Applicant 90  
Through -  
Rita B. Bora  
Advocate

DISTRICT: NALBARI

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

O. A. No. 135 / 2006

**SRI HRIDAY KALITA**

.....APPLICANT

- VERSUS -

**UNION OF INDIA & ORS.**

.....RESPONDENTS

A rejoinder has been filed by the  
applicant against the written  
statement filed by the respondents. RB

MOST RESPECTFULLY SHEWETH :-

1. That, a copy of the written statement have been served by the respondents to the counsel of this deponent and the deponent gone through the same and understood the contents thereof. Save and accept the statements which have been specifically admitted herein below and those which are born on records all other averments made in the written statements are hereby denied.
2. That with regards to the averments made in paragraph 2 and 3 of the written statement the answering deponent categorically denied and begs to state that the applicant has been removed from the service without following the due procedure

Contd.../-

prescribed by rules and law of the land. More so the deponent was removed from service on the ground of unauthorise leave and as such, such punishment was not proportionate.

see: Hriday Kalita 91

3. That with regards to the averments made in paragraph 4 of the written statement the answering deponent reiterate and reaffirm the brief facts and circumstances <sup>which</sup> ~~are~~ stated in original application. n2

4. That with regards to the averments made in paragraph 4.1 in the written statement the answering deponent reiterate and reaffirm the statements made in <sup>paragraph</sup> 6 - (a), (b), (C) and (d) of the original application. n2

5. That with regard to the averments made in paragraph 4.2 in the written statement the answering deponent denied the same and beg to say that the deponent was unable to inform the concern authority in time due to his serious illness and accordingly he was admitted in hospital for his treatment and after recovery of his illness he went to the office for resume his duty but the concern authority did not allow him to join in service.

6. That with regards to the averments made in paragraph 4.3 of the written statement the answering deponent denied the same and beg to say that the deponent hails from remote area of village Ulaguri in the district of Nalbari who have residing there alone. While he was ill, one of the

Contd.../-

neighbour took him for treatment in the hospital. Therefore he could not send any information to the authority for his illness and after recovery from illness he came to Guwahati on 13-04-2005 to resume his duty. But the authority concerned did not allow him to join in service. It is to be mentioned herein that the deponent again fall in ill since 14-04-2005 and treatment was made at Bamunimaidam Guwahati and accordingly submitted a medical certificate on 17-05-2005. On 04-05-2005 the authority was brought charge for major penalty against the deponent due to unauthorized absence in duty and the said charges for major penalties against the deponent is not proportionate and the same has been not at all warranted in the preview of service Rule.

7. That with regards to the statements made in paragraph 4.4 of the written statement the answering deponent reiterate and reaffirm the statements made in original application and which are matter of records.
8. That with regards to the statements made in paragraph 4.5 the answering deponent denies the same and begs to say that the defence counsel on 19-08-2005 had withdrawn his consent to act as defence counsel but the authority did not allowed the deponent to engage another counsel on his behalf.
9. That with regards to the averments made in paragraphs 4.6 and 4.7 of the written statements

*Diman*

Contd.../-

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gri: Haidar Kalita

the answering deponent denied the same and beg to say that a memorandum of major penalty issued to the deponent on 30-08-2005 and against which the deponent preferred an appeal before the appellate authority on 09-09-2005 but the appellate authority without considering the appeal filed by the deponent came to a conclusion whereby the deponent was removed from service. The deponent further beg to say that the disciplinary authority on 14-09-2005 issued a notice for imposition of penalty upon the deponent and also instructed him to prefer an appeal within fourteen days from the date of receipt of the notice. And accordingly the deponent had preferred an appeal on 27-10-2005 before the D.P.O./I.C./L.M.G., N.F. Railway, but the appellate authority without considering the grounds set forth in the appeal have not been considered and come to a erroneous conclusion that the charges against the deponent are proved and the penalty of removal from service still holds.

10. That with regards to the averments made in paragraph 4.8 and 4.9 of the written statement the answering deponent denied the same and beg to say that the deponent was absent from service due to serious illness and he unable to inform the authority concern in time that while the deponent had recovered from his illness / sufferings he came to the office for resume on his duty on 13-04-2005 but the officers concern to whom attached the deponent did not allow to join in service. The deponent further begs to say that the appellate authority without considering the legal aspects of

Contd.../-

30.11.2005  
Haidy Kalita

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Soni; Hriday Kalita

- 94  
Soni; Hriday Kalita

94  
Soni; Hriday Kalita

**VERIFICATION**

I, Sri Hriday Kalita, son of Late Nani Kalita, resident of village – Ulaguri, P.S. Kamarkuchi, P.O. Bijulighat, District – Nalbari, do hereby verify that the statements made in paragraphs 1 to 12 ..... are true to my knowledge and belief and those made in paragraphs ..... are true to my information based on records and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this verification on this the 30<sup>th</sup> day of October, 2006.

*Sri: Hriday Kalita*  
**SIGNATURE**

Contd.../-