

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

6

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 249/2006.....

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SECTION OFFICER (Judl.)

Bahita
27/10/17

FROM NO. 4
(SEE RULE 24)
CENTRAL ADMINISTRATIVE TRIBUNAL
CHHATTISGARH BENCH:

1. Original Application No. 249/06
2. Mice Petition No. /
3. Contempt Petition No. /
4. Review Application No. /

Applicant(S) Swapan Kr. Paul

Respondant(S) U. O. I. Govt

Advocate for the Applicant(S) G.K. Bhattacharyya...
B. Choudhury... P. Katarkei

Advocate for the Respondant(S) Railway Counsel....

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed/C.F. for Rs 50/- deposited vide <u>BD</u> No. <u>280924/78</u> Date <u>16.9.06</u></p> <p><u>[Signature]</u> Dy. Registrar</p>	24.10.2006	<p>Present: The Hon'ble Shri K.V. Sachidanandan Vice-Chairman.</p> <p>The case of the applicant is that he has been charge sheeted for two charges (2nd Article of charges being not legible), the Enquiry Officer found that first charge under Article I of Annexure-I was not proved and the second charge under Article II of Annexure-II was proved. According to the applicant, Article II at Annexure- II was not in existence in Articles of Charges. The Disciplinary Authority imposed a penalty of withholding of increment for 2 years (NC), which was enhanced by the Appellate Authority to the extent of 'Reduction to the post of junior clerk in the scale Rs.3050- 4590/- and the pay is fixed at Rs.3050/- for a period of 05 (five) years.' Being aggrieved, the applicant has filed this Original Application.</p>

OA.249/06

-2-

Contd.
24.10.2006

Heard Mr. B. Choudhury, learned counsel for the applicant. Considering the issue involved I am of the view that the O.A. to be admitted. Admit the O.A. Six weeks time is granted to the respondents to file reply statement.

Post on 6.12.2006 for orders. Dr.J.L.Sarkar, learned Railway Standing counsel, is directed to keep the records in readiness for production of the same at the time of hearing.

Vice-Chairman

bb.

06.12.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice - Chairman.

When the matter came up for hearing, Ms. P. Chakrabarty, learned Counsel for the Applicant would like to file some documents as to the vacancy position in the department in group 'D' post, which would show that there is vacancy in which the Applicant would be accommodated. Learned Counsel for the Respondents is also directed to file reply as to the vacancy position.

Post on 09.01.2007.

Vice-Chairman

/mb/

06.12.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice - Chairman.

Mrs. B. Devi, learned Railway Counsel for the Respondents wanted to have further time to file reply statement.
Post on 22.01.2007.

Vice-Chairman

/mb/

Notice & order
Sent to D/section
for issuing to
resp. nos. 1 to 6 by
regel. A/D post.

7/11/06. D/No-1068 to
1073
Dt= 8/11/06.

Notice duly served
on R-3,4,5,6.

21/11/06.

No Wks has been
filed.

5.12.06.

Rejoinder not filed.

28.6.07.

29.6.07.

Counsel for the applicant has submitted that the applicant is died and the legal heirs is not responded. Post the matter on 31.7.07.



Vice-Chairman

Rejoinder not filed.

30.7.07.

lm

31.7.2007

When the matter came up for consideration learned counsel representing Mrs.B.Devi, learned Railway counsel submitted that an additional written statement has been filed Annexure -1 order dated 7.5.2007 passed by the Respondents whereby the penalty for the remaining period has been waived of by the Appellate Authority and pay of the Applicant has been restored from 1.2.2007 and submitted that in view of the said order noting survives and therefore, the O.A. has to be closed. However, learned counsel for the Applicant wanted to take instruction. Let it be done within three weeks.

Post the matter on 23.08.2007.



Vice-Chairman

/bb/

23.8.2007

Let the case be posted on 12.9.2007 for completion of pleadings.

Cancelled



Vice-Chairman

B12

/bb/

22.1.2007

Learned counsel for the respondents seeks for further time to file reply statement. Let it be done. Post on 23.2.2007.

No W/B has been filed

22.2.07

/bb/

Vice-Chairman

23.2.07

At the request of learned counsel for the respondents two weeks time is granted to file written statement. Post the matter on 12.3.07.

Vice-Chairman

9.3.07
No W/S filed

12.3.07.

Counsel for the respondents has submitted that the written statement is being filed to-day. Liberty is given to the applicant to file rejoinder if any. Post the matter on 12.4.07.

vice-Chairman

13.3.07
W/S filed by the Respondents. page contains 1 to 5.

Member

11.5.07.

Written statement has been filed. Counsel for the applicant has submitted that the applicant is died and he would like to take instructions. Post the matter on 7.6.07.

Vice-Chairman

No rejoinder has been filed.

10.5.07.

No rejoinder has been filed.

lm

7.6.2007

Counsel for the Applicant wanted further time to substitute legal heir of the deceased person.

Post the case on 29.6.2007.

Vice-Chairman

22.6.07
Additional W/S submitted by Respondents. Copy served.

/bb/

OA-249/06

23.8.2007

Heard learned counsel for the parties. The O.A. is dismissed as not pressed in terms of the order, kept in separate sheets.

No costs.

Judgment Received,

Minal Kumar BNo. Advocats.
31/8/07

for Ms. B Devi, R/A.

bb

Vice-Chairman

10.10.07

copy of the
judgment has been
sent to the D/Sec.
for receipt the same
to the applicant by
post.

19.3.08
1142 D. 6.11.07.
AS

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No.249 of 2006

DATE OF DECISION: 23.08.2007

Sri Swapan Kumar Paul

.....Applicant/s

Mr.D.Goswami

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

- Versus -

U.O.I. & Ors

.....Respondent/s

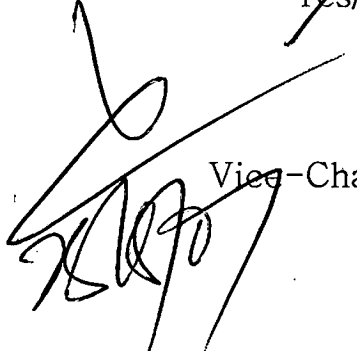
Mrs. Bharati Devi, Railway Counsel.

.....Advocate for the
Respondents

CORAM

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

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


Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 249 of 2006.

Date of Order: This, the 23rd day of August, 2007.

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

Sri Swapan Kumar Paul
S/o Late Manindra Chandra Paul
Senior Clerk, N.F.Railway
P.O: Lumding
Dist:- Nagaon, Assam

...Applicant.

By Advocates S/Shri B. Choudhury, P. Kakati & D.Goswami.

- Versus -

1. The Union of India represented by the
General Manager
N.F. Railway, Maligaon.
Guwahati-11.
2. Chief Personnel Officer
N.F.Railway, Maligaon
Guwahati-11.
3. The Divisional Railway Manager
N.F.Railway, Lumding
Dist: Nagaon.
4. Divisional Personnel Officer i/c
N.F.Railway, Lumding
Dist: Nagaon.
5. Divisional Personnel Officer
N.F.Railway, Lumding
Dist: Nagaon.
6. Assistant Personnel Officer (II)
N.F.Railway, Lumding
Dist: Nagaon.

... Respondents.



By Mrs. Bharati Devi, Railway Counsel.

ORDER (ORAL)

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

While the Applicant was working as Senior Clerk in the office of Area Manager, N.F.Railway, Badarpur, he was served with a memorandum of charge sheet No.EQ/85-S(DAR-Major) dated 04.03.2004 under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. After conclusion of the departmental proceeding, the Enquiry Officer submitted his enquiry report holding the Applicant guilty for second charge against which Applicant made representation. However, vide impugned order dated 11.11.2005 (Annexure-VII) punishment of withholding of increments for two years (NC) was awarded to the Applicant. The Applicant had filed appeal against the aforesaid order before the appellate authority but the appellate authority vide its order dated 23.6.2006 enhanced the penalty of withholding of increment for two years (NC) to reduction to the post of Junior Clerk in the pay scale of Rs.3050-4590/- and the pay was fixed at Rs.3050/- for a period of 5 years. Aggrieved by the action of the Respondents Applicant has filed this O.A. seeking the following main reliefs:-

(2) " ask the respondents to show cause as to why



the impugned orders dated : 11.11.05 (Annexure-VII) and 23.06.06 (Annexure-XI) should not be quashed and set aside and after perusing the causes shown, if any and hearing the parties, be pleased to quash and set aside the impugned orders dated : 11.11.05 (Annexure-VII) and 23.6.06 (Annexure-XI) and/or pass any orders as the Hon'ble Tribunal may deem fit and proper."

2. Respondents have filed written statement contesting the claim of the Applicant.

3. Heard Mr. D. Goswami, learned counsel for the Applicant and Mrs. Bharati Devi, learned counsel for the Railways. When the matter came up for consideration, learned counsel for the Applicant has drawn my attention to paragraph 2 of the additional written statement filed by the Respondents and submitted that the punishment have been waived of vide order dated 07.05.2007. For better elucidation paragraph 2 of the addition written statement is reproduced herein below:-


"2. That as per the letter issued by the APO/II/Lumding, Office of the Divisional Rly. Manager (P) N.F.Rly, Lumding vide Office Memo No.EQ/85-S dated 7.5.07 it is stated that the applicant Swapan Kumar Paul, Ex Sr. Clerk/E/LMG expired on 1.2.07, therefore, his penalty enhanced vide Disciplinary Authority/LMG's (APO/II/LMG) office letter No.EQ/85-S (DAR-Major) Dtd 23.6.06 to "reduction to the post of Junior Clerk in the scale of five years" i.e., from



23.06.06 to 22.06.2010, is hereby waived for the remaining period by the Appellate Authority. Hence the original post i.e., Senior Clerk at the pay of Rs.5750/- in the scale of Rs.4500-7000/- is restored from 01.02.07."

Learned counsel for the Applicant submitted that since punishment has already been revoked, the O.A. has become infructuous, and therefore, he is not pressing the O.A.

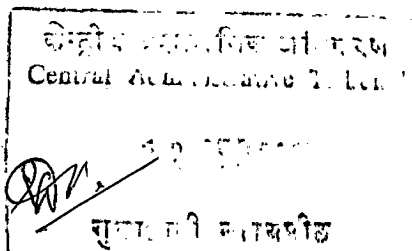
4. The Original Application is, accordingly, dismissed as not pressed. There shall be no order as to costs.



(K.V.SACHIDANANDAN)
VICE CHAIRMAN

/BB/

24.10.06



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
GUWAHATI

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

O.A.No. 249.....OF 2006

Sri Swapan Paul

...Applicant

vs

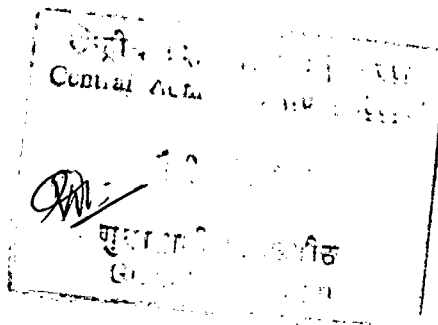
Union of India and others

...Respondents.

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Filed by

12.10.06
(Bikram Choudhury)



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

(An Application Under Section 19 of Administrative Tribunal Act, 1985)

O.A. 249..... of 2006

Sri Swapan Kumar Paul

..... Applicant.

- Versus -

The Union of India & Others.

..... Respondents

LIST OF DATES

25.11.71 : The applicant joined N.F. Railway as Junior Clerk and was posted as Area Manager, Badarpur and later promoted to Senior Clerk
Para No. 2, at page No.3.

12.6.01 : The applicant received office order No. E/283/LM(Q) PT. VIII Lumding whereby the applicant was transferred from office of the Area Manager, Badarpur to Divisional Railway Manager (P), Lumding

Para No. 3, at Page No. 3
Annexure - I, at page No. 13 to 14.

4.3.04 : The applicant received a memorandum of charge sheet No. EQ/85-S (DAR- Major) under Rule 9 of Railway Servants (Discipline and Appeal) Rules, 1968 issued by Respondent No. 5 whereby the applicant was informed that an enquiry under Rule 9 of the said Rules was proposed to be held against the applicant.

Para No. 4, at Page No. 3
Annexure - II, at page No. 14 to 15.

Contd.....

The applicant's mother expired on 30.6.03 and on recovery from his sickness the applicant reported before Divisional Railway Manager (P), Lumding for joining duty.

Para No. 5, at Page No. 4

13.9.04 : Joining Report of the applicant
Para No. 5, at Page No. 4
Annexure- III, at Page 16 to 17.

13.9.04 : Letter issued by Divisional Railway Manager (Respondent No. 3) directing the applicant to appear before railway medical authority for examination and thereafter to join duty.
Para No. 6, at Page No. 4
Annexure - IV, at Page 18 to 22

31.5.04 : The Disciplinary Authority (Respondent No. 5) appointed Sri D.C. Dey Personnel Inspector, Badarpur as Enquiry Officer vide order dated No. EQ/85.S (DAR Major) to inquire into the charges against the applicant
Para No. 6, at Page No. 4
~~Annexure - V, at Page~~

19.10.04 : The Enquiry Officer fixed this date for preliminary hearing and thereafter he refused to act as Enquiry Officer and returned the file to the disciplinary authority.
Para No. 6, at Page No. 4

Enquiry Officer fixed regular hearing on 5.4.05, 25.5.05, 9.6.05 and 17.6.05.

29.8.05 : Applicant received the enquiry report which was submitted by the Enquiry Officer to the disciplinary authority on 4.3.04.
Para No. 8 at Page No. 5
Annexure- V, at Page No. 23 to 26

6.9.05 : Applicant submitted an representation against the report of the enquiry officer before the disciplinary authority.
Para No. 10, at page No. 5
Annexure- VI, at Page 27 to 30
Contd.....

16.11.05 : Letter issued by the respondent No. 6 to the applicant vide letter No. EQ/85-S (DAR-Major) dated 11.11.05 wherein respondent No. 5 has imposed minor penalty of withholding of increments for 2 years (NC).

Para No. 11, at page 6
Annexure- VII, at Page No. 31 .

26.12.05 : The applicant filed an Departmental Appeal before the Respondent No. 5 (i.e Appellate Authority) against the impugned order dated 16.11.05. But the Appeal was taken over by the Respondent No. 4 without any authority.

Para no. 12, at Page 6
Annexure- VIII, at page 32 to 36

17.5.06 : Respondent No. 4 issued show cause notice to the applicant for enhancing the penalty.

Para No. 13, at Page 6
Annexure- IX, at Page 37 .

26.5.06 : The applicant submitted an reply to the show cause notice dated 17.5.06.

Para No. 14, at Page No. 7
Annexure- X, at Page 38 .

23.6.06 : Letter received by the applicant whereby he was informed that penalty of withholding of increment for 2 years (NC) has been enhanced to reduction to the post of Junior Clerk in the scale of Rs. 3050/--4590/- and the pay was fixed at Rs. 3050/- for a period of 5 (five) years.

Para No. 15, Page No. 7
Annexure- XI, at page No. 39 .

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*Swapan Kumar Paul
Filed by the applicant through
Bikram Choudhury, Advocate, 12.10.06.*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI
BENCH: GUWAHATI

(An Application Under Section 19 of Administrative Tribunal Act, 1985)

O.A. 249..... of 2006

Sri Swapan Kumar Paul
S/o Late Manindra Chandra Paul
Senior Clerk, NF. Railway
P.O.- Lumding
Dist.- Nagaon, Assam.

.... Applicant.

-VERSUS-

1. Union of India
Represented by the General Manager
N.F. Railway, Maligaon,
Guwahati-11.
2. Chief Personnel Officer
N.F. Railway, Maligaon,
Guwahati-11.
3. Divisional Railway Manger
N.F. Railway, Lunding,
Dist.- Nagaon.
4. Divisional Personnel Officer i/c
N.F. Railway, Lumding
Dist:- Nagaon
5. Divisional Personnel Officer.
N.F. Railway, Lumding,
District- Nagaon.

Contd.....

6. Assistant Personnel Officer (II)
N.F. Railway, Lunding
District- Nagaon.

..... Respondents.

1. **Particular of the orders against which the application is made**

- I. Order No.EQ/85-S (DAR-MAJOR) dated 11/11/05 issued by the Respondent No.2 imposing upon the applicant the penalty of withholding of increment for 2 (two) years non-commutative effect pursuant to proceeding drawn upon the applicant, by Memorandum No.EQ/85-S (DAR-MAJOR) dated 4/3/04.
- II. Order No.EQ/85-S(DAR-MAJOR) dated 23/6/06 issued by the Respondent No.4 In-charge whereby the penalty of withholding of increment for two (2) years non-cumulative was enhanced to reduction to the post of Junior Clerk in the scale of Rs.3050/- Rs.4590/- and the pay was fixed at Rs.3050/- for a period of 5 (five) years.

2. **JURISDICTION OF THE TRIBUNAL:**

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

3. **LIMITATION:**

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

4. **FACT OF THE CASE:**

1. That the applicant begs to state that he is citizen of India and is resident of the aforesaid locality and he is entitled to the rights and privileges guaranteed under the Constitution of India.

Contd.....

MP

- 18
2. That the applicant begs to state that he joined N.F. Railway on 25/11/1971 as a Junior Clerk and he was posted under Area Manager, Badrapur. Since then he has been discharging his duties sincerely and to the best of his abilities. Subsequently, in consideration of his service record and length of service he was promoted to the post of Senior Clerk under the Respondent No.3 and he was posted in the office of Area Manager, Badrapur.
 3. That in the year 2001 while the applicant was working as Senior Clerk in Badrapur, his old mother fell seriously ill and later on her sickness was diagnosed to be cancer. During this period of crisis in his life, the applicant received office order No. E/283/LM (Q) PT. VIII Lumding dated 12/6/01 whereby the applicant was transferred from the office of the Area Manager, Badrapur to Divisional Railway Manager (P) Lumding. After receiving the transfer order the applicant was confused and in dilemma as to what to do since there was no other male member in the family to look after his ailing mother, if he carries out the transfer order. While he was thinking about what to do he also fell sick and was later diagnosed to be suffering from diabetic and melinna.

A copy of transfer order dated 12/6/01 is annexed hereto and marked as ANNEXURE-I

4. That, while things remained as such, the applicant received a memorandum of charge sheet No.EQ/85-S (DAR-Major) dated 4/3/04, under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968, issued by the Respondent No.6 whereby the applicant was informed that an enquiry under Rule 9 of the said Rules was proposed to be held against the applicant. In the charge memorandum it was alleged that the applicant did not carry out the transfer order dated 12/6/01 (Annexure - I) inspite of being spared by

Contd.....

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Area Manager, Badarpur on 26/12/01 and this amounts to violation of Rule 3(i)-(ii) and (iii) of Railway Services (conduct) Rules 1966.

Copy of the above memorandum dated 4/3/04 is annexed hereto and marked as ANNEXURE-II.

5. That after sometime the applicant's mother expired on 30/6/03 and on recovering from his sickness the applicant reported before Divisional Railway Manager (P), Lumding for joining duty along with medical certificate of his illness, fit certificate and also his mother's death certificate. Thereafter Divisional Railway Manager (P), Lumding directed him to appear before the Railway doctor for examination. Accordingly, the applicant appeared before Railway doctor and after examination declared him to be fit for duty and he joined his duty at Lumding.

A copy of the joining report dated 13/9/04, Divisional Railway Manager's letter dated 13/9/04 directing him to appear before railway medical authority, duty fit certificate of railway medical authority and resumption of duty are annexed hereto and marked as ANNEXURE -III and IV (Series) respectively.

6. That, thereafter, the disciplinary authority (i.e. Respondent No.6) appointed Sri D.C. Dey, Personnel Inspector, Badarpur as Enquiry Officer vide order No.EQ/85-S (DAR-Major) dated 31/5/04 to inquire into the charges against the applicant. But Dey fixed only one date i.e. 19/10/04 for preliminary hearing, thereafter the Enquiry Officer refused to act as Enquiry Officer and returned the file to disciplinary authority.

Contd.....



7. That the disciplinary authority thereafter again appointed another Enquiry Officer Sri Sumit Das, Personnel Inspector vide order No.EQ/85-S (DAR-Major) to inquire into the charge against the applicant.

The Inquiry Officer then fixed regular hearing on 5/4/05, 25/5/05, 9/6/05 and 17/6/05 respectively.

8. That after conclusion of the departmental proceeding, the Enquiry Officer submitted his enquiry report on 4/3/04 before the disciplinary authority. A copy of the enquiry report was received by the applicant on 29/8/05.

A copy of the enquiry report is annexed hereto and marked as ANNEXURE- V.

9. That the Enquiry officer in his enquiry report held that from the given fact it is apparent that the applicant was unable to carry out the transfer order due to his prolonged illness w.e.f. 26/12/01 to 13/9/04 and illness of his widow mother who was suffering from cancer and ultimately expired on 30/6/03. Hence the charge framed in Article I of Annexure-II could not be proved considering his prolonged sickness and widow mother's death.

However, the applicant was shocked and surprised when he came over the mention of a 2nd charge under Article II Annexure-II which the Enquiry Officer has held to be proved in a very mechanical manner. In this regard the applicant states that there is no existence of Article II at Annexure-II, in fact Annexure-II speaks about the charge framed under Article-I of Annexure-I.

10. That, thereafter, the applicant submitted a representation dated 6/9/05 against the report of the Enquiry Officer before the Disciplinary Authority stating the above facts. It was stated in the representation that the

Contd.....

WD

Annexure- II speaks about imputation in support of the charge framed under the Article I of Annexure- I. The Rule 9 (6) of Railway Servants (Discipline and Appeal) Rules, 1968 states that Annexure II is a supporting statement in form of charge under Annexure- I.

A copy of the representation is annexed hereto and marked as ANNEXURE-VI.

11. That, on 16/11/05, the applicant was shocked and surprised to received letter No. EQ/85-S (DAR-major) dated 11/11/05 from Respondent No.6, wherein the disciplinary authority (i.e. Respondent No.6) without taking into consideration the representation dated 6/9/05 ~~6/9/05~~ has imposed upon him the minor penalty of with holding of increments for 2 years (NC).

A copy of the impugned order dated 11/11/05 is annexed hereto and marked as ANNEXURE-VII.

12. That as stated in the order dated 11/11/05 (Annexure- VII) the applicant filed a Departmental Appeal dated 26.12.05 before the Respondent No. 5 (i.e Appellate Authority) against the impugned order dated 11.11.05 stating amongst other, that the Enquiry Officer acted beyond his power by bringing a charge mechanically which was not in existence in Charge Memo. But, surprisingly the above appeal was taken up by Respondent No. 4 without any authority and moreover he is not the appellate authority as per rules.

A copy of the departmental appeal is annexed hereto and marked as ANNEXURE-VIII.

13. That after a long time the applicant received show cause notice dated 17/5/06 for enhancing the penalty from Respondent No. 6 issued under the direction of appellate authority (i.e. Respondent No. 4). In the notice the

Contd.....

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appellate authority without stating anything about his departmental appeal has in a cryptic manner show caused him as to why he should not be removed from service.

Copy of the notice dated 17/5/06 is annexed hereto and marked as ANNEXURE-IX.

14. That in response to the above show cause notice the applicant submitted his reply dated 26/5/06 before the appellate authority (i.e. Respondent No. 4) stating that the appellate authority may kindly go through the charge memorandum dated 4/3/04 (Annexure - II) and it will be apparent that only one charge has been brought against the applicant under Annexure I and II vide Article I and that this charge has been held as "NOT PROVED" by Enquiry Officer as it was not considered as unauthorized absence but was sick under authorized medical practitioner.

In respect of alleged charge under Article II of Annexure II as stated by the Enquiry Officer in his report, it will be clear from the charge memo that no charge under Article II at Annexure II is written.

Copy of the above reply dated 26/5/06 is hereto and marked as ANNEXURE-X.

15. That, thereafter, the applicant received letter No.EQ/85-S (DAR-Major) dated 23/6/06 from Respondent No. 6 whereby he was informed that the appellate authority has enhanced the penalty of withholding of increment for 2 years (NC) to reduction to the post of Junior Clerk in the scale of Rs.3050-4590/- and the pay fixed at Rs.3050/- for a period of 5 years.

The applicant states that the appellate authority passed the above impugned order without giving any valid reason against the grounds taken

Contd.....

by the applicant in his departmental appeal and also in his show cause reply dated, 26.5.06.

A copy of the impugned order dated : 23.6.06 of enhancement of penalty is annexed hereto and marked as ANNEXURE-XI.

16. That, being aggrieved, the applicant is approaching this Hon'ble Tribunal for due relief.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS

- I. For that the impugned orders were passed in a most arbitrary manner without proper application of mind and as such the impugned orders are bad in law and liable to be quashed and set aside.
- II. For that there was no charge for not informing the authorities about his sickness within 48 hours in the charge memo and as such the action of the Enquiry Officer in bringing such charge mechanically and holding that to be proved is bad in law and the penalty imposed on such charge is liable to be quashed and set aside.
- III. For that the Enquiry Officer is appointed to help the disciplinary authority in taking proper decision by finding out the truth of the charges leveled against the delinquent and therefore he cannot go beyond the charges written in the charge memo. As such the action of the Enquiry Officer in stating that Article No. II which is not in existence under Annexure II to be proved is bad in law and the penalty imposed thereupon is liable to be quashed and set aside.
- IV. For that the Annexure I and II under the memorandum of charge is a combined single charge and not separate with each other. Therefore the penalty order passed by the disciplinary authority is liable to be quashed and set aside.

Contd.....



- V. For that the impugned order of penalty is grossly disproportionate in the given facts of the case and as such the order of penalty imposed on the applicant is bad in law and liable to be quashed and set aside.
- VI. For that the Enquiry Officer submitted the Enquiry report in flagrant violation of the Rules and as such the penalty imposed on the applicant on the basis of such a vitiated enquiry report is bad in law and liable to be set aside.
- VII. For that the appellate authority is required to consider and decide the appeal on merit after considering the contentions raised in the appeal by passing a speaking order and in the instant case, that not having been done, the impugned appellate order is bad in law and liable to be quashed and set aside.
- VIII. For that the impugned orders were issued by the authorities in flagrant violation of Railway Service (Discipline and Appeal) Rules, 1968 and as such the impugned orders are liable to be quashed and set aside on this ground alone.
- IX. For that as per rules the Respondent No. 5 is the appellate authority but the appeal was taken up by the Respondent No. 4 de hors the rule and as such the impugned appellate order is liable to be quashed and set aside.
- X. ^{that} For in any view of the matter the impugned orders are bad in law and liable to be quashed and set aside.

6. **DETAILS OF REMEDIES EXHAUSTED**

The applicant had filed an appeal dated 26.12.05, before the Respondent No. 5 against the order dated 11.11.05 (Annexure- VII) but the same was taken up by Respondent No. 4 without any authority and the same has been disposed of by the Respondent No. 4 vide letter dated :23.6.06 (Annexure-XI) issued by the Respondent No. 5.

Contd.....

AP

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

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

8. **PRAYER**

It is therefore, prayed that this Hon'ble Tribunal would be pleased to admit this application, call for the entire records of the case, ask the respondents to show cause as to why the impugned orders dated : 11.11.05 (Annexure-VII) and 23.06.06 (Annexure-XI) should not be quashed and set aside and after perusing the causes shown, if any and hearing the parties, be pleased to quash and set aside the impugned orders dated : 11.11.05 (Annexure-VII) and 23.6.06. (Annexure-XI) and/or pass any order or orders as the Hon'ble Tribunal may deem fit and proper.

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

Contd.....

me

9. **INTERIM ORDER. IF ANY PRAYED FOR:**

It is , further prayed that pending disposal of the application this Hon'ble Tribunal may be pleased to suspend the operation of order dated 11.11.05 (Annexure- VII) and order dated 23.6.06 (Annexure - XI) and/or pass any other order/orders as this Hon'ble Tribunal deem fit and proper.

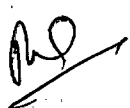
10. **PARTICULARS OF THE POSTAL ORDER IN RESPECT OF THE APPLICATION FEE.**

IPO NO... 286 924178 dated: ... 16.7.06.

Issued by Guwahati Post Office.

11. **LIST OF ENCLOSURE**

As stated in the Index.



VERIFICATION

I, **SRI SWAPAN KUMAR PAUL**, son of Late Manindra Chandra Paul, aged about 54 years, Senior Clerk, N.F. Railway, P.O. Lumding, in the district of Nagaon, Assam, do hereby verify that the contents of paragraphs 1, 2, 9, 10 and 14 are true to my personal knowledge and those in paragraphs 3, 4, 5, 6, 7, 8, 11, 12, 13 and 15 are believed to be true on legal advice and that I have not suppressed any material fact.

Date : 12.10.06.

Place : GUWAHATI

Swapan Kumar Paul
Signature of the applicant.

N.F. Railways

Office order.

Office of the
Divil. Rly. Manager (P),

Landing: 12/06/2001.

Shri Swapna Kumar Paul, Sr. Clerk/ E under AM/Badarpur's office is hereby transferred under DRN(P)/Landing on administrative ground with immediate effect.

Necessary transfer pass is admissible to him but no joining time is allowed.

This has the approval of competent authority.

for Divil. Rly. Manager (P),
N.F. Rly. Landing.

No. S/283/ LM(Q) Pt. VIII Landing, 12/06/2001.

Copy for information and action to:-

- 1) AM/BPB: He is requested to spare Shri Swapna Kumar Paul, Sr. Clerk/E immediately to report at DRN(P)/Landing. His name to be struck off from the attendance Register on receipt of this office order. He may be given a transfer pass Sx. BPB to Landing to join his duty by 14-06-2001. The LPC of Shri Paul should be sent along with.
- 2) DAC/LMN.
- 3) Staff concerned thro:- Proper channels.
- 4) COS/BQ.
- 5) Spare copy for P/case.

for Divil. Rly. Manager (P),
N.F. Rly. Landing.

Attested by.
Pranab Kumar
Adv

ANNEXURE TO STANDARD FORM NO. 5 MEMORANDUM OF CHARGESHEET
UNDER RULE RS (D&A) RULES, 1968.

Annexure - I

Statement of Articles of charge framed against Shri/Smt. Swapan Kumar Paul Sr.Clerk/E of AM /Badarpur , under order of transfer to DRM(P)/ Lumding. (Name and designation of the railway servant)

Article - I

That the said Shri/Smt. Swapan Kumar Paul Sr.Clerk/E of AM /Badarpur was transferred to DRM(P)/ Lumding as per DRM(P)/Lumding's Office order No- E/283/LM(Q) Pt. VIII . Dated: 12.6.2001. Shri Paul was spared by AM/BPB on 26.12.2001 as per AM/BPB's letter No CC/138 /O/1 Dated: 26.12.2001 , But he did not carry out the said order of Administration till dated which tent amounts to gross mis conduct and violation of Para - 3 (1) -(ii) and (iii) of Railway services (conduct) Rules - 1966

Annexure - II

Statement of imputations of misconduct of misbehavior in support of the articles of charge frame against Shri/ Smt Swapan Kumar Paul Sr.Clerk/E (Name and designation of the railway servant).

(Article - I)

That the said Shri Swapan Kumar Paul Sr.Clerk/E of AM /Badarpur was transferred to DRM(P)/Lumding on administrative ground as per DRM(P)/LMG's office order No E/283/LM(Q) Pt. VIII . Dated: 12.6.2001. Shri Paul was spared from AM/BPB's Office on 26.12.2001 as per AM/BPB's letter No. CC/138/O/1 Dated: 26.12.2001 . Shri Paul did not carry out the said order ~~of~~ Administration and kept himself un-authorized absent since 26.12.2001 to till date which unbecoming on the part of a Railway servant and lack of devotion to the duty. This act of Sri Paul tentamounts to Gross misconduct and violation of Para - 3 (1) -(ii) and (iii) of Railway services (conduct) Rules- 1966.

Annexure - III

List of the documents by which the articles of charge frame against

Shri/Smt. Swapan Kumar Paul Sr.Clerk/E (Name and designation of the railway servant) are proposed to be sustained

- 1) DRM(P)/LMG's office order No. E/283/LM(Q) Pt. VIII Dated: 12.6.2001 — PD/1
- 2) AM/BPB's letter No. CC/138/O/1 Dtd: 26.12.2001 — PD/2

Contd...2

Attested by
Bhondhury
Adv.

-2-

Annexure - IV

List of witnesses by whom the articles of charge framed/ against Shri/ ~~Smt~~ Swapan Kumar Paul Sr.Clerk/E (Name and designation of the railway servant)re proposed to be sustained .

- 1) OS of AM/BPB's Office .

(N. K. Das)

APO/II/Lunding.
Disciplinary Authority

ANNEXURE -III

(TYPED COPY)

To

The Divisional Railway Manager
Personal N.F. Railway Limbding

Sub : Report of joining

Ref : EQ/35-S dated. 31.8.04

Sir,

I have the honour to state that I could not duly join in my duty there in Lumding for my acute various illness in response to your transfer order dated 12.06.01 and this heartily regretted.

Presently I am a bit better and therefore decided to join in duty.

I was under PMC from 31.12.01 to 11.9.04 and PMC therein is enclosed herewith for your kind needfull consideration.

So, your favourable kind order for my resumption induty in reference to above is solicited

Enclosed copies
of PMC
Lumding
13.09.04

Yours faithfully
Swapan Kr. Paul
Sr Clerk (E)

Attested by
Personal Secretary
Adv.

To The Divisional Railway Manager
Personal N.F. Railway Landing

Sub: Report of joining

Ref:- EQ/85-S dtd, 31.8.04

Sir,

I have the honour to state that I could not duly join in my duty there in Landing for my acute various illness in response to your transfer order dated 12.06.01 & this is heartily regretted.

Presently I am a bit better & therefor decided to join in duty. I was under P.M.C from 31.12.01 to 11.9.04 and P.M.C therein is enclosed herewith for your kind needful consideration.

So your favourable kind order for my resumption in duty in reference to the above is solicited

Enclosed copies
of P.M.C.
Landing
13.09.04

Yours faithfully
Sargan K. Paul
Sr. Clerk (E)

Attested by
Bhadrasingh
Adv.

N.F. Railway.

No. EA/85-SOffice of the
Divil. Rly. Manager (P),
Lundin, dtd: 13/9/04TO
The CMS/Lmy

The staff mentioned below is advised to appear before you. Please examine him and issue necessary D.F.C.

1. Name:- Shri Swapan Kr. Paul
2. Designation:- Sr clerk (P)
3. Date of appointment:- 25-11-71
4. Station or place of work
(in case of P.W. Gangs the PWI under whom the man is working should be stated.) DRM (P) Lmy
5. The Medical categories he comes under such as:-

A/1	B/1	C/1
A/2	B/2	C/2
6. Period of absence.
7. Whether he voluntarily absented himself from duty.
8. Whether he has produced a P.P.C
9. Whether he overstayed the sanctioned leave (Casual/privilege), if so, the period of absence sanctioned should be stated.
10. L.T.I Signature of the person. Swapan Kr Paul
13/9/04

Two marks of Identification:-

- i) one cut mark $\frac{1}{2}$ " dia on the right knee
- ii) one cut mark $1 \times \frac{1}{2}$ " dia on the left knee

DA/ (to be returned).

for
DRM(P) Lundin.
to Div. Rly. Manager
N.F. Rly. LundinAttested by
B. Malhi

ANNEXURE -IV (SERIES)

(TYPED COPY)

N.F/M.43/M-44

RB/Med/C-6

**N.F. RAILWAY
Medicial Department
Duty FH Certificate**

No. 387/04

Hospital

Dispensary

I hereby certify that I have examined Name Swapan Kr. Paul Designation Sr.
Clerk (E) Mark of identification One num.....on the right knee
Branch of Department DRM (P) St. where employed Lumding Remarks
..... and consider him fit to resume duty pending production of fit certificate
from P.P.C. 14.09.04

Sig./L.T.I. of the applicant

Office Seal

Date 13/7/04

Signature of Rly. Doctor

Sr. DMO/OPD/LMG

N.F. Rly

Attested by.
Pranab Kumar
Adv.

पुणे/ N. F. 41/ M. 44
पुणे/ N. F. 41/ M. 44

पुणे रेलवे/ N. F. RAILWAY
चिकित्सा विभाग/ Medical Department
दुर्गती प्रमाण पत्र/ Duty Fit Certificate

382/7

अस्पताल/ Hospital
आवासीय/ Dispensary

क्र/ No.

मैं प्रमाणित करता हूँ कि मैं/ I hereby certify that I have examined

नाम/ Name.....

पद/ Designation.....

चिह्न/ Mark of Identification.....

विभाग/ Branch or Department.....

दुर्गती की जगह/ Stn. where employed.....

यदि जीव नहीं है और राखना है कि दुर्गती पर को पर तारीख/ Remarks.....

दुर्गती करने लायक/ and consider him fit to resume duty pending production of fit certificate from.....

आवेदक का हस्ताक्षर/आपने को दिशान/.....

सिग/ L.T.L. of the applicant.....

कार्यालय की मोहर/ Office Seal.....

तारीख/ Date.....

रेलवे डॉक्टर का अधिकार/ Railway Doctor
आवेदक का हस्ताक्षर/ Applicant's Signature

Attested by
Boudhary.

ANNEXURE - IV (SERIES)

(TYPED COPY)

To

DRM (P)/LMG

Sub : Resumption to duty

Sir,

Myself resume duty on 14.9.04 as per DFC No. 38714 dt 13.9.04
issued by Sr DMO/LMG N.F. Rly.

This for Your information ☐ please

DA: one DFC with
PPC
Dated 14.9.04

Yours faithfully
Swapan Kr. Paul
Sr Clerk (E)

Attested by.
Ramesh Chandra
Adv.

To, DMO (V)/LMS.

Subj: - Resumption to duty.

Sir, my self resume duty on
14.9.04 as per DFC no 3874
dt 13.9.04 issued by S&DNO/
LMS. N.F. Rly.

This for your information

please
enclose: one DFC with
PPC.

Dated.
14.9.04

Yours faithfully.
Swapan K Paul
Sr Clerk (F)

Attested by
[Signature]
Sh

ANNEXURE - V

(TYPED COPY)

Enquiry Report regarding the Major, Memorandum

No. Eo 85-S (DAR-Major) dt. 04.3.2004

The under signed has been nominated as Enquiry Officer under DRM (P)/LMG's Office Letter on Standard Form No. 7 dt. 13.01.2005 in the case of Sri Swapan Kr. Paul, Sr. Clerk (E) of DRM (P) LMG who was served with a Major Memorandum No. EQ/85-3 (DAR-Major) dt. 04.3.2004 due to un-authorised absent from 26.12.2001 to 13.9.2004 and also not carried out the Administrative order of transfer from Badarpur to Lumding at DRM (P)/LMG's Office. The major Memorandum was served to Sri Paul by Registered Post which was duly received by C.O. on 12.3.04. (Acknowledged receipt at SN/35 of DAR docket).

The charge framed against Sri Swapan Kr. Paul Sr. Clerk (E) Under DRM (P)/ LMG are as follows :-

(1) Sri Swapan Kr. Paul, Sr. Clerk (E) Under AM/BPB was transferred to DRM (P)/ LMG as per Admn's order Vide DRM (P)/LAMG's order No. E/283/LM(Q) Pt. VIII dt. 12.6.2001 & accordingly Sri Paul was spared by AM/BPB. Under his letter No. CC/ 138/0/1 dt. 26.12.2001. But he did not carry out the same up to 13.9.04 which tentamounts to gross miss-conduct and violation of Para-3(1)(ii) and (iii) of Railway Service Conduct Rules-1966.

(2) C.O. was transferred to DRM (P)/LMG on administrative ground and AM/BPB also spared him on 26.12.01, but he did not carry out the administrative order and kept himself un-authorised absent. Since 26.12.2001 to 13.9.2004 which unbecoming on the Part of a Rly. servant and lack of devotion to the duty. This act of C.O tentamounts to gross misconduct and violation of Para-3 (1)-(ii) & (iii) of Rly. Service Conduct Rules-1966.

Contd.....

Attested by.
Shandhu
Adv.

-2-

The RUD to prove the charge framed in the Charge Sheet-

(i) DRM (P)/LMG's office order No. E/283/LM(Q) Pt. VIII dt. 12.6.2001 (marked as PD/1)

(ii) AM/BPB's letter No. CC/138/0/1 dt. 26.12.2001 (marked as PD/2).

The CO had submitted defence, but the same has not satisfied in response to Major Memorandum dt. 04.3.2004.

Proceedings of the Enquiry :-

The date of Enquiry have been fixed on 05.4.05, 25.5.05, 09.6.05 and 17.6.05 respectively and C.O. along with D.C. including P/witness have present in all of above hearing. On 09.6.05 & 17.6.05 co was examined by me in presence of Defence Council (Copy enclosed). Further on 09.6.05 & 17.6.05 Prosecution witness as Annexure - IV of Major memorandum OS/AM office/BPB also attended with attendance Register and other official documents which were also examined by me in presence of C.O. & D.C, D.C has also cross examined the prosecution witness. (Copy of hearing enclosed).

Facts found in the Enquiry :-

The Under signed have gone through the Relied upon documents carefully, as quoted in the charge sheet (SF/5) to Sri Swapan Kr. Paul Sr. Clerk (E) was ordered to transfer from AM/BPB's office to DRM (P)/LMG's office vide DRM(P)/LMG's office order marked as PD/1 subsequently AM/BPB also spared him on 26.12.2001 (document's marked as PD/2). But C.O did not carry out his transfer order and he had been quitting himself from duty wef 26.12.2001 to 12.9.04. In support of which C.O submitted private medical certificate (PMC) from different doctors by covering his long absent period in relates to charge framed as per Article II, break up of PMC's are as Under :-

- (i) PMC from 31.12.01 to two months rest. (Dr. Utpal Das/ Srigouri) marked as DD/1 (D)
- (ii) ,, ,, 31.12.02 to 10.3.2003 (Dr. SM & HO/Srigouri) markes as DD/1 (C).
- (iii) ,, ,, 10.3.003 to 3 months (Dr. J. Chakraborty/BPB) markes as DD/1 (B).

Contd.....

-3-

(iv) „ „ 10.5.03 to 11.9.04 (Dr. SM & HO/KXJ) markes as DD/1 (A).

(v) „ „ 10.5.03 to 11.9.04 (Dr. SM & HO/Srigouri) markes as DD/1 (E).

On the basis of DD/1 (E), Rly doctor/LMG Hospital has accepted his PMC and issued Duty Fit Certificate (DFC) on 14.9.04 without making any comments over his PMC Sickness. Administration also allow him to resume duty at LMG on 14.9.04. During examination of C.O it also that his widow mother had also been suffering from Carcinoma of Cernix with metastasis and bleeding complication wef 15.11.2002 and ultimately she was expired on 30.6.2003 (death certificate enclosed). C.O had also advised two times to take better treatment at Rly. Hospital/BPB by APO/11/LMG but he did not take any treatment from Rly. doctors and had not followed Admn's order. If he could carry out transfer order in time, he could able to take better treatment at Divisional Hospital/LMG or at Central Hospital/MLG as there are enough medical facilities for treatment. Moreover he has stated before me during enquiry that he had not got recovered better from Rly. doctor as such he had to take the salter of private doctors both for self as well as his mother. For which he could not able to carry out transfer order/(PD/1) from AM/BPB to DRM (P)/LMG.

In response to written brief submitted by D.C, it stated that Asstt. Personnel officer can issue Major Memorendum/impose penalty to Group "C" staff whose pay scale (Rs. 5000-8000) vide R/B's notification No. E (D & A) 2002 RG 6-1 dt. 10.3.2003 (RBE No. 46/2003)

Findings

From the above facts it is clear that the C.O was unable to carry out his transfer order from AM/BPB's office to DRM (P)/LMG's office due to his prolonged sickness wef 26.12.01 to 13.9.04 and sickness of his widow mother who was expired on 30.6.03

Contd.....

(Death Certificate enclosed). She had been suffering from cancer. As such he was not in a position to carry out transfer order which was out of his capacity. Hence charged framed in Article I of Annexure - I could not be proved considering his prolonged sickness and widow mother's death.

In response to Article II of Annexure II, C.O had been suffering from illness under private doctor from 26.12.01 to 13.9.04 though Rly. doctor are available at BPB and the period was so long which can't be bearable though he was allowed to resume duty. As per records available in his P/case, it is stated that he did not informed Admn. regarding his sickness during absent period within 48 hours of his sickness, which he joined to Rly. authority on 13.9.04 (kept at P/Case SN/256/257). His sick certificates at DD/1 (D) has no link in respect to sick certificates at DD/1 (A),(B) & (C) respectively. During resumption he had produced PMC continued from 10.5.03 to 11.9.04 (SW/259/260) which was also not informed to the Admn. with in time which is gross misconduct & negligence of duty. Hence the charge framed in Article II of Annexure II has been proved without any doubt.

Submitted please,

DA :-

- (i) ALL hearing records - 14 sheets
- (ii) Defence Council's Brief-05 sheets
- (iii) Witness documents - 02 (two),,
- (iv) Death Certificate/Sick Certificates
of w/mother _____ 02 (two) sheets

(Enquiry Officer)

P1/11/HOER

(Sunit Ranjan Das)

Lunding
06-9-05

To
Asstt. Personnel Officer- II
L. F. Rly. : Lunding
(The Disciplinary Authority)
Sir,

Sub :- Representation against Report of Enquiry
Officer -----

Ref :- Your Major memorandum No. EQ/85- S (DAR-
Major) dated 04-3-05. -----

As desired, under extend Rule I submit my
representation on the Report of Enquiry Officer for your kind
consideration as under :-

1. Fact of the Matter

Vide your memorandum under reference, a major
proceedings were initiated against the undersigned whereupon
Sri Sunit Rn. Das, PI/II/LMG had been appointed as Enquiry
Officer to find out the truth through standard Form- 7 vide
your order No. EQ/85- S (DAR-Major) dt. 11-01-05.

Accordingly Enquiry Officer fixed-up the date
of Preliminary hearing on 05-4-05 when myself alongwith my
Defence Counsel attended the said inquiry and fully co-operate
with the Enquiry Officer during hearing. The regular hearing
on the above case was held on 25-5-05, 9-6-05 and 17-6-05. In
each dates myself alongwith my Defence Counsel attended the
inquiry and also co-operated with the Enquiry Officer. During
inquiry the Enquiry Officer had got full assistance from my
Defence Counsel in respect of Rule points.

That on conclusion of the inquiry the Enquiry
Officer submitted his Inquiry Report to Disciplinary
Authority which has now been

Attested by
[Signature]
Adv

dated which tantamounts to gross misconduct and violation of para- 3(1) (ii) & (iii) of Railway Service (Conduct) Rule, 1966. "

2) Statement and arguments of C.O.

a) That the Enquiry Officer in his findings observed as under :-

"From the above facts it is clear that the charged official was unable to carryout his transfer order from AM/BPB's office to DRM(P)/LMG's office due to his prolonged sickness w.e.f. 26-12-01 to 13-9-04 and sickness of his widow mother who was expired on 30-6-03 (Death certificate enclosed). She had been suffering from Cancer. As such he was not in a position to carryout transfer order which was out of his capacity. Hence charged framed in Article- I of Annexure- I could not be proved considering his prolonged sickness and widow mother's death."

From the above, it is crystal clear that in view of the evidence adduced during inquiry the Enquiry Officer declared in his findings that the only charge framed against charged official under Article- I of Annexure- I of the memorandum could not be proved and hence the charged official submits that no charge exists against him.

b) In regard to Enquiry Officer's findings in the concluding paragraph, it has been observed that the Enquiry Officer mechanically brought some unseen charge under Article-II of Annexure- II and held it as proved beyond doubt.

In this respect the charged official requests Hon'ble Disciplinary Authority kindly to ~~xxx~~ go through the Article of charge framed vide memorandum No. EQ/35- S (DAR-Major) dated 04-3-04 wherefrom it ~~will~~ will be gathered that there is no existence of Article- II at Annexure- II.

That Annexure- II speaks about imputation of the charge framed under Article- I of Annexure- I. I like to discuss here about Rule of framing charge which shall give a clear thought in this respect. As per Rule 9(6) of Railway Servants(D&A) Rule, 1963, whenever it is proposed to hold an inquiry against a Rly. servant under this Rule and Rule 10, the Disciplinary Authority shall draw-up or cause to be drawn up -

- (i) the substance of the imputation of misconduct or misbehaviour into definite and distinct article of charge ;
- (ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge which shall contain :

- (a) a statement of all relevant facts including any admission or confession made by the Rly. servant.
- (b) a list of documents by which, and a list of witness by whom, the article of charges are proposed to be sustained.

From the above analysis of Rule, it is evident that the Enquiry Officer mis-understood the Article- I of Annexure- II as a separate charge and declared the imputation against Article- I under Annexure- II as a separate charge which he re-named as Article- II of Annexure- II at his own consideration.

For better appreciation of the fact, I desire to reproduce Judgement of CAT, Principal Bench/New Delhi in the case of Sri Sohan Pal -Vs- Commissioner of Sales Tax, 1987(3) (SLJ/CAT/193).

Judgement :

" The charge and the statement of imputation of misconduct in support of the charge form one single document when something omitted to be mentioned in the summary of charges finds mention in the supporting statement of imputation of misconduct, which clarifies the position, both should be read together to understand the charge."

Thus imputation of misconduct and misbehaviour mention at Article- I of Annexure- II is a part of the charge under Article- I of Annexure- I and not a separate charge as understood by the Enquiry Officer. With due respect to the Enquiry Officer, I submit that the Enquiry Officer do not have a thorough study of Discipline and Appeal Rule and as such he converted Article- I of Annexure- II into Article- II of the Annexure- II.

The grounds and reasons on which the charged official was found not guilty on the charge under Article- I of Annexure- I would equally apply in case of Article- I of Annexure- II but as the Enquiry Officer has to somehow find the charged official guilty to satisfy his superior official, he did so.

3.

Submission

In view of the evidence adduced during inquiry, the Enquiry Officer in his findings declared that the charge

Contd....P/4

levelled against the charged official stands disproved and therefore the charge brought against me may kindly be dropped exonerating me from the charge and for this I shall remain ever grateful.

With regards,


Yours faithfully,

✓ Swapan Kr. Paul

(SHAFAN KR. PAUL)

Sr. Clerk/E

at office



-31-

R
16/11/05
m

ANNEX VII

No.EQ/85-S (DAR-Major)

Date:11.11.05

26

Notice for imposition of penalty

✓ Name: Sri Swapan Kumar Paul, Sr. Clerk under DRM(P)/LMG
Fathers Name: Sri M.C.Paul
Department: Personnel
Date of Birth: 01.01.53
Date of Appointment: 25.11.71
Scale of Pay: 4500-7000/-

SF/5 was issued to Sri Swapan Kumar Paul Sr. Clerk(E) vide memorandum No. EQ/85-5(DAR-Major) dt.04.03.04 for not carried out the transfer order and remaining absent for duty w.e.f 26.12.01 which violated Rly. Service Conduct Rule 3.1(ii) and (iii) of Rly. Service Conduct Rule/1966

within written The charge official did not submit any deference against the above charges the stipulated period.

Enquiry officer was nominated to conduct the enquiry and accordingly enquiry officer conducted enquiry on different dates and submitted enquiry report with finding in which one of article of charge has been proved.

I have gone through the report of enquiry conducted day to day and also final report of enquiry with findings of enquiry officer. The defence submitted by charge official on enquiry report, has also been seen.

On going through all relevant facts and documents the under signed has come to the conclusion to take lenient view and has decided to impose the minor penalty of WIT for 02(Two) years (NC) to meet the end of natural justice.

(N.B. Das)
(Disciplinary Authority)
A.P.O./II/LMG II

An appeal against this order lies to DPO/LMG, the next higher authority which shall be preferred within 45 days on receipt of this NIP

Copy to: HC/EQ/Bill at office
S/Copy for P/Case

(Disciplinary Authority)
A.P.O./II/LMG
Asstt Personnel Officer/II
U. F. Rly. : Lucknow

one for submission of appeal 01-01-06

Attested by
Shoukany
Adv. J

*Penalty 2 years
with 2 years*

Landing

The 26-12/2005

-32-

ANNEXURE-VIII

To
Divisional Personnel Officer
N.F. Ry. : Landing.

Sir,

Sub :- Appeal under Rule 18(11) of Railway Servants (D&A) Rule, 1968 against order of penalty of SIT for 2(two) years (MC).

Ref :- APO/II/LM's NIP No. EL/85-5 (DAR-Major) dated 11-11-05.

Being aggrieved with the decision of Sri N.B. Das, APO/II/LM imposing penalty of SIT for 2(two) years (MC) on me, I submit this appeal before you. I submit 1. Fact of the matter 2. Material Statement and argument 3. Submission for your judicious consideration please.

1. Fact of the Matter :

a) That a major charge memorandum under Rule 9 of Rly. Servants (DA) Rule, 1968 was served on me by APO/II/LM's vide memorandum No. EL/85-5 (DAR-Major) dt. 04-3-04 whereupon only one charge has been brought against me allegedly stating that myself transferred to DRM(P)/LM's office vide DRM(P)/LM's office order No. E/283/LM(2) Pt.VIII dt. 12-6-2001 and spared by AM/BPP's on 26-12-2001 vide his No. cc/1334/1 dt. 26-12-01, but I did not carryout the said order of Administration till date and remained unauthorised absent since 26-12-01 which amounts to great misconduct and violation of para-3(1) (ii) & (iii) of Railway Service (Conduct) Rule, 1966.

b) That in response to the above memorandum I submitted my defence statement vide my statement of defence dated 06-7-04 and send the same by Registered with A/D. Since APO/II/LM translated non-submission of defence by me against the above memorandum in his Notice for imposition of Penalty under reference, I submit herewith a copy of my defence dt. 6-7-04 for your kind perusal. It is very much important to mention here that during enquiry the P/case was produced before me for inspection of some documents when it was seen that the defence dt. 6-7-04 was available in the P/case which I produced before Inquiry Officer also.

c) That in terms of Rule 9(9)(a)(iv) of RS (D&A) Rule, 1968 where it is of the opinion of the disciplinary authority that the imposition of a major penalty is not warranted, it may itself drop the proceedings already initiated for imposition of a major penalty without prejudice to its right to impose any of the minor penalties and no order imposing any minor penalty shall be given attracting provisions of Rule 11(2) except after giving him

Contd...../2

Attested by
[Signature]

reasonable opportunity of making such representation against the penalty proposed. A standard form in such type of cases has also been circulated by Board as SF- 11(c).

But APC/II, the self-styled Disciplinary Authority to put a seal of his extreme violation of this Rule straightway declared ~~that~~ the easy method that C.O. had not at all submitted any defence in stipulated time while converting major charge sheet into minor imposing minor penalty.

d) Further to para (c) above, it is clarified under clause (b) of sub-rule(9) of Rule-9 of Rly. Servants (DAA) Rule, 1968 that if no written statement of defence is submitted by the Rly. servant, the disciplinary authority may itself inquire into the charge or may, if consider it necessary to do so appoint under Sub-rule(2) an Inquiring authority or Board of Inquiry for the purpose and also inform the Rly. servant of such appointment. In view of the above provision of Rule, I am unable to understand as to what the Disciplinary Authority desire to establish by alleging of non-submission of statement of defence when he had already appointed Inquiry Officer Sri Sunit K. Das, PI to inquire into the case vide No.EQ/35-S(DAR-major) dt.11-1-05.

e) That as will be evident from the Inquiry Report that from the evidence adduced during enquiry, the Inquiry Officer could not prove the only charge under Article I of Annexure- I and averted that - 'charge framed in article-I of Annexure-1 could not be proved _ _ _ _ B.'

Now the cat has come out from the bag, Inquiry Officer at his own mechanically brought some charge stated to be Article- II of Annexure-II and averted that - 'as per record available in P/case C.O. did not informed Admn. regarding his sickness during absent period within 48 hours of his sickness. Therefore this charge proved without any doubt.'

I request Appellate authority to examine if there is any such charge exists whereby it has been alleged that the charged official not informed about his sickness within 48 hours and thus violated Conduct Rule and exhibited lack of integrity or devotion to duty. Wherefrom the Inquiry Officer has got this charge.

f) That in respect of the above findings of Inquiry Officer holding the cooked charged under Article-II of Annexure-II as proved, I respectfully pray before the Appellate Authority kindly to peruse the Major Memorandum served on me. Both Inquiry Officer as well as Disciplinary Authority misunderstood Article-I of Annexure-II as a separate charge without going through the Heading of Annexure- II

which clearly states that it is a statement of imputation of misconduct and misbehaviour in support of the Article of charge framed under Article- I of Annexure- I.

It is essentially required to discuss here the provision of Rule 9(6) of Rly. Servants(D&A) Rule, 1968 which clarifies that whenever it is proposed to hold an enquiry against a Railway Servant under this Rule and Rule 10, the Disciplinary authority shall draw-up or cause to be drawn-up -

- (i) the substance of the imputation of misconduct or misbehaviour into definite and distinct Article of charge;
- (ii) a statement of imputation of misconduct or misbehaviour in support of each Article of charge which shall contain-
 - (a) statement of all relevant facts including any admission or confession made by the Rly. servant.
 - (b) a list of documents by which and a list of witnesses by whom the Article of charges are proposed to be sustained.

For better appreciation of the case, I reproduce herewith the judgement of Central Administrative Tribunal, Principal Bench, New Delhi in the case of Sri Sohan Pal -Vs- Commissioner of Sales Tax, 1997(3) (SLJ/CAT/193).

Judgement

"The charge and the statement of imputation of misconduct in support of the charge form one single document. When something omitted to be mentioned in the summary of charges finds mention in the supporting statement of imputation of misconduct, which clarifies the position, both should be read together to understand the charge."

Thus both Annexure- I and II form a single document which can not be separated from each other. When actual Article of charge could not be proved, its imputation can not be held proved separately.

Here again the charged official deserves to bring it to the notice of Hon'ble Appellate Authority that neither Annexure- I nor Annexure-II speaks about the charge that the charged official is guilty of not informing the Admn. regarding his sickness within 48 hours and this has been proved beyond doubt. Wherefrom the Inquiry Officer has got this charge ?

In terms of Rule 9(41) of Rly Servants(D&A)Rule, 1968 the inquiring authority should not go out of its way either to establish the delinquent's guilt or to justify his cause of action. He can not travel beyond charge. While writing findings he must record the fact of the case, the case of Disciplinary Authority as also the defence of the charged official. It should then discuss the evidence on record and give its findings. No charge different from the original article of charge can be recorded unless a reasonable opportunity to defend against such charge is extended. The Inquiry Officer never raised this charge

during inquiry nor extended any opportunity to defend.

g) That the Disciplinary Authority in his RIP at 4th para stated that he had gone through the Report of Enquiry Proceedings and findings of Enquiry Report and also the defence of the charge official on enquiry report. He If he actually had gone through the defence, he could easily detect that the charge which has sought to be proved does not exist in the charge memorandum. From the above it is crystal clear that the disciplinary authority acted in a biased manner anyhow to award penalty.

That Sir, I submitted both the Enquiry Report and the RIP to my defence counsel who is of the opinion that either the disciplinary authority or Inquiry Officer do not have a simple knowledge of Discipline and Appeal Rule or they did it purposefully and that no reasonable person acting reasonably who has a fair knowledge of D&A Rule can arrive at such a decision without mentioning brief reason for its findings to show that he has applied his mind to the case and the decision is on good faith. The principle of natural justice deserves that the justice should not only be done but should manifestly and undoubtedly seem to be done.

h) That in terms of Rule 22 (13) of Railway Servants (D&A) Rule, 1968 the Appellate Authority at its discretion may consider personal hearing before disposing of the Appeal. That Sir I will be highly obliged if you kindly allow personal hearing before disposal of my appeal with defence counsel and thereby reasonable opportunity of being heard to clarify my case in an effective manner.

2. Material Statement and Argument

a) That the Asstt. Personnel Officer do not enjoy any power/right to act as Disciplinary Authority in this case. In terms of Rly. Board's letter No. E(D&A)69 RJ 6-3 dt. 29-11-69 action to initiate disciplinary proceedings and to issue charge sheet for major penalty on a non-gazetted group 'C' employee can be taken up only by an authority competent to impose any of the major penalties and not only minor penalty and hold independent charge.

b) That there was no charge for not informing the administration about sickness within 48 hours. So such charge can not be mechanically brought against charged official and hold it proved.

c) That the Inquiry Officer has been nominated only to find out the truth of the charge and therefore he can not go beyond charge to satisfy his Boss (AFC/II).

d) That by doing so Inquiry Officer proved himself as a biased official and no officer can be nominated as Inquiry Officer who is free from bias.

e) That the self-styled disciplinary authority failed to find that the matter which sought to have been proved by Inquiry Officer is not existed in the charge sheet and thus it is crystal & clear that the claim of disciplinary authority for going through Enquiry Proceedings and Enquiry Report etc. is not true and that it is only any how to impose penalty which appears to be a biased attitude of disciplinary authority and therefore it is liable to be set aside and quashed.

f) That the Annexure- I and Annexure- II is a combined single charge and not separate with each other. Therefore the penalty order passed ~~xxx~~ by the disciplinary authority is liable to be set aside and quashed on this ground alone.

3. Submission :

In view of the above, I submit that the above submission made by the charged official may kindly be examined and the order of penalty so awarded may please be quashed being violation of Rule is a form of corruption which can not be existed in administrative action. I further pray before your kindness to allow personnel hearing with you before disposal of my appeal with my defence counsel and for this I shall ever be grateful.

With regards,

Yours faithfully,

DA:- AS stated

Swapan Kr Paul
(SWAPAN KR. PAUL)
Sr. Clerk - E
of DRM(P)/LMS.
on leave of B/PB

Copy to Asstt. Personnel Officer- II/LMS (Disciplinary authority)
for information please.

Swapan Kr Paul
(SWAPAN KR. PAUL)
Sr. Clerk - E
of DRM(P)/LMS.

वीमा नहीं NOT INSURED		क्रमांक No. 5615
लगाये गये डाक टिकटों का मूल्य रु. 30/-		
Amount of Stamps affixed Rs. 30/-		
एक रजिस्ट्रि*		तारीख मोहर
Received a Registered* (AD)		Date Stamp
पानेवाले का नाम		
Addressed to N.F. P. Lending		
	पानेवाले अधिकारी के हस्ताक्षर	
	Signature of Receiving Officer	
वीमा नहीं NOT INSURED		क्रमांक No. 5616
लगाये गये डाक टिकटों का मूल्य रु. 30/-		
Amount of Stamps affixed Rs. 30/-		
एक रजिस्ट्रि*		तारीख मोहर
Received a Registered* (AD)		Date Stamp
पानेवाले का नाम		
Addressed to The Asstt. Personnel Officer - II/LMS		
	पानेवाले अधिकारी के हस्ताक्षर	
	Signature of Receiving Officer	

R 17/5/06
N.F.Railway.

Office of the
Divl.Rly.Manager (P)
Lumding, Dt. 17-05-06

No.EQ/85-S (DAR-Major)

To
✓ Shri Swapan Kumar Paul,
Sr.Clerk/E
Under DPO/IC/LMG

Sub: -Show- Cause Notice for enhancing penalty.
Ref: -Your Appeal dtd.26-12-05 against NIP No.EQ/85-S (DAR -Major)
dated 11-11-05.

In reference to your appeal quoted above, the Appellate Authority (DPO/IC/LMG) has passed the following orders:-

"Remaining absent for about 3 years without any intimation to the administration is a gross negligence of duty on the part of the charged official. Issue Show Cause Notice to him as to why he should not be removed from service. His representation must be made within 10 (Ten) days from the date of receipt of this notice."

As such, you are hereby advised to submit your explanation within 10 days from the date of receipt of this letter.

This is for your information & necessary action accordingly.

Ambar
(A.C.Konwar) 17/5/06
DPO/IC/LMG
Disciplinary Authority/II
N. F. Rly. : Lumding

Attested by
Shri Swapan Kumar Paul
Adv.

Lumding
26-5-06

To
Divisional Personnel Officer/IC
N.F. Rly. : Lumding

Sir,

Sub :- Show Cause Notice .

Ref :- APO/II/LMG's No. EQ/85- S (DAR-Major)
dated 17-5-06 .

In response to the above, I would request you kindly to go through the charge memorandum issued vide No. EQ/85- S (DAR-Major) dated 04-3-04. Only one charge brought against me under Annexure- I and II vide Article- I and this charge has been held as 'Not Proved' by Inquiry Officer as it was not considered as unauthorised absence but was sick under authorised medical practitioner.

In respect of alleged charge under Article- II of Annexure- II as shown by the Inquiry Officer in his report at page- 4, kindly see that there is no existence of charge under Article- II at Annexure- II. Only one charge exists under Article- I at Annexure- I and II of the charge memorandum which has been held as 'Not Proved' .

In view of the foregoing, I beseech you to be kind enough to examine and consider the above fact and quash the penalty imposed by Disciplinary Authority as the only charge brought against me held by Inquiry Officer as 'Not Proved'. As per Rule framed by Rly. Board, the Appellate Authority shall consider 'personnel hearing' before final disposal of the order appealed against.

I, therefore, request your kind honour to consider personnel hearing alongwith my Defence Counsel before final decision of my appeal and for this I shall ever be grateful to you.

With regards,

Yours faithfully

Swapan Kr Paul

(SWAPAN KR. PAUL)
Sr.Clerk-E at
DRM(P)/Elect/LMG

*Attested by
Biswally
Adv*

[Signature]

Office of the
Divisional Rly Manager(P)
Lumding
Date: 23.06.06

No.EQ/85-S(DAR- Major)

To,
Sri Swapan Kr. Paul,
Sr.Clerk (E) under
DRM(P)/LMG.

Sub: Your appeal dated 26.12.2005 followed by show cause notice for enhancing penalty vide this office letter No.EQ/85-S (DAR – Major) dated 17.05.2006

While disposing off your appeal dated 26.12.2005, the Appellate Authority has passed the following orders :

“After going through the charges, enquiry report and representation submitted by the C.O. against show cause notice for enhancement of penalty, the following facts are established.

The C.O. was absent from duty from 26.12.2001 to 13.9.2004. During this period, the C.O. neither informed the administration nor the leave was sanctioned by any competent authority. Therefore, the whole period of absence was un-authorised.

The penalty of withholding of increment for 2 (two) years (NC) for un-authorised absence of more than two and half years is too less. Hence, the penalty is enhanced to 'Reduction to the post of junior clerk in the scale Rs.3050-4590/- and the pay is fixed at Rs.3050/- for a period of 05 (five) years.'

[Signature]
(A.C. Konwar)
APO/II/LMG
Disciplinary Authority

The revision petition against this order lies to ADRM/LMG, the next higher authority which will be preferred within 45 days on receipt of this order.

Copy to :-

- 1) OS/E/Elect at office,
- 2) Hd.Clerk/EQ bill at office,
- 3) S/copy for P/case.

[Signature]
A.C. Konwar
APO/II/LMG
Disciplinary Authority

Attested by
[Signature]

DIST.-NAGAON

THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI
BENCH : GUWAHATI.

Original Application No. 249/2006

Sri Swapan Kumar Paul.

Applicant.

-Vs-

Union of India & Others.

Respondents.

WRITTEN STATEMENTS ON
BEHALF OF THE RESPONDENTS

The Written statements of the Respondents are as follows:-

1. That a copy of the Original Application No. 249/2006 (herein after referred to as the ("application") has been served upon the respondents. The respondents have gone through the same and understood the contents thereof.
2. That save and except the statements which are specifically admitted by the respondents , the rests of the statements made in the application may be treated as denied by the respondents.
3. That the statements made in paragraphs 4.1 & 4.2 to the application the answering respondent has no comments.
4. That the statements made in paragraphs 4.3 to the application are not accepted by the answering respondent. The applicant while working as a senior clerk in Badarpur, was transferred to DRM(P)/LMG on administrative ground vide DRM(P)/LMG order No. E/283/LM(Q)Pt. VIII dated 12.6.01 with a direction to report at DRM(P) /LMG but he purposely did not carry out his transfer order and absented from his office with out any information pertaining to his mother's sickness and his self sickness. But instead of carrying out the transfer order he filed a case before the Hon'ble Tribunal vide OA No. 457/01 challenging the legality of the said transfer order. To the best of t he knowledge of the answering respondent the said application was dismissed. As such the applicant has not sought relief with clean hand.

13 MAR 2007
13 MAR 2007
13 MAR 2007

Wijes

म. हा. अधिकारी, आ. व. सी.
ड. सी. ने. व. ने. व. ने. व. ने. व.
Divisional Personnel Officer,
N. F. Rly., Lumding

Filed by
Shakti Ben
R/A NF Rly,
Lumding, 12/06/07

Copy enclosed



५०. ५०. अधिकारी, अति. सी. ५२
 ५०. ५०. रेलवे, लार्ड्स
 Divisional Personnel Officer/IC
 N. F. Rly., Lumding

5. That with regard to the statements made in paragraph 4.4 to the application the answering respondent has

to the records. Since the applicant was willingly and unauthorisely absent without joining his new place of posting he was charge sheeted by the Disciplinary Authority dated 4.3.04 as per relevant provisions of D & A Rules, 1968

6. That with regard to the statements made in paragraph 4.5 to the application the answering respondent begs to state that no information regarding death of the applicant's mother stated to be expired on 30.6.03, was intimated to the concerned authority during the period from 26.12.04 to 13.09.04. The applicant informed the authority only on 13.9.04 after a gap of 2 ½ Yrs. by submitting the periodical private medical certificate though the Railway hospital is available at ^{Badarpur} for which the authority had to refer the applicant to appear before the Railway medical authority for thorough check up and thereafter the applicant resumed duty on 14.9.04

7. That with regard to the statements made in paragraph 4.6 to the application particularly in respect of the averments made therein that the Enquiry Officer refused to act as Enquiry Officer and returned the file to disciplinary authority the answering respondent begs to state that the Disciplinary Authority had appointed Sri Dulal Ch. Dey PI/Gr. I/Badarpur on 31.5.04 as an Enquiry Officer vide SF/7 bearing No. EQ/85-S dated 31.5.04 against the Major Memorandum bearing No. EQ/85-S(DAR-Major) dated 4.3.2004 charge sheeted to the applicant. Accordingly the date of Preliminary Enquiry was fixed on 19.10.04 and on request of Defence Counsel (Sri P.S.Bose, Sr. Clerk/E), the said enquiry date was postponed and further fixed on 4.12.04 vide E.O.'s L. No. EQ/85-S(DAR-Major) dated 23.11.04. Thereafter, on further request of Defense Counsel for conducting the DAR Enquiry at LMG instead of Badarpur, said Dulal Ch. Dey, E.O. requested the Disciplinary Authority for nominating another E.O. from Lumding vide his letter No. E/5/Misc/ZIC dated 17.12.04 and therefore, he returned the docket case of DAR to the Disciplinary

Authority. Thereafter the D.A. appointed another Enquiry Officer namely Sri Sumit Das to enquire into the charges against the applicant.

8. That the statements made in paragraph 7 & 8 to the application the answering respondent has no comment unless contrary to the records.

9. That with regard to the statements made in paragraph 4.9 to the application the answering respondent begs to state that the Enquiry Officer after thorough enquiry and after conclusion of the departmental proceeding submitted the enquiry report vide *annexure-V* to the application

10. That with regard to the statements made in paragraphs 4.10. & 4.11 to the application the answering respondent begs to state that it is a fact that the applicant(C. O.) filed a representation on 6.9.05 against the report of E.O. to the D.A. The D.A. after going through the enquiry report and the representation submitted by the C.O. ,(the applicant) , with all relevant facts and documents , imposed the minor penalty of withholding of increments for 2 (two) years(NC) to meet the ends of justice and accordingly served the NIP dated 11.11.05.

11. That the statements made in paragraph 4.12 to the application is not admitted by the deponent. The applicant filed an appeal before the Divisional Personnel officer on 26.12.05 who is the Appellate Authority being the next higher authority to the D.A.

12. That the statements made in paragraph 4.13 to the application are matters of records and this deponent does not admit anything beyond the records. The show cause notice was served to the C.O. on 17.5.06 for enhancement of penalty as to why he should not be removed from service for remaining absent from 3 (three) years with out any intimation to the administration which is gross negligence of duty on the part of the charged official and the violation of Rly Service Conduct Rules.

13. That the statements made in paragraph 4.14 to the application are matters of record and the deponent does not admit anything beyond the records.

14. That with regard to the statements made in paragraph 4.15 to the application the answering respondent begs to state that since the C.O.

Wdyl 58

was absent from duty from 26.12.01 to 13.9.04, The Appellate Authority after perusal of the relevant records and reports passed the order 'the penalty of withholding of increment for 2(Two) years (NC) for unauthorise absence of more than 2 ½ years is too less. Hence the penalty is enhanced to the Reduction to the post of Junior Clerk in the scale of Rs. 3050/- - 4590/- and the pay is fixed at Rs. 3050/- for a period of 5 (five) years' and served the same to the C.O. vide letter dated 23.6.06. The Appellate authority rightly passed the order enhancing penalty considering all the documents on records and the conduct of the applicant as to deliberate and willful absent from duty without informing his authority. Voluntarily absence from duty for such a long period itself is a gross misconduct on the part of the Government servant which is unbecoming. The applicant did not prefer revision before the appropriate forum against the aforesaid order of enhancement of penalty and as such he has not exhausted the alternative remedy available to him.

15. That your deponent begs to state that as per Medical Certificate dated 7.2.07 issued by the Sr. Divisional Medical Officer, Badarpur the applicant died on 1.2.07.

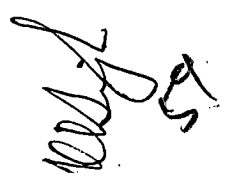
16. That the submissions made in the ground portion are not admitted by the answering respondent.

17. That the applicant is not entitled to any relief as claimed by him.

18. That the application filed by the applicant lacks bonafide and as such not tenable in law and liable to be dismissed forthwith.

19. That in any view of the matter raised in the application and the reasons set forth thereon, there can not be any cause of action against the respondents at all and the application is liable to be dismissed with cost.

म. डा. अतिकारी, आई. सी.
पु. नं. २२२, लामडि
Divid. Personnel Officer/IC
N. P. २२, Laming



In the premise aforesaid, it is therefore ,
prayed that Your Lordship would be
pleased to peruse the records and after
hearing the parties be pleased to
dismiss the application with cost. And
pass such order or orders as to the
Hon'ble Court may deem fit and proper
considering the facts and circumstances
of the case and for the ends of justice.

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

VERIFICATION

I, Shri K.P. Singh son of Kh. Dinamani
Singh aged about 34 Yrs., resident of Lundry at
present working as the
Divisional personnel officer (I/c), Lundry, Guwahati being
competent and duly authorised to sign this verification do hereby solemnly
affirm and state that the statements made in paragraph
1,2,3,4,5,6,7,8,9,10,11&12 are true to my knowledge and belief , and the
rest are my humble submission before this Hon'ble Tribunal. I have not
suppressed any material fact.

And I sign this verification on this _____ day of February, 2007 at
Guwahati.

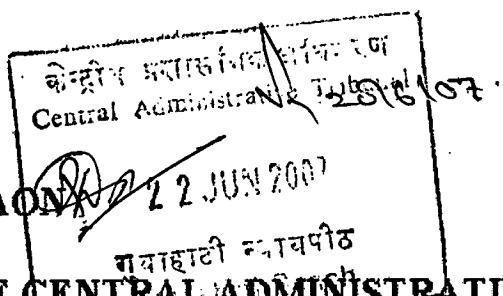


DEPONENT

स. फा. अधिकारी, आई. सी.
पू. ली. रेलवे, लामडि
Divisional Personnel Officer/IC
N. F. Sby., Lundry

2/3 filed by Mr. Bhaskar Dew, Advocate.

DIST. - NAGALAND



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH AT GUWAHATI

O.A. No. 249 of 2006

Shri Swapan Kumar Paul.....Applicant

-Vs-

Union of India & others..... Respondents.

ADDITIONAL WRITTEN STATEMENTS ON
BEHALF OF THE RESPONDENTS.

The Additional Written statement of the Respondents

are as follows :-

1. That the respondent filed written statements in the aforesaid case which is pending for disposal before this Hon'ble Tribunal.
2. That as per the letter issued by the APO/II/Lumding, Office of the Divisional Rly. Manager(P) N.F.Rly, Lumding vide Office Memo No. EQ/85-S dated 7.5.07 it is stated that the applicant Swapan Kumar Paul, Ex Sr. Clerk/E/LMG expired on 1.2.07, therefore his penalty enhanced vide Disciplinary Authority /LMG's (APO/II/LMG) office letter No. EQ/85-S (DAR-Major) Dtd 23.6.06 to "reduction to the post of Junior Clerk in the scale of Rs. 3050-4590/- and the pay is fixed at Rs. 3050/- for a period of five years" i.e., from 23.06.06 to 22.06.2010, is hereby waived for the remaining period by the Appellate Authority. Hence the original post i.e., Senior Clerk at the pay of Rs.5750/- in the scale of Rs.4500-7000/- is restored from 01.02.07. //

*A copy of the letter dated 07.05.07 is enclosed
herewith and marked as Annexure- 1*

3. That this additional written statement may be treated as a part of the Written Statement filed in the above mentioned case.

म. हा. अधिकारी, आई.जी.
पू. सं. रेलवे, लुमडि
Divisional Personnel Officer
N. F. Rly., Lumding

File by
Shri. Swapan
K. Paul
20/6/07

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In the light of the above facts and
circumstances the Hon'ble Tribunal
would be pleased to treat this
additional written statement as a part
of the written statement for the fare
ends of justice

And for this act of kindness the humble respondent shall ever pray.

VERIFICATION

I, Shri K. P. Ragh Son
of Kh. Dinamani Ragh resident of
Lumding at present working as the
Divisional personnel officer (I/c), Lumding, Guwahati
being competent and duly authorised to sign this verification
do hereby solemnly affirm and state that the statements made in
paragraph 1&2 are true to my knowledge and belief, and the
rests are my humble submission before this Hon'ble Tribunal. I
have not suppressed any material fact.

And I sign this verification on this day of
May 2007, at Guwahati.


DEPONENT

म. का. अधिकारी, आई. सी.
पू. सं. रेलवे, लामडि
Divisional Personnel Officer/IC
N. F. Rly., Lumding

N.F.Railway.

Office order

Office of the
Divil.Rly.Manager(I')
Lumding.Dated: 7.5.07

Vide Disciplinary Authority/LMG's (APO/II/LMG) office letter No. EQ/85-S(DAR-Major) Dtd: 23/6/06, the Penalty was enhanced to "Reduction to the post of Junior Clerk in the scale Rs. 3050-4590/- and the pay is fixed at Rs.3050/- for a period of 05 (five) years" i.e., from 23.6.06 to 22.6.2010, against Shri Swapan Kr.Paul, Ex. Sr.Clerk/E/LMG, as per order of Appellate Authority (DPO/IC/Lumding.)

Since Shri Swapan Kr.Paul, Ex. Sr.Clerk /E/LMG expd. on 1.2.07, therefore his penalty is hereby waived for the remaining period by the Appellate Authority. Hence the original post i.e. Sr.Clerk on pay Rs.5750/- in scale Rs. 4500-7000/- is restored from 1.2.07.

(A.C.Konwar)
APO/II/Lumding.
for Divil.Rly.Manager (P)
N.F.Railway. Lumding.

No- EQ/85-S Lumding Dtd: 7.5.07.

Copy forwarded for information and necessary action to:-

- 1) DFM/LMG
- 2) CLA/LMG at Office
- 3) PIU/IC/LMG
- 4) HC/EQ-Bill at Office.
- 5) Smt. Swapna Paul, W/O Late Swapan Kr.Paul.
- 6) S/copy for P/case.

(A.C.Konwar)
APO/II/Lumding.
for Divil.Rly.Manager (P)
N.F.Railway. Lumding.

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