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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

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O.A/T.A No. 165/2006

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SECTION OFFICER (Judl.)

Kalita
24/10/17

(The Rules 1963)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:
ORDERS SHEET

1. Original Application No. 165/06
2. Misc Petition No. _____
3. Contempt Petition No. _____
4. Review Application No. _____

Applicant(S) Kiream Gans
 Respondant(S) U.O.P Joms
 Advocate for the Applicant(S) G.K. Bhattacharjee
B. Chandray

 Advocata for the Respondant(S) Railway Counsel

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed/C.F. for Rs. 10/- deposited vide IPO/BD No. <u>269/324/06</u> Dated <u>26.6.06</u></p> <p style="text-align: center;"><i>[Signature]</i> Dy. Registrar</p> <p><i>[Signature]</i> <u>mb</u></p> <p>Steps not taken.</p> <p style="text-align: center;"><i>[Signature]</i></p> <p>Received true copy. <i>[Signature]</i> Adv. D. 12.7.06.</p> <p style="text-align: center;"><i>[Signature]</i> <u>24/7/06</u> cc - Adv.</p>	<p>30.06.2006</p>	<p>Heard learned counsel for the parties. The application is disposed of in terms of the order passed in separate sheets. No order as to costs.</p> <p style="text-align: right;"><i>[Signature]</i> Vice-Chairman <u>3/7/06</u></p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

.....

165 of 2006

O.A. No.

30.06.2006

DATE OF DECISION

Sri Kiran Gaur

..... Applicant/s

By Mr. G.K. Bhattacharyya, Sr. Advocate, Mr. B. Chowdhury, Advocate.

..... Advocate for the
applicant/s.

- Versus -

Union of India & Ors.

..... Respondent/s

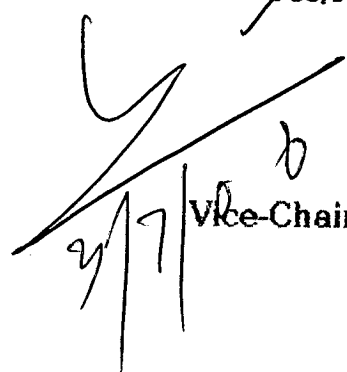
Dr. J.L. Sarkar, Railway Standing Counsel.

..... Advocate for the
respondents

CORAM

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

- 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 compiled at Jodhpur Bench ? Yes/No
- 4. Whether their Lordships wish to see the fair copy of the Judgment ? Yes/No


 Vice-Chairman

1

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 165 of 2006

Date of Order : This the 30th day of June 2006.

The Hon'ble Sri K.V. Sachidanandan, Vice-Chairman.

Sri Kiran Gaur
Emergency Peon
(Since Removed from service)
S/o - Nagina Gaur
S/o - Munna Prasad Rezak
Gate No. 1, Hillside Colony
Near Kailash Apartment, Maligaon
Guwahati - 11.

... Applicant.

By Mr. G.K. Bhattacharyya, Sr. Advocate, Mr. B. Chowdhury,
Advocate.

- Versus -

1. The Union of India,
Represented by the General Manager,
N.F. Railway, Maligaon.
Guwahati - 11.
2. General Manager (P),
N.F. Railway, Maligaon,
Guwahati - 11.
3. Divisional Railway Manager
N.F. Railway, Rangia Division,
Rangia.
4. Senior Divisional Engineer (Co-ordination),
N.F. Railway, Rangia Division,
Rangia.

... Respondents.

By Advocate Dr. J.L. Sarkar, Railway Standing Counsel.

....

ORDER (ORAL)

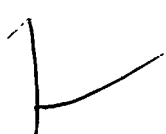
K.V. SACHIDANANDAN, (V.C.)

The Applicant, who was substitute emergency peon, stated that he felt sick and could not attend the office for duties for some

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days, for which he submitted leave application. The Respondents initiated departmental proceeding against the applicant and charge sheet was issued on 07.02.2005. One of the charges against him was that he was unauthorisedly absent from 02.02.2005. The order dated 02.02.2005 (annexure - II) also speaks to the effect that the applicant was under suspension from 02.02.2005 (A/N). This is borne out in the imputation of charges also that the applicant was absent unauthorisedly from 02.02.2005. The Applicant stated that no reasonable opportunity was given to him nor witnesses and list of documents were furnished before the inquiry. Therefore, the impugned order is arbitrary and liable to be set aside. The Respondents stated in the order that the applicant did not participate in the inquiry, therefore, ex parte inquiry was conducted and awarded punishment of removing from service. Aggrieved by the said action of the Respondents, he has filed this application seeking the following reliefs:-

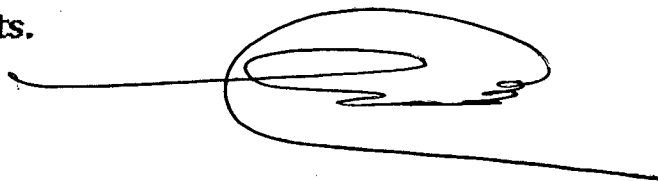
"It is, therefore, prayed that Your Lordships would be pleased to admit this application, call for the entire records of the case, ask the respondents to show cause as to why the impugned order dated 9.8.05 (Annexure - III) shall not be quashed and set aside and after perusing the causes shown, if any and hearing the parties be pleased to quash and set aside the order dated 9.8.05 (Annexure - III) and/or pass any other order/orders as Your Lordship may deem fit and proper."

2. Heard Mr. B. Choudhury, learned counsel for the Applicant and Dr. J.L. Sarkar, learned standing counsel for the Railways (who was represented by Ms. U. Das, learned counsel).
 3. Learned counsel for the Applicant submitted that the findings of the Inquiry Officer, which was accepted by the Disciplinary Authority, that the Applicant was unauthorisedly absent from duty
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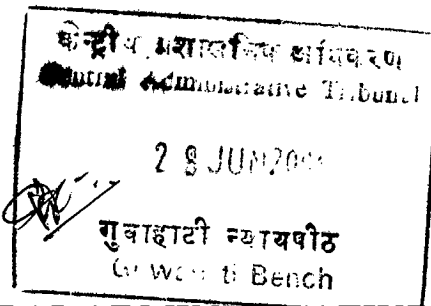
from 03.02.2005 and therefore, he was found guilty and removed from service, is not correct since the documents indicate that the applicant was suspended from 02.02.2005. The question is, how come a suspended employee could be unauthorisedly absent ? The Respondents committed a mistake in having that finding which is perverse. The Applicant also filed appeal on 21.09.2005 against the order of removal, which is yet to be disposed of. Learned counsel for the applicant submitted that he will be satisfied if a direction is given to the Respondents to dispose of the appeal dated 21.09.2005 as expeditiously as possible and pass appropriate order and communicate the same to the Applicant.

4. This Court is also view that it will suffice ends of justice. Therefore, the Respondent No. 3 and any other competent authority shall dispose of the appeal dated 21.09.2005 filed by the Applicant giving weightage to the observations made above and pass a speaking order and communicate the same to the applicant within a period of one month from the date of receipt of copy of this order.

The application is disposed of as above at the admission stage itself. No order as to costs.



(K. V. SACHIDANANDAN)
VICE-CHAIRMAN



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH :: GUWAHATI

O. A. NO. 165 /2006.

Sri Kiran Gaur

..... Applicant.

- Versus -

Union of India and others.

..... Respondents

I N D E X

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Filed by :

Bikram Choudhury,
Advocate 29.6.06.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

GUWAHATI

D.A. NO. 165 /2006

KIRAN GAUR ..Applicant

-Vs-

UNION OF INDIA & ORS. ..Respondents

LIST OF DATES

- 22.7.02/ - Appointed as Substitute Emergency Peon
- 1.8.02 ..Annexure - I, Page-12.
Joined and was attached to R.K. Meena
the then Deputy Chief Engineer (Co-ord)
Maligaon.
- 2003 - A new Division was established at Rangia
and Sri R.L. Meena was transferred to
Rangia as Sr.Divisional Engineer (Co-ord)
and the @ continued to with the new
incumbent in place of Sri R.L. Meena.
- 1.4.2003 - In response to a query by Respondent
No.2 about applicant's status Sri RL
Meena certified his work to be satis-
factory and can be continued further.
On request of R.L. Meena the applicant
was transferred to Rangia and he resumed
his work with R.L.Meena.
- 27.1.2005 - Applicant felt sick and he was diagnosed
to be suffering from viral fever and he
duly informed R.L. Meena that he shall
not be able to come to work for few days

Contd..P/-

2.2.2005 - Received order placing the applicant under suspension with immediate effect pending drawing of departmental proceedings.

Annexure - II, Page-13

7.2.2005 - Received charge sheet.

Annexure - III, Page-14

25.2.2005 - Applicant submitted his written statement.

Annexure - IV, Page-18

1.3.2005 - Received order appointing the Enquiry Officer.

Annexure - V, Page-19

22.3.2005 - Received order from Enquiry Officer fixing 6.4.05 for hearing.

4.4.2005 - Applicant submitted an application before Enquiry Officer seeking some clarification.

Para -10, Page-5

Enquiry was not held on the date fixed and it got postponed twice and was fixed on 9.6.05.

Subsistence allowance was not received by the applicant since April, 2005.

Contd..P/-

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6.6.2005 - Applicant submitted an application before Enquiry officer seeking the clarification as stated in application dated 4.4.05.

Annexure - VI, Page-20

15.6.2005 - Received a letter from Enquiry Officer fixing the enquiry on 5.7.05 and the appeals dtd.6.6.05 and 13.6.05 filed by him shall be considered on that date

Annexure - VII, Page-22

5.8.2005 - Received order from Respondent No.4 revoking his suspension order.

24.8.2005 - Received impugned order dtd.9.8.05 issued by the Respondent No.4 removing him from service with immediate effect.

Annexure - VIII, Page-23

21.0.2005 - Submitted an appeal before Respondent No.3 against the order of removal dtd. 9.8.2005.

Annexure - IX, Page-24

Filed by:


Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI
BENCH :: GUWAHATI

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

O. A. NO. 165 / 2006.

Sri Kiran Gaur

Emergency Peon

(Since removed from service)

S/o - Nagina Gaur,

C/o Munna Prasad Rezak.

Gate no 1, Hillside Colony,

Near Kailash Apartment, Maligaon,
Guwahati - 11.

..... Applicant.

- Versus -

1. The Union of India

Represented by the General Manager,

N.F. Railway, Maligaon,

Guwahati-11.

2. General Manager(P),

N.F. Railway, Maligaon,

Guwahati -11

3. Divisional Railway Manager

N.F. Railway, Rangia Division

Rangia.

4. Senior Divisional Engineer (Co-
ordination), N.F. Railway, Rangia Division,
Rangia.

..... Respondents.

Contd.....

Filed by:

Kiran Gaur

through Suren Choudhury
Adv.
22.6.06

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

(i) Order No. W/87/DAR/RNY/W-8 dated 9.8.05 issued by the Respondent No. 3, whereby the applicant was imposed the major penalty of removal from service.

(ii) Appeal dated 21.9.05 filed by the applicant under the Rules before the Respondent No. 2 against the order of removal but till date the same has not been disposed.

(iii) Action of the authorities in removing the applicant from service in a very illegal and arbitrary manner.

2. **JURISDICTION OF THE TRIBUNAL**

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of this Tribunal.

3. **LIMITATION**

The applicant further declares that the application is within the limitation prescribed under section 21 of the Administrative Tribunals Act, 1985.

4. **FACTS OF THE CASE:**

1. That the applicant belongs to a very poor strata of the society and as the meagre income of the family was not sufficient to sustain the family the applicant, after passing his HSSLC examination in the year 1994 the applicant gave up his studies and started looking for a job to support his family.
2. That thereafter the applicant applied for various jobs and finally in the year 2002, the applicant was appointed as a Substitute Emergency Peon in the scale of Rs. 2550/- to Rs. 3200/- (RPS) on pay of Rs. 2550/-

Contd.....

Hiran Gaur

w.e.f. 22.07.2002 vide General Manager (P), Maligaon letter No. E/ 283/45 (E) dated 22.07.2002/01.08.02 on a temporary basis.

A copy of the appointment letter is annexed herewith and marked as ANNEXURE - I.

3. That accordingly, the applicant joined duty as a Substitute Emergency Peon and he was assigned/attached to Sri R.L. Meena, the then Deputy Chief Engineer, (Co ord), Maligaon. Since the date of his joining service the applicant had been performing his duties sincerely and to the best of abilities and there had been no such occasion when any adverse remark or otherwise was ever communicated to him and after completion of 120 days, service as a Substitute Emergency Peon the applicant was conferred temporary status.
4. That after formation of Rangia as a new Division in the year 2003 Shri R.L. Meena was transferred to Rangia as Senior Divisional Engineer (Co ord), Rangia and the applicant continued to work with the new Deputy Chief Engineer (Co ord), Maligaon. However, in reponse to a query from General Manager (P), Maligaon on the applicant's status, Sri R.L. Meena by his letter No. W/Transfer/2003 dated 01.04.2003 requesting the General Manager (P), Maligaon to transfer the applicant to Rangia under him as his work was satisfactory and further certified that the applicant's "service were satisfactory and he can be continued further".
5. That thereafter, the applicant was transferred to Rangia and he resumed his work with Sri R.L. Meena, Senior Divisional Engineer (Co ord), Rangia with the same sincerity and devotion. On 27.01.2005 while discharging his duties, the applicant suddenly fell sick and on consulting a Railway doctor on the next day he was diagnosed to be suffering from viral fever and accordingly he duly informed Sri R.L. Meena about his sickness and he shall not be able to come to work for few days.
6. That after resuming his duties after his recovery the applicant was shocked and surprised to receive order dated 02.02.2005 issued by the Respondent No. 4, whereby he was placed under suspension with immediate effect pending contemplation of a disciplinary proceeding

Contd.....

Jirani

and he was further directed not to leave the Head Quarter without permission of the competent authority. The order further stated that the order regarding subsistence allowance will be issued separately.

A copy of the above order dated 02.02.2005 is annexure herewith and marked as ANNEXURE - II.

7. That the applicant then was served with the chargesheet issued under memo No. W/87/DAR/RNY/W-8/815 dated 07.02.2005 whereby it was alleged that the working of the applicant is casual, careless and non-cooperative inspite of being instructed several times verbally to improve his working and warned on 25.11.2004 vide this office letter No. W/415/RNY/W/8 dated 25.11.2004 and over and above it was alleged that he was unauthorisedly absenting himself since 02.02.2005, which tantamounts to serious misconduct and violated Rule 3.1(I) and 3.1(II) of Railway Service Conduct Rules, 1966.

The applicant states that as stated in the charge sheet he was never served oral or written warning dated 25.11.04 and he was placed under suspension w.e.f 2.2.05 and as such there can be no question of remaining absent unauthorisedly from 2.2.05.

A copy of the chargesheet dated 07.02.2005 is annexed herewith and marked as ANNEXURE - III.

8. That thereafter the applicant submitted his written statement of defence on 25.02.2005 denying the charges levelled against him and stated that he has been discharging his duties properly as instructed by Madam/Sir i.e. Mr. and Mrs. Meena.

A copy of the written statement dated 25.02.2005 is annexed herewith and marked as ANNEXURE - IV.

Contd.....

Kiran Gaur

9. That thereafter the applicant received order No. W/87/DAR/RNY/W-8 dated 01.03.2005 appointing Sri S. Bose ADEN/SPL/RNY as the enquiry officer to enquire into the charges levelled against the applicant.

It will be relevant to mention here that the letter dated 01.03.2005 does not in anyway reflect as to whether the written statement filed by the applicant was at all considered by the Disciplinary Authority before remitting the case to the Enquiry Officer as required under the rules. Then he received letter dated 22.03.05 whereby the Enquiry Officer fixed 06.04.05 for hearing.

A copy of the above letter dated 01.03.2005 is annexed herewith and marked as ANNEXURE - V.

10. That the applicant on 04.04.2005 submitted an application before the Enquiry Officer stating that as per Rule 9.(9)(a) (iv) of the Railway Servants (Discipline and Appeal Rule), 1968, the disciplinary authority has to consider his written statement and pass a reasoned order either to hold an enquiry or to drop the charges for major penalty and impose a minor penalty or to drop the charges altogether being convinced with the submissions and thereafter appoint the Enquiry Officer, if the disciplinary authority decided to hold the enquiry. But in the case of the applicant no such reasoned order was issued before appointment of the Enquiry Officer and as such the holding of the enquiry would be premature and without jurisdiction. Moreover the charges were vague, indefinite and indistinct as no detail particular of casualness, carelessness and non-co-operation have been furnished and as there is no list of relied upon documents and witnesses enclosed with the memorandum, there is no material before the enquiry officer to sustain the charges levelled against the applicant and also it will be difficult for the applicant to defend himself in such a situation.
11. That thereafter the Enquiry Officer did not give any reply to the letter dated 04.04.05 of the applicant and instead postponed the hearing which was fixed on 06.04.05 and re-fixed the same on 03.06.05 by his letter dated 20.05.05.

Contd.....

Hiran Gaur

12. That in the meantime, the applicant submitted an application dated 17.05.05 before the disciplinary authority stating that as his suspension order dated 02.02.05 has elapsed with expiry of 90 days on 02.05.05 since the same has not been reviewed or extended as per rules and as such he may be allowed to resume duties.
13. That on 01.06.05 the applicant again received a letter from the Enquiry Officer postponing the enquiry scheduled to be held on 03.06.05 due to official work of the Enquiry Officer to 09.06.05. The applicant further states that after his suspension he was paid full salary for February, 2005 and subsistence allowance for March, 2005 but since April, 2005 he has not been paid any subsistence allowance which is in violation of F.R. 53.
14. That thereafter on 06.06.2005 the applicant submitted another representation with reference to the letter of the Enquiry Officer dated 01.06.2005 reiterating that the disciplinary authority has not passed a reasoned order before remitting the case to the enquiry authority and since there is no list of relied upon documents and witnesses there is no material before the Enquiry Officer to enquire into the charges.

A copy of representation dated 6.6.05 is annexed herewith and marked as ANNEXURE-VI

15. That on 09.06.05 the applicant received another letter from the Enquiry Officer completely ignoring the application dated 06.06.05 submitted before the Enquiry Officer and fixed 15.06.05 for hearing stating that if he does not attend the hearing on the next date then ex parte decision will be communicated to the higher authority for the next course of action.
16. That since the disciplinary authority and the Enquiry Officer appeared to be proceeding in the above disciplinary proceeding with the object of bringing about the removal of the applicant from service defying all rules and principles the applicant on 13.06.2005 filed an appeal under

Contd.....7

Ahram Gaur

Rule 18 of the Railway Servant (D & A) Rules 1968 before Respondent no 3 stating the above facts and that he has not been paid his subsistence allowance and his suspension is continuing without any order even after expiry of 90 day from the date of suspension.

17. That thereafter the applicant received letter No. W/87/DAR/RNY/W-8 dated 15.06.2005 from the Enquiry Officer asking the applicant to attend the regular hearing of the Enquiry on 05.07.2005 and also to appoint his defence counsel, if desired or otherwise decision thereof would be taken exparte. The Enquiry Officer further stated that the two appeals dated 06.06.05 and 13.06.05 filed by the applicant had been received and discussion on the same would be taken up on the regular hearing.

A copy of the letter dated 15.06.05 is annexed herewith and marked as ANNEXURE - VI.

18. That the applicant received order No. W/87/DAR/RNY/W-8 dated 05.08.05 from the disciplinary authority whereby the order of his suspension dated 02.02.05 was revoked w.e.f. 05.08.05.
19. That to the utter shock and surprise of the applicant he has now received order issued under Memo No. W/87/DAR/RNY/W-8 dated 09.08.05 from the disciplinary authority on 24.08.05 removing him from service with immediate effect.

It will be pertinent to mention here that before imposing the major punishment of removal from service the disciplinary authority had not furnished the applicant with the exparte enquiry report.

A copy of the order dated 09.08.05 is annexed herewith and marked as ANNEXURE - VIII.

20. That thereafter the applicant on 21.9.05 submitted an appeal against the order dated 9.8.05 under the rules before the Respondent No. 3

Contd.....8

Jhijan Gaur

with the prayer for setting aside the order of removal being illegal and arbitrary.

A copy of the appeal dated 21.9.05 is annexed herewith and marked as ANNEXURE -IX.

21. That the applicant begs to state that after filing the appeal he was hopeful that the appellate authority would look into the matter and give a positive response to his appeal. But till date there has been no response to his appeal and as such he is convinced that no useful purpose will be served by waiting any longer and therefore he is approaching this Hon'ble Tribunal for just and proper relief.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS

- (i) For that, the impugned order was passed in a most arbitrary manner in gross violation of the procedure laid down for imposing penalties and conducting the proceedings and as such the impugned order is bad in law and is liable to be set aside.
- (ii) For that even assuming, but not admitting that the charges levelled against the applicant are proper the action of the authorities in imposing the punishment of removal from service is highly unreasonable and illogical in as much as the punishment imposed is too harsh and grossly disproportionate to the alleged offence and as such the same is liable to be quashed and set aside.
- (iii) For that, the applicant was not afforded reasonable opportunity for defending his case in the proceeding inspite of his raising the objection that there is no list of relied upon documents and witness by which the charges are sought to be proved and as such the impugned order is liable to be quashed and set aside.
- (iv) For that, the disciplinary authorities had not furnished the applicant with the exparte Enquiry Report before imposing on him the punishment of removal from service, which is mandatory as per the Rules and as

Contd....9

Kiran Gaur

such the impugned order of removal from service is liable to be set aside on this count alone.

- (v) For that, the applicant was charged with the offences alleged on a purely personal grudge and as such the action of the authorities in proceeding on the basis of those charges and thereafter removing him from service is bad in law and is liable to be set aside.
- (vi) For that the applicant had asked for some reasonable clarifications with regard to be proceeding in the interest of natural justice and since no decision was taken on his clarification the Enquiry Officer should not have proceeded with the enquiry *ex parte* without any decision being taken on the clarification sought for by the applicant and as such the impugned order is bad in law and is liable to be set aside.
- (vii) For that the enquiry officer submitted his report which was not based on any evidence on record but was based on surmises and conjectures and as such the impugned order passed on the basis of such report is bad in law and liable to be set aside.
- (viii) For that the impugned order 9.8.05 (Annexure-) passed by the Respondent No. 3 is not a reasoned order and it does not reveal as to how the disciplinary authority has come to the same conclusion with that of the Enquiry Officer with regard to the alleged charge and as such the same is bad in law and liable to be set aside.
- (ix) For that the applicant had filed an appeal dated 21.9.05 against the order of removal dated 9.8.05 before the Respondent No. 2 and the action of the appellate authority in not disposing the same till date shows that they failed to exercise the jurisdiction vested in it and as such the same is bad in law and liable to be set aside.
- (x) For that it will be apparent from the impugned order dt 9.8.05 (Annexure -VIII) that the disciplinary authority has held that the applicant was unauthorisedly absent from 3.2.05 whereas the applicant was placed under suspension w.e.f. 2.2.05 and as such the impugned order is bad in law and liable to be set aside on this ground alone.

Contd....10

Kiran Gaur

- (xi) For that in any view of the matter the impugned order of removal from service is bad in law and is liable to set aside.

6. **DETAILS OF THE REMEDIES EXHAUSTED :**

The applicant filed an appeal dated 21.9.05 before the appellate authority (i.e. Respondent No. 2) challenging the impugned order but till date the same has not been disposed of.

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

The applicant further declares that he has not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any Court or any other authority or any other Bench of the Tribunal nor any any such application, writ petition or suit is pending before any of them.

8. **PRAYER :**

It is, thereofer, prayed that Your Lordships would be pleased to admit this application, call for the entire records of the case, ask the respondents to show cause as the why the impugned order dated 9.8.05 (Annexure- VIII) shall not be quashed and set aside and after perusing the causes shown, if any and hearing the parties be pleased to quash and set aside the order dated 9.8.05 (Annexure- VIII) and/or pass any other order/orders as Your Lordship may deem fit and proper.

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

9. **INTERIM ORDER : DOES NOT ARISE**

10. **PARTICULARS OF THE POSTAL ORDER :**

- (a) I.P.O. No. 269/32464 dated 28.6.06.
 (b) Date of issue 28.6.06.
 (c) Issued by G.P.O.

11. **LIST OF ENCLOSURES :**

As stated in the Index

S. Kiran Gowar

VERIFICATION

I, Sri Kiran Gaur, son of Nagina Gaur, aged about 30 years, resident of C/o Munna Prasad Rozak, Gate no. 1, Hillside Colony, Near Kailash Apartment, Maligaon, Guwahati - 11, in the district Kamrup, Assam do hereby verify that the statements made in paragraphs no. 1, 3, 4, 5, 10, 11, 12, 13, 14, 15, 16 & 21 are true to my personal knowledge and those in paragraphs 2, 6, 7, 8, 9, 17, 18, 19 & 20 are believed to be true on legal advice and that I have not suppressed any material fact.

And I sign this verification on this 29 day of June, 2006 at Guwahati.

Date: 29.6.06.

Place: Guwahati

Kiran Gaur

Signature of the applicant.

Kiran Gaur

OFFICE OF THE
GENERAL MANAGER (E)
MADHON. P. 22/7/02

NO. E/283/115(E) Local

To
Spt. *Kiran Gaur*
at Office.

(Through CA/CS/W/MLL under CE/MLL)

Sub : Temporary appointment as Substitute
Emergency Peon in scale Rs. 2550-3200/-.

You are hereby temporarily engaged as substitute E/
Peon in scale Rs. 2550-3200/- (ERS) on pay Rs. 2550/- w.e.f.
22.7.02 attached to Dy. CE/co-ord. against the existing
vacancy of W/c, EGAH No. 29 CE (87) subject to the following con-
ditions. (8) of 2000-01 for 16 months chargeable to 2141-01

- (1) Immediate discharge in the event of the return of perma-
nent incumbent from leave or on expiry of temporary san-
ction in which you are engaged or your mental or physical
incapability or to your removal or dismissal from service
for misconduct.
- (2) If the termination of your service is due to some other
causes you will be entitled to notice of 14 (fourteen)
days or month as the case may or pay in lieu thereof.
- (3) You will be transferred with the officer with whom you
are engaged as substitute E/Peon or you will be dis-
charged in the event of the officer for whom you are en-
gaged expresses his unwillingness to take you on transfer
alongwith him.
- (4) Your engagement as substitute E/Peon at the first instance
will be for a period of 3 (three) months only and will be
extended further, on receipt of certification from the con-
trolling Officer that, "the services of substitute E/
Peon is satisfactory and he can be continue further".
- (5) You will not be eligible for any benefit except those
admissible to temporary employees under the rules in
force from time to time.
- (6) No provision of quarters is guaranteed.

This issues with the approval of General Manager/
N.F. Railway/Madison.

L.S.
M. P. RAILWAY/MADISON.

NO. E/283/115(E) Local

DATED 22.7.02

Copy forwarded for information & necessary action to :

- 1. PA/CA/PTG.
- 2. Dy. CE/co-ordination/MLL
- 3. Secy to G.M./MLL
- 4. DCC/MLL (in duplicate)/MLL
- 5. ...
- 6. ...
- 7. ...
- 8. ...

Attested by
[Signature]
Adv

for GENERAL MANAGER (E)/MIG.

Staff copy

-13-

ANNEXURE-II v3

STANDARD FORM NO.1
Standard Form of Order of Suspension.
Rule 5(1) of the RS (D&A) Rules, 1968.

Office of the
Divl. Rly. Manager (W)
N. F. Rly, Rangiya.
Dt. 2/2/05.

ORDER

Whereas disciplinary proceeding against
Shri Kiran Gaur, Sub. E/Peon
(Name and designation of the Railway
servant) is contemplated/Pending.

Now, therefore, the undersigned (the authority competent to place
the Railway servant under suspension in terms of the Schedule II and III
appended to RS (D&A) Rules, 1968/an authority mentioned in proviso to
[Rule 4 of the RS(D&A) Rules, 1968, hereby places the powers conferred
by Rule 4/proviso to Rule 4 of RS(D&A) Rules, 1968, hereby places the
said Shri Kiran Gaur, Sub. E/Peon under suspension
with immediate effect/with effect from 02/02/05 (AN)

It is furthered ordered that during the period this order shall
remain in force, the said Shri Kiran Gaur, Sub. E/Peon shall not
leave the headquarters without obtaining the previous permission of the
competent authority.

Signature [Signature]
Designation ROENLC
(Designation of the suspending authority)

Copy to :
Shri Kiran Gaur, Sub. E/Peon
(Name and designation of the suspended Railway servant)

Order regarding subsistence allowance admissible to him during
the period suspension will issue separately.

Author's Comments :- While placing a Railway servant under
suspension there may be more than one case pending/contemplated
against him, and all or some of them might have weighed with the
competent authority ordering suspension. In such a case the Form
should be carefully filled up and if necessary, it may be suitable modified
so as to include all such cases and later deciding about the suspension
period.

Attested by
[Signature]
Adv.

2111

2/2/05

74105

(Rule-9 of the Railway Servants (Discipline & Appeal) Rules, 1968)

No. W/87/DAR/RNY/ W-8/815 (Name of the Railway Administration S.D. ZEN/c
NFKY/RNY, place of issue Rangiya, dated 7-2-05

M E M O R A N D U M

The President/Railway Board/Undersigned, propose to hold an inquiry against Shri. Kiran Gaur under Rule-9 of the Railway Servants (Disciplinary & Appeal) Rules, 1968. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of Articles of Charge (Annexure-I). A statement of the imputation of misconduct or misbehaviour in support of each Article of Charge, is enclosed (Annexure-II). A list of documents by which all or witnesses by whom, the Articles of Charge proposed to be sustained are also enclosed (Annexures-III & IV). Further, copies of documents mentioned in the list of documents as per Annexure-III are enclosed.

2. Shri. Kiran Gaur is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure-III) at any time during office hours within 10(ten) days of receipt of this Memorandum. For this purpose, he should contact the undersigned immediately on receipt of this memorandum.

3. Shri. Kiran Gaur is further informed that he may, if he so desires, take the assistance of any other Railway servant or official of Railway Trade Union (who satisfies the requirement of Rule-9 (13) of the Railway Servants (Discipline & Appeal) Rules, 1968 and Note-1 and/or Note-2, there under as the case may be) for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an Oral Inquiry being held. For this purpose, he should nominate one or more persons of order of preference. Before nominating the assisting Railway servant(s) or Railway Trade Union Official(s) Shri. Kiran Gaur should obtain an undertaking from the nominee(s) that he/they is/are willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case(s), if any, in which the nominee(s) has already undertaken to assist and the undertaking should be furnished to the undersigned along with the nomination.

4. Shri. Kiran Gaur is hereby directed to submit to the undersigned a written statement of his defence within 10(ten) days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of his defence, and within 10(ten) days after completion of inspection of documents if he desires to inspect documents, and also:-

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

5. Shri. Kiran Gaur is informed that an inquiry will be held only in respect of those articles of charge on which he is not admitted. He should, therefore, specifically admit or/deny each Article of Charge.

Contd. 2/2

Attested by
Boudhwar
Adv-1

Key/21/11

Received 4.4.05

6. Shri Kiran Gowd is further informed that if he does not submit his written statement of defence within the period specified in Para-2 or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of Rule-9 of the Railway Servants' (Discipline & Appeal) Rules, 1968 or the orders/direction issued in pursuance of the said rule, the Inquiring Authority may hold the inquiry ex-parte.

7. The attention of Shri Kiran Gowd is invited to Rule-20 of the Railway Services (Conduct) Rules, 1966, under which no Railway Servant shall bring or attempt or bring any political or other influence to bear upon any (Superior Authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on this behalf from another person in respect of any matter dealt within those proceedings, it will be presumed that Shri Kiran Gowd is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule-20 of the Railway Services (Conduct) Rules-1966.

8. The receipt of this memorandum may be acknowledged.

Encls :-

Signature
Name & Designation of Competent Authority.

[Signature]
07/12/68

Seal

To: Shri Kiran Gowd

Through Place :- Alipurduar Junction, Rangpur

Copy to :- Shri [Name and Designation of the lending authority] for information.

Strike out whichever is not applicable. To be deleted if copy are 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 by the Investigating authority or any authority who are in the custody of the listed documents who would be arranging for inspection of the documents to enable that authority being mentioned in the draft Memorandum.

Where the President is the disciplinary authority
To be retained wherever president or the Rly. Board is the competent authority.

To be issued wherever applicable, see Rule-16 (1) of the RS(DA) Rules, 1968. Not to be inserted in the copy sent to the Rly. Servant.

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IMPUTATION OF CHARGES FRAMED AGAINST SHRI KIRAN GOUR, PEON.

The workings of Shri Kiran Gour, Sub E/Peon is casual, careless and non-cooperative. He has been instructed verbally several times to improve his workings and warned on 25/11/04 vide this office letter No.W/415/RNY/W-8 dt.25.11.04. Over and above he is being absenting unauthorisedly since 2/2/05 (AN). Which tantamounts to serious misconduct and violated Rule 3.1(I) and 3.1(II) of Rly.service conduct Rule 1966.

11
07/2005
Sr. DEN/C/RNY
N.F. Railway
Senior Divisional Engineer
N. F. Rly, Ranjira

2111

Ke/2111

received 4.4.05

ANNEXURE-II

Imputation of charges framed against Sri Kiron Gour, E/Peon.

Being as E/Peon Sri Kiron Gour could not carry out his duty properly, he could not maintain his duties even issued warning letter against Sri Gour vide this office letter NO. W/415/RNY/W-8 dtd. 25-11-04.

Sri Kiron Gour neglected towards duty and violated service conduct rule- 1966 3.1 (i) and 3.1 (ii).

Ms
07/2/05
Sr. DEN/C/RNY
N.F.Railway.

- 2111

Re/2/05

(Sri Kiron Gour
Received 4.4.05)

Date : 25-02-2005.

From :
Kiran Kumar Goun,
E/Peon
under Sr. DEN/Rly.

To
Sr. Divisional Engineer(C)
N.F. Railway : Rangiya.

Subj- Reply of standadard form of suspension from duty
under Rule 5(I) enclosed with charge memorandum
No. W/87/DAR/INY/W-8/815 N.F. Rly. INY dt. 7-2-05.

.....

Sir,
I have been served with above said memorandam under RS
(DCA) Rules 1968 proviso to Rule 4 of RS (DCA) Rules 1968 on
16-02-2005.

I deny the charges framed against me I further submit
that I have never been ~~xxx~~ instructed to improve my workings,
as I have been performing my duties properly under the instruc-
tion of Madam irrespective of time or any limit of hr's of
performance of duty.

I submit that I have been allegedly made unauthorisedly
absent/service 02-02-05 illegally, and the charge is untrue
which does not warrant me to be associated with misconduct and
violation of Rule 3.1 (1) of Rly. service conduct Rule 1966 I
submit that I have been performing my duty with full responsibi-
lity and devotion since I have been considered for appointment
as E/Peon, and have never been disobeyed the order's of both
Sir, and Madam.

Thus the suspension and SF(5) memorandam issued against
me is illegal you are therefore, requested to kindly drop the
charges against me and revoke my duties.

Thanking you,

Yours faithfully,

Kiran Goun

(Kiran Goun) E/Peon
for Sr. D.E.N/(C) Rangiya.

Received
By
22/2/05
(22-15-10 hrs)

Attested by
[Signature]
Adv

N.F. RAILWAY
Standard form No. 07

[Standard form or order Relating to Appointment of Inquiry Officer/Board of Inquiry
(Rule No. 9(2) of RS(D&A) Rule 1968]

No. W/87/DAR/Rwy/W.C.

Railway N.F.

Place of issue Rangiya

ORDER

Whereas an Inquiry under Rule (of the Railway Servants (Discipline and Appeal) Rules, 1968 is being held against Shri Kiron Goyal, E/Pon. AND WHEREAS the undersigned considers that a Board of Inquiry/an Inquiry Officer should be appointed to inquiry into the charge framed against him

NOW THEREFORE, the undersigned, in exercise of the powers conferred by sub-rule (2) of the said Rule, hereby appoints Shri S. Bose, ADEN/SPL/Rwy as Inquiry Officer to inquire into the charges against the said Shri

Kiron Goyal, E/Pon.

Signature [Signature]

Name [Signature]
(Designation of the Disciplinary Authority)
Senior Divisional Engineer
N. F. Rly, Rangiya

Copy to:

(i) Shri Kiron Goyal, E/Pon.
(Name and designation of the Railway servant)

(ii) Shri S. Bose, ADEN/SPL/Rwy
(Name and designation of the Inquiry Officer)

25/2/05
- 1/3/05 -
- 6/6/05

[Signature]
Signature [Signature]
Senior Divisional Engineer
N. F. Rly, Rangiya

Attested by
[Signature]
Adv.

To,

Date : 6.6.2005

The Enquiry Officer
A.D.E.N./SPL/RNY.
N.F. Railway

From :

Kiran Gour E/Peon of
Sr. DEN/Rangiya
N.F. Railway

Sub : With reference to your letter for D.A.R., enquiry to be held
on 9.6.05.

Sir,

Please refer to my application dt. 4.4.2005 whereunder I had submitted that no order of the Disciplinary authority in term's of rule 9 (IX) (A) (IV) of RS (D & A) rules (1968) has been passed before remitting the case to the disciplinary authority in absence of such an order no enquiry can be held. Secondly I had submitted that the language is vague indefinite and indistinct as no detailed particular's of casualness carelessness and non cooperation have been furnished and that this coupled with the fact that no list of relied upon documents and witnesses have been enclosed with the charge memorandum demonstrates that there is no material before the enquiry officer to enquire in to in absence of any material to sustain the charge framed how would you as enquiry officer hold the enquiry and how would I defend my self and against what?

Mere allegation is not prove of misconduct. Ignoring this vital and relevent plea which is based on the rule and the principles of material justice enshrined in article 311(II) of the constitution, you have been insisting on fixing dates of enquiry and submission of the name of defence counsel.

When I am not aware of the full particulars of the charges, how my defence counsel will under take a defence on this defective charge memorandum.

Attested by
@sundhary
Adv. D

You are therefore requested to consider my submission as aforesaid and pass an order accordingly before fixing another date of enquiry.

I may further add that my suspension has lapsed after 90 days by operation of Govt of India's instruction and I shall be highly prejudiced in defending myself in the enquiry for non payment of amount as subsistence allowance being paid during suspension.

Thanking you,

Yours faithfully

Kiran Gour

Kiran Gour E/Peon
Under Sr. DEN/RNY
N.F. Railway

Received
Pr
6/6/05

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ANNEXURE-VII

N.F.Railway.

Office of the
Divisional Railway Manager(W)
Rangiya;

Date:- 15-06-05.

NO.W/87/DAR/RNY/W-8

To,
Sri Kiran Gour,
E/Peon.

Sub:- Regular Hearing (R.H.) for DAR Enquiry.

Ref:- This office L/NO.W/87/DAR/RNY/W-8/1044
dtd. 09.06.05.

In reference to above, you were asked to attend regular hearing (R.H.) on 15-06-05 to the undersigned. But you have failed to attend on above fixed programme. Any how, you are again asked to attend the said Enquiry on 05-07-05 at 10.00 hrs. at undersigned chamber. By this time if you want to depute any defence counsel on behalf of you, you may submit his consent letter.

In this connection I would like to informed you that your two (2) apealed dt. 06.06.05 & 13.06.05 has been recieved by this office which would be discussed on the regular hearing.

In view of that it is to be mentioned that if you do not attend the R.H. fixed on 05.07.05 then ex-parte decision will be taken and which will be sent to D.A. for his final action please.

(S. Bose.) 15/6/05

Inquiry officer,
ADEN/SPL/RNY.

Attested by
@Sundhary
Adm

पू० सी० जी०-174एम०

N. F. G.-174 M.

पूर्वोत्तर सीमा रेलवे
Northeast Frontier Railway

नियम 1707 (1) की मद (i), (ii) और (iii) और नियम 1707 (2)-स्था० को मद (i) और (ii) के अंतर्गत दण्ड के संबंध में सूचना/Notice of imposition of penalties under items (i), (ii) & (iii) of Rule 1707 (1) and items (i) and (ii) of Rule 1707 (2)-RI.

(सन्दर्भ :- नियम 1716-स्था० का उप नियम-9)/Ref:- SR-9 Under Rule 1716 --RI)

सं०/No. CU/87/DAR/RNY/W-8

दिनांक/Date 09.08.05

प्रेषक/From DRM (W)/RNY

N.F.Rly.

सेवा में/To Sri. Kiran Gow, R/Peon.

Under DRM (W) RNY.

आरोप पत्र सं० N.F. Rly. दिनांक पर आपके स्पष्टीकरण के संबंध में आपको सूचित किया जाता है कि आपका स्पष्टीकरण संतोषजनक नहीं है तथा* ने निम्नलिखित आदेश दिया है **:-/With reference to your explanation to the charge sheet No CU/87/DAR/RNY/W-8/815 dated 7.02.05 you are hereby informed that your explanation is not considered satisfactory and that *the Competent authority has passed the following orders:**

Speaking order:

"Removed from Service with immediate effect i.e, 09.08.05."

[Signature]
अनुशासनिक अधिकारी का
हस्ताक्षर एवं पदनाम
[Signature]
Signature & Designation
of the Disciplinary
Authority
N. F. Rly, Rangpo

टिप्पणी :- हिदायत दूसरी तरफ देख । /N. B. :-Please see instructions on the reverse.

(इस भाग को काटकर हस्ताक्षर करके जारी करनेवाले कार्यालय को लौटा दे) / (The portion must be detached signed and returned to the office of issue).

प्राप्ति स्वीकृति/ACKNOWLEDGEMENT

में/To Sri. Kiran Gow, R/Peon.

e/o Sri Subananda Kumar.
Heav Gun Post, Type I Gr.

सूचना पत्र सं० P.O. Maligaon, Guwahati - 781011 दिनांक 7.8.05

आरोप पत्र सं० दिनांक
प्राप्ति स्वीकार करता हूँ । /I hereby acknowledgement receipt of your Notice No
dated the charge Sheet No

तारीख/Dated

स्टेशन/Station

तारीख/Dated

हस्ताक्षर या अंगूठे का निशान
Signature or Thumb Impression

पदनाम/Designation

Attested by
[Signature]
Adv.

• जब अनुशासनिक प्राधिकारी के सिवा अन्य प्राधिकारी द्वारा सूचना पर हस्ताक्षर किया जाये तो यह आदेश देनेवाले प्राधिकारी का उल्लेख कर। / When the notice is signed by an authority other than the Disciplinary authority here quote the authority passing the order.

•• यहां स्पष्टीकरण की स्वीकृति या अस्वीकृति और दिये गये दण्ड का उल्लेख कर / Here quote the acceptance or rejection of explanation and the penalty imposed.

हिदायत/INSTRUCTIONS

(1) इन आदेशों के विरुद्ध अपील (आदेश देनेवाले प्राधिकारी से ठीक ऊपर का प्राधिकारी) के पास की जा सकती है। / An appeal against these orders lies to *with in 45 days* next (immediate superior to the authority passing the orders);

म. P. A. P. Cross. Copy to :- 1) DRM (P)/ANY
2) P/case.

NO: W/87/DAR/RNY/W-8

Office of the
DRM/W/RNY
Dated. 07.08.05.

ORDER:

1. A major memorandum was issued vide No. W/87/DAR/RNY/W-8/815 dated. 7.02.05 to Shri Kiron Gaur, E/Peon in scale Rs. 2550-3200/- as he could not carry out his duty properly and also could not maintained his punctuality/devotion to duties, even issued warning letter against Shri Gaur vide this office letter No. W/415/RNY/W-8 dtd. 25.11.04 advising him to be punctual, and to work properly.
2. An inquiry officer appointed to enquire the fact and accordingly a report has been submitted by I.O. with the charges leveled against Shri Gaur.
3. Shri Kiron Gaur, E/Peon was unauthorisedly absent w.e.f. 3.02.05 till date which is very much irregular, neglegency of duties and misconduct of behaviour.

Based on the report of I.O., the undersigned has passed the following order:-

"I have gone through the case thoroughly.

After finding of I.O. the fact that the charges framed against Shri Kiron Gaur, E/Peon is acknowledged that he was not care about his duties, hence he neglected and minconducted to the superiors and violated service conduct rule 1966 3.1 and 3.1(ii).

Shri Kiron Gaur, E/Peon asked to attend on P.H. & R.H. fixed on 9.06.05, 15.6.05 & 5.07.05 and acknowledgement of the same is available at SN.42, but he had not attended on both the occasions, only he has submitted appeals which are self explanatory. Since, the delinquent has accepted indirectly, the charges himself has been given a chance to mend his ways in the past months. But undersigned find that Shri Kiron Gaur, never, mend his ways.

So, Shri Kiron Gaur, is removed from his service with immediate effect to meet the end of justice."

Speaking order is enclosed.

/

(R. L. MEENA)
Sr. DEN/C/RNY

To,
Shri Kiron Gaur, E/Peon
C/o-Shri Subananda Kumar,
(Near GM Bungalow), Type-1 Qtr.,
P.O.- Maligaon,
Guwahati-781 011, Assam.

Copy to:-

1. DFM/RNY.
2. DPO/RNY.
3. FS/Section.
4. ADEN/SPL/RNY.
5. notice board.

Witness

Hareeswar Sanyal
H.A. Clerk.

[Signature]
09/08/05
(R. L. MEENA)
Sr. DEN/C/RNY
Senior District Engineer
N. F. Rly., Guwahati

SPEAKING ORDER:-

I have gone through the case thoroughly.

Enquiry officer vide his E.R. at SN-51, confirmed the fact that the charges framed against Shri Kiron Gaur, E/Peon was not attended on both the occasion of Preliminary and Regular Hearing which was scheduled on 9.06.05, 15.06.05 & 5.07.05 inspite of summoned him vide letters placed at SN-34, 40, 42 & 48.

E.O. confirmed the fact that the charges against Shri Kiron Gaur, E/Peon as is C.O. is not willing at all to face on enquiry.

Shri Kiron Gaur, E/Peon was unauthorisedly absent w.e.f. 3.02.05 to till date which is very much irregular, neglecting attitude towards duties and misconduct of behaviour.

So, Shri Kiran Gaur, E/Peon is hereby removed from his service with immediate effect, i.e. 9.08.05 to meet the end.

D.A

[Signature]
09/8/05

(R. L. MEENA)

प्रवर/SE-DEN/GRNY

एन. ए. वि. से. वि. वि. वि. वि. वि.

Senior Divisional Officer

N. P. Bldg., Bhopal

[Signature] 3/8/05

To,

The Divisional Railway Manager,
N.F. Railway, Rangia Division
Rangia,
(Through Senior Divisional Engineer, Co-Ordination Rangia
Division, Rangia)

IN THE MATTER OF :

An appeal under Rule 18 of the Railway
Servants (D & P) Rules, 1968.

- AND -

IN THE MATTER OF :

Sri Kiran Gaur
Emergency Peon
(Since removed from service)
S/o - Nagina Gaur,
C/o - Sri Subananda Kumar,
(Near GM Bungalow), Type - I Quarter,
P.O. - Maligaon, Guwahati - 11.
..... Appellant.

- AND -

IN THE MATTER OF :

Order No. W/87/DAR/RNY/W-8
dated 09.08.05 issued by the Senior
Divisional Engineer (Co-ordination),
Rangiya Division, whereby the
appellant was imposed the major
penalty of removal from service.

The appellant above named.

Contd.....

NR
21/9/05

Received
21/9/05
C/S

Attested by.
@sundhary.
Adv.

- 2 -

MOST RESPECTFULLY BEGS TO STATE:

1. That the appellant belongs to a very poor strata of the society and as the meagre income of the family was not sufficient to sustain the family the appellant, after passing his HSSLC examination in the year 1994 the appellant gave up his studies and started looking for a job to support his family.
2. That thereafter the appellant applied for various jobs and finally in the year 2002, the appellant was appointed as a Substitute Emergency Peon in the scale of Rs. 2550/- to Rs. 3200/- (RPS) on pay of Rs. 2550/- w.e.f. 22.07.2002 vide General Manager dated 22.07.2002/01.08.02 on a temporary basis.

A copy of the appointment letter is annexed herewith and marked as ANNEXURE - I.

3. That accordingly, the appellant joined duty as a Substitute Emergency Peon and he was assigned to Sri R.L. Meena, the then Deputy Chief Engineer, (Co ord), Maligaon. Since the date of his joining service the appellant had been performing his duties sincerely and to the best of abilities and there had been no such occasion when any adverse remark or otherwise was ever communicated to him and after completion of 120 days, service as a substitute Emergency Peon the appellant was conferred temporary status.
4. That after formation of Rangia as a new Division in the year 2003 Shri R.L. Meena was transferred to Rangia as Senior Division Engineer (Co ord), Rangia and the appellant continued to work with the new Deputy Chief Engineer (Co ord), Maligaon. However, in reponse to a query from General Manager (P), Maligaon on the appellant's status, Sri R.L. Meena by his letter No. W/Transfer/2003 dated 01.04.2003 requesting the General Manager (P), Maligaon to transfer the appellant to Rangia under him as his work was satisfactory and further certified that the appellant's "service were satisfactory and he can be continued further".

Contd.....

- 3 -

5. That thereafter, the appellant was transferred to Rangia and he resumed his work with Sri R.L. Meena, Senior Divisional Engineer (Co ord), Rangia with the same sincerity and devotion. On 27.01.2005 while discharging his duties, the appellant suddenly felt sick and on consulting a Railway doctor on the next day he was diagnosed to be suffering from viral fever and accordingly he duly informed Sri R.L. Meena about his sickness.
6. That after resuming his duties after his recovery the appellant was shocked and surprised to receive order dated 02.02.2005 issued by the Senior Divisional Engineer (Co ord), Rangia, whereby he was placed under suspension with immediate effect pending contemplation of a disciplinary proceeding and he was further directed not to leave the Head Quarter without permission of the competent authority. The order further stated that the order regarding subsistence allowance will be issued separately.

A copy of the above order dated 02.02.2005 is annexure herewith and marked as ANNEXURE - II.

7. That the appellant then was served with the chargesheet issued under memo No. W/87/DAR/RNY/W-8/815 dated 07.02.2005 whereby it was alleged that the working of the appellant is casual, careless and non-cooperative inspite of being instructed several times verbally to improve his working and warned on 25.11.2004 vide this office letter No. W/415/RNY/W/8 dated 25.11.2005 and over and above it was alleged that he was unauthorisedly absenting himself since 02.02.2005, which tantamounts to serious misconduct and a violated Rule 3.1(I) and 3.1(II) of Railway Service Conduct Rules, 1966.

The appellant states that as stated in the charge sheet he was never served oral or written warning dated 25.11.04.

A copy of the chargsheet dated 07.02.2005 is annexed herewith and marked as ANNEXURE - III.

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8. That thereafter the appellant submitted his written statement of defence on 25.02.2005 denying the charges levelled against him and stated that he has been discharging his duties properly as instructed by Madam/Sir i.e. Mr. and Mrs. Meena.

A copy of the written statement dated 25.02.2005 is annexed herewith and marked as ANNEXURE - IV.

9. That thereafter the appellant received order No. W/87/DAR/RNY/W-8 dated 01.03.2005 appointing Sri S. Bose ADEN/SPL/RNY as the enquiry officer to enquire into the charges levelled against the appellant.

It will be relevant to mention here that the letter dated 01.03.2005 does not in anyway reflect as to whether the written statement filed by the appellant was at all considered by the Disciplinary Authority before remitting the case to the enquiry officer as required under the rules. Then he received letter dated 22.03.05 whereby the Enquiry Officer fixed 06.04.05 for hearing.

A copy of the above letter dated 01.03.2005 is annexed herewith and marked as ANNEXURE - V.

10. That the appellant on 04.04.2005 submitted an application before the Enquiry Officer stating that as per Rule 9.(9)(a) (iv) of the Railway Servants (Discipline and Appeal Rule), 1968, the disciplinary authority has to consider his written statement and pass a reasoned order either to hold an enquiry or to drop the charges for major penalty and inpose a minor penalty or to drop the charges altogether being convinced with the submissions and thereafter appoint the Enquiry Officer, if the disciplinary authority decided to hold the enquiry. But in the case of the appellant no such reasoned order was issued before appointment of the Enquiry Officer and as such the holding of the enquiry would be premature and without jurisdiction. Moreover the

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charges were vague, indefinite and indistinct as no detail particular of casualness, carelessness and non-co-operation have been furnished and as there is no list of relied upon documents and witnesses enclosed with the memorandum, there is no material before the enquiry officer to sustain the charges levelled against the appellant and also it will be difficult for the appellant to defend himself in such a situation.

11. That thereafter the Enquiry Officer did not give any reply to the letter dated 04.04.05 of the appellant and instead postponed the hearing which was fixed on 06.04.05 and refixed the same on 03.06.05 by his letter dated 20.05.05.
12. That in the meantime, the appellant submitted an application dated 17.05.05 before the disciplinary authority stating that as his suspension order dated 02.02.05 has elapsed with expiry of 90 days on 02.05.05 since the same has not been reviewed or extended as per rules and as such he may be allowed to resume duties.
13. That on 01.06.05 the appellant again received a letter from the Enquiry Officer postponing the enquiry scheduled to be held on 03.06.05 due to official work of the Enquiry Officer to 09.06.05. The appellant further states that after his suspension he was paid full salary for February, 2005 and subsistence allowance for March, 2005 but since April, 2005 he has not been paid any subsistence allowance which is in violation of F.R. 53.
14. That thereafter on 06.06.2005 the appellant submitted another representation with reference to the letter of the Enquiry Officer dated 01.06.2005 reiterating that the disciplinary authority has not passed a reasoned order before remitting the case to the enquiry authority and since there is no list of relied upon documents and witnesses there is no material before the Enquiry Officer to enquire into the charges.

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15. That on 09.06.05 the appellant received another letter from the Enquiry Officer completely ignoring the application dated 06.06.05 submitted before the Enquiry Officer and fixed 15.06.05 for hearing stating that if he does not attend the hearing on the next date then ex parte decision will be communicated to the higher authority for the next course of action.
16. That since the disciplinary authority and the Enquiry Officer appeared to be proceeding in the above disciplinary proceeding with the object of bringing about the removal of the appellant from service defying all rules and principles the appellant on 13.06.2005 filed an appeal under Rule 18 of the Railway Servant (D & A) Rules 1968 before Your Goodself stating the above facts and that he has not been paid his subsistence allowance and his suspension is continuing without any order even after expiry of 90 day from the date of suspension.
17. That thereafter the appellant received letter No. W/87/DAR/RNY/W-8 dated 15.06.2005 from the Enquiry Officer asking the appellant to attend the regular hearing of the Enquiry on 05.07.2005 and also to appoint his defence counsel, if desired or otherwise decision thereof would be taken ex parte. The Enquiry Officer further stated that the two appeals dated 06.06.05 and 13.06.05 filed by the appellant had been received and discussion on the same would be taken up on the regular hearing.

A copy of the letter dated 15.06.05 is annexed herewith and marked as ANNEXURE - VI.

18. That the appellant received order No. W/87/DAR/RNY/W-8 dated 05.08.05 from the disciplinary authority whereby the order of his suspension dated 02.02.05 was revoked w.e.f. 05.08.05.
19. That to the utter shock and surprise of the appellant he has now received order issued under Memo No. W/87/DAR/RNY/W-8 dated 09.08.05 from the disciplinary authority on 24.08.05 removing him from service with immediate effect. *Contd.....*

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It will be pertinent to mention here that before imposing the major punishment of removal from service the disciplinary authority had not furnished the appellant with the exparte enquiry report.

A copy of the order dated 09.08.05 is annexed herewith and marked as ANNEXURE - VII.

Being highly aggrieved by the order of the disciplinary authority removing him from service the appellant begs to prefer this appeal amongst other on the following.

G R O U N D S

- (i) For that, the impugned order was passed in a most arbitrary manner in gross violation of the procedure laid down for imposing penalties and conducting the proceedings and as such the impugned order is bad in law and is liable to be set aside.
- (ii) For that even assuming, but not admitting that the charges levelled against the appellant are proper the action of the authorities in imposing the punishment of removal from service is highly unreasonable and illogical in as much as the punishment imposed is grossly it is disproportionate to the alleged offence and as such the same is liable to be quashed and set aside.
- (iii) For that, the appellant was not afforded reasonable opportunity for defending his case in the proceeding inspite of his raising the objection that there is no list of relied upon documents and witness by which the charges are sought to be proved and as such the impugned order is liable to be quashed and set aside.

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- (iv) For that, the disciplinary authorities had not furnished the appellant with the exparte Enquiry Report before imposing on him the punishment of removal from service, which is mandatory as per the Rules and as such the impugned order of removal from service is liable to be set aside on this count alone.
- (v) For that, the appellant was charged with the offences alleged on a purely personal grudge and as such the action of the authorities in proceeding on the basis of those charges and thereafter removing him from service is bad in law and is liable to be set aside.
- (vi) For that the appellant had asked for some reasonable clarifications with regard to be proceeding in the interest of natural justice and since no decision was taken on his clarification the Enquiry Officer should not have proceeded with the enquiry exparte without any decision being taken on the clarification sought for by the appellant and as such the impugned order is bad in law and is liable to be set aside.
- (vii) For that in any view of the matter the impugned order of removal from service is bad in law and is liable to set aside.

It is, therefore, prayed that Your Honour would be pleased to admit this appeal, call for the entire records of the case and after perusal thereof set aside the impugned order dated 09.08.05 (Annexure - VII), received on 24.08.05 and direct that the appellant be reinstated in service and pass any other order/orders as Your Honour may deem fit and proper.

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