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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓ 198/2006
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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:**

ORDERS SHEET

1. Original Application No. 198/06
 2. Misc Petition No. _____
 3. Contempt Petition No. _____
 4. Review Application No. _____

Applicant(s) Sudhite Prasad Jom

Respondant(s) U-O-I Jom

Advocate for the applicant(s) P. Bhosmick
J. Talukdar

Advocate for the Respondant(s) CRS

Notes of the Registry	Date	Order of the Tribunal
<p>The application is in form.</p> <p>55E 545137-41</p> <p>2.8.06</p> <p><i>Sheeto</i></p> <p><i>mb</i></p> <p>Steps of taken dont one copy short.</p> <p><i>18.8.06</i></p> <p>C. copy has been collected by the L/Adv. for the applicant and a copy of the same handed over to the L/Adv. for the applicant.</p> <p><i>17/8/06</i></p>	<p>10.08.2006</p>	<p>The application is disposed of in terms of the order passed in separate sheets. at the admission stage itself.</p> <p><i>[Signature]</i> Member</p> <p>Vice-Chairman</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

198 of 2006

O.A. No.

10.08.2006

DATE OF DECISION

Shri Sudhir Prosad & Others

Applicant/s

Mr P. Bhowmick and Mr J. Talukdar

Advocate for the
Applicant/s.

- Versus -

Union of India & Others

Respondent/s

Dr. J.L. Sarkar, SC Railways

Advocate for the
Respondents

CORAM

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

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

Vice-Chairman

M

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 198 of 2006

Date of Order : This the 10th day of August 2006.

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

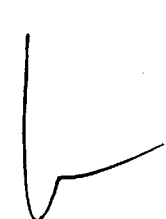
The Hon'ble Sri Gautam Ray, Administrative Member.

1. Shri Sudhir Prosad
S/o Late Dhanraj Prasad
Rly. Quarter No. DS/16. (H)
Station Colony, Guwahati.
2. Shri Bindeswari Singh
S/o Late Raj Narayan Singh
Rly. Quarter No. DS-86(C),
Ambari Railway Colony, Guwahati.
3. Sri Avijit Ghose
S/o Late Amal Krishna Ghose
Flat No. 504, R.K. Apartment,
Adabari, P.O. - Pandu, Guwahati - 12.
4. Shri Harshit Kumar Narzary,
S/o Doghadip Narzary
East Gotanagar
Rly. Quarter No. 88/A
Maligaon, Guwahati.
5. Shri Sagar Chowdhury
S/o Late Binod Choudhury
Gosala East, Rly Quarter No. 206(A)
Maligaon, Guwahati.
6. Shri Bimal Kumar Chanda
S/o Late Bisendra Chanda
Quarter No. 25(B)
B.B.C. Colony, Pandu
Guwahati.
7. Shri Rajib Rajbongshi
S/o Late A.K. Rajbongshi
Uzanbazar, Happy Villa
B.R. Road, House No. 14,
Guwahati - 781 001.

... Applicants

By Advocates Mr P. Bhowmick and Mr J. Talukdar.

- Versus -

1. Union of India, represented by the
General Manager, N.F. Railway,
Maligaon, Guwahati.
- 

2. Senior Area Railway Manager,
N.F. Railway, Guwahati.
3. Divisional Commercial Manager
N.F. Railway, Guwahati.
4. Assistant Commercial Manager,
N.F. Railway, Guwahati.

... Respondents

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

.....

ORDER (ORAL)

K.V. SACHIDANANDAN (V.C.)

The Applicants are working as Train Ticket Examiners in the N.F. Railway, Maligaon, Guwahati. Their grievance is that charges of less collection of penalty earning that Train Ticket Examiners of the Railways do not strictly come within the purview of misconduct. Non-compliance of the circulars issued to that effect would not come within the purview of misconduct, the same being against all canons of equity, justice and fair play, the same not being a condition of service and the direction contained in the circulars in question having not found place in the relevant service rules as misconduct, non-compliance of the same cannot amount to misconduct for which the Applicants are required to answer certain charges in a disciplinary proceeding. They should not have been punished for non-compliance of the circulars. But the Respondents initiated disciplinary proceedings against the Applicant for less collection and punishment imposed after consideration of their appeal. Aggrieved by the said inaction of the Respondents, the Applicants has filed this Application, seeking the following reliefs:-

"To set aside and quash in impugned orders issued vide order No. C/GHY/Earnings/03 dated 25.4.2005

issued by the Divisional Commercial Manager, N.F. Railway, Guwahati in respect of Applicant No. 1, order No. C/GHY/Earnings/03 dated 26.4.2005 issued by the Divisional Commercial Manager, N.F. Railway, Guwahati in respect of Application No. 2, order No. C/GHY/Earnings/03 dated 30.08.04 issued by the Divisional Commercial Manager, N.F. Railway, Guwahati in respect of Applicant No. 3, Order No. C/GHY/Earnings/03 dated 25.4.05 issued by the Divisional Commercial Manager, N.F. Railway, Guwahati in respect of Applicant No. 4, order No. C/GHY/Earnings/03 dated 25.4.05 issued by the Divisional Commercial Manager, N.F. Railway, Guwahati in respect of Applicant No. 5, order No. C/GHY/Earnings/03 dated 25.4.05 issued by the Divisional Commercial Manager, N.F. Railway, Guwahati in respect of Applicant No. 6 and orders No. C/GHY/Earnings/03 dated 30.4.04 issued by the Divisional Commercial Manager, N.F. Railway, Guwahati in respect of Applicant No. 7."

2. Heard Mr P. Bhowmick, learned Counsel for the Applicants and Dr. J.L. Sarkar, learned Standing Counsel for the Railways.

3. Learned Counsel for the Applicant submitted that though the Applicants have preferred appeal against the imposition of punishment, they have got liberty to submit Revision Petition, which may be permitted to submit within a time frame and the Respondents may be directed to consider and dispose of the same. Learned Counsel for the Respondents, on the other hand, submitted that the O.A. is not maintainable, since the Applicants' have different cause of action and different cause of action cannot club in a single Application. Therefore, the Application is not maintainable for mis-joinder and ~~mis~~-joinder of cause of action. However, the learned Counsel for the Respondents submitted that if the Applicants want to submit Revision Petition, it will suffice ends of justice and he has no objection.

4. Therefore, in the interest of justice, we direct the Applicants to submit separate Revision Petition before the Revisional Authority within a

period of 15 days from today. On receipt of such Revision Petition, the Revisional Authority shall consider and dispose of the same within a period of three months from the date of receipt of the Revision Petition. We make it clear that the Revisional Authority will condone the delay, if any. If aggrieved further the Applicants are at liberty to approach this Tribunal individually in separate proceeding since they have no common cause of action.

The O.A. is disposed of as above at the admission stage itself.

No order as to costs.

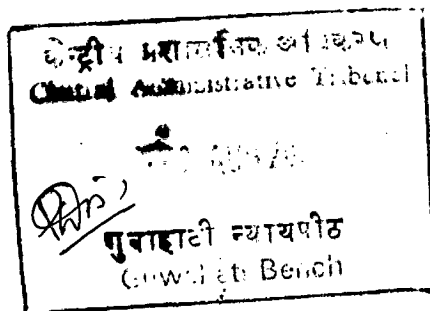


(GAUTAM RAY)
ADMINISTRATIVE MEMBER



(K.V. SACHIDANANDAN)
VICE-CHAIRMAN

/mb/



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
AT GUWAHATI

O.A. No. 198/2006.

Shri Sudhir Prosad & others

APPLICANTS

-Versus-

Union of India & others

RESPONDENTS

SYNOPSIS OF THE CASE

An application under Section 14 of the Administrative Tribunals Act, 1985 read with Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 challenging the legality and validity of the action of the Respondents in initiating the departmental proceeding against the Applicants and subsequently awarding punishment to them for being unable to collect adequate penalty earnings from the ticketless Railway travellers, the applicants being serving as Train Ticket Examiners in the N.F. Railway, Guwahati, in violation of the Order dated 17.8.1990 passed by this Hon'ble Tribunal in O.A. No.10(G)/90.

Filed by

Jayanta Talukdar
Advocate

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1986

No. D.A. No. /2006

Shri Sudhir Prosad & ors. APPLICANTS

-Versus-

Union of India & ors. RESPONDENTS

LIST OF DATES

- 14.5.04 The Applicant No. 6 was served with Memorandum of Charge for imposition of minor penalties under Rule-11 of the Railway Services (Disciplinary and Appeal) Rules, 1968 along with the statement of allegations.
- 19.5.04 The Applicant No. 4 was served with Memorandum of Charge for imposition of minor penalties under Rule-11 of the Railway Services (Disciplinary and Appeal) Rules, 1968 along with the statement of allegations.
- 1.6.04 Respondent No.3 awarded punishment to Applicant No.4 by way of stoppage of next increment for next two years.
- 8.6.04 Applicant No. 6 submitted representation against the Memorandum of Charges and statement of allegations.
- 19.7.04 Applicant No. 4 submitted representation against the Memorandum of Charges and statement of allegations.
- 19.7.04 Appeal filed by the Applicant No.6 against the punishment imposed.
- 20.7.04 The Applicants No. 1, 2, 3, 5 and 7 were served with Memorandum of Charge for imposition of minor penalties under Rule-11 of the Railway Services (Disciplinary and Appeal) Rules, 1968 along with the statement of allegations.
- 11.8.04 Applicants No. 1 and 2 submitted representations against the Memorandum of Charges and statement of allegations.
- 12.8.04 Applicant No. 5 submitted representation against the Memorandum of Charges and statement of allegations.

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- 17.8.04 Applicant No. 3 submitted representation against the Memorandum of Charges and statement of allegations.
- 30.8.04 Respondent No. 3 awarded punishment to Applicants No.1,2,4 & 7 by way of stoppage of next increment for next two years.
- 30.8.04 Respondent No.3 awarded punishment to Applicants No.3, 5 & 6 by way of stoppage of next increment for next one year.
- 5.10.04 Appeal filed by the Applicant No.1 against the punishment imposed.
- 6.10.04 Appeal filed by the Applicant No.2 against the punishment imposed.
- 11.10.04 Appeal filed by the Applicant No.5 against the punishment imposed.
- 26.4.05 On receipt of appeal, Respondent No. 3 reviewed the punishment imposed upon Applicant No.1 and all sets of passes and PTOs were stopped for next two years.
- 26.4.05 On receipt of appeal, Respondent No. 3 reviewed the punishment imposed upon Applicant No.2 and the punishment awarded was that he was penalised with stoppage of two sets of passes.
- 26.4.05 On receipt of appeal, Respondent No. 3 reviewed the punishment imposed upon Applicant No.4 and directed that four sets of passes be stopped when next due.
- 26.4.05 On receipt of appeal, Respondent No. 3 reviewed the punishment imposed upon Applicant No.5 and he was penalised with stoppage of 3 sets of passes when next due.
- 26.4.05 On receipt of appeal, Respondent No. 3 reviewed the punishment imposed upon Applicant No.6 and he was penalised with stoppage of 3 sets of passes when next due.
- 21.12.05 Applicant No.7 was served with another Memorandum of Charge along with statement of allegations for imposition of minor penalty

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17.8.90 This Hon'ble Tribunal in O.A. No. 10(G)90, had held
Annex. 8 that charges of less collection of penalty earning
the Train Ticket Examiners of the Railways do not
strictly come within the purview of misconduct.
Non-compliance to circulars issued to that effect
would not come within the purview of misconduct,
the same being against all canons of equity,
justice and fairplay, the same not being a condi-
tion of service and the direction contained in
the circulars in question having not found place
in the relevant service rules as misconduct, non-
compliance of the same can not amount to miscon-
duct for which the applicants are required to
answer certain charges in a disciplinary proceed-
ing and as such, glaring irregularity has been
conducted by the Respondents in punishing the
applicants for non-compliance of the circulars.

Filed by:-

Jayanta Talukder
Advocate

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
AT GUWAHATI

ORIGINAL APPLICATION NO. 198/2006

Shri Sudhir Prosad & ors. ... Petitioners

-Versus-

Union of India & others ... Respondents.

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Filed by :-


(JAYANTA TALUKDAR),
ADVOCATE

Filed by
Jayanta Jaisankar
Advocate
through 13

08.08.06

Rajib Raybanshi

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
AT GUWAHATI

O.A. No. 198 /2006.

IN THE MATTER OF :

An application under Section 14 of the
Administrative Tribunals Act, 1985 read
with Rule 4(5)(a) of the Central Admin-
istrative Tribunal (Procedure) Rules,
1987.

- A N D -

IN THE MATTER OF :

1. Shri Sudhir Prosad,
S/o Late Dhanraj Prasad,
Rly. Quarter No. DS/16.(H),
Station Colony, Guwahati.
2. Shri Bindeswari Singh,
S/o Late Raj Narayan Singh,
Rly. Quarter No. DS-86(C),
Ambari Railway Colony, Guwahati.
3. Shri Avijit Ghose,
S/o Late Amal Krishna Ghose,
Flat No.504, R.K.Apartment,
Adabari, P.O. Pandu, Guwahati-12.

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Rajib Rajbongshi

4. Shri Harshit Kumar Narzary,
S/o Doghadip Narzary,
East Gotanagar,
Rly. Quarter No. 88/A,
Maligaon, Guwahati.
5. Shri Sagar Chowdhury,
S/o Late Binod Choudhury,
Gosala East,
Rly. Quarter No. 206(A),
Maligaon, Guwahati.
6. Shri Bimal Kumar Chanda,
S/o Late Bisendra Chanda,
Quarter No. 25(B),
B.B.C. Colony, Pandu,
Guwahati.
7. Shri Rajib Rajbongshi,
S/o Late A.K. Rajbongshi,
Uzanbazar, Happy Villa,
B.R. Road, House No. 14,
Guwahati - 781001.

... APPLICANTS

- Vs -

1. Union of India
represented by General Manager,
N.F. Railway, Maligaon, Guwahati.
2. Senior Area Railway Manager,
N.F. Railway, Guwahati.

Contd...

3. Divisional Commercial Manager,
N.F.Railway, Guwahati.
4. Assistant Commercial Manager,
N.F.Railway, Guwahati.

... RESPONDENTS

DETAILS OF APPLICATION :

I. Nos. of the order against which the application is made :-

The instant application has been preferred against order No. C/GHY/Earnings/03 dated 25.4.05 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.1, order No. C/GHY/Earnings/03 dated 26.04.05 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.2, order No. C/GHY/Earnings/03 dated 30.08.04 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.3, order No. C/GHY/Earnings/03 dated 25.4.05 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.4, order No. C/GHY/Earnings/03 dated 25.4.05 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.5, order No. C/GHY/Earnings/03 dated 25.4.05 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.6 and orders No. C/GHY/Earn-

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Rajib Raybanshi

ings/03 dated 30.8.04 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.7.

II. Jurisdiction of the Tribunal :-

The Applicants declare that the subject matter of the orders against which they want redressal is within the jurisdiction of the Tribunal.

III. Limitation :-

The Applicants further declare that the application is made within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

IV. Facts of the case :-

1. That the applicants state that the Applicant No.1 is working as a Head Train Ticket Examiner, Guwahati in the N.F. Railway and is a resident of Railway Quarter No. DS/16(H), Station Colony, Guwahati, the Applicant No.2 is working as Train Ticket Examiner in the N.F.Railway at Guwahati and is a resident of Railway Quarter No. DS-86(C), Ambari Railway Colony, Guwahati, the Applicant No.3 is working as Head Train Ticket Examiner in the N.F.Railway at Guwahati and is a resi-

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Rajib Raybongshi

dent of Flat No. 504, R.K. Apartment, Adabari, P.O. Pandu, Guwahati, the Applicant No.4 is working as CTTI/I, N.F. Railway, Guwahati and is a resident of East Gotanagar, Railway Quarter No. 88/A, Maligaon, Guwahati, the Applicant No.5 is working as Train Ticket Examiner in the N.F. Railway at Guwahati and is a resident of Gosala East, Railway Quarter No. 206(A), Maligaon, Guwahati, the Applicant No. 6 is working as CTTI/II in the N.F. Railway at Guwahati and is a resident of Wuar-ter No. 25(B), B.B.C. Colony, Pandu, Guwahati, and the Applicant No.7 is working as TTE in the N.F. Railway at Guwahati and is a resident of Uzanbazar, Happy Villa, B.R. Road, House No.14, Guwahati-781001.

2. That the applicants respectfully state that since then have a common cause of action, as such, they respetfully submit that they may be permitted to file a single application as the nature of relief prayed for in the instant O.A. is also similar and they have a common interest in the matter, as per the provisions of Rule 4(5)(a) of the Central Administrative Tribunal (Prode-
cure) Rules, 1987.

3. That the Applicant No.1 was served with a Memorandum of Charge for imposing minor penalties under Rule 11 of the Railway Services (Disciplinary and Ap-
peal) Rules, 1968 on 20.7.04 by the Respondent No.3. The said Memorandum of Charge was accompanied with a state-

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Rajil Raybanshi

ment of allegations dated 20.7.04 wherein it has been stated that scrutiny of the individual performance of the Applicant No.1 for June, 2004 reveals that the ticket checking performance in respect of detection and charging of without ticket passengers by the Applicant No.1 was very poor. He worked 14 days during the period and his penalty earnings was Rs.1893/-. As per the relevant circular dated 10.7.98, minimum penalty earnings per amenity TTE and Squad TTE, per month should have been Rs.6,000/- and Rs.10,000/- respectively. As such, the Applicant No.1 has shown lack of integrity and devotion to duty and thereby contravened the Service Conduct Rules No.3.1(i)(ii) of 1966.

On receipt of the aforesaid Memorandum of Charge, the Applicant submitted his representation on 11.8.04 wherein he stated that the allegations contained in the statement of allegations are based on surmises and conjectures and that he has been punctual and faithful to his duties and he had no occasion to encourage irregular passengers so as to achieve a particular financial limit of penalty earnings. That apart, this Hon'ble Tribunal in O.A. No.10(G)/90 had held that such kind of arbitrary limit cannot be fixed towards collection of penalty earnings by the Railway administration. Therefore, the Applicant respectfully submitted before the Respondent No.3 that the charges framed against him may be dropped.

Thereafter, vide order No. DCM/GHY/C/41/

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Raj'sanghi

Earnings/03 dated 30.8.04, the Respondent No.3 was pleased to observe that the defence submitted by the Applicant No.1 was not satisfactory. However, a lenient view was taken and the Applicant No.1 was punished with stoppage of his next increment for two years.

The Applicant No.1 on being intimated about the delivery of the aforesaid letter dated 30.8.04, submitted a representation before the Respondent No.2 on 5.10.04 relying on various circulars issued by the Railway Board and prayed that the authority would be please to cancel/set aside the punishment imposed upon him. On receipt of the aforesaid representation dated 5.10.04, the Respondent No.3 vide order dated 26.4.05 was pleased to review the penalty imposed upon the Applicant No.1 and had directed that all sets of passes and PTOs were stopped from next two years. On receipt of the aforesaid order dated 26.4.05, the Applicant No.1 submitted another representation dated 31.5.05 before the Chief Area Manager, N.F.Railway, Guwahati. The fate of the said representation dated 31.5.05 has never been communicated to the Applicant No.1.

Copies of the aforesaid Memorandum of Charges, statement of allegation, representation dated 11.8.04, order dated 30.8.04, representation dated 5.10.04, order dated 26.4.05 and representation dated 31.5.05 are annexed hereto and marked as ANNEXURE-1 series.

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Rajib Ray'bangshi

4. That the Applicant No.2 was served with a Memorandum of Charge for imposing minor penalties under Rule 11 of the Railway Services (Disciplinary and Appeal) Rules, 1968 on 20.7.04 by the Respondent No.3. The said Memorandum of Charge was accompanied with a statement of allegations dated 20.7.04 wherein it has been stated that scrutiny of the individual performance of the Applicant No.2 for June, 2004 reveals that the ticket checking performance in respect of detection and charging of without ticket passengers by the Applicant No.2 was very poor. He worked 21 days during the period and his penalty earnings was Rs.5292/-. As per the relevant circular dated 10.7.98, minimum penalty earnings per amenity TTE and Squad TTE, per month should have been Rs.6,000/- and Rs.10,000/- respectively. As such, the Applicant No.2 has shown lack of integrity and devotion to duty and thereby contravened the Service Conduct Rules No.3.1(i) and (ii) of 1966.

On receipt of the aforesaid Memorandum of Charge, the Applicant No.2 submitted his representation on 11.8.04 wherein he stated that the allegations contained in the statement of allegations are based on surmises and conjectures and that he has been punctual and faithful to his duties and he had no occasion to encourage irregular passengers so as to achieve a par-

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Rajib Raybanshi

particular financial limit of penalty earnings. That apart, this Hon'ble Tribunal in O.A. No.10(G)/90 had held that such kind of arbitrary limit cannot be fixed towards collection of penalty earnings by the Railway administration. Therefore, the Applicant No.2 respectfully submitted before the Respondent No.3 that the charges framed against him may be dropped.

Thereafter, vide order No.C/GHY/Earnings/03 dated 30.8.04, the Respondent No.3 was pleased to observe that the defence submitted by the Applicant No.2 was not satisfactory. However, a lenient view was taken and the Applicant No.2 was punished with stoppage of his next increment for two years.

The Applicant No.2 on being intimated about the delivery of the aforesaid letter dated 30.8.04, submitted a representation before the Respondent No.2 on 6.10.04 relying on various circulars issued by the Railway Board and prayed that the authority would be pleased to cancel/set aside the punishment imposed upon him. On receipt of the aforesaid representation dated 6.10.04, the Respondent No.3 vide order dated 26.4.05 was pleased to review the penalty imposed upon the Applicant No.2 and he was penalised with stoppage of two sets of passes.

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Copies of the aforesaid Memorandum of Charges, statement of allegation, representation, dated 11.8.04, order dated 30.8.04, representation dated 6.10.04, and order dated 26.4.05 are annexed hereto and marked as ANNEXURE-2 series.

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Rayil Raybanshi

5. That the Applicant No.3 was served with a Memorandum of Charge for imposing minor penalties under Rule 11 of the Railway Services (Disciplinary and Appeal) Rules, 1968 on 20.7.04 by the Respondent No.3. The said Memorandum of Charge was accompanied with a statement of allegations dated 20.7.04 wherein it has been stated that scrutiny of the individual performance of the Applicant No.3 for June, 2004 reveals that the ticket checking performance in respect of detection and charging of without ticket passengers by the Applicant No.3 was very poor. He worked 8 days during the period and his penalty earnings was Rs.1836/-. As per the relevant circular dated 10.7.98, minimum penalty earnings per amenity TTE and Squad TTE, per month should have been Rs.6,000/- and Rs.10,000/- respectively. As such, the Applicant No.3 has shown lack of integrity and devotion to duty and thereby contravened the Service Conduct Rules No.3.1(i)(ii) of 1966.

On receipt of the aforesaid Memorandum of

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Charge, the Applicant NO.3 submitted his representation on 17.8.04 wherein he stated that the allegations contained in the statement of allegations are based on surmises and conjectures and that he has been punctual and faithful to his duties and he had no occasion to encourage irregular passengers so as to achieve a particular financial limit of penalty earnings. That apart, this Hon'ble Tribunal in O.A. No.10(G)/90 had held that such kind of arbitrary limit cannot be fixed towards collection of penalty earnings by the Railway administration. Therefore, the Applicant No.3 respectfully submitted before the Respondent No.3 that the charges framed against him may be dropped.

Thereafter, vide order No. C/GHY/Earnings/03 dated 30.8.04, the Respondent No.3 was pleased to observe that the defence submitted by the Applicant No.3 was not satisfactory. However, a lenient view was taken and the Applicant No.3 was punished with stoppage of his next increment for 1(one) year.

The Applicant No.3 on being intimated about the delivery of the aforesaid letter dated 30.8.04, submitted a representation before the Respondent No.2 relying on various circulars issued by the Railway Board and prayed that the authority would be pleased to cancel/set aside the punishment imposed upon him. The fate of the said representation has not been communicat-

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Rajib Raybanshi

ed to the applicant No.3 till date.

Copies of the aforesaid Memorandum of Charges, statement of allegation, representation dated 17.8.04, order dated 30.8.04 and the second representation are annexed hereto as ANNEXURE-3 series.

6. That the Applicant No.4 was served with a Memorandum of Charge for imposing minor penalties under Rule 11 of the Railway Services (Disciplinary and Appeal) Rules, 1968 on 19.5.04 by the Respondent No.3. The said Memorandum of Charge was accompanied with a statement of allegations dated 19.5.04 wherein it has been stated that the Applicant No.4 had failed to increase the earnings of his squad batch as well as his individual earnings. As per the relevant circular dated 10.7.98, minimum penalty earnings of TTEE working in squad per month should have been Rs.10,000/-. But none of the TTEs working under him could so far achieve the target which clearly reflexes bad performance and slack of supervision. As such, the Applicant No.4 has shown lack of integrity and devotion to duty and thereby contravened the Service Conduct Rules No.3.1(i)(ii) of 1966.

On receipt of the aforesaid Memorandum of Charge, the Applicant NO.4 submitted representation wherein he stated that the allegations con-

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tained in the statement of allegations are based on surmises and conjectures and that he has been punctual and faithful to his duties and he had no occasion to encourage irregular passengers so as to achieve a particular financial limit of penalty earnings. That apart, this Hon'ble Tribunal in O.A. No.10(G)/90 had held that such kind of arbitrary limit cannot be fixed towards collection of penalty earnings by the Railway administration. Therefore, the Applicant respectfully submitted before the Respondent No.3 that the charges framed against him may be dropped.

Thereafter, vide order No.C/GHY/Earning/03 dated 1.6.04, the Respondent No.3 was pleased to observe that the defence submitted by the Applicant No.4 was not acceptable and he was punished with stoppage of his next increment for two years.

On receipt of the aforesaid letter dated 1.6.04, the Applicant No.4 submitted an appeal on 19.7.04 against the punishment imposed on him before the Respondent No.2 relying on various circulars issued by the Railway Board and prayed that the authority would be pleased to cancel/set aside the punishment imposed upon him. On receipt of the aforesaid appeal dated 19.7.04, the Respondent No.3 vide order dated 26.4.05 was pleased to review the penalty imposed upon the Applicant No.4 and had directed that four sets of passes were stopped when next due.

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Copies of the aforesaid Memorandum of Charges dated 19.5.04, statement of allegation dated 19.5.04, order dated 1.6.04, representation dated 19.7.04 and order dated 26.4.05 are annexed hereto as ANNEXURE-4 series.

7. That the Applicant No.5 was served with a Memorandum of Charge for imposing minor penalties under Rule 11 of the Railway Services (Disciplinary and Appeal) Rules, 1968 on 20.7.04 by the Respondent No.3. The said Memorandum of Charge was accompanied with a statement of allegations dated 20.7.04 wherein it has been stated that scrutiny of the individual performance of the Applicant No.5 for June, 2004 reveals that the ticket checking performance in respect of detection and charging of without ticket passengers by the Applicant No.5 was very poor. He worked 13 days during the period and his penalty earnings was Rs.3594/-. As per the relevant circular dated 10.7.98, minimum penalty earnings per amenity TTE per month should have been Rs.6,000/-. As such, the Applicant No.5 has shown lack of integrity and devotion to duty and thereby contravened the Service Conduct Rules No.3.1(i)(ii) of 1966.

On receipt of the aforesaid Memorandum of Charge, the Applicant No.5 submitted his representation

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on 12.8.04 wherein he stated that the allegations contained in the statement of allegations are based on surmises and conjectures and that he has been punctual and faithful to his duties and he had no occasion to encourage irregular passengers so as to achieve a particular financial limit of penalty earnings. That apart, this Hon'ble Tribunal in O.A. No.10(G)/90 had held that such kind of arbitrary limit cannot be fixed towards collection of penalty earnings by the Railway administration. Therefore, the Applicant No.3 respectfully submitted before the Respondent No.3 that the charges framed against him may be dropped.

Thereafter, vide order No. C/GHY/Earnings/03 dated 30.8.04, the Respondent No.3 was pleased to observe that the defence submitted by the Applicant No.5 was not satisfactory. However, a lenient view was taken and the Applicant No.5 was punished with stoppage of his next increment for 1(one) year.

The Applicant No.5 on being intimated about the delivery of the aforesaid letter dated 30.8.04, submitted a representation before the Respondent No.2 on 11.10.04 relying on various circulars issued by the Railway Board and prayed that the authority would be pleased to cancel/set aside the punishment imposed upon him. On receipt of the aforesaid representation dated 11.10.04, the Respondent No.3 vide order dated 26.4.05 was pleased to review the penalty imposed upon the Applicant No.5 and had directed that the applicant No.5

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was penalised with stoppage of 3 sets of passes when next due.

Copies of the aforesaid Memorandum of Charges dated 20.7.04, statement of allegation dated 20.7.04, representation dated 12.8.04, order dated 30.8.04, representation dated 11.10.04 and order dated 26.4.05 are annexed hereto and marked as ANNEXURE-5 series.

8. That the Applicant No.6 was served with a Memorandum of Charge for imposing minor penalties under Rule 11 of the Railway Services (Disciplinary and Appeal) Rules, 1968 on 14.5.04 by the Respondent No.3. The said Memorandum of Charge was accompanied with a statement of allegations dated 14.5.04 wherein it has been stated that scrutiny of the individual performance of the Applicant No.6 for April, 2004 reveals that the ticket checking performance in respect of detection and charging of without ticket passengers by the Applicant No.6 was very poor. He worked 16 days during the period and his penalty earnings was Rs.798/-. As per the relevant circular dated 10.7.98, minimum penalty earnings per amenity TTE and Squad TTE, per month should have been Rs.6,000/- and Rs.10,000/- respectively. As such, the Applicant No.6 has shown lack of integrity and devotion to duty and thereby contravened the Service

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Conduct Rules No.3.1(i)(ii) of 1966.

On receipt of the aforesaid Memorandum of Charge, the Applicant No.6 submitted his representation on 8.6.04 wherein he stated that he could not find out large scale ticket-less travellers and as such, he had no scope to penalise the bonafide passengers. Therefore, the Applicant No.6 respectfully submitted before the Respondent No.3 that the charges framed against him may be dropped.

Thereafter, vide order No. C/GHY/Earnings/03 dated 1.6.04, the Respondent No.3 was pleased to observe that since no defence has been submitted by the Applicant No.6, he was penalised with stoppage of next increment for one year.

On receipt of the aforesaid order dated 1.6.04, the Applicant No.6 submitted an appeal before the respondent authorities on 19.7.04 wherein he stated that the allegations contained in the statement of allegations are based on surmises and conjectures and that he has been punctual and faithful to his duties and he had no occasion to encourage irregular passengers so as to achieve a particular financial limit of penalty earnings. That apart, this Hon'ble Tribunal in O.A. No. 10(6)/90 had held that such kind of arbitrary limit cannot be fixed towards collection of penalty earnings by the Railway administration. Therefore, the Applicant No.6 respectfully submitted before the Respondent No.3 that the charges framed against him may be dropped.

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The Applicant No.6 was served with another Memorandum of Charge for imposing minor penalties under Rule 11 of the Railway Services (Disciplinary and Appeal) Rules, 1968 on 20.7.04 by the Respondent No.3. The said Memorandum of Charge was accompanied with a statement of allegations dated 20.7.04 wherein it has been stated that scrutiny of the individual performance of the Applicant No.6 for June, 2004 reveals that the ticket checking performance in respect of detection and charging of without ticket passengers by the Applicant No.7 was very poor. He worked 22 days during the period and his penalty earnings was Rs.4435/-. As per the relevant circular dated 10.7.98, minimum penalty earnings per amenity TTE and Squad TTE, per month should have been Rs.6,000/- and Rs.10,000/- respectively. As such, the Applicant No.6 has shown lack of integrity and devotion to duty and thereby contravened the Service Conduct Rules No.3.1(i)(ii) of 1966.

On receipt of the aforesaid Memorandum of Charge dated 20.7.04, the Applicant No.6 submitted his representation on 8.8.04 denying the charges levelled against him and respectfully submitted before the Respondent No.3 that the charges framed against him may be dropped.

Thereafter, vide order No. C/GHY/Earnings/03 dated 30.8.04, the Respondent No.3 was pleased to observe that the defence submitted by the Applicant No.6

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was not satisfactory and therefore, taking a lenient view, the Applicant No.6 was punished with stoppage of his next increment for two years.

Thereafter, the Applicant No.6 submitted an appeal dated 15.10.04 before the Respondent No.2 against the punishment imposed on him vide the orders dated 1.6.04 and 30.8.04 relying on various circulars issued by the Railway Board and prayed that the authority would be pleased to cancel/set aside the punishment imposed upon him. On receipt of the aforesaid appeal dated 15.10.04, the Respondent No.3 vide order dated 26.4.05 was pleased to review the penalty imposed upon the Applicant No.6 and had directed that he is penalised with stoppage of 3 sets of passes when next due.

Copies of the aforesaid Memorandum of Charges dated 14.5.04, statement of allegation dated 14.5.04, representation dated 8.6.04, order dated 1.6.04, representation dated 19.7.04, Memorandum of Charges dated 20.7.04, statement of allegation dated 20.7.04, representation dated 8.8.04, order dated 30.8.04, appeal dated 15.10.04 and order dated 26.4.05 are annexed hereto and marked as ANNEXURE-6 series.

9. That the Applicant No.7 was served with a

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Memorandum of Charge for imposing minor penalties under Rule 11 of the Railway Services (Disciplinary and Appeal) Rules, 1968 on 20.7.04 by the Respondent No.3. The said Memorandum of Charge was accompanied with a statement of allegations dated 20.7.04 wherein it has been stated that scrutiny of the individual performance of the Applicant No.7 for June, 2004 reveals that the ticket checking performance in respect of detection and charging of without ticket passengers by the Applicant No.7 was very poor. He worked 24 days during the period and his penalty earnings was Rs.4053/-. As per the relevant circular dated 10.7.98, minimum penalty earnings per amenity TTE and Squad TTE, per month should have been Rs.6,000/- and Rs.10,000/- respectively. As such, the Applicant No.7 has shown lack of integrity and devotion to duty and thereby contravened the Service Conduct Rules No.3.1(i)(ii) of 1966.

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On receipt of the aforesaid Memorandum of Charge, the Applicant No.7 submitted his representation wherein he stated that the allegations contained in the statement of allegations are based on surmises and conjectures and that he has been punctual and faithful to his duties and he had no occasion to encourage irregular passengers so as to achieve a particular financial limit of penalty earnings. That apart, this Hon'ble Tribunal in O.A. No.10(G)/90 had held that such kind of arbitrary limit cannot be fixed towards collection of penalty earnings by the Railway administration. The

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Applicant No.7 also stated that he was recruited in N.F.Railway basically for sports as a cricket player. Therefore, the Applicant No.7 respectfully submitted before the Respondent No.3 that the charges framed against him may be dropped.

Thereafter, vide order No. C/GHY/Earnings/03 dated 30.8.04, the Respondent No.3 was pleased to observe that the defence submitted by the Applicant No.7 was not satisfactory. However, a lenient view was taken and the Applicant No.7 was punished with stoppage of his next increment for two years.

Thereafter, the Applicant No.7 submitted an appeal before the Respondent No.2 praying for review of his case in lenient view and to waive the punishment imposed on him.

The Applicant No.7 was served with another Memorandum of Charge for imposing minor penalties under Rule 11 of the Railway Services (Disciplinary and Appeal) Rules, 1968 on 21.12.05 by the Respondent No.3. The said Memorandum of Charge was accompanied with a statement of allegations dated 21.12.05 wherein it has been stated that scrutiny of the individual performance of the Applicant No.7 for the months of April, 2005 to September, 2005 reveals that the earnings of Applicant No.7 was very poor and during that period of 6 months, his penalty earnings was Rs.2658/- against the target earnings of Rs.36,000/- as per the relevant circular dated 10.7.98. As such, the Applicant No.7 has failed to

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maintain devotion to duty and thereby contravened the Service Conduct Rules No.3.1(ii) of 1966.

Copies of the aforesaid Memorandum of Charges dated 20.7.04, statement of allegation dated 20.7.04, representation made against the same, order dated 30.8.04, appeal preferred against the said order, Memorandum of Charges dated 21.12.05, statement of allegation dated 21.12.05, are annexed hereto and marked as ANNEXURE-7 series.

10. That the applicants respectfully state that the fact as to whether the respondents have been legally authorised to fix limits for collection of penalty earnings by the applicants is no more res-integra. As far back on 17.8.90, this Hon'ble Tribunal in O.A. No. 10(G)/90 had the occasion to deal with one such matter. In the said case, it has been held by this Hon'ble Tribunal that the charges of less collection of penalty earnings by Train Ticket Examiners of the Railways do not strictly come within the purview of misconduct. This Hon'ble Tribunal was pleased to observe that it is beyond the Hon'ble Tribunal's apprehension as to how a Train Ticket Examiner would pay such amount fixed by the authority without realisation. Non-compliance of circu-

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lars issued to that effect would not come within the purview of misconduct, the same being against all canons of equity, justice and fairplay, the same not being a condition of service and the direction contained in the circulars in question having not found place in the relevant service rules as misconduct, non-compliance of the same can not amount to misconduct for which the applicants are required to answer certain charges in a disciplinary proceeding, and as such, glaring irregularity has been committed by the respondents in punishing the applicants for non-compliance of the circulars.

A copy of the aforesaid Judgment and Order dated 17.8.90 is annexed hereto and marked as annexure -8.

V. GROUND FOR RELIEF WITH LEGAL PROVISIONS :-

(A) For that the fact as to whether the respondents have been legally authorised to fix limits for collection of penalty earnings by the applicants is no more res-integra. As far back on 17.8.90, this Hon'ble Tribunal in O.A. No. 10(G)/90 had the occasion to deal with one such matter. In the said case, it has been held by this Hon'ble Tribunal that the charges of less collection of penalty earnings by Train Ticket Examiners of the Railways do not strictly come within the purview of

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misconduct. This Hon'ble Tribunal was pleased to observe that it is beyond the Hon'ble Tribunal's apprehension as to how a Train Ticket Examiner would pay such amount fixed by the authority without realisation. Non-compliance of circulars issued to that effect would not come within the purview of misconduct, the same being against all canons of equity, justice and fairplay, the same not being a condition of service and the direction contained in the circulars in question having not found place in the relevant service rules as misconduct, non-compliance of the same can not amount to misconduct for which the applicants are required to answer certain charges in a disciplinary proceeding, and as such, glaring irregularity has been committed by the respondents in punishing the applicants for non-compliance of the circulars.

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(E) For that misconduct has not been defined in the Rules. the word "misconduct" is anti-thesis of the word "conduct". Thus the expression "misconduct" means wrong or improper conduct, unlawfull behaviour, misfeasance, wrong conduct, misdemeanour etc. There being different expressions of the misconduct, therefore, the same is to be construed with reference to the subject and the context wherein the said expression occurs. Inability to collect the required amount of penalty earnings as fixed by the respondents in the absence of sufficient numbers of ticketless travellers

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in trains can not be construed to be misconduct by any stretch of imagination.

(C) For that the action of the respondents in fixing ceiling limits for collection of penalty earnings in the facts and circumstances of the case is without any authority of law and as such illegal and is, therefore, violative of Article 14 of the Constitution of India.

(D) For that the applicants crave leave of this Hon'ble Tribunal to raise, refer to and rely upon any fresh/new ground at the time of hearing of the case.

VI. DETAILS OF THE REMEDIES EXHAUSTED :-

The applicants declare that they have availed all the remedies available to them under the relevant service rules as stated in the preceding paragraphs and the same has not be considered by the respondents.

VII. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY

COURT :-

The applicants further declare that they have not filed any application, writ petition or suit regarding the instant matter and no other application has been made before any court or any other authority or any

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Bench of the Tribunal, nor any such application, writ petition or suit is pending before any of them.

VIII. RELIEF SOUGHT :-

In view of the facts stated above, the applicants respectfully pray for the following reliefs :-

To set aside and quash in impugned orders issued vide order No. C/GHY/Earnings/03 dated 25.4.05 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.1, order No. C/GHY/Earnings/03 dated 26.04.05 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.2, order No. C/GHY/Earnings/03 dated 30.08.04 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.3, order No. C/GHY/Earnings/03 dated 25.4.05 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.4, order No. C/GHY/Earnings/03 dated 25.4.05 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.5, order No. C/GHY/Earnings/03 dated 25.4.05 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.6 and orders No. C/GHY/Earnings/03 dated 30.8.04 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.7.

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IX. INTERIM ORDER, IF ANY, PRAYED FOR :-

Pending disposal of this application, the applicants respectfully pray that the operation of the impugned orders issued vide order No. C/GHY/Earnings/03 dated 25.4.05 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.1, order No. C/GHY/Earnings/03 dated 26.04.05 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.2, order No.C/GHY/Earnings/03 dated 30./08.04 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.3, order No. C/GHY/Earnings/03 dated 25.4.05 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.4, order No. C/GHY/Earnings/03 dated 25.4.05 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.5, order No. C/GHY/Earnings/03 dated 25.4.05 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.6 and order No. C/GHY/Earnings/03 dated 30.8.04 issued by the Divisional Commercial Manager, N.F.Railway, Guwahati in respect of Applicant No.7 may be kept in abeyance.

X. This application has been filed through the counsel for the applicants.

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XI. NUMBERS OF THE POSTAL ORDER IN RESPECT OF THE APPLICATION FEE :

I.P.O. NO. : 55E 545137-41
Date of Issue : 2-8-06
Issuing Post Office : N.P.O.
Post Office at which payable :

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

I, Shri Rajib Rajbangshi, S/o.Late A.K.Rajbangshi aged about 34 years, presently working as T.T.E.Guwahati, in the office of the N.F.Railway, Maligaon, Guwahati and a resident of Uzanbazar, Happy Villa, B.R.Road, Guwahati-1 do hereby state that I am the Applicant No.7 in the instant O.A. and I have been authorised by the other applicants to sign this verification on their behalf also and I do hereby verify that the contents in 1, 2, I, II, III, IV - VIII are true to my personal knowledge, those in 3 to 10 are believe to be true on legal advice and I have not suppressed any material fact.

Date : 8.8.06

Place : Guwahati

Rajib Rajbangshi

Signature of the Applicant

NORTHEAST FRONTIER RAILWAY
STANDARD FORM NO. 11

G/1741

Standard Form of Memorandum of charge for imposing minor penalties.
(Rules 11 of RS (D&A) Rules, 1968)

No. E/CHY/Barnaga/03

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

(Place of issue) dated 28/7/04
Sr. AM/CHY/Office

MEMORANDUM

Shri S. Prasad (Designation) HD TTB/CHY Office on which working) CHY/CHY hereby informed that the President/Railway Board/undersigned propose (s) to take action against him under Rule 11 of the Railway servants (Discipline and Appeal) Rules, 1968. A statement of the imputations of misconduct or misbehaviour in which action is proposed to be taken as mentioned above is enclosed. See on reverse.

2. Shri S. Prasad is hereby given an opportunity to make such representation as he may wish to make against the proposal. The representation, if any, should be submitted to the undersigned (through the General Manager Railway as to reach the said General Manager) * within ten days of receipt of this Memorandum.

3. If Shri S. Prasad fails to submit his representation within the period specified in para 2, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri S. Prasad ex-parte.

4. The receipt of this Memorandum should be acknowledged by Shri S. Prasad, HD TTB/CHY.

%(By order and in the name of the President)

Signature

Name

Name and designation of the
Competent Authority

RAILWAY, GUWAHATI

To

Shri

S. Prasad, HD TTB/CHY
(Name Designation and Office of the Railway Servant)

Thro:- CHY/CHY

*To be retained wherever this Memorandum is issued by the Railway Board/the President
%Where the President is the disciplinary authority.

Certified to be True Copy.

Jyanta Talukdar,

Addl Secy.

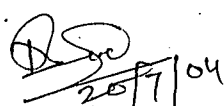
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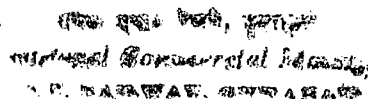
STATEMENT OF ALLEGATION

Scrutiny of the individual performances for June/2004 reveals that the ticket checking performance in respect of detection and charging of without ticket passengers by Shri


S. Basad Designation HD. TTE/MLG is very poor. He worked 14 days and where as his penalty earnings is Rs. 1893/- only which clearly indicated his negligence and lack of devotion his duty. As per CC/N.F.Rly/MLG's letter No.C/26/Review/85/TC-pt.III dtd. 10.7.1998 that the minimum penalty earnings per amenity TTE and Squad TTE per month should be Rs.6000/- and 10,000/- respectively. This is far away from his actual earnings.

Thus by the above act Shri _____ executed lack of integrity and devotion to duty and there by contravened Service Conduct Rule No.3.1(i) and (ii) of 1966 .


26/7/04
Divnl. Comm. Manager
N. F. Railway/Guwahati.


N. F. RAILWAY, GUWAHATI

Certified to be True Copy.


Jayanta Talukdar,
Admn. etc.

To,
The Divisional Commercial Manager
N.F. Rly, ~~Imphal~~ Guwahati

Through Proper Channal

Sir,

Sub : Representation against memorandum.

Ref : No C/GHY/Earnings/03 N.F. Rly. Dated 20.07.04

I have the honour to submit this representation to you against the memorandum bearing its number mentioned above under reference for reasons & grounds mentioned below :-

- 1) That Sir, during my course of service I did not allow or let loose any without ticket travelers to travel without ticket and there is no such proof of it.
- 2) That Sir, before entering the job of Traveling Ticket Examiner I did not sign in any agreement of contract with Rly administration and regarding depositing Rs. 6000/- per month on account of without ticket travelers even if such proportionate number of passengers do not travel without ticket.
- 3) That Sir, rule 3.1 (i) (ii) of Service Conduct Rules, 1966 no where contemplate or substantiate the verbatim of the statement of allegation framed against me by you and the alleged statement of allegation framed against me by you under rule 3.1 (i) (ii) of Service Conduct Rule 1966 are based on conjectures or services.
- 4) That Sir, I am very much punctual and faithful to my duties and I am not at fault.
- 5) Should I encourage the irregular passengers to entrain in my couch instead of resisting such elements.
- 6) It amazing to read in the memo that my earning has crossed the so called quota (which is fixed by administration) still I have been charged.
- 7) In this connection I like to mention here that Honorable Judge of CAT/GHY Branch acquitted the punishment of Mr. N.C. Acherjee Hd. T.T.E. / LMG. Vide his verdict dated..... which might be available in your office.
- 8) That Sir, I view of the above mentioned facts & circumstances and legal aspects here I am earnestly requesting you with all humility to consider my below mentioned prayer for ends of justice please :-

PRAYER

Kindly exonerate me from the charges and withdraw / rescind / cancel the charged memorandum framed against me or totally drop the matter at this stage.

Please do needful and oblige.

Dated : 11/8/04..
Place : Guwahati

Yours faithfully,

Sudish Prasad
HD TTE/GHY

Certified to be True Copy.

Jyanta Talukdar,
Advocate.

पूर्वोत्तर सीमा रेलवे
Northeast Frontier Railway

नियम 1707 (1) की मद्र (1), (11) और (111) और नियम 1707 (2) सूच्य को मद (1) और (11) के अन्तर्गत दण्ड देने के संबंध में सूचना/Notice of inspection of prohibited articles (1), (11) & (111) of Rule 1707 (1) and items (1) and (11) of Rule 1707 (2) RI. D & A Rules, 1968.

सं/ No. 44HY/Earnings/03 तारीख/ Dated 30/8/04
प्रसक्त/From Dem/4HY

सेवा में/ To S. Prasad, Hd/TTE/4HY
Thro CTT/IC/4HY

आरोप पत्र सं० दिनांक पर आपके स्पष्टीकरण के संदर्भ में आपको सूचित किया जाता है कि, आपका स्पष्टीकरण स्वीकृत नहीं है। *
** -/ With reference to your explanation to the charge sheet No. 44HY/Earnings/03 dated 20/7/04 you are hereby informed that your explanation is not considered satisfactory and that the Dem/4HY has passed the following orders: *

N.B. - Order on reverse

अनुशासनिक प्राधिकारी का हस्ताक्षर एवं पदनाम
Signature & Designation of the
Disciplinary Authority

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

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

प्राप्ति स्वीकृति/ACKNOWLEDGEMENT

सेवा में/To S. Prasad, Hd/TTE/4HY
Thro CTT/IC/4HY

मैं सूचना पत्र सं० दिनांक की

आरोप पत्र सं० दिनांक

प्राप्ति स्वीकार करता हूँ। hereby acknowledgement receipt of your Notice No.
dated the charge Sheet No.

तारीख/Dated

स्थान/Station

हस्ताक्षर या अंगुठे का निशान
Signature or Thumb Impression

पदनाम Designation

Certified to be True Copy.

Jayanta Talukdar,
Adm.

P.T.O.

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

** यहाँ स्पष्टीकरण की स्वीकृति या अस्वीकृति और दिये गये दण्ड का उल्लेख करें। Here quote the acceptance or rejection of explanation and the penalty imposed.

हिदायतें/INSTRUCTIONS

(1) इन आदेश के विरुद्ध अपील

(अदेश देनेवाले प्राधिकारी से ठीक ऊपर का प्राधिकारी के पास की जा सकती है।/ An appeal against these order lies to Sr. Asst. M/CHY next (immediate superior to the authority passing the orders).

" Defence submitted by Shri S. Prasad Hd. TTE/CHY is not satisfactory. Shri Prasad worked as amenity TTE for 14 days during the month 2 June/04 and penalty earning Rs. 1893/- against the fixed target of Rs. 6000/- given by CCM/N.F.2. So a lenient view is taken and as such he is punished with stoppage of his next increment for 2 (two) years N.C. "

Copy to:-

① DPM/p/LM

2. APO/CHY

3. CTTI/CHY

4. DCM/LM

for information
please.

N.F.Rly.Press-1/11/9704/61-May'97-15,000Forms.

Certified to be True Copy

Jaganta Talwar,
Advocate.

30/8/04
D. N. Prasad
Sr. Asst. M/CHY
N.F. RLY. PRESS, GORAKHPUR.

To
The Sr. ARM/Guwahati
N.F. Railway

(Through Proper Channel)

Sir

Sub : Appeal Against punishment imposed by DCM/GHY

Ref : DCM/GHY's No. C/41/Earnings/03 dated 30.08.04

Most respectfully, I beg to prefer the following appeal to your grace against the punishment imposed by DCM/GHY to the tune of stoppage of increments for two year (NC) vide his order under reference.

To focus the background, I am enclosing herewith the following relevant paper for your kind perusal.

1. Memorandum issued by DCM/GHY under SF -11 (Annexure -'A').
2. Defence to memorandum submitted by me on 11.8. 04 (Annexure -'B').
3. The order imposing the penalty by the DCM/GHY (Annexure -'C').

In my defence, the following points were raised in support of my alleged failure to maintain the alleged earnings of Rs. 6000.00 in the concerned month.

- (i) During my activities, as far there was no instance when I failed to respect in arresting ticket less travel including any irregularities on that account which proved my sincerity.
- (ii) That there was no pre-condition made/ mentioned while I was appointed to work as ticket checking staff by the appointing authority and now the application of an fixed amount controverts the service conditions.
- (iii) That Hon'ble CAT/GHY pronounced a judgment in exactly under the similar circumstances stating that there could not be any target fixed as penalty earnings for ticket checking staff as individual performance.
- (iv) I declared myself as a duty bound employee without any shortcomings.
- (v) Although the TTEs manning the amenity coaches were duty bound to remain present in the coach for all the time from the departure of the train till he reaches destination to ensure.

- (a) against un-authorized entry of passengers in the coach,
- (b) to ensure comfort all the passengers in the reserved coach.
- (c) to ensure that no theft occurs.
- (d) He must make himself available on call by the passengers etc.

- (vi) But when the alleged target was imposed arbitrarily (since I was not made known the process/justification followed for fixing such target, I had no way but to depart from my duty taking the full risk to leave the reserved coach and go for hunting without ticket/irregular travelers in the other general coaches.

Certified to be True Copy.

Jayanta Talukdar,
Advocate.

- (vii) That the alleged target of Rs. 6000.00 was although fixed without any proper analysis and or appreciation, a TTE working less Nos. of days cannot be expected to give an earning in reference to the target. wX

But unfortunately, my defence was not taken seriously and punishment was imposed by the DCM/GHY without application of his mind for which the speaking order was not passed by him.

In the matter of passing a "Speaking Order", the Rly. Board has issued the following orders, which are produced below for you kind appraisal.

1. Rly. Board's No. E(D & A) 56 RG 6-14 dated 20-12-55

"Speaking Orders" – The disciplinary authority imposing the penalty must apply its mind to the facts, circumstances and records of the case and then record its findings on each imputation of misconduct or misbehavior. The disciplinary authority should give brief reasons for its findings to show that it has applied its mind to the case. The reasons recorded by the disciplinary authority shall be of great help to the delinquent Railway servant in preferring his appeal. The disciplinary authority must not pass non-speaking and cryptic orders because the orders of imposition of penalty being appeal able must be speaking orders. When the explanation of the delinquent has not been considered satisfactory, the competent authority must invariably record reasons for rejecting the explanation. Sketchy and cryptic orders have been held by the Court of law to be non speaking and as such illegal."

2. Rly. Board's No. E (D & A) 78 RG 6 –11 dated 3.3.78; (SE 106/78 NR 6966, SE 45/78, ER 50/78, NF/ADC 326).

"Speaking Order" – While imposing any of the penalties laid down in D & A Rules, Speaking Orders indicating the reasons for imposing a particular penalty, must be passed. (See 'Consulting UPSC' under Rule - 14 also)
The same procedure should be adopted by the appellate authority while passing orders on appeals."

3. Rly. Board's No. E (D&A) 86 RG 6-1 of 20.1.86 (RBE 5/86). "D & AR case – Need for Speaking orders – As well settled by the courts, the disciplinary proceedings are quasi-judicial in a nature and it is necessary that orders in such proceedings are issued only by the competent authority who have been specified as Disciplinary/Appellate/ Revising authorities under the rules and the orders should have the attributes of judicial order. Supreme Court in one case observed that recording of reason is obligatory as it ensure that it is as per law and not capricious".

In such circumstances your grace surely on application of your mind will very kindly cancel the punishment imposed by DCM/GHY is violation of DA Rules, 1968 and also in denial of Natural justice guaranteed by the Constitution of India.

Thanking you.

DA : As above

Yours faithfully.

English Prasad
CAO D/GHY

Date 05/10/04

Recd and an
Sd ARM/CHY

5/10/04

5/10/04
Sd. B. B. B.

Certified to be True Copy

A

Jayanta T. S. Dar,
Adm. Secy.

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N.F. Railway

Office of the
Chief Area Manager
Girwahati, Dt. 26/4/05

No.C/GHY/Earnings/03

To

Shri/Smt. S. Prasad
Undt. 14/4/05

Through:- CTTI/14/4/05

Sub:- Appeal against NIP of even No dtd. 30/8/04

Ref:- Your appeal No. N.L. dtd. 5/10/04

In continuation to DCM/GHY's notice of imposition of penalty of even No. dtd. 30/8/04 & ... respectively. Whereas Shri. S. Prasad Undt. 14/4/05 was punished with stoppage of 2 (Two) years increment (NC) / p pass. The case/s was /were put up to Sr. ARM/GHY for review.

On going through the appeal submitted by shri. S. Prasad Undt. 14/4/05 Sr.ARM/GHY has passed the following orders.

" Mr. S. Prasad Undt. 14/4/05 his earnings were Rs. 1892/- against target of Rs. 6000/- his penalty is reviewed to stoppage all sets of passes & PTOS for next two years. "

Divisional Commercial Manager.

Copy forwarded for information and necessary action please.

- 1) DRM/P/LMG, 2) DCM/LMG, 3) APO/GHY,
- 2) 4) CTTI/GHY

Divisional Commercial Manager.

Certified to be True Copy.

Jayanta Talukdar,
Adocate

The Chief Area Manager
N.F. Railway.

Through proper channel.

Sub: Appeal for withdrawal punishment with ref. office order No. C/GHY/Earnings/03, dated 31st June 2005.

Sir,

Most humbly and respectfully stated the following for your kind disposal.

That Sir, my previous humble prayer for quench the charge framed against me by the above mentioned letter could not yield positive response from your end, the reason best known to the administration. My sincere effort was on to achieve the target of earnings, sadly enough I remained a little lagging behind as destructed by the unavoidable circumstances of mine. I can categorically say that had I been got chance to work for the whole month I would have easily the target of earnings. Regret for that.

Be that as it may, the gap between the working days (14 days - 1 day rest) = 13 days and the amount realised was not much widen and it is easy accessible to consider my case sympathetically. As ill luck would have it, it embraced a hard hit blow on my head, by stopping pass and PTOS for the two years, which is certainly unbearable, injurious, and indiscriminate can any one imagine its initiation. My agony is this that the administration adopts the soft-stand against someone and hardone for one for the same offence perpetrated by the concerning staff. Naturally it causes the up set of my mental balance and I earnestly appealed to the leaved honour for its kind revival.

That Sir, This is the first kind of charge framed against me which I even had deviously its proves my sincerity devotion an dedications to the service needs no clarification. And I do assure you that I shall keep it up my tempo to gearup the checking zeal to increase earnings and never get chance to remind me once again in near future. Here I would like quote a vital factor for your kind disposal. That Sir, I am hailing from Bihar and residing area here with my family leaving my old parent there. As no one predicts the fate or mine in case of sudden demise of near and dear one on more particularly inevitable purposes. How it is injustice to wrap the hands and feet tight by stopping pass and PTOS of a subordinate staff like me. I want its justice.

Under the above circumstances may I pray your honour to consider my case sympathetically and exonerate from all charges and punishment.

I am quite optimistic that the door of your good office always remain open for justice and not necessitate to bang on door to door to a justice, as its truth lies in the saying in English "Never leave to other what one should finish oneself."

The act of your leniency would be the substantial boost to keep the morals high of your pity subordinate staff like me and ease to attain goal.

Thanking you.

Yours faithfully,

Sudish Prasad
(S. Prasad) 31/5/05
Conductor/Ghy.

Certified to be True Copy.

Jayanta Talukdar,
Advocate.

Forwarded to
CAM/CHY for kind
consideration please. At present
Mr. S. Prasad Conductor/CHY is
having good penalty earnings.
31/5/05

NORTHEAST FRONTEIR RAILWAY

STANDARD FORM NO. 11

G/174 L

Standard Form of Memorandum of charge for imposing minor penalties
(Rules 11 of RS (D&A) Rules, 1968)

No. 4/447/Earnings/03

For ADM/ADM Name of Railway Administration)

(Place of issue) dated 20/7/04

For ADM/ADM's Office
MEMORANDUM

Shri B. Singh (Designation) TTE/4th Office on which working) CTTI/IC/4th hereby informed that the President/Railway Board/undersigned propose (s) to take action against him under Rule 11 of the Railway servants (Discipline and Appeal) Rules, 1968. A statement of the imputation of misconduct or misbehaviour in which action is proposed to be taken as mentioned above is enclosed. See on reverse

2. Shri B. Singh is hereby given an opportunity to make such representation as he may wish to make against the proposal. The representation, if any, should be submitted to the undersigned (through the General Manager Railway, so as to reach the said General Manager) within ten days of receipt of this Memorandum.

3. If Shri B. Singh fails to submit his representation within the period specified in para 2, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri B. Singh ex-parte.

4. The receipt of this Memorandum should be acknowledged by Shri B. Singh TTE/4th

%(By order and in the name of the President)

Signature

Name

Name and Designation of the Competent Authority

To

Shri B. Singh, TTE/4th (Name Designation and Office of the Railway Servant)

Thro. CTTI/IC/4th

*To be retained wherever this Memorandum is issued by the Railway Board/the President
%Where the President is the disciplinary authority.

Certified to be True Copy.

STATEMENT OF ALLEGATION

Scrutiny of the individual performances for June/2004 reveals that the ticket checking performance in respect of detection and charging of without ticket passengers by shri B. Singh Designation TTE/442 is very poor. He worked 21 days and where as his penalty earnings is Rs. 5292/- only which clearly indicated his negligence and lack of devotion his duty. As per CC/N.F.Rly/ILG's letter No.C/26/Review/85/TC-pt.III dtd. 10.7.1998 that the minimum penalty earnings per amenity TTE and Squad TTE per month should be Rs.6000/- and 10,000/- respectively. This is far away from his actual earnings.

Thus by the above act shri B. Singh executed lack of integrity and devotion to duty and there by contravened Service Conduct Rule No.3.1(i) and (ii) of 1966 .

BS
28/7/04
Divnl. Comml. Manager
N. F. Railway/Guwahati.

CC/N.F.Rly/ILG's
letter No.C/26/Review/85/TC-pt.III
dtd. 10.7.1998

Certified to be True Copy.

A.
Jeyanta Talukdar,
Advocate.

52

To,
The Divisional Commercial Manager
N.F. Rly, Guwahati

Through Proper Channel

Sir,

Sub : Representation against memorandum.

Ref : No C/GHY/Earnings/03 N.F. Rly. Dated 20.07.04

I have the honour to submit this representation to you against the memorandum bearing its number mentioned above under reference for reasons & grounds mentioned below :-

- 1) That Sir, during my course of service I did not allow or let loose any without ticket traveler to travel without ticket and there is no such proof of it.
- 2) That Sir, before entering the job of Traveling Ticket Examiner I did not sign in any agreement of contract with Rly administration and regarding depositing any fixed amount per month on account of without ticket travelers even if such proportionate number of passengers do not travel without ticket.
- 3) That Sir, rule 3.1 (i) (ii) of Service Conduct Rules, 1966 nowhere contemplate or substantiate the verbatim of the statement of allegation framed against me by you and the alleged statement of allegation framed against me by you under rule 3.1 (i) (ii) of Service Conduct Rule 1966 are based on conjectures or services.
- 4) That Sir, I am very much punctual and faithful to my duties and I am not at fault.
- 5) It is amazing to read in the memorandum that my earning is far away of your fixed quota do not stand, because I have crossed the quota for the month ie. I worked _____ days and my penalty earning is _____ which is proportionally far above the quota.
- 6) In this connection I like to mention here that Honorable Judge of CAT/GHY Bench acquitted the punishment of Mr. N.C. Acherjee Hd. T.T.E. / LMG. Vide his verdict. which might be available in your office.
- 7) That Sir, In view of the above mentioned facts & circumstances and legal aspects here I am earnestly requesting you with all humility to consider my below mentioned prayer for ends of justice please :-

PRAAYER

Should I encourage the irregular passengers to entrain in my coach instead of resisting such elements as described in the schedule of duties of SLEEPER CLASS T.T.E."S vide Boards letter No. L / 2000 CHG- II / 30 / 10.Dated 25.05.01.

Kindly exonerate me from the charges and withdraw / rescind / cancel the charged memorandum framed against me or totally drop the matter at this stage.
Please do needful and oblige.

Dated :
Place : Guwahati

Yours faithfully

Certified to be True Copy.

J

Jayanta Talu *Advocate.*

पूर्वोत्तर सीमा रेलवे
Northeast Frontier Railway

नियम 1707 (I) की मद (I), (II) और (III) और नियम 1707 (2) रूल को मद (I) और (II) के अन्तर्गत दण्ड देने के संबंध में सूचना/Notice of imposition of penalties under items (I), (II) & (III) of Rule 1707 (I) and items (I) and (II) of Rule 1707 (2) RI. D & A Rules, 1968.

(सन्दर्भ - नियम 1706 रूल को अथ नियम-7) Ref. D & A Under Rule 1716-RI
सं/ No. CCHY/Earnings/03 तारीख/ Dated 30/8/04

प्राप्त/From Dem/CHY

सेवा में/ To Bimalhewari Singh TTE/CHY
Thro. CTTI/14/CHY

आरोप पत्र सं० दिनांक पर आपके स्पष्टीकरण के
संदर्भ में आपको सूचित किया जाता है कि आपका स्पष्टीकरण स्वीकृत नहीं है। तब * ने निम्नलिखित आदेश दिया है
** :-/ With reference to your explanation to the charge sheet No. CCHY/Earnings/03 dated 20/7/04
you are hereby informed that your explanation is not considered satisfactory and that *
the Dem/CHY has passed the following orders : **

अनुशासनिक प्राधिकारी का हस्ताक्षर पदनाम
Signature of Discipline Officer
Discipline Officer
[Signature]
30/8/04

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

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

प्राप्ति स्वीकृति/ACKNOWLEDGEMENT

सेवा में/To Bimalhewari Singh TTE/CHY
Thro. CTTI/14/CHY

में सूचना पत्र सं० दिनांक की

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

हस्ताक्षर या अंगुठ का निशान
Signature or Thumb Impression

पदनाम Designation

Certified to be True Copy.

Jayanta Talukdar,
Advocate.

P.T.O

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

विषयार्थ/INSTRUCTIONS

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

विषयार्थ/INSTRUCTIONS

(1) इन आदेश के विरुद्ध अपील

(अदेश देनेवाले प्राधिकारी से ठीक ऊपर का प्राधिकारी के पास की जा सकती है।/ An appeal against those order lies to Sr. Authority next (immediate superior to the authority passing the orders).

4 Defence submitted by Shri Bimgheswari Singh TTE/CITY is found not satisfactory. Shri Singh worked as amenity TTE for 21 days during the month of June/04 and penalty earning is Rs. 52-92/- instead of fixed target- Rs. 6000/-. So, a debarment view is taken and as such he is punished with stoppage of his next increment for 2 (two) years etc 4

copy to

1. Dnm | p | Lm4
2. APO | u44
3. CTT1 | 14444
4. Dcm | ~~4444~~

for information plan.

N.F.Rly.Press-1/11/9704/61-May'9 7-15,000Forms.

assumed to be True Copy:

Jeranta T u Ar,
1980

CRM/Guwahati
Railway

(Through Proper Channel)

Sir

Sub : Appeal Against punishment imposed by DCM/GHY

Ref : DCM/GHY's No. C/41/Earnings/03 dated 30.08.04

Most respectfully, I beg to prefer the following appeal to your grace against the punishment imposed by DCM/GHY to the tune of stoppage of increments for two year (NC) vide his order under reference.

To focus the background, I am enclosing herewith the following relevant paper for your kind perusal.

1. Memorandum issued by DCM/GHY under SF -11 (Annexure -'A').
2. Defence to memorandum submitted by me on 11.8. 04 (Annexure -'B').
3. The order imposing the penalty by the DCM/GHY (Annexure -'C').

In my defence, the following points were raised in support of my alleged failure to maintain the alleged earnings of Rs. 6000.00 in the concerned month.

- (i) During my activities, as far there was no instance when I failed to respect in arresting ticket less travel including any irregularities on that account which proved my sincerity.
- (ii) That there was no pre-condition made/ mentioned while I was appointed to work as ticket checking staff by the appointing authority and now the application of an fixed amount controverts the service conditions.
- (iii) That Hon'ble CAT/GHY pronounced a judgment in exactly under the similar circumstances stating that there could not be any target fixed as penalty earnings for ticket checking staff as individual performance.
- (iv) I declared myself as a duty bound employee without any shortcomings.
- (v) Although the TTEs manning the amenity coaches were duty bound to remain present in the coach for all the time from the departure of the train till he reaches destination to ensure.
 - (a) against un-authorized entry of passengers in the coach.
 - (b) to ensure comfort all the passengers in the reserved coach.
 - (c) to ensure that no theft occurs.
 - (d) He must make himself available on call by the passengers etc.
- (vi) But when the alleged target was imposed arbitrarily (since I was not made known the process/justification followed for fixing such target, I had no way but to depart from my duty taking the full risk to leave the reserved coach and go for hunting without ticket/irregular travelers in the other general coaches.

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Contd P. 2

Jayanta Te'u' ar,
Ad

- 2 - 44 -
- (vii) That the alleged target of Rs. 6000.00 was although fixed without any proper analysis and or appreciation, a TTE working less Nos. of days cannot be expected to give an earning in reference to the target.

But unfortunately, my defence was not taken seriously and punishment was imposed by the DCM/GHY without application of his mind for which the speaking order was not passed by him.

In the matter of passing a "Speaking Order", the Rly. Board has issued the following orders, which are produced below for your kind appraisal.

1. Rly. Board's No. E(D & A) 56 RG 6-14 dated 20-12-55

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The same procedure should be adopted by the appellate authority while passing orders on appeals."

3. Rly. Board's No. E (D&A) 86 RG 6-1 of 20.1.86 (RBE 5/86). "D & AR case

Need for Speaking orders | As well settled by the courts, the disciplinary proceedings are quasi-judicial in a nature and it is necessary that orders in such proceedings are issued only by the competent authority who have been specified as Disciplinary/Appellate/ Revising authorities under the rules and the orders should have the attributes of judicial order. Supreme Court in one case observed that recording of reason is obligatory as it ensure that it is as per law and not capricious".

In such circumstances your grace surely on application of your mind will very kindly cancel the punishment imposed by DCM/GHY is violation of DA Rules, 1968 and also in denial of Natural justice guaranteed by the Constitution of India.

Thanking you.

DA : As above

*Received and
one copy forwarded to
Sr ARM/GHY*

6/10/04

DCM / IC / GHY
R.R. RLY

Yours faithfully,

Bhideshwar Singh
TTE/GHY

Certified to be True Copy.

Jayanta T. u
Advocate



N.F. Railway

Office of the
Chief Area Manager
Guwahati, Dt. 24/4/05

No.C/GHY/Earnings/03

To

Shri/Smt. Bindhawari Singh ✓
.....TTE/CHY.....
.....

Through:- CTTI/CHY

Sub:- Appeal against NIP of even No dtd. 20/8/04

Ref:- Your appeal No. Nil dtd. Nil

In continuation to DCM/GHY's notice of imposition of penalty of even No. dtd. 20/8/04 & respectively. Whereas Shri. Bindhawari Singh, TTE/CHY was punished with stoppage of 2 (two) years increment (NC) / p pass The case/s was /were put up to Sr. ARM/GHY for review.

On going through the appeal submitted by shri. Bindhawari Singh, TTE/CHY Sr.ARM/GHY has passed the following orders.

" Shri B. Singh, TTE/CHY - Since he has earned Rs. 5292/- against target of Rs. 6000/- he is penalised with stoppage of 2 sets of passes."



Divisional Commercial Manager.

Copy forwarded for information and necessary action please.

- 1) DRM/P/LMG, 2) DCM/LMG, 3) APO/GHY,
- 2) 4) CTTI/GHY


Divisional Commercial Manager.

Certified to be True Copy.


Jayanta Talukdar,
Admn. Secy.

0296634

50

NORTHEAST FRONTIER RAILWAY

STANDARD FORM NO. 11

G/174 L

Standard Form of Memorandum of charge for imposing minor penalties
(Rules 11 of RS (D&A) Rules, 1968)

No. C/977/Burnings/03.

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

(Place of issue) dated 20/7/04
for AAmp/444's Office

MEMORANDUM

Shri A. Ghose (Designation) HO TTE/CHP Office on which working) C/77/1e is hereby informed that the President/Railway Board/undersigned propose (s) to take action against him under Rule 11 of the Railway servants (Discipline and Appeal) Rules, 1968. A statement of the imputations of misconduct or misbehaviour in which action is proposed to be taken as mentioned above is enclosed. See on reverse.

2. Shri A. Ghose is hereby given an opportunity to make such representation as he may wish to make against the proposal. The representation, if any, should be submitted to the undersigned (through the General Manager Railway, so as to reach the said General Manager) within ten days of receipt of this Memorandum.

3. If Shri A. Ghose fails to submit his representation within the period specified in para 2, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri A. Ghose ex-parte.

4. The receipt of this Memorandum should be acknowledged by Shri A. Ghose

%(By order and in the name of the President)

Signature

Name

Name and Designation of the
Competent Authority

To

Shri

A. Ghose, HO TTE/CHP
(Name Designation and Office of the Railway Servant)

*To be retained wherever this Memorandum is issued by the Railway Board/the President
%Where the President is the disciplinary authority.

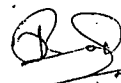
Certified to be True Copy.

Jayanta Talukdar,
Advocate.

STATEMENT OF ALLEGATION

Scrutiny of the individual performances for June/2004 reveals that the ticket checking performance in respect of detection and charging of without ticket passengers by Shri A. Ghose Designation HO TTE/Amr very poor. He worked 8 days and where as his penalty earnings is Rs. 1836/- only which clearly indicated his negligence and lack of devotion his duty. As per COM/N.F.Rly/MLG's letter No.C/26/Review/85/TC-pt.III dtd. 10.7.1998 that the minimum penalty earnings per amenity TTE and Squad TTE per month should be Rs.6000/- and 10,000/- respectively. This is far away from his actual earnings.

Thus by the above act Shri A. Ghose executed lack of integrity and devotion to duty and there by contravened Service Conduct Rule No.3.1(i) and (ii) of 1966 .


26/7/04
Divnl. Comm. Manager
N. F. Railway/Guwahati.

For the
Joint Commercial Manager
N. F. Railway, Guwahati

Certified to be True Copy.


Jayanta Talukdar,
Adm.

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

Through Proper Channal

Sir,

Sub : Representation against memorandum.

Ref : No C/GHY/Earnings/03 N.F. Rly. Dated 20.07.04

I have the honour to submit this representation to you against the memorandum bearing its number mentioned above under reference for reasons & grounds mentioned below :-

- 1) That Sir, during my course of service I did not allow or let loose any without ticket travelers to travel without ticket and there is no such proof of it.
- 2) That Sir, before entering the job of Traveling Ticket Examiner I did not sign in any agreement of contract with Rly administration and regarding depositing Rs..... per month on account of without ticket travelers even if such proportionate number of passengers do not travel without ticket.
- 3) That Sir, rule 3.1 (i) (ii) of Service Conduct Rules, 1966 nowhere contemplate or substantiate the verbatim of the statement of allegation framed against me by you and the alleged statement of allegation framed against me by you under rule 3.1 (i) (ii) of Service Conduct Rule 1966 are based on conjectures or services.
- 4) That Sir, I am very much punctual and faithful to my duties and I am not at fault.
- 5) Should I encourage the irregular passengers to entrain in my coach instead of resisting such elements.
- 6) It is amazing to read in the memo that my earning has crossed the so called quota (which is fixed by administration) still I have been charged.
- 7) In this connection I like to mention here that Honorable Judge of CAT/GHY Branch acquitted the punishment of Mr. N.C. Acherjee Hd. T.T.E. / LMG. Vide his verdict dated..... which might be available in your office.
- 8) That Sir, I view of the above mentioned facts & circumstances and legal aspects here I am earnestly requesting you with all humility to consider my below mentioned prayer for ends of justice please :-

PRAYER

Kindly exonerate me from the charges and withdraw / rescind / cancel the charged memorandum framed against me or totally drop the matter at this stage.

Please do needful and oblige.

Dated :
Place : Guwahati

Yours faithfully

Aijet Ghosh

Certified to be True Copy.

[Signature]
Jayanta Talukdar,
Advocate.

पूर्वोत्तर सीमा रेलवे
Northeast Frontier Railway

नियम 1707 (1) की मद (i), (ii) और (iii) और नियम 1707 (2) स्पष्ट को मद (i) और (ii) के अन्तर्गत दण्ड देने के संबंध में सूचना/notice of impositions of penalties under items (i), (ii) & (iii) of Rule 1707 (1) and items (i) and (ii) of Rule 1707 (2) R.L. D & A Rules, 1968.

(सन्दर्भ - नियम 1706 स्पष्ट को मद (i) नियम 1707 (2) स्पष्ट को मद (i) और (ii) के अन्तर्गत दण्ड देने के संबंध में सूचना/notice of impositions of penalties under items (i), (ii) & (iii) of Rule 1707 (1) and items (i) and (ii) of Rule 1707 (2) R.L. D & A Rules, 1968.)
सं/ (No) 444/Exmns/03 तारीख/Date 20/12/04

प्रक/From Dcm City

अप्रील 2004 को 10-11-04 को Arjun Ghosh, TTE/444
सेवा में सं/ Arjun Ghosh, TTE/444
को Arjun Ghosh, TTE/444

आरोप पत्र सं/ 444/Exmns/03 दिनांक 21/12/04 पर आपके स्वीकृति के बिना

With reference to your explanation to the charge sheet No. 444/Exmns/03 dated 21/12/04 you are hereby informed that your explanation is not considered satisfactory and that the Dcm City has passed the following orders: 21/12/04

N.B. orders on servers

अनुशासनिक प्राधिकारी का हस्ताक्षर एवं पदनाम
Signature & Designation
Disciplinary Authority
(Arjun Ghosh)

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

(इस भाग को काटकर हस्ताक्षर करके जारी करने वाले कार्यालय को लौटा दें। The portion must be detached signed and returned to the office of issue.)

प्राप्ति स्वीकृति/ACKNOWLEDGEMENT

सेवा में/To Arjun Ghosh, TTE/444
Arjun Ghosh, TTE/444

में सूचना पत्र सं/ 444/Exmns/03 दिनांक 21/12/04 की

आरोप पत्र सं/ 444/Exmns/03 दिनांक 21/12/04

प्राप्ति स्वीकार करता हूँ। I hereby acknowledgement receipt of your Notice No. 444/Exmns/03 dated 21/12/04 the charge Sheet No. 444/Exmns/03

तारीख/Dated 21/12/04
स्थान/Station Dcm City

हस्ताक्षर या अंगुठे का निशान
Signature or Thumb Impression
पदनाम/Designation Arjun Ghosh

Certified to be True Copy.

2
Jayanta Talukdar,
Advocate.

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* जब अनुशासनिक प्राधिकारी के सिवा अन्य प्राधिकारी द्वारा सूचना पर हस्ताक्षर किया जाये तो यहाँ आदेश देने का उल्लेख करें।/When the notice is signed by an authority other than the Disciplinary authority quote the authority passing the order.

** यहाँ स्पष्टीकरण की स्वीकृति या अस्वीकृति और दिये गये दण्ड का उल्लेख करें। Here quote the acceptance or rejection of explanation and the penalty imposed.

हिदायतें/INSTRUCTIONS

(1) इन आदेश के विरुद्ध अपील

(आदेश देनेवाले प्राधिकारी से ठीक ऊपर का प्राधिकारी के पास की जा सकती है।/ An appeal against those order lies to next (immediate superior to the authority passing the orders).

a Defence submitted by Shri Arjun Ghosh, H.D. TTE/CH is found not so satisfactory. Shri Ghosh worked as amputee for 8 days during the month of June/01 and penalty earning is Rs. 1836/- against fixed target Rs. 6000/-. So, a limited view is taken and as such he is punished with 15 days of his next increment for 1 (one) year N.C.

(Signature)

Copy to:

1. DDM/p/LMH

2. APO/CH

3. CTTI/CH

4. DDM/CH

for information

Please

38/04

(D.N. Bhasu)

Dcm/CH

Certified to be True Copy

Japanta T. u
Adm. Secy

-51-

fo
The Sr. ARM/Guwahati
N.F. Railway

(Through Proper Channel)

Sir

Sub : Appeal Against punishment imposed by DCM/GHY

Ref : DCM/GHY's No. C/41/Earnings/03 dated 30.08.04

Most respectfully, I beg to prefer the following appeal to your grace against the punishment imposed by DCM/GHY to the tune of stoppage of increments for two year (NC) vide his order under reference.

To focus the background, I am enclosing herewith the following relevant paper for your kind perusal.

1. Memorandum issued by DCM/GHY under SF -11 (Annexure -'A').
2. Defence to memorandum submitted by me on 11.8. 04 (Annexure -'B').
3. The order imposing the penalty by the DCM/GHY (Annexure -'C').

In my defence, the following points were raised in support of my alleged failure to maintain the alleged earnings of Rs. 6000.00 in the concerned month.

- (i) During my activities, as far there was no instance when I failed to respect in arresting ticket less travel including any irregularities on that account which proved my sincerity.
- (ii) That there was no pre-condition made/ mentioned while I was appointed to work as ticket checking staff by the appointing authority and now the application of an fixed amount controverts the service conditions.
- (iii) That Hon'ble CAT/GHY pronounced a judgment in exactly under the similar circumstances stating that there could not be any target fixed as penalty earnings for ticket checking staff as individual performance.
- (iv) I declared myself as a duty bound employee without any shortcomings.
- (v) Although the TTEs manning the amenity coaches were duty bound to remain present in the coach for all the time from the departure of the train till he reaches destination to ensure.

- (a) against un-authorized entry of passengers in the coach.
- (b) to ensure comfort all the passengers in the reserved coach.
- (c) to ensure that no theft occurs.
- (d) He must make himself available on call by the passengers etc.

- (vi) But when the alleged target was imposed arbitrarily (since I was not made known the process/justification followed for fixing such target. I had no way but to depart from my duty taking the full risk to leave the reserved coach and go for hunting without ticket/irregular travelers in the other general coaches.

Deemed to be True Copy


Jayanta Talukdar,
Advocate.

Contd P. 2

- (vii) That the alleged target of Rs. 6000.00 was although fixed without any proper analysis and or appreciation, a TTE working less Nos. of days cannot be expected to give an earning in reference to the target.

But unfortunately, my defence was not taken seriously and punishment was imposed by the DCM/GHY without application of his mind for which the speaking order was not passed by him.

In the matter of passing a "Speaking Order", the Rly. Board has issued the following orders, which are produced below for your kind appraisal.

1. Rly. Board's No. E(D & A) 56 RG 6-14 dated 20-12-55

"Speaking Orders" - The disciplinary authority imposing the penalty must apply its mind to the facts, circumstances and records of the case and then record its findings on each imputation of misconduct or misbehavior. The disciplinary authority should give brief reasons for its findings to show that it has applied its mind to the case. The reasons recorded by the disciplinary authority shall be of great help to the delinquent Railway servant in preferring his appeal. The disciplinary authority must not pass non-speaking and cryptic orders, because the orders of imposition of penalty being appealable must be speaking orders. When the explanation of the delinquent has not been considered satisfactory, the competent authority must invariably record reasons for rejecting the explanation. Sketchy and cryptic orders have been held by the Court of law to be non speaking and as such illegal."

2. Rly. Board's No. E (D & A) 78 RG 6-11 dated 3.3.78; (SE 106/78 NR 6966, SE 45/78, ER 50/78, NF/ADC 326).

"Speaking Order" - While imposing any of the penalties laid down in D & A Rules, Speaking Orders indicating the reasons for imposing a particular penalty, must be passed. (See 'Consulting UPSC' under Rule - 14 also)

The same procedure should be adopted by the appellate authority while passing orders on appeals."

3. Rly. Board's No. E (D&A) 86 RG 6-1 of 20.1.86 (RBE 5/86). "D & AR case - Need for Speaking orders - As well settled by the courts, the disciplinary proceedings are quasi-judicial in a nature and it is necessary that orders in such proceedings are issued only by the competent authority who have been specified as Disciplinary/Appellate/Revising authorities under the rules and the orders should have the attributes of judicial order. Supreme Court in one case observed that recording of reason is obligatory as it ensures that it is as per law and not capricious".

In such circumstances your grace surely on application of your mind will very kindly cancel the punishment imposed by DCM/GHY as violation of DA Rules, 1968 and also in denial of Natural justice guaranteed by the Constitution of India.


Thanking you.

DA : As above

Yours faithfully,

Date

Certified to be True Copy.


Jayanta Talukdar,
Advocate.

NORTHEAST FRONTIER RAILWAY

STANDARD FORM NO. 11

G/1731

Standard Form of Memorandum of charge for imposing minor penalties
(Rules 11 of RS (D&A) Rules, 1968)

No. CP 9147/General Manager/2003

N.P. Rly. (Name of Railway Administration)

(Place of issue) Sr. Manager's Office dated 12/5/04

MEMORANDUM

Shri H. K. Narzari (Designation) ET 71/1/CHY Office on

which working) ET 71/1/CHY is hereby informed that the President/Railway Board/undersigned propose (s) to take action against him under Rule 11 of the Railway servants (Discipline and Appeal) Rules, 1968. A statement of the imputation of misconduct or misbehaviour in which action is proposed to be taken as mentioned above is enclosed. See enclosed

2. Shri H. K. Narzari is hereby given an opportunity to make such representation as he may wish to make against the proposal. The representation, if any, should be submitted to the undersigned (through the General Manager Railway as to reach the said General Manager) within ten days of receipt of this Memorandum.

3. If Shri H. K. Narzari fails to submit his representation by 27/5/04 the period specified in para 2, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri H. K. Narzari ex-parte.

4. The receipt of this Memorandum should be acknowledged by Shri H. K. Narzari ET 71/1/CHY

%(By order and in the name of the President)

Signature M 19/5

Name (A. Hossain)

Name and Designation General Manager
Competent Authority General Manager

To: H. K. Narzari ET 71/1/CHY
Shri Shri. ET 71/1/CHY (Name Designation and Office of the Railway Servant)

*To be retained wherever this Memorandum is used by the Railway Board/the President
%Where the President is the disciplinary authority.

66

STATEMENT OF ALLEGATION

Shri H.K. Nargari, CTTI/I/GHY while working as Incharge of GHY ticket checking squad "B" has committed gross negligence of duty and devotion of duty in as much as he failed to increase the earnings of his squad/batch as well as his individual earnings. As per COM/MIS's letter No. C/T-26/Review/85/TC-Pt.III dtd. 10.7.1998 the monthly personal earnings of TTEs working in squads should be Rs. 10,000/- but none of the TTEs working under him could so far achieve the target, which clearly reflexes bad performance and slack of duty supervision.

Thus by the above act Shri H.K. Nargari, CTTI/I/GHY executed lack of integrity and devotion to duty and thereby contravened service ~~conduct~~ conduct Rule No. 31(1) and (ii) of 1966.

21/9/18
Divil. Comm. Manager
Guwahati

Certified to be True Copy.

↓
Jayanta Talukdar,
Adocate.

पूर्वोत्तर सीमा रेलवे
Northeast Frontier Railway

नियम 1707 (1) की मद (i), (ii) और (iii) और नियम 1707 (2)-स्था. को मद (i) और (ii) के अंतर्गत
दिये जाने 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: A & A (Rev. 1-1-78).

(संदर्भ :- नियम 1716-स्था. का उप नियम-9)/Ref:- SR-9 Under Rule 1716-RI)

to/No. EP/114/Carriage/03

दिनांक/Date 6/1/84

प्रपत्र/From Dem/44

सेवा में/To Sm H. K. Nazam 6/1/84
Thru 6/1/84

आरोप पत्र सं. दिनांक पर आपके स्पष्टीकरण के संबंध में आपको सूचित
किया जाता है कि आपका स्पष्टीकरण संतोषजनक नहीं है तथा
दिया है :- /With reference to your explanation to the charge sheet No EP/114/Carriage/03
dated 19/5/84 you are hereby informed that your explanation is not considered
satisfactory and that the 1 has passed the following orders :-

N. B. Orders on reverse

अनुशासक प्राधिकारी का
हस्ताक्षर एवं पदनाम
Signature & Designation
of the Disciplinary
Authority
(A. Hoesner)

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

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

प्रति स्वीकृति/ACKNOWLEDGEMENT

से/To Sm H. K. Nazam 6/1/84
Thru 6/1/84

मैं सूचना प्राप्त सं. दिनांक को
आरोप पत्र सं. दिनांक
I hereby acknowledge receipt of your Notice No.
dated 19/5/84 the charge sheet No.

तारीख/Dated
स्थान/Station

हस्ताक्षर या मुद्रा/Signature or Thumb Impression
पदनाम/Designation

तारीख/Dated 6/1/84 certified to be True Copy.

Jaganata Talukdar.
Adequate

P.T.O

अव अनुशासनिक प्राधिकारी के विना अन्य प्राधिकारी द्वारा मुक्तता पर असाक्षर किया जाये तो यहाँ
आदेश देनेवाले प्राधिकारी का उल्लेख कर। / When the order is issued by an authority other than
the Disciplinary authority here quote the authority passing the order.

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

हिरासत/INSTRUCTIONS

(1) ह/आदेशों के विरुद्ध अपील
(आदेश देनेवाले प्राधिकारी से ठीक ऊपर का प्राधिकारी) के पास की जा सकती है / An appeal against those
orders lies to next (immediate superior to the authority
passing the orders).

C. P. M. Press

Defence is not acceptable. His
individual earnings as well as
batch earnings are far from the target
fixed by C.M./N.F.R. As incharge of
the batch he failed to inspire the
staff to increase Rly. revenue. So
he is punished with stoppage of
his next increment for two
years (re).

Copy to

DRM/ P / 1/10/7
A.P.O / 4/10/7
S.M / 8/4/10/7

mi/s
Dem/city
for information
and necessary
action please

Certified to be True Copy

Jagata Talwar
Advocate.

Dem/city
M.P. Rly.

EARNING PARTICULARS

MONTH	NOS. OF CASES	FARE	PENALTY	TOTAL
May, 2003	80	8557.00	5955.00	14512.00
June, 2003	64	5512.00	4722.00	10234.00
July, 2003	93	7744.00	7032.00	14776.00
August, 2003	59	4954.00	4925.00	9879.00
September, 2003	71	6133.00	5807.00	11940.00
October, 2003	70	7275.00	5498.00	12773.00
November, 2003	65	5545.00	4705.00	10250.00
December, 2003	46	4360.00	3448.00	7808.00
January, 2004	34	3092.00	2391.00	5483.00
February, 2004	17	1530.00	1500.00	3030.00 (Worked for 15 days)
Total	599	54702.00	45983.00	100685.00

PLEASE SEE

March, 2004 On leave

April 2004 On leave.

ANNEXURE -B

Total number of Cases in 10 months = 599

Average per month = 60

Total penalty earnings = Rs 1,00,685.00

Average Penalty earnings per month = 10,000.00

Certified to be True Copy

Jayanta Talukdar,
Advocate.

01.1.2004 - 5621 Dn x 703 up GHY-KYQ-GHY, 5603 UP GHY-LMG

02.1.2004 - 5960 Dn LMG - GHY, 5621 Dn GHY-KYQ, 701UP KYQ-GHY

03.1.2004 - 5621 Dn x 701UP GHY-KYQ-GHY, 5665up x 2068 Dn GHY-CPK-GHY with ACM/GHY.

04.1.2004 - 5621 Dn x 701UP GHY-KYQ-GHY, 5665up GHY-LMG.

05.1.2004 - 5966 Dn LMG - GHY, 2667 Up, 5960 Dn SPOP at GHY

06.1.2004 - 5621 Dn x 701UP GHY-KYQ-GHY, 5603 Up GHY-LMG.

07.1.2004 - 5960 Dn LMG - GHY, 5621 Dn x 701UP GHY-KYQ-GHY

08.1.2004 - 5621 Dn x 701UP GHY-KYQ-GHY, 5665up GHY-CPK-GHY

09.1.2004 - 5621 Dn x 701UP GHY-KYQ-GHY, 5603 Up GHY-LMG.

10.1.2004 - 5604 Dn LMG-GHY, 5621 Dn x 701UP GHY-KYQ-GHY.

11.1.2004 REST.

12.1.2004 - 5960 Dn x 703 up GHY-RNY-GHY, 5665upx2068 Dn GHY-CPK-GHY.

13.1.2004 - 805 Upx806 Dn GHY-IIBN-GHY.

14.1.2004 - 2067 Upx2068 Dn GHY-LMG-GHY with CRS/CCRS

15.1.2004 - 5621 Dn x 701UP GHY-KYQ-GHY, 5603 Up GHY-LMG

16.1.2004 - 5960 Dn LMG - GHY, 5621 Dn x 701UP GHY-KYQ-GHY

17.1.2004 - 5665up GHY-LMG with ACM/GHY.

18.1.2004 - 5604 Dn LMG-GHY, 5621 Dn x 703UP GHY-KYQ-GHY

19.1.2004 - 801 up x 8904 Dn GHY-DGU-GHY, 5665up x 2068 Dn GHY-CPK-GHY with ACM/GHY.

20.1.2004 - 5621 Dn x 703 up GHY-CPK-GHY, 5603 GHY-LMG

Certified to be True Copy.

J
Jayanta Talukdar,
Advocate.

60
72
The Area Manager
N.E. Railway, GHY

(Through proper channel)

Sir,

Sub: - Appeal against punishment imposed by DCM/GHY.

Ref: - DCM/GHY's letter no. C/GHY/Earnings/2003 dated. 19.05.2004

The humble memorialist begs to file the following appeal against the punishment imposed to the tune of stoppage of increment for 2 years (Non-cumulative) by the DCM/GHY.

The alleged charge framed against him was as under:-

Sri H.K. Narzary, CTTI/IC/GHY while working as Incharge of GHY ticket checking squad "B" has committed gross negligence of duty and lack of devotion of duty in as much as he failed to increase the earnings of his squad batch as well as his individual earnings. As per CCM/MIG's letter no. C/T - 26/Review/85/TC- Pt. III dated. 10.07.1998 the monthly personal earnings of the TTEs working in squad should be Rs 10,000 - but none of the TTEs working under him could so far achieve the target, which clearly reflexes bad performance and slack of supervision.

In the above context the, humble memorialist may be permitted to place the following for your grace for reviewing the same on the grounds: -

- (i) He leads a squad for preventing ticket less travel.
- (ii) The performance of his ^{my} squad was compared with that of the other squad lead by Shri Sonowal, CTTI/IC/GHY.
- (iii) The comparison of performances of his ^{my} squad with that of other squad is not justified on the following grounds.
 - (a) The other squad was allotted with free movement and they could pick up any Train at any time of their choice.
 - (b) Where as my squad was given a fixed diagram by the CTTI/IC/GHY without any choice for altering the same (ANNEXURE: -C for the month of January, 2004 as an example)
 - (c) There are some specific trains prone for travelling without ticket passengers but I have had no liberty to select such trains to work.

(Contd. Page: -2

Read and
one copy Forwarded to
ARM/IC/GHY
[Signature]
17/12/2004

Certified to be True Copy.

[Signature]
Jayanta Talukdar,
Advocate.

- (iv) The performances should be judged on the basis of numbers of without ticket/irregular traveler and not on amounts.
- (v) In this context, the memorialist is taking the indulgence of annexing his performances during the period from May, 2003 to June, 2003 (AS ANNEXURE: -A). It may please be seen from the said annexure that he did not lead the batch during the period from February 2004 (he worked for the days in the said month) and in the March 2004 & April 2004 he was on leave.
- (vi) The memorialize succeeded to prevent ticket less travel which would be evident from the facts that the window sales increased gradually as compared with the corresponding period of the last year.
- (vii) In view of the consideration of working in a particulars and specific diagram he was subjected to work, the performances of his squad can not be reasonably compared with the other squad having no specific programme given to them and was granted the liberty to select the trains of their choice.
- (viii) The memorialists own performances during the period from May, 2003 to February, 2004 i.e. for 10 months on average was Rs 10,337.00 per month (ANNEXURE: -B).
- (ix) It is further submitted that the comparison of performance reasonably should be done within the members of the particular squad and not that of the other squad as has been done.
- (x) You may kindly also connect the judgement of the Hon'ble CAT/GHY in Case no. 10(G) of 1990 wherein the **PUNISHMENT IMPOSED ON THE PRETEXT OF LOW EARNINGS ON SRI NRIPENDRA CHANDRA ACHARYA, HEAD TTE OF LMG** was quashed. The Photostat copy of the judgement is enclosed as ANNEXURE: -D.

It is therefore, hoped that your good grace would be kind enough to cancel the punishment imposed by DCM/GHY please.

Thanking you,

DA: - As above.

Date: - 19-07.2004.

Yours faithfully,

H.K. Narzari
(H.K. Narzary)
CTTI/I/GHY

Certified to be True Copy.

J
Jayanta Talukdar,
Advocate.

NORTHEAST FRONTEIR RAILWAY

STANDARD FORM NO. 11

G/174 I

Standard Form of Memorandum of charge for imposing minor penalty.
(Rules 11 of RS (D&A) Rules, 1968)

No. SP/CLH/Examined/103
 From SP/CLH (Name of Railway Administration)
 (Place of issue) SP/CLH/CLH's Office dated 20/7/04
MEMORANDUM

Shri S. Chowdhury (Designation) TTE/CLH (Office on which working) CLH/CLH hereby informed that the President/Railway Board/undersigned propose (s) to take action against him under Rule 11 of the Railway servants (Discipline and Appeal) Rules, 1968. A statement of the imputations of misconduct or misbehaviour in which action is proposed to be taken as mentioned above is enclosed. See on reverse

2. Shri S. Chowdhury is hereby given an opportunity to make such representation as he may wish to make against the proposal. The representation, if any, should be submitted to the undersigned (through the General Manager CLH/CLH Railway, CLH to reach the said General Manager) within ten days of receipt of this Memorandum.

3. If Shri S. Chowdhury fails to submit his representation within 10 days the period specified in para 2, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri S. Chowdhury ex-parte.

4. The receipt of this Memorandum should be acknowledged by Shri S. Chowdhury TTE/CLH

%(By order and in the name of the President)

Signature BSDName D. N. Banerjee

Name and Designation of the
Competent Authority, General Manager

General Manager
N.E. Frontier Railway, CLH

To S. Chowdhury

Shri S. Chowdhury (Name Designation and Office of the Railway Servant)

CLH/CLH

*To be retained wherever this Memorandum is issued by the Railway Board/the President
 *Where the President is the disciplinary authority

Certified to be True Copy

Jayanta
 Jayanta T. S. Dhar,

STATEMENT OF ALLEGATION

Scrutiny of the individual performances for June/2004 reveals that the ticket checking performance in respect of detection and charging of without ticket passengers by shri S. Chowdhury Designation TTE is very poor. He worked 13 days and where as his penalty earnings is Rs. 3594/- only which clearly indicated his negligence and lack of devotion his duty. As per COM/N.F.Rly/MLG's letter No.C/26/Review/85/TC-pt.III dtd. 10.7.1998 that the minimum penalty earnings per amenity TTE and Squad TTE per month should be Rs.6000/- and 10,000/- respectively. This is far away from his actual earnings.

Thus by the above act shri S. Chowdhury executed lack of integrity and devotion to duty and there by contravened Service Conduct Rule No.3.1(I) and (ii) of 1966 .

B.S.
26/7/04
Divnl. Comml. Manager
N. F. Railway/Guwahati.

Certified to be True Copy.

A
Jayanta Talukdar,
Adm. etc.

64

16

The Divisional Commercial Manager
N.F. Railway/ Guwahati.

Through: Proper Channel.

Sir,

Sub:- Defence.

Ref:- Your memorandum No. C/GHY/Earnings/03 dated 20-7-04.

.....

In obedience to the above, I have the honour to submit the following for favour of your appraisal please.

That the alleged charge framed against me vide your memorandum under reference is denied.

That the grounds/circumstances for such denial are placed hereunder for your kind consideration please.

In the memorandum it has been shown that my penalty earning in the month of June/2004 was Rs. 3594.00 for 13 working days. It otherwise says that my per day earnings were $\text{Rs. } 3594 \div 13 = \text{Rs. } 276.50$ paise approximately.

The alleged target for a month has been shown as Rs. 6000.00. In a month of 30 days, the net working days comes 30 days less 4 weekly rest = 26 days; Per day target earnings comes as $\text{Rs. } 6000.00 \div 26 = \text{Rs. } 222.22$ paise approximately.

Under such circumstances I do not know as to how your grace could frame a charge against me of failing for maintaining targets.

Your grace will surely agree that according to the target of Rs. 6000.00 P.M. the average earning per day comes to Rs. 222.00 and as such for pinpointing the success/failure, such amount be multiplied by the working days. This is a rational approach having the logical support.

Besides that, basically I am being guided with duty chart prepared by the Rly authority for manning the amenity coaches, these have been elaborated/incorporated as follows:-

(a) The ticket checking staff shall make himself available in front of the coach before he is nominated to man prior to departure of the train.

(b) He does have the sole responsibilities to prevent un-authorized persons from taking entry in the coach.

(c) He will ensure his presence for all the time in the coach during the journey (i.e. duty hours).

(d) He has to ensure at intermediate stoppages of the train to guard against any un-authorized entry at such stoppages.

(e) He has to ensure that at such stoppages, all the doors at opposite side of the coach from the platform are secured so as to ensure safety, security of the passengers, above all the un-authorized entry.

(f) He must be available in the coach at a call by the commuters for extending required help and relief etc.

(g) The above chart of duties if complied with full devotion he cannot have any opportunity to raid the without ticket/irregular traveller or for penalty earnings in other coaches leaving his nominated coach.

Certified to be True Copy.

(Contd...2)

Page-(2)

(h) It may be mentioned also in this context that unless relaxation in the heavy duty schedule as mentioned above, the TTE manning the amenity coach will have no scope to show penalty earning.

(i) It also may please be appreciated that the TTE manning the amenity coaches cannot leave his coach/coaches for raiding other coaches for general ticket checking. His such move, if taken by him cannot be a healthy one rather he will be lagging from his duty schedule.

(j) The TTEs can not give penalty earnings by remaining in their allotted coaches. If however, he can give Rs. 6000.00 penalty earning only allowing un-authorised entry of passengers inside the reserved coach, I believe that your grace may not accept such situation as befitting for them.

I hope that in appreciation to the above you will very kindly withdraw the memorandum under reference and thus obliged.

Thanking you,

Date: 12.8.04

Yours faithfully,

Sagar Chowdhury
(Sagar Chowdhury)
TTE/ GHY.

Certified to be True Copy.

Jayanta Talukdar
Advocate.

RECEIVED
12/8/04

Northeast Frontier Railway

Grand Jury - City and County of New York - Vol. 60 - Under Rule 1716-10

To: Mr. Sagar Choudhary. TTE/CNY.
Thru: CHIEF/CNY

आरिप पत्र सं० दिनांक पर आपने स्पष्टीकरण के
प्रकार में आगे उचित किया जाता है कि अस्स स्पष्टीकरण सम्बन्धित नहीं है।
With reference to your explanation to the charge sheet No. dated 20/7/04,
you are hereby informed that your explanation is not considered satisfactory and that
the Deputy Commissioner has passed the following orders : "

B. Orbits on reverse

अध्यापनिक प्रधिकारी का हस्ताक्षर, प्रमाणपत्र
Signature of the Teacher, Certificate
Disciplinary Authority

टिप्पणी :- विद्यार्थी द्वारा तारक देखो / N.B. :- Please see instructions on the reverse side.

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

प्राप्ति स्वीकृति/ACKNOWLEDGEMENT

Sd/- Sagar Chowdhury. TFE/CCH

सामान पत्र नं० दिनांक की

आरोप पत्र २७

प्राप्ति स्वीकार करता हूँ। I hereby acknowledgement receipt of your Notice No.

The charge Sheet No. 100-11111-100

Approved _____

Signature or Thumb Impression

हस्ताक्षर या अंगुठी का निशान
Signature or Thumb Impression

REF ID: A66000

Certified to be True Copy.

Juganta Taiy'ndar,

430-12

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

** यहाँ स्पष्टीकरण की स्वीकृति या अस्वीकृति और दिये गये दण्ड का उल्लेख करें।/ Here quote the acceptance or rejection of explanation and the penalty imposed.

विधायक/INSTRUCTIONS

(1) इस आदेश के विरुद्ध अपील -----

(आदेश देनेवाले प्राधिकारी से ही ऊपर का प्राधिकारी के पास की जा सकती है।/ An appeal against those order lies to Sr. Ar. M. S. H. T. X next (Immediate superior to the authority passing the orders).

"Defence submitted by, Sri Sagar Chowdhury, IAS/IAS in matter of Sri Chowdhury worked as a member of the 13 days during the month of June/04 and penalty earnings Rs. 3594/- against fixed wage Rs. 6000/- so a sanction vide is taken and as such he is punished with stoppage of his next increment for one year etc."

Copy to :-

- ① DRMP/Lme
- ② APD/CH
- ③ ETI/CH
- ④ Dem/Lme

For informant's place

Form 1/11/9701/61-May 9-7-15,000 Form 1.

Sanctioned to be True Copy

Jayanta Talukdar,

Dem/Lme

Sr. DCM/GHY

Railway

Sir,

Sub. - Appeal against punishment imposed by DCM/GHY

Ref. - DCM/GHY's letter no. C/GHY/Earnings/03 of 30.08.2004

1. Most respectfully, I beg to prefer the following appeal to your grace against the punishment imposed by the DCM/GHY to the tune of stoppage of increment for one year (non cumulative) vide his order under reference.

2. To focus the background, I am enclosing herewith the following relevant documents for your kind perusal please.

- (i) Memorandum issued by DCM/GHY under SF-11 (Annexure-A).
- (ii) Defence to the Memorandum submitted (Annexure-B).
- (iii) The order imposing the penalty by the DCM/GHY (Annexure-C).
- (iv) The duty specified by the Railway Administration (Annexure-D).

3. In my defence, the following points were raised by me in support of my faultiness activities and against the alleged failure for maintaining the alleged target of earnings.

3.1. The basic duties of the TTE manning the amenity coach are of the following:-

- (i) To prevent ticket less passengers entering in the coach he maintained
- (ii) To prevent the unauthorized passengers holding the general journey ticket fare from entering the reserved coach.

3.2. The TTE manning the amenity coach shall make himself available for all the time in the coach to:-

- (i) To prevent theft of luggage of the passengers.
- (ii) Work into the general amenities services to the occupants.
- (iii) To ensure his availability on call by the passengers.

Contd. Page #2

Certified to be True Copy.

Jayanta Talukdar,
Advocate.

The TTE is to ensure locking of the doors at immediate stoppage.

3.4 The TTE can give penalty earnings only by allowing the :-

(i) Un-authorized/without ticket passengers to travel in the reserved coach

And or

(ii) By leaving the coach and go on hunting the without ticket passengers in other coaches.

3.5 My earnings as alleged was Rs 3,594/- (Rupees three thousands five hundred ninety four) only involving only 13 (Thirteen) working days and as such per day average earning was Rs 276.50 (Rupees two hundred seventy six & paise fifty) only where as the target earnings of Rs 6,000/- (Rupees six thousands) only in a month in 26 days working days (30 days minus 4 weekly rest = 26 days), the average daily earning comes to Rs 222.22 (Rupees two hundred twenty two & paise twenty two) only and as such I did not fail to achieve the earnings

4. The DCM/GHY did not give any speaking any speaking order countering the above points raised by me and also his honor failed to apply his mind in as much as :-

(i) The process of fixing the target of Rs 6,000/- was not made known to me.

(ii) The target so fixed is supposed to be achieved by a TTE working for the whole month.

5. In the matter of passing a "speaking order" the Railway Board have issued the following orders which are reproduced below for your kind appraisal please

(i) Railway Board's orders no. F (D&A) 56 RG 6-14 dated. 20.12.55

Disciplinary orders - The disciplinary authority imposing penalty must apply its mind to the facts, circumstances and records of the case and then record its findings on each imputation of misconduct or misbehavior. The disciplinary authority should give brief reasons for its findings to show that it has applied its mind to the case. The reasons recorded by the disciplinary authority shall be of great help to the delinquent Railway servant in preferring appeal. The disciplinary authority must not pass non speaking and cryptic orders, because the orders of imposition of penalty being appealable must be speaking orders. When the explanation of the delinquent has not been considered satisfactory, the competent authority must invariably record reasons for rejecting the explanation. Sketchy and cryptic orders have been held by the court of law to be non-speaking and as such illegal.

Contd. Page-3

Certified to be True Copy.

Jayanta Talukdar,
Adm. Sec.

Railway Board's orders no. E (D&A) 78 RG 6-11 dated, 3.3.78; (SE 106/78 NR SC 43/78, ER 50/78, NF/ADC 326)

Speaking Order :- While imposing any penalties laid down in D & A Rules, Speaking Orders indicating the reasons for imposing a particular penalty must be passed (see 'Consulting UPSC' under Rule 14 also).

The procedure should be adopted by the appellate authority while passing orders on appeals

(iii) Railway Board's orders no. E (D&A) 78 RG 6-1 dated, 20.1.86 (RBE 5/86)

D & A-R Cases (Need for speaking orders) :- As is well settled by the courts, the disciplinary proceedings are quasi judicial in a nature and it is necessary that orders in such proceedings are issued only by the competent authority who have been specified as Disciplinary/Appellate/Revising authorities under the rules and the orders should have the attributes of a judicial order. Supreme court in one case observed that recording of reasons is obligatory as it ensures that it is as per law and not capricious.

In view of the circumstances, your grace may surly on application of your mind will very kindly cancel the above punishment imposed to the tune of stoppage of increment for 1 year (non-cumulative) by DCM/GHY in violation of Disciplinary & Appeal Rules, 1968 and also in denial of natural justice guaranteed by the constitution of India.

Thanking you,

DA:- As stated above.

Yours faithfully,

Sagar Chowdhury

(S. Chowdhury)

TTE at GHY

Under CTT/IC/GHY

Date: 11.10.04

R
11/10/04
CTT/IC/GHY
R.F. BHA.

Certified to be True Copy.

J
Jayanta Talukdar,
Advocate.

71
N.F. Railway

Office of the
Chief Area Manager
Guwahati, Dt. 26/1/05

No. C/GHY/Earnings/03

To

Shri/Smt. Sagar Choudhury
TTE/417

Through:-

CTTI/14/417

Sub:- Appeal against NIP of even No dtd. 20/7/04

Ref:- Your appeal No. 41 dtd. 12/8/04

In continuation to DCM/GHY's notice of imposition of penalty of even No. dtd. 20/7/04
& respectively. Whereas Shri. Sagar Choudhury, TTE/417
was punished with stoppage of Phen. Jan. increment (NC) / p pass
..... The case/s was /were put up to Sr. ARM/GHY for review.

On going through the appeal submitted by shri. Sagar Choudhury, TTE/417
Sr. ARM/GHY has passed the following orders.

- a. Sri Sagar Choudhury - since Sri Choudhury worked only for 13 days and earned Rs. 3594/- only against pay of Rs. 6000/+, he is penalised with stoppage of 3 sets of passes when next due.

[Signature]
Divisional Commercial Manager

Copy forwarded for information and necessary action please.

- 1) DRM/P/LMG, 2) DCM/LMG, 3) APO/GHY,
2) 4) CTTI/GHY

[Signature]
Divisional Commercial Manager

Certified to be True Copy.

[Signature]
Jayanta Talukdar,

NORTHEAST FRONTEIR RAILWAY

STANDARD FORM NO. 11

G/174 L

Standard Form of Memorandum of charge for imposing minor penalties
(Rules 11 of RS (D&A) Rules, 1968)

No. C/GM/ Earnings/2003

N. P. Rly. (Name of Railway Administration)

(Place of issue) S. ARM/ GM's Office dated 14/5/04

MEMORANDUM

Shri B. K. Chanda (Designation) CTT/11 (Office on which working) is hereby informed that the President/Railway Board/undersigned propose (s) to take action against him under Rule 11 of the Railway servants (Discipline and Appeal) Rules, 1968. A statement of the imputation of misconduct or misbehaviour in which action is proposed to be taken as mentioned above is enclosed. See on reverse

2. Shri B. K. Chanda is hereby given an opportunity to make such representation as he may wish to make against the proposal. The representation, if any, should be submitted to the undersigned (through the General Manager Railway, so as to reach the said General Manager) within ten days of receipt of this Memorandum.

3. If Shri B. K. Chanda fails to submit his representation Within the period specified in para 2, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri B. K. Chanda ex-parte.

4. The receipt of this Memorandum should be acknowledged by Shri B. K. Chanda CTT/11/GM.

%(By order and in the name of the President)

Signature M. Hossain

Name (A. Hossain)

Name and Designation of the
Competent Authority
G. P. NARAYAN, GENERAL MANAGER

To

Shri B. K. Chanda CTT/11/GM,
(Name Designation and Office of the Railway Servant)

Thru: CTT/11/GM

*To be retained wherever this Memorandum is issued by the Railway Board/the President
%Where the President is the disciplinary authority.

Certified to be True Copy.

STATEMENT OF ALLEGATION

Scrutiny of the individual performances for April/2004 reveals that the ticket checking performances in respect of detection and charging of without ticket passengers by Sri B.K. Chanda CT71/C/42 is very poor. He worked 16 (Sixteen) days and where as his penalty earnings is Rs. 798/- which clearly indicated his negligence and devotion his duty. As per CCM/B.F.Rly/MIG's L/No.C/T-26/Review/85/TC-Pt-III dated 10/7/1998 that the minimum penalty earnings per amenity TTE and Squad per month should be Rs.6000/- and Rs.10,000/- respectively. This is far from his actual earnings. L. Leek of

Thus by the above act sri B.K. Chanda CT71/C/42 executed lack of integrity and devotion to duty and thereby Contravened Service Conduct Rule No. 31 (i) and (ii) of 1966.

MIG
Divil. Comm. ~~Manager~~

Commercial Manager
1. P. RAILWAY, GUNAWAD

Recd. 28-6
Certified to be True Copy.

J
Jayanta Talukdar,
Advocate.

पूर्वोत्तर सीमा रेलवे
Northeast Frontier Railway

नियम 1707 (1) की मद (i), (ii) और (iii) और नियम 1707 (2)-स्था० को मद (1) और (ii) के अंतर्गत दण्ड देने 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: D & A R. No. 19 68.

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

सं०/No. ef 944/Earnings/03

दिनांक/Date 01/6/04

प्रपत्र/From Dem/cty.

N. P. Railway

सेवा में/To Sri B. K. Chandra, ETT/11/644,

Thro:- ETT/11/644.

आरोप पत्र सं० दिनांक पर आपके स्पष्टीकरण के संदर्भ 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. ef 944/From dated 14/5/04 you are hereby informed that your explanation is not considered 03 satisfactory and that the Dem/cty. has passed the following orders :-

N. B. 1. Order on reverse.

अनुशासनिक प्राधिकारी का
हस्ताक्षर एवं पदनाम
Signature & Designation
of the Disciplinary
Authority

(A-1703202)

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

से/To Sri B. K. Chandra, ETT/11/644,

Thro:- ETT/11/644.

मे सूचना पत्र सं० दिनांक की

..... आरोप पत्र सं० दिनांक

प्राप्ति स्वीकार करता हूँ । / I hereby acknowledgement receipt of your Notice No. dated the charge Sheet No.

तारीख/Dated

स्थान/Station Sanitized to be True Copy.

तारीख/Dated 2

Jayanta Talukdar,
Advocate.

हस्ताक्षर या मुद्रा का निशान
Signature or Thumb Impression
तारीख/Designation

PTD

Recd
08-6-04

जब अनुशासनिक प्राधिकारी के विना अन्य प्राधिकारी द्वारा सूचना पर हस्ताक्षर किया जाये तो यहाँ
आदेश देने वाले प्राधिकारी का उल्लेख करें। / When the notice is signed by an authority other than
the Disciplinary authority here quote the authority passing the order.

** यहाँ स्वीकृति या अस्वीकृति और दिये गये दण्ड का उल्लेख करें / Here quote the
acceptance or rejection of explanation and the penalty imposed.

हिदायत/INSTRUCTIONS

(1) इन आदेशों के विरुद्ध अपील
(आदेश देने वाले प्राधिकारी से ठीक ऊपर का प्राधिकारी) के पास की जा सकती है। / An appeal against these
orders lies to Sr. Anwar Khan next (immediate superior to the authority
passing the orders);

"Since no defence has been
submitted by Sr. Anwar Khan
B.R. Chandra and others
within stipulated
time, it is presumed that -
they have nothing to say
about the charges. In view of
this, they are punished with
stoppage of next increment -
for one year (w.e.)"

am/6
Dem/11/7

Copy to:-

- (A) DRM/P/Lonig
 - (B) ADG/4ms
 - (C) SM/6/10.44
- } for information.
for a pleasure.

Certified to be True Copy.

Japanta T. U-dar,

Adl.

Dem/11/7

To
The Divisional Commr. Manager,
N.E. Railway, Guwahati.

(Through Proper Channel).

Sir,

Sub:- Memo NO.C/GHY/Earnings/2003 N.F. Rly.dated
14-5-04.

With due regards I beg to state in reference to the above quoted memo of charges for imposing minor penalties as my defence for your kind consideration please.

That Sir, I have received the above memo of charges in time.

That Sir, I had been entrusted to work in Sleeper Coach (Amenities) during the relevant period as mentioned in the memo.

But Sir, as ill luck would have it, during the aforementioned period I could not find out large scale ticket-less travellers in one hand and on the other most of the passengers were running with ticket and reservation slip and as a result I had no scope to penalise the bonafide passengers since there were no ticket less passengers ran in sleeper coach where I was on duty.

Sir, lastly I assure you that there shall not be any lapses on my part to do my duty with devotion and integrity.

In view of the above, I pray for exoneration me from the charges levelled against me for which act of your kindness I shall remain ever grateful to you.

Yours faithfully.

Bimal K. Chanda
(B.K. Chanda),
C.T.T.I./II at
Guwahati.

Dated 08-06-04.

Certified to be True Copy.

Jayanta Telukdar
Jayanta Telukdar,
Advocate.

*Received and
One Copy Forwarded to
DCM/GHY
08/6/04
Submitted on - 08/6/04
Sl No - 453 of 08/6/04*

77
89
The Area Manager
N.F.Railway, GHY

(Through proper channel)

Sir,

Sub : Appeal against punishment imposed by DCM/GHY
Ref : DCM/GHY's letter no. C/GHY/Earnings/2003 dated 01- 06 -
2004

1. The humble petitioner submit the following appeal against the punishment imposed by DCM/GHY under reference to the tune of stoppage of increment for one year (Non-cumulative) (copy of the standard form for memorandum of charge imposing minor penalty, is enclosed as ANNEXURE :- A for your reference please).

2. The above punishment was imposed on ex part decision since I failed to submit my written defence within the stipulated period of 10 ndays. This happended due to my pre occupation on Administrative duties and also for getting the extract of CCM/MLG's letter no. C/T-26/Review/85/TC - ET - III dated. 10.07. 1998 as has been mentioned in the statement of allegation but failed to collect the same from CTTI/GHY's office. This has caused the delay in submitting of his reply. However, he had submitted the defence on 08 - 06 - 2004 duly received by CTTI/GHY's office vides serial no. 453 dated 08 - 06 - 2004 (Copy enclosed at ANNEXURE :- B).

3. The basic charge framed against me is not tenable due to the following reasons :-

(a) I worked very sincerely & with all rigidity to prevent the unauthorized passanger both without ticket traveller & ticket holder having no reservation.

(b) In the event of rigidity he followed, I had no scope to detect and charge without ticket passenger and contribute for railway earning in the amenity coach I manned.

(c) I always ensured my presence in amenity coaches allotted to my save guard :-

(i) Proper maintenance of the coaches.

(ii) Ensure safty of the passanger traveling in the coaches.

(iii) Ensure basic available comforts to the passenger travelling in coaches without interfering by the unauthorized persons.

(d) If would be a rare occation when any person daring to enter into the reservation coaches and as such there is rare possibility for me to fulfill the alleged targets of Rs. 6000/- earnings on ticket less travel by me.

(e) I further feels that my contribution towards rendering most sincere service caused a good name to the railway which would be established as there was no complain in the reservation coaches, I maintained my services, I would have been rather appreciated by the Administration.

Certified to be True Copy.

Jayanta Talukdar,
Advocate.

- (f) I am sure that during the month of April 2004 over all window sells of ticket were increased as compared with the corresponding period of the previous years.
- (g) I would be obliged if the Administration directs me to leave the reservation coaches for which I was booked unman and go on hunting for without ticket passenger in General Coach for earnings as has been targeted.
- (h) I further places the judgement of the Hon'ble CAT/GHY in Case No. 10(G) of 1990 wherein PUNISHMENT IMPOSED ON THE PRETEXT OF LOW EARNINGS ON SRI NRIPENDRA CHANDRA ACHARYA, HEAD TTE OF LMG was quashed. The Photostat copy of the judgement is enclosed as ANNEXURE-C

In view of the above positive, the applicant will be highly obliged if the appropriate Appellate Authority cancels the punishment imposed on me by DCM/GHY.

Thanking you,

DA: As above.

Date: 19-7-04

Yours faithfully

Bimal K. Chanda
(CTTI/GHY) 19/7/04

Certified to be True Copy.


Jayanta Talukdar,
Advocate.

NORTHEAST FRONTIER RAILWAY

STANDARD FORM NO. 11

G/174 L

Standard Form of Memorandum of charge for imposing minor penalty
(Rules 11 of RS (D&A) Rules, 1968)

No. 4412/Earnings/03In, Am/44 (Name of Railway Administration)(Place of issue) dated 20/7/04In, Am/ce w's Hc

MEMORANDUM

Shri B. K. Chanda (Designation) CTTI/11 (Office on which working) is hereby informed that the President/Railway Board/undersigned propose (s) to take action against him under Rule 11 of the Railway servants (Discipline and Appeal) Rules, 1968. A statement of the imputations of misconduct or misbehaviour in which action is proposed to be taken as mentioned above is enclosed. See on reverse

2. Shri B. K. Chanda is hereby given an opportunity to make such representation as he may wish to make against the proposal. The representation, if any, should be submitted to the undersigned (through the General Manager Railway, so as to reach the said General Manager) *within ten days of receipt of this Memorandum.

3. If Shri B. K. Chanda fails to submit his representation within the the period specified in para 2, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri B. K. Chanda ex-parte.

4. The receipt of this Memorandum should be acknowledged by Shri B. K. Chanda CTTI/11/447

%(By order and in the name of the President)

Signature.....

Name.....

Name and Designation of the
Competent Authority

To

Shri B. K. Chanda CTTI/11/447 (Name Designation and Office of the Railway Servant)

*To be retained wherever this Memorandum is issued by the Railway Board/the President
%Where the President is the disciplinary authority.

Certified to be True Copy.

STATEMENT OF ALLEGATION

Scrutiny of the individual performances for June/2004 reveals that the ticket checking performance in respect of detection and charging of without ticket passengers by Shri B. K. Chanda Designation CTTI/II is very poor. He worked 22 days and where as his penalty earnings is Rs. 4435/- only which clearly indicated his negligence and lack of devotion his duty. As per COM/N.F.Rly/MLG's letter No.C/26/Review/85/TC-pt.III dtd. 10.7.1998 that the minimum penalty earnings per amenity TTE and Squad TTE per month should be Rs.6000/- and 10,000/- respectively. This is far away from his actual earnings.

Thus by the above act Shri B. K. Chanda executed lack of integrity and devotion to duty and there by contravened Service Conduct Rule No.3.1(i) and (ii) of 1966 .

BS
28/7/04
Divnl. Comml. Manager
N. F. Railway/Guwahati.

FOR THE FILE, 10/04/04
Additional Commercial Manager,
N. F. Railway, Guwahati

Certified to be True Copy.

J
Jayanta Talukdar,
Asst. Secy.

To
The Divnl. Comm. Manager,
N.F. Railway, Guwahati.

(Through Proper Channel).

Sir,

Sub:- Memo of charge NO.C/GHY/Earnings/03-Sr.ARM/
GHY's Office dated 20-7-04.

With due regards I beg to state that I have received your above quoted memo of charges only on 01-08-04 and came to know the contents thereon.

That Sir, it is a fact that I was on amenity duty for June, 2004 and my penalty earnings is Rs.4435/- (Rupees four thousand four hundred thirty five) only out of my 22 working days of the said month.

Sir, you have stated in your statement of allegation that as per CCM/N.F.Rly./MLG.'s letter NO.C/26/Review/85/TC-Pt. III dated 10-7-98 that the minimum penalty earnings per amenity TTE per month should be Rs.6,000/- (Rupees six thousand) only i.e. per day Rs.200/- whereas you have stated my penalty earning is Rs.4435/- out of 22 working days i.e. more than Rs.200/- per day and thereby I earned minimum penalty as required under referred letter of CCM/MLG.

In view of the facts stated herein above, I pray to exonerate me from the charges levelled against me, for which act of your kindness I shall remain ever grateful to you.

Yours faithfully,

Bimal K. Chanda
(B.K. Chanda)
CTTI/II, Guwahati.

Dated 8-8-04.

R
9/8/04
Certified to be True Copy.

J
Jayanta Talukdar,
Advocate.

पूर्वोत्तर सीमा रेलवे
Northeast Frontier Railway

नियम 1707 (1) की मद (1), (11) और (111) और नियम 1707 (2) स्पष्ट को मद (1) और (11) के अर्न्तगत दण्ड देने के संबंध में सूचना/Notice of Imposition of penalties under items (1), (11) & (111) of Rule 1707 (Hand Items (1) and (11) of Rule 1707 (2) D & A Rules, 1968.

(सन्दर्भ - नियम 1706 स्पष्ट को नियम 9) Ref. D & A under Rule 1716-RU
सं/ No. 4447/Earnings/03 तारीख/ Dated 30/8/04

प्रेषक/From Dum/4447

सेवा में/To B.K. Chanda, CTTI/11/4447
थ्रू CTTI/14/4447

आरोप पत्र सं/ दिनांक पर आपका स्पष्टीकरण के
संदर्भ में आपको सूचित किया जाता है कि आपका स्पष्टीकरण संतुष्ट नहीं है।
With reference to your explanation to the charge sheet No. 4447/Earnings/03 dated 20/7/04,
you are hereby informed that your explanation is not considered satisfactory and that
the Dum/4447 has passed the following orders:

2-14 B. Orders on charges
अनुशासनिक प्राधिकारी का हस्ताक्षर एवं पदनाम
Signature & Designation of the
Disciplinary Authority
(B.K. Chanda)
Dum/4447

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

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

प्राप्ति स्वीकृति/ACKNOWLEDGEMENT

सेवा में/To B.K. Chanda, CTTI/11/4447
थ्रू CTTI/14/4447

में सूचना पत्र सं/ दिनांक की

अरोप पत्र सं/ दिनांक

प्राप्ति स्वीकार करता हूँ। I hereby acknowledgement receipt of your Notice No.
dated the charge Sheet No.

तारीख/ Dated

स्टेशन/Station

हस्ताक्षर या अंगुठ का निशान
Signature or Thumb Impression

पदनाम/Designation

Recd on - 25/9/04

Deputed to be True Copy

Signature T. u

Ada

P.O.

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

** यहाँ स्पष्टीकरण की स्वीकृति या अस्वीकृति और दिये गये दण्ड का उल्लेख करें। Here quote the acceptance or rejection of explanation and the penalty imposed.

हिदायतें/INSTRUCTIONS

(i) इन आदेश के विरुद्ध अपील -----

(आदेश देनेवाले प्राधिकारी से ठीक ऊपर का प्राधिकारी के पास की जा सकती है।/ An appeal against those order lies to Sr. Ar. m/447 next (Immediate superior to the authority passing the orders).

" Defence submitted by Shree Bimal Kumar Chanda, CTT/11/447 is found not satisfactory. Shree Chanda, worked as an amenity TTE for 22 days during the month of June/04 and penalty evening is Rs. 4135/- instead of fixed target - Rs. 6000/- given by CEM/NAR. So, a lenient view is taken and as such he is punished with forfeiture of his next increment for 2 (two) years. etc."

Copy to:

1. DRM/p/LMH
2. APO/447
3. CTT/11/447
4. Dem/447

BS
36/8/04
S. N. Barman
Dem/447

for information
of the place.

BS
36/8/04
Dem/447

Date:- 10.2004.

To

The Sr.ARM/GIHY
N.F. Railway

(Through proper channel)

Sir,

Sub: - Appeal against punishment imposed by DCM/GIHY.

Ref: - DCM/GHY's letter no.

1. C/GHY/Earnings/2003 of 01.06.2004.
2. C/GHY/Earnings/ 03 of 30.08.2004.

1. Most respectfully, I beg to place to your honour the following appeal for favour of your kind & sympathetic consideration please.

2. That a Memorandum under SF-11 was issued to me by DCM/GHY vide his letter no. C/GHY/Earnings/2003 dated 14.05.2004 and the defence was due to be submitted within 10 days, the stipulated period but I could not manage to file my defence in time for which the case was decided ex parte and a punishment order of stoppage of increment to the tune of 1 (one) year non-cumulative was imposed on me vide his letter no. C/GHY/Earnings/2003 dated 1.06.2004, which was received by me on 08.06.2004.

3. As mentioned in the said imposition of penalty order, I prefer an appeal against the said punishment order on 19.07.2004 but it is surprising that the DCM/GHY took this appeal of mine dated 19.07.2004 as a defence of Memorandum dated. 20.07.2004 and imposed a penalty of stoppage of increment to the tune of 2 (two) years non-cumulative vide his letter no. C/GIHY/Earnings/03 30.08.2004.

4. From the facts focused as above, you will surly appreciate that: -

- (i) DCM/GIHY the disciplinary authority imposed 2 sets of punishment to the tune of 1 year & 2 years stoppage of increment respectively for disposing a particular memorandum dated 20.07.2004.
- (ii) DCM/GHY at one stage decided the case ex parte and again he traced on a document which was not defence but an appeal to the next higher authority.
- (iii) DCM/GHY acted both as disciplinary authority and as appellate authority, which is beyond the recognition of the D & A Rules, 1968.

5. The above acts clearly show that the DCM/GHY while imposing 2 sets of penalties did not at all apply his mind which is a most important and vital under D & A rules, 1968 while imposing the penalties of stoppage of increment for 2 years non-cumulative on me dated 30.8.2004, he simply stated that the points raised by me in my appeal dated. 19.07.2004 vide item no. 3 were not satisfactory and he abstained from passing a speaking order and thus violated the D & A rules, 1968 and instructions issued by the Railway Board in the matter of compulsion in passing the speaking order.

R/563
15/10/04

Forwarded
to Sr.ARM/GIHY
15/10/04
N.F. RLY.

Certified to be True Copy

Contd. Page:-2

Jayanta Talukdar,
Advocate.

6. DCM/GHY also ignored the basic facts while imposing penalty in the matter of alleged target expected to be acted upon by a TTE. In the month under reference, my earning was Rs 4435/- (Rupees four thousands four hundred thirty five) only in 22 days i.e. per day average earning was above Rs 200/- (Rupees two hundred) only and the alleged target of earning of Rs 6000/- (Rupees six thousands) only in 30 days i.e. average daily earning comes to Rs and the alleged target comes to Rs 200/- (Rupees two hundred) only. This also shows that DCM/GHY neither apply his mind while framing the charges nor while imposing the penalty.

7. In the matter of passing a "Speaking order" the Railway Board have issued the following orders which are produced below for your kind appraisal please.

(i) Railway Board's orders no. E (D&A) 56 RG 6-14 dated. 20.12.55

Speaking orders: - The disciplinary authority imposing penalty must apply its mind to the facts, circumstances and records of the case and then record its findings on each imputation of misconduct or misbehavior. The disciplinary authority should give brief reasons for its findings to show that it has applied its mind to the case. The reasons recorded by the disciplinary authority shall be of great help to the delinquent Railway servant in preferring appeal. The disciplinary authority must not pass non-speaking and cryptic orders, because the orders of imposition of penalty being appeal-able must be speaking orders. When the explanation of the delinquent has not been considered satisfactory, the competent authority must invariably record reasons for rejecting the explanation. Sketchy and cryptic orders have been held by the court of law to be non-speaking and as such illegal.

(ii) Railway Board's orders no. E (D&A) 78 RG 6-11 dated. 3.3.78; (SE 106/78 NR 6966, SC 45/78, ER 50/78, NF/ADC 326)

Speaking Order: - While imposing any penalties laid down in D & A Rules, Speaking Orders indicating the reasons for imposing a particular penalty must be passed (see 'Consulting UPSC' under Rule 14 also).

The procedure should be adopted by the appellate authority while passing orders on appeals.

(iii) Railway Board's orders no. E (D&A) 78 RG 6-1 dated. 20.1.86 (RBE 5/86)

D. & A R Cases (Need for speaking orders): - As is well settled by the courts, the disciplinary proceedings are quasi judicial in a nature and it is necessary that orders in such proceedings are issued only by the competent authority who have been specified as Disciplinary/Appellate/Revising authorities under the rules and the orders should have the attributes of a judicial order. Supreme court in one case observed that recording of reasons is obligatory as it ensures that it is as per law and not capricious.

In view of the circumstances, your grace may surly on application of your mind will very kindly cancel the above punishment imposed to the tune of stoppage of increment for 1 year & 2 year (non-cumulative) by DCM/GHY in violation of Disciplinary & Appcal Rules, 1968 and also in denial of natural justice guaranteed by the constitution of India.

Thanking you,

Original to be Free Copy.

Jayanta Talukdar,
Adm. Secy.

Yours faithfully,

Bimal Kumar Chanda

(B.K. Chanda)
CTM at GHY
Under CTT/IC/GHY



N.F. Railway

Office of the
Chief Area Manager
Guwahati, Dt. 26/4/05

No.C/GHY/Earnings/03

To:

To
Shri/Smt. P. K. Chanda
..... CTTI/II/GHY

Through:-

Sub:- Appeal against NIP of even No dtd... 30/8/04

Ref:- Your appeal No.....214..... dtd.....15/11/04.....

In continuation to DCM/GHY's notice of imposition of penalty of even No. dtd. 30/8/04 & _____ respectively. Whereas Shri. P. K. Chanda C.T.I./11/411y was punished with stoppage of next increment (NC)/p.pas..... The case/s was/were put up to Sr. ARM/GHY for review.

On going through the appeal submitted by shri... Pa. K. Chanda CTTI/11/GHY
Sr.ARM/GHY has passed the following orders.

4. Sri B. K. Chanda, CTTI/11/4Hy. his earnings have been Rs. 4425/- against target of Rs. 6000/- He is penalised with stoppage of 3 sets of passes when next due and is advised to pull up his performance."

Divisional Commercial Manager:

Copy forwarded for information and necessary action please.

- 1) DRM/P/LMG, 2) DCM/LMG, 3) APO/GHY,
2) 4) CTTI/GHY

Divisional Commercial Manager:

Certified to be True Copy.

Jayanta Talukdar,
Advocate.

0296632

NORTHEAST FRONTIER RAILWAY

STANDARD FORM NO. 11

G/174 L

Standard Form of Memorandum of charge for imposing minor penalty
(Rules 11 of RS (D&A) Rules, 1968)

No. C/Earnings/03Sr. ARM/410 (Name of Railway Administration)(Place of issue) _____ dated 20/7/04
Sr. ARM/410's office

MEMORANDUM

Shri R. Raybanshi (Designation) TTE/410 (Office on which working) CTI/410 is hereby informed that the President/Railway Board/undersigned propose (s) to take action against him under Rule 11 of the Railway servants (Discipline and Appeal) Rules, 1968. A statement of the imputation of misconduct or misbehaviour in which action is proposed to be taken as mentioned above is enclosed. See on reverse

2. Shri R. Raybanshi is hereby given an opportunity to make such representation as he may wish to make against the proposal. The representation, if any, should be submitted to the undersigned (through the General Manager _____ Railway, so as to reach the said General Manager) *within ten days of receipt of this Memorandum.

3. If Shri R. Raybanshi fails to submit his representation within the period specified in para 2, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri R. Raybanshi ex-parte.

4. The receipt of this Memorandum should be acknowledged by Shri R. Raybanshi TTE/410

%(By order and in the name of the President)

Signature R. D. Banerjee
20/7/04Name D. R. BanerjeeName and Designation of the
Competent Authority General Manager

To

Shri R. Raybanshi TTE/410
(Name Designation and Office of the Railway Servant)

*To be retained wherever this Memorandum is issued by the Railway Board/the President
%Where the President is the disciplinary authority.

Certified to be True Copy

STATEMENT OF ALLEGATION

Scrutiny of the individual performances for June/2004 reveals that the ticket checking performance in respect of detection and charging of without ticket passengers by shri R Rajbanshi Designation 2A TTE is very poor. He worked 24 days and where as his penalty earnings is Rs. 4053 () only which clearly indicated his negligence and lack of devotion his duty. As per CCM/N.F.Rly/MLG's letter No.C/26/Review/85/TC-pt.III dtd. 10.7.1998 that the minimum penalty earnings per amenity TTE and Squad TTE per month should be Rs.6000/- and 10,000/- respectively. This is far away from his actual earnings.

Thus by the above act shri R. Rajbanshi executed lack of integrity and devotion to duty and there by contravened Service Conduct Rule No.3.1(i) and (ii) of 1966 .

20/7/04
Divnl. Comml. Manager
N. F. Railway/Guwahati.

FOR OFFICIAL USE

FOR THE USE OF THE

OFFICIAL OF THE

OFFICE OF THE

Certified to be True Copy.

J
Jayanta Talukdar,
Advocate.

पूर्वोत्तर सीमा रेलवे
Northeast Frontier Railway

नियम 1707 (1) की मद (i), (ii) और (iii) और नियम 1707 (2) स्पष्ट को मद (i) और (ii) के अर्न्तगत दण्ड देने के संबंध में संख्या/Notice of imposition of penalties under items (i), (ii) & (iii) of Rule 1707 (1) and items (i) and (ii) of Rule 1707 (2) RI. D & A Rules, 1968.

सं/ No. NO. 4744 / Examiners/03 तारीख/ Dated 30/8/04

4457/From *Thro Dec/44*

सेवा में/ To Rajib Rajbanshi, TTE/CHT
Throu - CTTI/rel.452

आरोप पत्र सं० दिनांक पर आपको स्पष्टीकरण के
 तदर्थ में आपको सूचित किया जाता है कि आपका स्पष्टीकरण संभवतः पूर्ण है तथा 444 Earnings/03 नं० निर्मलिखित आदेश दिया है
 ** :-/ With reference to your explanation to the charge sheet No. dated. 20/2/04.
 you are hereby informed that your explanation is not considered satisfactory and that
 the Decm/444 has passed the following orders :-
 N.B. order on reverse.

अनुशासनिक प्राधिकारी का हस्ताक्षर एवं पदनाम
Signature & Designation of the
Disciplinary Authority

रिप्ली - हिदायत दुसरी तरफ देखे। N.B. :- Please see instructions on the reverse side.

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

प्राप्ति स्वीकृति/ACKNOWLEDGEMENT

सेवा में/To Rajat Rajwanshi, TTE/407
Thru: 471/14 407

मैं सूचना पत्र सं० ----- दिनांक ----- की -----

अरोप पत्र सं० ----- दिनांक -----

प्राप्ति स्वीकार करता हूँ। I hereby acknowledgement receipt of your Notice No.....
dated the charge Sheet No

तारीख/Dated

स्टेशन/Station

हस्ताक्षर या अंगुठे का निशान
Signature or Thumb Impression

पद/Designation

Certified to be True Copy.

Jayanta Talukdar,
Advocate.

P.T.O.

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

** यहाँ स्पष्टीकरण की स्वीकृति या अस्वीकृति और दिये गये दण्ड का उल्लेख करें।/ Here quote the acceptance or rejection of explanation and the penalty imposed.

हिदायतें/INSTRUCTIONS

(1) इन आदेश के विरुद्ध अपील -----

(आदेश देनेवाले प्राधिकारी से ठीक ऊपर का प्राधिकारी के पास की जा सकती है।/ An appeal against those order lies to Sr. Anm/4H4 next (immediate superior to the authority passing the orders).

" Defence submitted by Shri Rajib Raybanshi TTE/4H4 is not satisfactory. Shri Raybanshi worked as a amandy TTE for 24 days during the month of June /04. and penalty earning is Rs. 4053/- instead of Rs. 6000/- a target fixed by ccm/N.F.E. So, a lenient view is taken and as such he is punished with stoppage of 2 (two) years of his next increment. N.C "

copy to:

1. D2m/p/Lm6
2. APO/4H4
3. CTTI/IC/4H4
4. Dcm/4H4

(Signature)
30/8/04
D. N. Raybanshi
Dcm/4H4
for information
phone

Printed to be True Copy

(Signature)
Jaganta T. u. dar,
Ad.

NORTHEAST FRONTIER RAILWAY

STANDARD FORM NO. 11

G/174 L

Standard Form of Memorandum of charge for imposing minor penalties
(Rules 11 of RS (D&A) Rules, 1968)

No. 4442/Earnings/03

N.F. Bly. (Name of Railway Administration)

(Place of issue) dated 21/12/05CAM/442

MEMORANDUM

Shri R. Rajbanshi (Designation) TTE/442 Office on which working) CTTI/K/442 hereby informed that the President/Railway Board/undersigned propose (s) to take action against him under Rule 11 of the Railway servants (Discipline and Appeal) Rules, 1968. A statement of the imputation of misconduct or misbehaviour in which action is proposed to be taken as mentioned above, is enclosed. See in reverse

2. Shri R. Rajbanshi hereby given an opportunity to make such representation as he may wish to make against the proposal. The representation, if any, should be submitted to the undersigned (through the General Manager CTTI/K/442 Railway, so as to reach the said General Manager) within ten days of receipt of this Memorandum.

3. If Shri R. Rajbanshi fails to submit his representation within the period specified in para 2, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri R. Rajbanshi ex-parte.

4. The receipt of this Memorandum should be acknowledged by Shri R. Rajbanshi

%(By order and in the name of the President)

Signature ThamaraName D. 21/12/05Name and Designation of the Competent Authority Asst. Comm. Manager

To

Shri R. Rajbanshi (Name Designation and Office of the Railway Servant)Thamara CTTI/K/442

*To be retained where this Memorandum is used by the Railway Board/President
%Where the President is the appointing authority

G. L. Roy, Pres 1/1/1969/11 May 1964/1968 Form.

Certified to be True Copy.

Jayanta Talukdar,
Adm. Sec.

STATEMENT OF ALLEGATION

Scrutiny of the individual performance

~~xxx~~
for the month of April/05 to Sept./05 reveals that earnings of
Shri. R. Rajbomshi.....designation...TTE/444.....
was very poor. During this period of 6 months his penalty
earnings was Rs. 2658/- (Two Thousand Six hundred fifty eight)
against the target earnings of
Rs. 36000/- as per CCM/N.F.Rly./MLG's L/No. C/20/Review/
85/TC pt.III dtd. 10.7.1998.

Thus by the above act shri. R. Rajbomshi.....
designation...TTE/444.....failed to maintain devotion
to duty and thereby contravened Rule No. 3.1(11) of the
Rly. Service Condt. Rules 1960.

Pravin
21.12.05
Assst. Comm. Manager
सहायक वाणिज्य संचालक
Guwahati Div. G.W.H. 1
8 सो रोड, गुवाहाटी

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J
Jayanta Talukdar,
Advocate.



A/908

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N.F. Railway.

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No. C/GHY/Earnings/63

Office of the
Divl. Comm. Manager
Guwahati, Dt. 05/01/06

TO
Shri/Sat. R. Raybanshi,
TTE/GHY.
.....
.....
.....

Through: - CTTI/GHY

Sub: - Non received of defence against SF-11

Please refer this office Memorandum of even Nos
dtd. 21.12.65, your defence in this connection has not yet been
received by this office.

Please note that if your defence is not received
by the undersigned within 5 days of receipt of this letter, ~~Ex-parte~~
ex-parte decision will be taken from this end.

Please treat this as 'MOST URGENT'.

06/01/06
Y Asstt. Comm. Manager
Guwahati.

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Jayanta Talukdar,
Advocate

To

Date :

The Divisional Commercial Manager
N. F. Railway, Maligaon,
Guwahati.

(Through proper channel)

Sub :- Representation against the allegation of Memorandum.

Ref :- Memorandum No. C/GHY/Earnings/03 dated 20th July 2004.

Sir,

I herby submit my statement of defence as under,

The whole proceeding framed against me vide the memorandum cited above with the charges imposing allegations upon me, negligence in duty and violation of service conduct rule (i), (ii) & (iii) – 1966 is not justified and it is a matter of great resentment which indicating the effort to persuade me for victimization.

That Sir, inspite of my heart and soul effort with absolute sincerity and devotion, I fell short a little behind to acquire the target earnings, amidst the stiff competition of special ticket checking function incessantly conducted by various ticket checking batch along with officers, vigilance with the assistance of security personnel from every corner and so it can not be regarded as less earner by showing negligence in duty. Regular ticket checking function in every train from various spot did not left even a single scope for leakage of Railway revenue from ticket checking side and as a result day by day ticketless traveling movement reducing and parallely widow sale of every stations have been turning towards ascending order. So depending upon the above fact, fluctuation in individual earnings in the part of ticket checking staff cannot be regarded as negligence in duty. Yet for your information my earnings for the month of June/04 was not far behind the target earnings. Over and above, imposition of any punishment on the basis of less earner will be injustice to concerning staff. Here in this connection the verdict of Hon'ble CAT, Guwahati on the plea of less earnings quashed order may be taken as reference.

Moreover Sir, our function as amenity TTE confined within a certain jurisdiction. As a amenity TTE our vital strength have to utilise in primary function for coach maintenance in respect of dealing with reservation, ensure availability of amenity provided and restrict over crowding. In addition frequently officers with squad TTE used to check our coaches from various spots and makes tickets from WT and IT passengers if available in our coaches interfering before us. Thus scope of penalty earnings in our part also diminishes and this is also one of the reason, why we fall short from achieving target earnings.

That Sir, my recruitment in N.F.Railway basically meant for sports as a cricket player and my effort solely have to dedicate for the reputation of N.F.Railway in respect of sports. Almost always my attachment involved with the N.F.Railway's sports association either as a player or as a coach. So my contribution as TTE should not be considered as other.

Therefore considering the above fact, I hope that you will be kind enough to judge my case in positive manner with your learned view to exonerate me from the imposed charges.

Your positive judgment in my favour will certainly provide me encouragement to gear up my individual earnings in future with assurance.

Yours faithfully,

Rajib Rajbanshi

TTE / GHY

N. F. Railway.

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Jayanta Talukdar,
Advocate

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To
The Sr. ARM/ GHY.
N.F.Railway.

Date:.....

(Through proper channel.)

Sub: An appeal to waive up punishment imposed upon me by DCM/Ghy.

Ref: DCM/Ghy's office order No- C/Earning/03 dated 03-08-2004.

Sir,

In reference to the above subject matter, I would like to furnish the following few lines, to draw your kind attention towards the consequences of injustice laid down by the controlling officer DCM/GHY, by imposing punishment 2 (two) years increment stop (NC) depending upon the allegation brought against me as a less earner to achieve the earnings stipulated by CCM/MLG and here your learned and sympathetical intervention is highly solicited to review my case in lenient view, so that I will be considered release from the imposed punishment.

That Sir, it is a matter of great resentment and act of imprecation, to punish any checking staff depending on less earning. Inspite of heart and soul effort, my earning for the month of June 2004 was a little behind to achieve target amount. So as a amenity T.T.E. my earnings was not to negligible to be punished. Yet DCM/ GHY instead of considering my case leniently he took a stern view and punished me by stopping increment for next two (2) year (NC). To speak the truth DCM/GHY utilized his power on the basis of **might is right** and as a result, I the innocent staff have to suffer mentally and financially for no fault.

That Sir, amidst the incessant stiff ticket checking function conducted by squad TTE's along with officers and security personal from every corner. Existence of amenity TTE's earnings has reduced. Yet in the month of June 2004 my earnings was Rs 4053.00 and I have given 26 penalty cases in 24 days of working. For non-achievement of this small amount of earnings DCM/GHY could have taken the matter in-a lenient view, yet he did not do so whereas punished me badly with stern view.

Over and above Sir, I am a sportsman of NFRSA and ACA. My involvement as a cricket player and a coach with these organizations simultaneously reciprocal with my job as a checking staff. So any mental agony may torture my career.

Therefore, finally with an expect, to get a proper and positive justice from your side bringing favour by reviewing the case in lenient view to waived up the imposed punishment against me, I hereby submitting my appeal to you. Your consideration will be a existence to be remembered ever.

Encloser: -

1. Charge sheet copy.
2. Statement of defence copy.
3. Punishment imposed letter.

Thanking You

Yours Faithfully.

Rajib Rajbangshi
(Rajib Rajbangshi.)
TTE/GHY.

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Jayanta Talukdar.
Advocate.

found the order of punishment as impugned and had exonerated Sri Acharya of the charge and therefore declared—acquitted.

THE JUDGMENT IN DETAIL IS GIVEN HEREIN UNDER

In the Central Administrative Tribunal, Gauhati Bench

Original Application—No. 10 (G) of 1990.

Date of Decision the 17th day of August, 1990.

Sri Nripendra Chandra Acharya, Hd. WTB. 139/B New Colony.

Lumding, Dist Nongpao

Union of India Represented by GM/VS Rly. CCS/N.F. Rly DRM/LMG, DCS/LMG.

JUDGMENT

In this application under section 19 of the Administrative Tribunals Act 1985 the petitioner prays to—quash the penalty imposed on the Petitioner by Withholding Three future increments without Cumulative effect.

(2) Shortly stated the case of the petitioner is That while he was functioning as a Head Ticket Examiner, a Chargesheet was delivered to him alleging that the target of minimum earning of an individual travelling Ticket Examiner Working in Squad/amenity was fixed at Rs 1800'00 Rs. 1000/- per month i. e. Rs. 60'00 Rs. 30'00 on average per working day.

On Examination it revealed that the earning of the petitioner during the January 1985 to July 1985 on this account was far below the target and therefore the petitioner was proceeded against in a departmental enquiry and he was Called upon to submit his explanation on the above mentioned charges. In his turn the petitioner submitted his explanation which was not accepted to be satisfactory and vide Annexure 'III' dated 10th February 1987 the departmental authority found the petitioner guilty of the Charge and imposed a penalty to the extent of stoppage of three increments without Cumulative effect. By saying that the petitioner has submitted an explanation it should be construed that the petitioner alongwith the several others had submitted a joint explanation which was not taken notice of because it was not the individual explanation filed by the charged officer. Against this order of punishment the petitioner had preferred an appeal on 23rd February 1987 which did not yield any fruitful result., hence this application with the aforesaid prayer.

(3) In their Counter the opposit parties the opposit parties maintain that the order of punishment is legally justified and is not liable to be quashed because as a matter of fact the petitioner had not reached the target which was imposed on every Ticket Examiner by virtue of a circular dated 30th January 1986 vide Annexure 'R-1' Further—more it is main-)

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Advocate.

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tained that there being no violation of principle of natural justice, the departmental authority rightly ordered punishment of the petitioner because the petitioner and that of his colleagues are not rising to the necessity to check Ticketless travelling. In a nutshell it is maintained by the opposit parties that order of punishment should not be unsettled rather it should be sustained.

We have heard Mr G. K. Bhattacharjee, learned counsel for the petitioner and Mr. B.K. Sharma learned standing counsel assisted by Mr. A.K. Ray, at some length, Mr Bhattacharjee submitted before us that this order of punishment imposed by the Concerned authority in levying a particular amount in respect of each Traveling Ticket Examiner to realise from the Ticketless travellers and pay the Railway administration is against all cannons of justice, equity and fair play. According to Mr Bhattacharjee such directions given by the concerned authority not having found place as one of the Conditions of service of such ticket examiner either in the rules or in the letter of appointment and the non compliance of the said circular not having come within any of the 'MISCONDUCT' defined in the conduct rules, it should not have persuaded the concerned authority to draw up a proceeding against the petitioner and impose punishment. Hence it was further submitted that the impugned order of punishment should be quashed.

(5) On the other hand it was strenuously urged by Mr B.K. Sharma learned standing counsel that once there has been a direction given by the competent authority asking the travelling Ticket Examiner to reach the particular target towards realisation of amount from the ticket less travellers and such direction not having been complied, it definitely amounts to mis conduct for violation and hence the petitioner was liable for punishment on account of misconduct. Furthermore it was submitted by Mr B.K. Sharma that the case is grossly barred by limitation. It should be illumined dismissed, and as a last submission it was stated by Mr Sharma that no appeal having been preferred by the petitioner against the order of punishment, the provisions Contained under Section 20 of the Administrative Tribunal Act 1985 it is a clear bar to entertain such an application.

(6) We have given our anxious consideration to the argument advanced at the Bar. We like to take up the question of limitation first. Admittedly the impugned order was passed on 10th February 1987. From Annexure 'V' it is apparently clear that an appdeal was preferred by the petitioner on 23rd February 1987 which was disposed of vide order dated 15th May 1987 as Contained in Annexure 'V' Computing the period of limitation from 15th May 1987 till 24th January 1990 (date of filing of this application) undonbtedly the case is barred by limitation, of course it does not come within the purview of Section 21 (2) of the Admini-

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statute Tribunals Act 1985 but the case being barred by limitation under the foregoing provision of Section 21 (2), it requires Condonation if sufficient cause is made out or otherwise for the interest of justice. At this stage we would prefer to avert to the merits of the case to consider whether the delay needs to be—Condoned. As stated earlier it is the duty of the petitioner to make out sufficient cause for condonation of delay or if the court otherwise feels that there is a grave mis-carriage of justice the delay ought to be condoned. From the nature of charge framed against the petitioner we feel that it does not strictly come within the purview of misconduct, in case there are no ticketless travel or travellers in a train, how can one expect the ticket examiner to realise the amount fixed by the authority and pay the same to the Railway administration. It is beyond our comprehension as to how the Ticket Examiner would pay such amount without realisation. We also fail to understand as to how, non Compliance with this circular would come within the purview of 'misconduct' and therefore we are in complete agreement with Mr Bhattacharjee that this is against all canons of Equity, Justice and Fairplay. Nothing has been stated in the counter that there has been any condition imposed under the rules or in the letter of appointment to the above effect as one of their condition of service and therefore even though this circular has not been challenged by the petitioner to be ultravires, yet we think that the direction given in the circular not having found place in the relevant rules as 'misconduct,' non Compliance of the same cannot amount to 'misconduct,' for which the petitioner has required to answer certain charges in a departmental proceeding. Glaring illegality has been committed by the departmental authority in punishing the petitioner for non compliance of this circular. We cannot allow such an illegal order to remain on the field and we cannot allow such an illegal order to be sustained merely on a technical ground of limitation. Therefore considering the question of limitation we may say that if it comes within the provisions contained in the last portion of Section 21 (2) of the Act, then we have no power to condone the delay if the cause of action has occurred in favour of the person aggrieved prior to first November 1982 but cause of action arising after 1.11.85 could be condoned if sufficient cause has been made out. The Supreme Court in its judgment reported in AIR 1987 Supreme Court 8353 (Circular, Land Acquisition Anant Nag & Others VS Mst. Katiji & others) has laid down that the court should make a liberal approach while considering the question of limitation. Their lordships have been pleased to observe as follows:—

- (1) Ordinarily, a litigant does not stand to benefit laws
- (2) Refusing to consent... result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is

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condoned highest that can happen is that a case would be decided on merits after hearing the parties.

(3) 'Everyday's delay must be explained' does not mean that a pedantic approach should be made. Why not every hours delay, every seconds delay? The doctrine must be applied in a rational common sense and pragmatic manner.

(4) When substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred for the owner side—cannot claim to have vested right in injustice being done because of non-deliberate delay.

(5) There is presumption that delay is deliberately or culpable negligence or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds, but because it is capable of removing injustice, and is expected to do so.

(7) During course of argument it was submitted on behalf of the petitioner that since his near-relations were ill and the petitioner was in a disturbed mind; he could not come to this court within time. Considering all these aspects and in view of the fact that a glaring illegal order should not be allowed to remain on the field, We do hereby condone the delay and furthermore in view of the reasons stated above, the impugned order of punishment is hereby quashed and petitioner is exonerated of the charge and acquitted, Both the orders passed by the disciplinary authority and that of the appellate authority are hereby quashed.

(8) Lastly the contention of Mr. Sharma that Section 20 of the Administrative Tribunals Act would be a bar for entertaining this application has no force, because an appeal was preferred as contained in Annexure 'V' Therefore this submission of Mr Sharma carries no weight with us.

(9) In view of the discussions made above the punishment imposed on the petitioner is hereby quashed and he exonerated of the charge.

(10) Thus the application stands allowed leaving the parties to bear their own cost.

Sd/—Member (A)
17.8.90

Sd/—Vice Chairman
17.8.90

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