

50/100

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

α

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

*[Signature]*  
31/1/17

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDER SHEET

1. Original Application No. 325/06
2. Misc Petition No.
3. Contempt Petition No.
4. Review Application No.

Applicant(S) Kiran Gaur VS Union of India & Ors

Advocate for the Applicant(S) B. Chandhury

Advocate for the Respondant(S) ~~Case~~ Rly Counsel, J. L. Sarika

Notes of the Registry	Date	Order of the Tribunal
<p>Application is in form Is Rs. 50/- d. P/B N <u>286933207</u> D. <u>18.12.06</u></p> <p><i>[Signature]</i> By Registrar</p> <p><i>[Signature]</i> Steps taken without envelopes.</p> <p><i>[Signature]</i></p>	11.1.2007	<p>Present: The Hon'ble Shri K.V. Sachidanandan Vice-Chairman.</p> <p>The Applicant, a Substitute Emergency Peon is reported to have fell sick and could not attend his duties. The Respondents initiated disciplinary proceedings and charge sheet was issued on him. One of the charges against him was that he was unauthorisedly absent from 02.05.2005 when he was under suspension. The Applicant earlier approached this Tribunal by way of O.A. No. 165/2006 wherein vide order dated 30.06.2006 this Tribunal while disposing the O.A. by directing the Respondents to pass speaking orders on the appeal filed by the Applicant has observed as under:-</p>

Contd.  
11.1.2007

"Learned counsel for the Applicant submitted that the findings of the Inquiry Officer, which was accepted by the Disciplinary Authority, that the Applicant was unauthorisedly absent from duty from 03.02.2005 and therefore, he was found guilty and removed from service, is not correct since the documents indicate that the applicant was suspended from 02.02.2005. The question is, how come a suspended employee could be unauthorized absent ? The Respondents committed a mistake in having that finding which is perverse. The Applicant also filed appeal on 21.09.2005 against the order of removal, which is yet to be disposed of. Learned counsel for the applicant submitted that he will be satisfied if a direction is given to the Respondents to dispose of the appeal dated 21.09.2005 as expeditiously as possible and pass appropriate order and communicate the same to the Applicant."

Subsequently as per direction the appeal was disposed of by Sr. Divisional Engineer (Co.) vide order dated 23.08.2006 (Annexure-XII) rejecting the prayer of the Applicant. Hence this application challenging the aforesaid order.

Mr.B.Choudhury, learned counsel for the Applicant submitted that disciplinary proceeding proceeded on one of the charges that Applicant was unauthorisedly absent from duty during suspension period. Apart from that he was not given copies of the documents and enquiry report. Further,

Contd.  
11.1.2007

Mr. Choudhury submitted that the Appellate Order has been passed by the Disciplinary Authority not the Appellate Authority and for all the aforesaid reasons the impugned order will not hold good.

When the matter came up for consideration, Dr. J.L. Sarkar, learned Standing counsel for the Railways was good enough to submit that he will take up the matter with the authority and come up with a solution before the next date. Let it be done.

Let the case be posted on 13.02.2007. In the meantime Respondents are also directed to file reply statement.


  
Vice-Chairman

/bb/


No reply statement  
has been filed.

13.2.07

Counsel for the respondents prays for adjournment. Four weeks time is granted to file reply. Post the matter on 14.3.07.



Vice-Chairman

  
12.2.07.

6.3.07  
no reply filed so far.  
im

07.03.07


Counsel for the respondents prays for further time to file reply statement. It is made clear that if it is not the matter will be disposed of. Post the matter on 9.4.07.




Vice-Chairman

im

No WOs has been filed.

  
5.4.07

No WOs has been  
filed.

  
24.4.07.

Bajinder

Vice-Chairman

/bb

4-5-07  
no W/S filed.

1.5.07. Post the matter on 7.5.2007.

Vice-Chairman

lm

No W/S filed.

7.5.07. Counsel for the respondents wanted time to file written statement. Let it be done. post the matter on 8.6.07.

Vice-Chairman

7.5.07.

lm

8.6.07. Counsel for the respondents has submitted that he will file the written statement within two days. Let the case be listed on 19.6.07. Copy of the written statement will furnish the counsel for the applicant. Liberty is given to the counsel for the applicant to file rejoinder if any.

Vice-Chairman

No W/S has been filed.

18.6.07

lm

19.6.07. It is reported that Dr. J.L. Sarkar learned counsel for the respondents is in bereavement. post the matter on 25.6.07.

Vice-Chairman

22.6.07  
W/S submitted  
p. 1 to 4. page  
no. 1 to 3. copy  
sured.

lm

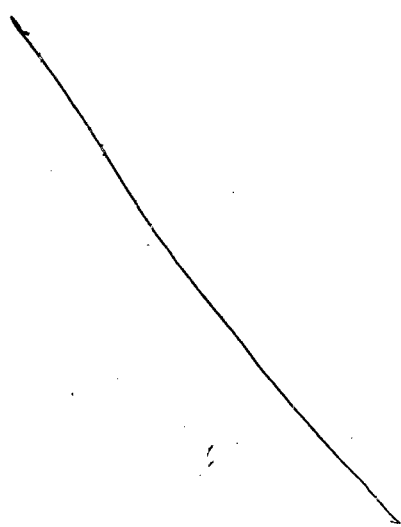
25.6.07. Post the matter to-morrow on 26.6.07

Vice-Chairman

No rejoinder filed.

lm

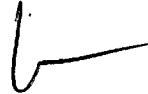
22.6.07



5  
O.A. 355 '06  
26.6.07.

When the matter came up for hearing the learned counsel for the respondents has submitted that it is a Division Bench matter. Since being a Division Bench matter, matter may be fixed before the next available Division Bench.

Considering the issue involved in this O.A., the application has to be admitted. Application is admitted. Issue notice on the respondents. Post the matter on 13.7.07.

  
Vice-Chairman

lm

① Wks already filed by the respondents.

② Rejoinder not filed.

12.07.07.

13.7.07. Counsel for the applicant has submitted that he has not filed the rejoinder. Let the case be listed before the next available Division Bench on top priority basis, without failing the matter be listed before the next D.B.

  
Vice-Chairman

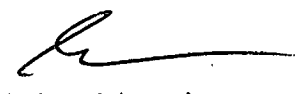
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Rejoinder not filed.

7.05.08

08.05.2008

Call this matter on 14<sup>th</sup> May, 2008 for hearing.

  
(Khushiram)  
Member(A)

  
(M.R. Mohanty)  
Vice-Chairman

Rejoinder not filed.

13.5.08

Lm

14.05.2008

None appears for the Applicant nor the Applicant is present. However, Dr. J.L. Sarkar, learned Counsel for the Respondents/Department, is present.

Dt. 14.5.08


Please send copies of this order to the Applicant's Cent and to the Respondents.

15/5/08


order dt. 14/05/08 send to D/Section for issuing to applicant and the respondents by post.

Call this matter on 24.06.2008 for hearing.

Send copies of this order to the Applicant and to the Respondents (in the addresses given in the O.A.) so that they can come ready for hearing on the date fixed.

  
(Khushiram)  
Member (A)

nkm

  
(M.R. Mohanty)  
Vice-Chairman

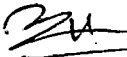
16/5/08. D/No-2322 to Dt= 2326 19/5/08.

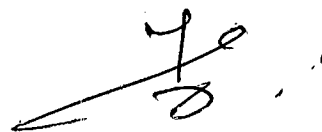
24.06.08

Mr B.Choudhury, learned counsel for the Applicant is present and Mr S.N.Tamuli, Advocate (and associate of Dr J.L.Sarka, learned Standing counsel for Railways) is also present.

Call this matter on 31.07.2008.

Rejoinder not filed.

  
23/6/08

  
(M.R. Mohanty)  
Vice-Chairman

Rejoinder not filed.

PG

12.08.2008

13.08.2008

None appears for the Applicant nor the Applicant is present. Dr.J.L.Sarkar, learned Standing counsel is present for the Railways.

Call this matter before the Division Bench on 03.09.2008 for hearing, when Respondents should cause production of the departmental proceeding records to substantiate their case.

Send copies of this order to the Respondents and free copy of this order be supplied to Railway Standing counsel.

Dt. 13.8.08  
Pl. send copies of this order, to the Respondents Free copy of this order be supplied to the Railway Standing counsel.

14/8/08

Copies of order dated 13/8/08 sent to D/Sec. for issuing to respondents and to the Rly. S.C.

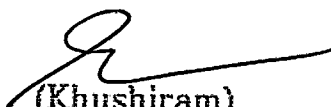
  
(M.R. Mohanty)  
Vice-Chairman


26/8/08. D/No-3713-17 Dt= 27/8/08.

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03.09.2008 Mr. B. Choudhury, learned Counsel appearing for the Applicant, is present. However, Dr J.L. Sarkar, learned Standing Counsel for the Railways, is on accommodation.

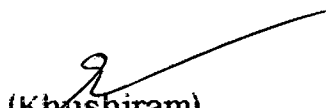
In the premises, call this matter on 11.09.2008 for hearing.

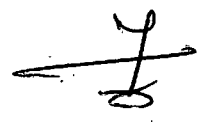
  
(Khushiram)  
Member(A)

  
(M.R. Mohanty)  
Vice-Chairman

nkm

11.09.2008 Mr. B. Choudhury, learned counsel appearing for the Applicant is present. Dr. J. L. Sarkar, learned Standing Counsel for the Railways has sought an accommodation for to-day. Accordingly, this matter stands adjourned to be taken up on 10.11.2008.


  
(Khushiram)  
Member(A)

  
(M.R. Mohanty)  
Vice-Chairman

lm

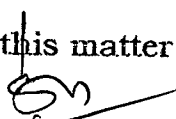
~~The case is~~

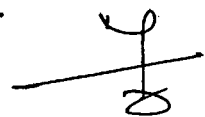
w/s billed.

  
1.12.08.


10.11.2008

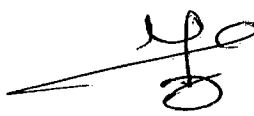
Call this matter on 02.12.2008.

  
(S.N. Shukla)  
Member(A)


  
(M.R. Mohanty)  
Vice-Chairman

02.12.2008 On the prayer of Dr J.L.Sarkar, learned counsel appearing for the Applicant call this matter on 16.12.2009.

  
(S.N. Shukla)  
Member(A)

  
(M.R. Mohanty)  
Vice-Chairman

w/s billed.

  
15.12.08.

8

9

16.12.2008 Heard Mr B. Choudhury, learned Counsel appearing for the Applicant, and Dr J.L. Sarkar, learned Counsel for the Respondents/Railways, and perused the materials placed on record.

For the reasons recorded separately this O.A. stands allowed.

Send copies of the final order placed separately to the Applicant and the Respondents in the addresses given in the O.A. and free copies of this order be also supplied to the learned Counsel for the parties.

(S.N. Shukla)  
Member (A)

(M.R. Mohanty)  
Vice-Chairman

nkm

Received copy of order  
dt. 16-12-08

Chairman Chandernagore  
tdw.  
25-2-09

28-1-09  
S.P. Singh

5.3.09

Copy of the order  
sent to the office  
for issue the same  
to the Applicant as  
well as to the Resps.  
by post.  
H.B.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI

.....  
O.A.No.325 of 2006

DATE OF DECISION: 16.12.2008

Shri Kiran Gaur .....Applicant(s)

Mr B. Chaudhury Advocate(s) for the  
Applicant (s)

- Versus -

Union of India and others Respondent(s)

Dr J.L. Sarkar, Railway Standing Counsel Advocate(s) for the  
Respondent(s)

CORAM:

THE HON'BLE SHRI MANORANJAN MOHANTY, VICE-CHAIRMAN  
THE HON'BLE SHRI S.N. SHUKLA, ADMINISTRATIVE MEMBER

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

  
Vice-Chairman

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**

Original Application No.325 of 2006

Date of Order: This the 16th day of December 2008

The Hon'ble Shri M.R. Mohanty, Vice-Chairman

The Hon'ble Shri S.N. Shukla, Administrative Member

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

..... Applicant

By Advocate Mr B. Chaudhury.

- versus -

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

..... Respondents

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

.....

O.A.No.325/2006

ORDER (ORAL)

16.12.2008

M.R. MOHANTY, VICE-CHAIRMAN

In this Original Application filed Under Section 19 of the Administrative Tribunals Act, 1985, the Applicant has challenged the order of his 'removal' from services/post of Substitute Emergency Peon under N.F. Railway. The case of the Applicant as disclosed in the O.A. is as under:

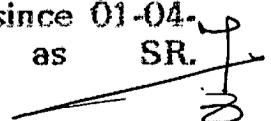
a) Applicant was appointed as a Substitute Emergency Peon (w.e.f. 22.07.2002) and was attached to Er. R.L. Meena (the then Deputy Chief Engineer/Co-ordination/North East Frontier Railways, stationed at Maligaon/Guwahati) by an Order dated 01.08.2002 of General Manager (P)/N.F. Railway/Maligaon. A copy of the said Order dated 01.08.2002 has been placed as Annexure-I to the O.A.

b) During 2003, a new Railway Division was carved out (in N.F. Railway) having Headquarters at Rangiya and said Er. R.L. Meena was transferred to Rangiya Railway Division as Senior Divisional Engineer (Co.ord.) and by his communication dated 01.04.2003 (a copy of which has been placed as Annexure-II to this O.A.) said Sr. DEN/Co.ord. of the establishment of DRM(W)/Rangiya reported (to the GM(P) of N.F. Railway/Maligaon/Guwahati) as under:-

"Sub: Transfer Shri Kiran Gour Sub.E/Peon attached to R.L. Meena, Ex DYCE/Co-Ord. Now Sr. DEN/Co-Ord/Rangiya.

Ref:- Your letter No.E/283/45 (E) loose dt. 22.07.02/01.08.02

Rangiya is functional as new division since 01-04-2003. The undersigned resumed as SR.



DEN/Co.Ordination of RNY division. Above mentioned Sub.E/Peon Shri Kiran Gour is working satisfactory. He is working with undersigned. There is provision of posts as well as a number of vacancies in this division. He will be adjusted in RNY division. The undersigned certified, "the services of substitute E/Peon is satisfactory and he can be continue further."

You are requested to transfer above-mentioned Sub.E/Peon to RNY div."

c) Accordingly, the Applicant was transferred and posted at Rangiya under the said Sr DEN/Er. R.L. Meena.

d) For the reason of his sickness, the Applicant had to remain absent from 27.01.2005, under intimation to above said Sr. DEN/Er. R.L. Meena, and, upon resuming duty, he (Applicant) was placed under suspension under Annexure-III dated 02.02.2005.

e) Under Annexure-IV dated 07.02.2005, the Applicant was charge sheeted (in a Departmental Proceeding) and the allegations raised against him (Applicant) in the said charge sheet (received on 16.02.2005) was worded as under:-

"IMPUTATION OF CHARGES FRAMED AGAINST SHRI KIRAN GOUR, PEON.

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

Sd/-  
Sr.DEN/C/RNY  
N.F. Railway  
Seal"

f) Applicant having submitted his written statement of defence (to the charge sheet dated 07.02.2005) under Annexure V

dated 25.02.2005 (wherein he denied the charges) an Enquiry Officer was appointed under Annexure-VI dated 01.03.2005.

g) Enquiry Officer issued a notice (dated 22.03.2005) fixing the date of enquiry to 06.04.2005.

h) On 04.04.2005, the Applicant addressed a representation to the Enquiry Officer; wherein he pointed out that the charges to be vague, indefinite and not distinct and also pointed out about absence of particulars (of the alleged 'casual, careless and non-cooperation attitude of the Applicant') in the allegations leveled against him in the charge sheet and about non-supply of "list of documents" and "list of witnesses" etc.

i) Enquiry, which was fixed to 06.04.2005, was postponed from time to time and was, ultimately, fixed on 09.06.2005.

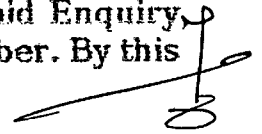
j) Applicant, who was not paid "subsistence allowances" since April 2005, submitted a reminder (to his representation dated 04.04.2005) on 06.06.2005.

k) Under Annexure-VIII dated 15.06.2005, the Enquiry Officer issued a notice to the Applicant to attend the enquiry on 05.07.2005. The text of the said notice under Annexure-VIII dated 15.06.2005 reads as under:-

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

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

In reference to above, you were asked to attend regular hearing (R.H.) on 15-06-05 to the undersigned. But you have failed to attend on above fixed programme. Any how, you are again asked to attend the said Enquiry on 05-07-05 at 10.00 hrs. at undersigned chamber. By this



time if you want to depute any defence counsel on behalf of you, you may submit his consent letter.

In this connection I would like to inform you that your two (2) appeals dt. 06.06.05 & 13.06.05 have been received by this office which would be discussed on the regular hearing.

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

l) By an order dated 05.08.2005, the Order of Suspension (dated 02.02.2005) was revoked and by a subsequent order under Annexure-IX dated 09.08.2005 (received on 24.08.2005) the Applicant was 'removed' from services.

m) The Applicant, under Annexure-X dated 21.09.2005, preferred an Appeal.

n) The Applicant also approached this Tribunal by way of filing an Original Application (No.165 of 2006) under Section 19 of the Administrative Tribunals Act, 1985; which was disposed of on 30.06.2006 with direction (to the Respondents) to dispose of the Appeal dated 21.09.2005 of the Applicant within a period of one month from the date of receipt of the copy of the Order (dated 30.06.2006) of this Tribunal.

o) The above said Appeal (dated 21.09.2005) having been dismissed under Annexure-XII dated 23.08.2006, the Applicant has made the present second journey to this Tribunal with the present Original Application No.325 of 2006.

2. At the hearing the following, amongst other, main grounds were advanced by Mr B. Chaudhury, learned Counsel appearing for the Applicant:

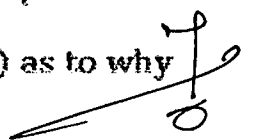
- a) the Applicant having been placed under suspension by an order under Annexure-III dated 02.02.2005, the charge (in the Departmental Proceeding under Annexure-IV dated 07.02.2005) that he was absent un-authorisedly from said 02.02.2005 was an outcome of non-application of mind.
- b) the dates (on which the Applicant was instructed verbally to improve his working) having not been disclosed in the charge sheet/enclosed imputation of charges under Annexure-IV dated 07.02.2005, the charges were vague.
- c) the 'list of documents' and the 'list of witnesses' having not been supplied (to the Applicant) with the charge sheet, there were violation of natural justice ab-initio.
- d) Since the Applicant was going without 'Subsistence Allowances' (from April 2005), the Enquiry that was conducted subsequent to that date (April 2005) was bad; for the Applicant was crippled down to put up his defence effectively and, in fact, he (Applicant) failed to attend the enquiry with a defence assistant and, as such, the ex parte enquiry is not sustainable.
- e) Non-supply of the Enquiry Report to the Applicant (by way of giving him an opportunity to have his say in the matter) before passing of the final orders in the Departmental Enquiry, is a factor to set aside the final order of removal.



- f) the final order (removing the Applicant from service) is bad; for the same has been passed blindly and
- g) the Appellate Order is also not sustainable; for the same has been passed (without application of mind) by the same officer (who passed the removal order as the Disciplinary Authority) as the Appellate Authority.

3. By way of filing a written statement, the Respondents/Railways have disclosed that charges against the Applicant was proved; that, despite several opportunities, the Applicant did not attend the enquiry; that "the inquiry report was never asked for by the Applicant and that "it can be made available to the Applicant at any time he desires", that "the procedural shortcoming (of Appeal being disposed of by Disciplinary Authority) can be set right and is curable". No explanations have even been given by the Respondents, in the written statement, as to how the period of suspension has been charged as the period of un-authorised absence. Nothing has been stated therein as to why 'list of documents' and 'list of witnesses' were not supplied to the Applicant. Nothing has been said as to why Subsistence Allowances (beyond April 2005) was not paid to the Applicant and as to why 'a copy of the Enquiry Report' was not supplied to the Applicant to have his say/representation in the matter before passing of the final order of 'removal'.

4. At the hearing, Dr J.L. Sarkar, learned Standing Counsel, appearing for the Railways, miserably failed to put up any acceptable explanation, (a) as to how the charge sheet branded the "period of suspension" to be the "period of un-authorised absence", (b) as to why

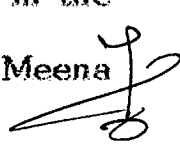


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'no list of documents' and 'no list of witnesses' were supplied to the Applicant; although he (Applicant) pointed out about the same in his representation under Annexure-VII dated 06.06.2005, and in his Appeal under Annexure-X dated 21.09.2005; (c) as to why subsistence allowances, after April 2005, was not paid to the Applicant and (d) as to why the enquiry report was not supplied to the Applicant (to have his say in the matter) before passing of the final order (of removal) in the Disciplinary Proceeding.

5. We gave careful consideration in the matter (again with reference to the materials placed on record) and found that the Applicant was a willing worker with Er. R.L. Meena at Maligaon and, on request of said Er. Meena, the Applicant was transferred to Rangiya to be attached to said Er. Meena at new station. Nothing has been placed on record to show that the Applicant was careless/non-co-operative in discharging his duties or that he was told to mend his behaviour at any point of time. No such detail has been provided in the written statement. Such details were also not provided in the charge sheet nor in the warning letter dated 25.11.2004. Rather Annexure-II dated 01.04.2003 goes to show pointedly that he (Applicant) was discharging his duties satisfactorily; for which he was brought (on transfer) from Maligaon to Rangiya.

6. We have found that the Respondents have remained silent (in their written statement) to the pointed assertion of the Applicant (as made in the Original Application) that he was sick within the knowledge of Er. R.L. Meena. Applicant took the same stand in the Appeal under Annexure-X dated 21.09.2005 and, although Er. Meena



himself decided the Appeal, the said point has not been answered in the Appellate Order under Annexure-XII dated 23.08.2006.

7. We have also found that in his Appeal Memo, the Applicant disclosed that he became sick on 27.01.2005 (while discharging duties); for which he was subjected to be consulted by the Doctors of the Railways. It appears, the Appellate Authority did not cause an enquiry to find out that aspect of the matter.

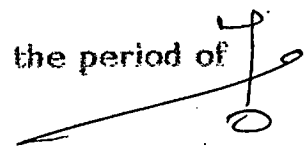
8. We have also noticed that the Applicant was placed under suspension on 02.02.2005 but the allegation in the charge sheet states that the Applicant remained absent un-authorizedly from 02.02.2005. It shows non-application of mind on the part of the Disciplinary Authority.

9. The above said factum was pointed out by the Applicant in his Appeal Memo dated 21.09.2005 and in the disposed of Original Application No.165 of 2006. This Tribunal, on 30.06.2006, while disposing of the said O.A.No.165/2006, also took cognizance of such a glaring mistake and, while reminding the Appellate Authority to dispose of the Appeal of the Applicant, pointed out as under:-

"The question is how come a suspended employee could be un-authorizedly absent? The Respondents committed a mitake in having that finding which is perverse."

Despite such an observation from the Tribunal, the Appellate Authority closed his eyes and passed an arbitrary order under Annexure-XII dated 23.08.2006; which has forced the Applicant to make this second journey to this Tribunal.

Certainly the period of suspension (from 02.02.2005) could not have been alleged (in the charge sheet) to be the period of



unauthorized absence. For this reason alone the entire proceeding was had ab-initio.

10. Applicant was placed under suspension on 02.02.2005. His Subsistence Allowances were not paid from April 2005. Applicant did not attend the enquiry. Non-payment of Subsistence Allowances from April 2005 certainly can be a ground for not attending the enquiry held on subsequent dates. The said aspect of the matter (non-payment of Subsistence Allowances from April 2005) was raised in the Appeal Memo under Annexure-X dated 21.09.2005. But the Appellate Authority did not care to consider the said aspect of the matter.

11. That apart, although the point of non-supply of the 'list of documents' and the 'list of witnesses' was raised in the Appeal Memo, the Appellate Authority has not considered that aspect of the matter in the Appellate Order dated 23.08.2006.

12. Non-supply of the 'copy of the enquiry report' to the Applicant, before passing of the final order of removal against him, is not in dispute in this case. Respondents even did not care to serve a copy of the same on the Applicant during pendency of this case. The same should not only have been supplied to the Applicant but he should have been given a chance to represent on the same (to have his say on the same) and such representation should have been taken in to consideration before passing of the final order. The same not having been done, there has been a gross miscarriage of justice in the decision making process.



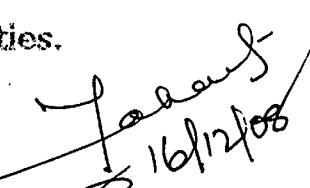
13. The final order and Appellate Order are certainly bad and are also not sustainable; because the same Officer, to whom the Applicant was attached as Substitute Emergency Peon, acted as Reporting Authority, Disciplinary Authority and Appellate Authority. He exploited the services of the Applicant and was instrumental to remove him from service. It was un-ethical.

14. Thus, judging from all angles, as discussed in the foregoing paragraphs, we hold that the entire action (against the Applicant) of the Respondents (right from the time of placing him under suspension up to his removal from service and dismissal of the Appeal) are not sustainable and, as such, the same are hereby quashed. Respondents to reinstate the Applicant in service with all back wages.

15. Finally, this case is allowed with costs of Rs.5000/- (Rupees five thousand only) to be paid (by the Respondents) to the Applicant.

16. Send copies of this order to the Applicant and the Respondents, in the addresses given in the O.A., and free copies of this order be supplied to the Advocates for both parties.

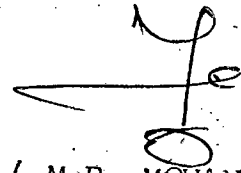
  
(S. N. SHUKLA)  
ADMINISTRATIVE MEMBER

  
(M. R. MOHANTY)  
VICE-CHAIRMAN

22  
✓ OA/GP/RA/ME No. 34 /200 6

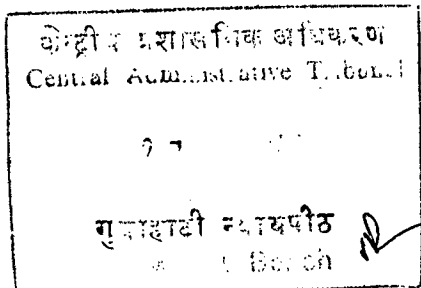
Order dated 25.3.2008

Call the matter for hearing  
on 8-5-08.

  
( M.R. MOHANTY )  
Vice-Chairman

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

**O. A. NO. 325/2006**  
**Shri Kiran Gaur**

..... Applicant.

**-VS-**

**Union of India and others.**

..... Respondents

**LIST OF DATES**

- 22.7.02/1.8.02 : Appointed as Substitute Emergency Peon.  
(Annexure- I, Page- 15) .
- Joined and was attached to R.K. Meena the then Deputy Chief Engineer (Co-ord), Maligaon.
- 2003 : A new Division was established at Rangia and Sri R.L. Meena was transferred to Rangia as Sr. Divisional Engineer (Co-ord) and the applicant continued to work with the new incumbent in place of Sri R.L. Meena.
- 1.4.2003 : In response to a query by Respondent No. 2 about applicant's status Sri R.L. Meena certified his work to be satisfactory and can be continued further. On request of R.L. Meena the applicant was transferred to Rangia and he resumed his work with R.L. Meena.  
(Annexure- II, at Page No. 16)
- 27.1.2005 : Applicant felt sick and he was diagnosed to be suffering from viral fever and he duly informed R.L. Meena that he shall not be able to come to work for few days.
- 2.2.2005 : Received order placing the applicant under suspension with immediate effect pending drawing of departmental proceeding.  
(Annexure - III at Page No. 17).
- 7.2.2005 : Received charge memo without the list of document and list of witnesses sheet.  
(Annexure - IV, at Page No. 18 )
- 25.2.2005 : Applicant submitted his written statement.  
(Annexure - V, at Page No. 22).
- 1.3.2005 : Received order appointing the Enquiry Officer.  
(Annexure- VI, at Page No. 23)

Contd.....

- 22.3.2005 : Received order from Enquiry Officer fixing 6.4.05 for hearing.
- 4.4.2005 : Applicant submitted an application before Enquiry Officer seeking some clarification.  
(Para No. 10, at Page No.5).
- Enquiry was not held on the date fixed and it got postponed twice and was fixed on 9.6.05.
- Subsistence allowance was not received by the applicant since April, 2005.
- 6.6.2005 : Applicant submitted an application before Enquiry Officer seeking the clarification as stated in application dated 4.4.05.  
(Annexure - VII, at Page No.24)
- 15.6.2005 : Received a letter from Enquiry Officer fixing the enquiry on 5.7.05 and the appeals dated 6.6.05 and 13.6.05 filed by him shall be considered on that date.  
(Annexure- VIII, at Page No.26)
- 5.8.2005 : Received order from Respondent No. 4 revoking his suspension order.
- 24.8.2005 : Received impugned order dated 9.8.05 issued by the Respondent No. 4 removing him from service with immediate effect.  
(Annexure- IX, at Page No.27)
- 21.9.2005 : Submitted an appeal before Respondent No. 3 against the order of removal dated 9.8.2005.  
(Annexure - X, at Page No.31)
- 30.6.2006 : Order passed by the Hon'ble Tribunal in O.A. 165/06 directing the Respondent No. 3 and any other competent authority to dispose of the appeal dated 21.9.05 submitted by the applicant.  
(Annexure- XI, at Page No. 39)
- 23.8.2006 : Order issued from the office of Respondent No. 3 by the Respondent No. 4 whereby he (i.e. Respondent No. 4) has rejected the appeal filed by the applicant.

As per rule Respondent No. 4 is the disciplinary authority and Respondent No. 3 is the appellate authority.

(Annexure - XII, at Page No.41)

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

O.A 325/2006

Shri Kiran Gaur

..... Applicant

-Vs-

Union of India & Others

..... Respondents

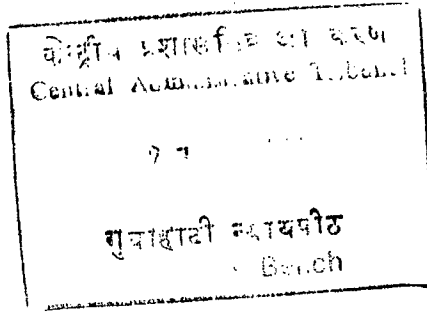
**I N D E X**

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Filed by :

*Bikram Choudhury*

Advocate



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

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

O. A. NO. 325 / 2006.

Sri Kiran Gaur

Emergency Peon

(Since removed from service)

S/o - Nagina Gaur,

C/o Munna Prasad Rezak.

Gate no 1, Hillside Colony,

Near Kailash Apartment, Maligaon,

Guwahati - 11.

..... Applicant.

- Versus -

1. The Union of India

Represented by the General Manager,

N.F. Railway, Maligaon,

Guwahati-11.

2. General Manager(P),

N.F. Railway, Maligaon,

Guwahati -11

3. Divisional Railway Manager

N.F. Railway, Rangia Division

Rangia.

4. Senior Divisional Engineer (Co-

ordination), N.F. Railway, Rangia Division,

Rangia.

..... Respondents.

Contd.....

Kiran Gaur  
Filed by the applicant  
through Bikram Choudhury.  
28.12.06

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

(i) Order No. W/87/DAR/RNY/W-8/680 dated 9.8.05 issued by the Respondent No. 4, whereby the applicant was imposed the major penalty of removal from service.

(ii) Order No. W/87/DAR/RNY/W-8 dated 23.8.2006 issued by the Respondent no. 4 (when infact he is the disciplinary authority) rejecting the departmental appeal filed by the applicant without any authority.

(iii) Arbitrary action of the Respondent No. 4 in disposing of the departmental appeal dated 21.9.05 under the cover of the order dated 30.6.06 passed by this Hon'ble Tribunal in O.A. 165/06 and by doing so it has acted beyond the powers which is not vested upon him under the Rules.

(iv) Action of the authorities in removing the applicant from service in a very illegal and arbitrary manner and with malafide intention.

2. **JURISDICTION OF THE TRIBUNAL**

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

3. **LIMITATION**

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

4. **FACTS OF THE CASE :**

1. That, the applicant belongs to poor strata of the society and as the meagre income of the family was not sufficient to sustain the family, the applicant after passing his HSSLC examination in the year 1994, the applicant gave up his studies and started looking for a job to support his family.

Contd.....

2. That, thereafter, the applicant applied for various jobs and finally in the year 2002, the applicant was appointed as a Substitute Emergency Peon in the scale of Rs. 2550/- to Rs. 3200/- (RPS) on pay of Rs. 2550/- w.e.f. 22.07.2002 vide General Manager (P), Maligaon letter No. E/ 283/45 (E) dated 22.07.2002/01.08.02 on a temporary basis.

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

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

A copy of the letter dated 1.4.03 is annexed herewith and marked as **ANNEXURE- II**.

5. That, thereafter, the applicant was transferred to Rangia and he resumed his work with Sri R.L. Meena, Senior Divisional Engineer (Co ord), Rangia with the same sincerity and devotion. On 27.01.2005 while

*Contd.....4*

*Kiran Gaur*

-4-

discharging his duties, the applicant suddenly fell sick and on consulting the Railway doctor on the next day he was diagnosed to be suffering from viral fever and accordingly he duly informed Sri R.L. Meena about his sickness and further stated that he shall not be able to come to work for few days.

6. That after resuming his duties on recovery, the applicant was shocked and surprised to receive order dated 02.02.2005 issued by the Respondent No. 4, whereby he was placed under suspension with immediate effect pending contemplation of a disciplinary proceeding and he was further directed not to leave the Head Quarter without permission of the competent authority. The order further stated that the order regarding subsistence allowance will be issued separately.

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

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

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

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

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Kiran Gaer

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

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

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

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

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

- 10. That the applicant on 04.04.2005 submitted an application before the Enquiry Officer stating that as per Rule 9.(9)(a) (iv) of the Railway Servants (Discipline and Appeal Rule), 1968, the disciplinary authority has to consider his written statement and pass a reasoned order either to hold an enquiry or to drop the charges for major penalty and impose a minor penalty or to drop the charges altogether being convinced with the submissions and thereafter appoint the Enquiry Officer, if the disciplinary authority decides to hold the enquiry. But in the case of the applicant no such reason order was issued before appointment of

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*Kiran Gaur*

the Enquiry Officer and as such the holding of the enquiry would be premature and without jurisdiction. Moreover the charges were vague, indefinite and indistinct as no detail particular of casualness, carelessness and non-co-operation have been furnished and as there was no list of documents and witnesses relied upon by the respondents was enclosed with the memorandum, there was no material before the enquiry officer to sustain the charges levelled against the applicant and moreover it was difficult for the applicant to defend himself in such a situation.

11. That, thereafter, the Enquiry Officer did not gave any reply to the letter dated 04.04.05 of the applicant and instead postponed the hearing which was fixed on 06.04.05 and refixed the same on 03.06.05 by his letter dated 20.05.05.
12. That, in the meantime, the applicant submitted an application dated 17.05.05 before the disciplinary authority stating that as his suspension order dated 02.02.05 has elapsed with expiry of 90 days on 02.05.05 since the same has not been reviewed or extended as per rules and as such he may be allowed to resume duties.
13. That, on 01.06.05 the applicant again received a letter from the Enquiry Officer postponing the enquiry scheduled to be held on 03.06.05, due to official work of the Enquiry Officer, to 09.06.05. The applicant further states that after his suspension he was paid full salary for February, 2005 and subsistence allowance for March, 2005 but since April, 2005 he was not paid any subsistence allowance which is in violation of F.R. 53.
14. That, thereafter, on 06.06.2005 the applicant submitted another representation with reference to the letter of the Enquiry Officer dated 01.06.2005 reiterating that the disciplinary authority has not passed a reasoned order before remitting the case to the inquiring authority and

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*Kiran Gaur*

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since there was no list of relied upon documents and witnesses, there was no material before the Enquiry Officer to enquire into the charges.

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

15. That, on 09.06.05, the applicant received another letter from the Enquiry Officer completely ignoring the application dated 06.06.05 submitted before the Enquiry Officer and fixed 15.06.05 for hearing stating that if he does not attend the hearing on the next date then exparte decision will be communicated to the higher authority for the next course of action.
16. That, since the disciplinary authority and the Enquiry Officer appeared to be proceeding in the above disciplinary proceeding with the object of bringing about the removal of the applicant from service arbitrarily and with malafide intention, defying all rules and principles, the applicant on 13.06.2005 filed an appeal under Rule 18 of the Railway Servant (D & A) Rules 1968 before Respondent no 3 stating the above facts and that he has not been paid his subsistence allowance and his suspension is continuing without any order even after expiry of 90 day from the date of suspension.
17. That, thereafter the applicant received letter No. W/87/DAR/RNY/W-8 dated 15.06.2005 from the Enquiry Officer asking the applicant to attend the regular hearing of the Enquiry on 05.07.2005 and also to appoint his defence counsel, if desired or otherwise decision thereof would be taken exparte. The Enquiry Officer further stated that the two appeals dated 06.06.05 and 13.06.05 filed by the applicant had been received and discussion on the same would be taken up on the regular hearing.

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

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Kiran Gaur

- 18. That, the applicant received order No. W/87/DAR/RNY/W-8 dated 05.08.05 from the disciplinary authority whereby the order of his suspension dated 02.02.05 was revoked w.e.f. 05.08.05.
- 19. That, to the utter shock and surprise of the applicant he received order issued under Memo No. W/87/DAR/RNY/W-8 dated 09.08.05 from the disciplinary authority i.e. Respondent No. 4 on 24.08.05, removing him from service with immediate effect.

It will be pertinent to mention here that before imposing the major punishment of removal from service the disciplinary authority did not furnish the applicant with the exparte enquiry report as required under Rule 12 of the Railway Servants (Discipline and Appeal) Rules, 1968.

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

- 20. That, thereafter, the applicant on 21.9.05 submitted an appeal against the order dated 9.8.05 under the rules before the Respondent No. 3 with the prayer for setting aside the order of removal being illegal and arbitrary.

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

- 21. That the applicant begs to state that after filing the appeal he was hopeful that the appellate authority would look into the matter and give a positive response to his appeal. But nothing happened for a long time and being aggrieved, the applicant filed an original application before this Hon'ble Tribunal which was registered and numbered as O.A. No. 165/06.

On 30.6.2006, this Hon'ble Tribunal after hearing both sides, found and made an observation stating that the applicant was suspended

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*J. Gran Gaur*

on 2.2.2005 and as such how could he be unauthorisedly absent from 3.2.2005, as stated in the impugned order and therefore the finding of the disciplinary authority was perverse. Further, the Hon'ble Tribunal gave a direction directing the Respondent No. 3 and any other competent authority to dispose of the appeal dated 21.9.05 giving weightage to the observation made by the Hon'ble Tribunal and pass a speaking order.

A copy of the order dated 30.6.06 is annexed herewith and marked as ANNEXURE- XI.

22. That the applicant now received order No. W/87/DAR/RNY/W-8/680 dated 23.8.06 from the office of Respondent No. 3 issued by the Respondent No. 4, whereby he (i.e. Respondent No. 4) has rejected the appeal filed by the applicant against the impugned order dated 9.8.05 in an illegal and arbitrary manner.

Copy of the order dated 23.8.06 is annexed herewith and marked as ANNEXURE- XII.

23. That on receiving the order dated 23.8.06 (Annexure- XII) the applicant was shocked and surprised when he found that the Respondent No. 4 has disposed of the appeal filed by the applicant instead of Respondent No. 3 who is the appellate authority. The applicant states that as per rules the Respondent No. 4 is the disciplinary authority and Respondent No. 3 is the appellate authority. The applicant further states that the authorities by this action has shown their vindictive attitude towards the applicant in order to appoint some blue-eyed person in his place. Moreover, it is apparent from the order dated 23.8.06 that the Respondent No. 4 is not conversant with the rules of the Railways and thus it proved the stand taken by the applicant during the disciplinary proceeding that the proceeding was initiated arbitrarily, malafidely and with bias intention. As such, the applicant is approaching this Hon'ble Tribunal or appropriate relief.

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Kiran Gaur

5.   ****GROUND**S FOR RELIEF WITH LEGAL PROVISIONS**  

- (i) For that, the impugned order was passed in a most arbitrary manner in gross violation of the procedure laid down for imposing penalties and conducting the proceedings and as such the impugned order is bad in law and is liable to be set aside.
- (ii) For that even assuming, but not admitting that the charges levelled against the applicant are proper the action of the authorities in imposing the punishment of removal from service is highly unreasonable and illogical in as much as the punishment imposed is too harsh and grossly disproportionate to the alleged offence and as such the same is liable to be quashed and set aside.
- (iii) For that, the applicant was not afforded reasonable opportunity for defending his case in the proceeding inspite of his raising the objection that there is no list of relied upon documents and witnesses by which the charges are sought to be proved and as such the impugned order is liable to be quashed and set aside.
- (iv) For that, the disciplinary authorities had not furnished the applicant with the exparte Enquiry Report before imposing on him the punishment of removal from service, which is mandatory as per the Rules and as such the impugned order of removal from service is liable to be set aside on this count alone.
- (v) For that, the applicant was charged with the offences alleged on a purely personal grudge and as such the action of the authorities in proceeding on the basis of those charges and thereafter removing him from service is bad in law and is liable to be set aside.
- (vi) For that the applicant had asked for some reasonable clarifications with regard to the proceeding in the interest of natural justice and since no decision was taken on his clarification the Enquiry Officer should

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not have proceeded with the enquiry exparte without any decision being taken on the clarification sought for by the applicant and as such the impugned order is bad in law and is liable to be set aside.

- (vii) For that the enquiry officer submitted his report which was not based on any evidence on record but was based on surmises and conjectures and as such the impugned order passed on the basis of such report is bad in law and liable to be set aside.
- (viii) For that the impugned order 9.8.05 (Annexure- IX) passed by the Respondent No. 4 is not a reasoned order and it does not reveal as to how the disciplinary authority has come to the same conclusion with that of the Enquiry Officer with regard to the alleged charge and as such the same is bad in law and liable to be set aside.
- (ix) For that the respondent authorities have disposed of the appeal dated 21.9.05 filed by the applicant without any independent application of mind and as such the appellate order is bad in law and liable to be quashed and set aside.
- (x) For that it will be apparent from the impugned order dt 9.8.05 (Annexure -VIII) that the disciplinary authority has held that the applicant was unauthorisedly absent from 3.2.05 whereas the applicant was placed under suspension w.e.f. 2.2.05 and as such the impugned order is bad in law and liable to be set aside on this ground alone.
- (xi) For that, as per the Railway Servant (D & A) Rules, 1968, the Respondent No. 3 is the appellate authority and the Respondent No. 4 by disposing of the departmental appeal under the cover of the order dated 30.6.06 in O.A. No. 165/06 is an usurpation upon the authority of Respondent No. 3 which was not the intent of the order dated 30.6.06 in O.A. 165/06 and also not under the Rules and the impugned order are liable to be set aside on this ground alone.

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Kiran Gaur

- (xii) For that it is apparent from appellate order dated 23.8.06 that the Respondent No. 4 has some personal grudge upon the applicant or is acting under the influence of some other officer that he doesnot want the higher authorities to know about the vindictive attitude shown to the applicant during the proceeding and as such he took upon himself the role of appellate authority to dispose of the appeal dehor the rules, (whereas as per rule he is the disciplinary authority) inspite of order dated 30.6.06 in O.A. 165/06 by this Hon'ble Tribunal. This action of the authorities proves the allegation of vindictiveness, malafide and arbitrary shown by the authorities particularly Respondent No. 4 towards the applicant all along the proceeding and as such the impugned order and appellate order are liable to be quashed and set aside.
- (xiii) For that in any view of the matter the impugned order of removal from service is bad in law and is liable to set aside.

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

The applicant filed an appeal dated 21.9.05 before the appellate authority (i.e. Respondent No. 3) challenging the impugned order of removal from service and the same has been disposed of by the Respondent No. 4 (who is not the appellate authority but disciplinary authority).

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

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

Contd.....13

Kiran Gaur

8. **PRAYER:**

It is, therefore, prayed that Your Lordships would be pleased to admit this application, call for the entire records of the case, ask the respondents to showcause as the why the impugned order dated 9.8.05 (Annexure-IX) and order dated 23.8.06 (Annexure- XII) shall not be quashed and set aside and after perusing the causes shown, if any and hearing the parties be pleased to quash and set aside the order dated 9.8.05 (Annexure-IX) and order dated 23.8.06 (Annexure- XII) and/or pass any other order/orders as Your Lordship may deem fit and proper.

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

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

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

- (a) I.P.O. No. 286933207 dated 16.12.06..
- (b) Date of issue
- (C) Issued by

11. **LIST OF ENCLOSURES :**

As stated in the Index

*Contd.....Verification*

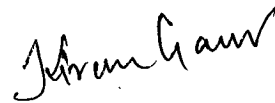
*Kiran Gaur*

**VERIFICATION**

I, **SRI KIRAN GAUR**, son of Nagina Gaur, aged about 30 years, resident of C/o Munna Prasad Rezak, Gate no. 1, Hillside Colony, Near Kailash Apartment, Maligaon, Guwahati - 11, in the district Kamrup, Assam do hereby verify that the statements made in paragraphs no. 1, 3, 5, 10, 11, 13, 14, 15, 16, 18 & 23 are true to my personal knowledge and those in paragraphs 2, 4, 6, 7, 8, 9, 17, 19, 20, 21 & 22 are believed to be true on legal advice and that I have not suppressed any material fact.

Date: 27.12.06.

Place: Guwahati



**Signature of the applicant.**

OFFICE OF THE  
GENERAL MANAGER (E)  
RAILGON.

NO. E/283/45(E) Local

To  
Sd/- Kiran Gaur  
at Office.

(Through CH/CS/W/MLL/MLL and CE/MLL)

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

You are hereby temporarily engaged as substitute E/  
Peon in scale Rs. 2550-3200/- (EFS) on pay Rs. 2550/- w.e.f.  
22.7.02 attached to Dy. CE/co-ord. against the existing  
vacancy of W/c, Exst. No. 29CE subject to the following con-  
dition. ② of 2000-01 for 16 months chargeable to 3141-C1

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

This issues with the approval of General Manager/  
N.P. Railway/Railgon.

Ris.  
N. P. PATILWAY/RAILGON.

NO. E/283/45(E) Local

DATED 22.7.02

- Copy forwarded for information & necessary action to :
- 1. N.P. CAD/MLG.
  - 2. CH/CS/W/MLL/MLL
  - 3. CH/CS/W/MLL/MLL
  - 4. CH/CS/W/MLL/MLL

- 2. Dy. CE/co-ordination/MLL
- 4. Dy. CE/co-ordination/MLL
- 6. Spec. copy for 1/1/1
- 8. Spec. copy for 1/1/1

Attested by  
Shrawan Kumar  
Adv.

for GENERAL MANAGER (E)/MLG.

no-76

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**N.F. RAILWAY**

Office of the  
Divisional Railway Manager. (Works )  
Rangiya, N.F. Railway.  
Dt. 01.04.03

No : W/Transfer/2003

To,  
General Manager(P)  
N.F. Railway.  
Maligaon, Guwahati- 11

**Sub :-** Transfer Shri Kiran Gour Sub. E/Peon attached to R.L. Meena, Ex. DYCE/Co-Ord, now Sr. DEN/Co-Ord/Rangiya.

**Ref :-** Your letter no. E/283/45 (E) loose dt : 22.07.02/01.08.02

Rangiya is functional as new division since 01-04-2003. The undersigned resumed as SR. DEN/Co-Ordination of RNY division. Above mentioned Sub. E/Peon Shri. Kiran Gour is working satisfactory. He is working with undersigned. There is provision of posts as well as a number of vacancies in this division. He will be adjusted in RNY division. The undersigned certified, "the services of substitute E/Peon is satisfactory and he can be continue further".

You are requested to transfer above-mentioned Sub.E/Peon to RNY div./

*[Signature]*  
01.4.03

(R.L. Meena )  
Sr. DEN/Co-Ordination.

o/c

Copy to :

- GM (Works) for information and necessary action please.
- DPO/RNY for information and necessary action please.
- DFM/RNY for information and necessary action please.

*[Signature]*  
28/7/03

Attested by  
*[Signature]*  
Adv.

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

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

**ORDER**

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

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

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

Signature [Signature]  
02/2/05

Designation RO EN/C  
Senior Divisional Engineer

(Designation of the suspending authority)  
Senior Divisional Engineer

Copy to : N. F. Rly, Rangiya  
Shri Kiran Gour, Sub E/Peon  
(Name and designation of the suspended Railway servant )

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

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

2/2/05  
[Signature]

Attested by  
[Signature]  
Adv.

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

No. W/87/DAR/RNY/ W-8/815 (Name of the Railway Administration) Sy DEN/C  
NFRN/RNY, place of issue Rangiya, dated 7-2-05.

MEMORANDUM

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

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

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

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

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

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

Dept Prac-1

Contd.....2/2

Attested by  
Bhadrakumar  
Adv-1

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

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

8. The receipt of this memorandum may be acknowledged.

Encls :-

Signature  
Name & Designation of Competent Authority.

[Signature]  
07/12/68  
Senior District Officer

Senior District Officer  
N. R. Dly, Bangalore

To: Shri Kiran Gowd

Through Place :- Alipurduar Junction, Rangpur

Copy to :-

- Shri \_\_\_\_\_ (Name and designation of the lending authority) for information.
- Strike out whichever is not applicable. To be deleted if copies are given/not given with the Memorandum as the case may be;
- Name of the Authority. (This would imply that whenever a case is referred to the disciplinary authority by the Investigating authority or any authority who are in the custody of the listed documents who would be arranging for inspection of the documents to enable that authority being mentioned in the draft Memorandum where the President is the disciplinary authority.
- To be retained wherever President of the Rly. Board in the competent authority.
- To be issued wherever applicable, see Rule-15 (1) of the RS(DA) Rules, 1968. Not to be inserted in the copy sent to the Rly. Servant.

IMPUTATION OF CHARGES FRAMED AGAINST SHRI KIRAN GOUR, PEON.

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

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

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

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

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

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

*(Sri Kiron Gour  
Received 4.4.05)*

ANNEXURE-IV

Date : 25-02-2005

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

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

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

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

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

Since

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

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

Thanking you,

Yours faithfully,

*Kiran Goun*

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

Received  
By  
22/2/05  
(At - 15.10 hrs)

Attested by  
*Shrawan*  
Adv.

N.F. RAILWAY  
Standard form No. 07

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

No. W/27/DAR/Rev./W.8

Railway N.F.

Place of issue Rangiya

ORDER

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

NOW THEREFORE, the undersigned, in exercise of the powers conferred by sub-rule (2) of the said Rule, hereby appoints Shri S. Bose, A.DEN/S.P.L./RNY an Inquiry Officer to inquire into the charges against the said Shri Kiron Gow, E/Prom

Signature [Signature]

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

Copy to:

(i) Shri Kiron Gow, E/Prom  
(Name and designation of the Railway servant)

(ii) Shri S. Bose, A.DEN/S.P.L./RNY  
(Name and designation of the Inquiry Officer)

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

Attested by  
[Signature]  
Adv.

To,

Date : 6.6.2005

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

From :

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

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

Sir,

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

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

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

Attested by  
Broullingy  
Adv.

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

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

Thanking you,

Yours faithfully

*Kiran Gour*

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

Received  
Ph  
6/6/05

ANNEXURE VIII 51

N.F. Railway.

Office of the  
Divisional Railway Manager(W)  
Rangiya;

Date:- 15-06-05.

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

To,  
Sri Kiran Gour,  
E/Peon:

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

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

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

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

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

( S. Bose. ) 15/6/05

Inquiry officer,  
ADEN/SPL/RNY.

Diary Entry  
1207

Attested by  
S. Bose  
Adv.

पू० सी० जी-174एम०

N. F. G.-174 M.

पूर्वोत्तर सीमा रेलवे  
Northeast Frontier Railway

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

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

सं०/No CU/87/DAR/RNY/w-8

दिनांक/Date 07.08.05

प्रेषक/From DRM (w)/RNY

N.F. Rly.

सेवा में/To Sri. Kiran Gowr, R/Peon.

Under DRM (w) RNY.

आरोप पत्र सं० N.F. Rly. दिनांक ..... पर आपके स्पष्टीकरण के संबंध में आपको सूचित  
किया जाता है कि आपका स्पष्टीकरण संतोषजनक नहीं है तथा\* ..... ने निम्नलिखित आदेश  
दिया है \*\*:-/With reference to your explanation to the charge sheet No w/87/DAR/RNY/w-8/815  
dated 7.08.05 you are hereby informed that your explanation is not considered  
satisfactory and that \*the Competent authority has passed the following orders:\*\*

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

[Signature]  
अनुशासनिक प्राधिकारी का  
हस्ताक्षर या अंगूठे का निशान  
(Signature & Designation)  
of the Disciplinary  
Authority  
N. F. Rly, Guwahati

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

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

प्राप्ति स्वीकृति/ACKNOWLEDGEMENT

में/To Sri. Kiran Gowr, R/Peon.  
e/o Sri Subananda Kumar.  
near G.M. Bungalow, Type I Qr.  
P.O. Maizagaon, Guwahati-781011

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.....

तारीख/Dated.....

हस्ताक्षर या अंगूठे का निशान  
Signature or Thumb Impression

पदनाम/Designation.....

Attested by  
[Signature]  
shu.

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

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

हिदायत/INSTRUCTIONS

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

En. P. Bly. Press. Copy to :- 1) DRM (P)/ANY  
2) P/case.

Attested by  
*Shardul Singh*  
Adv

-29-

N. F. RAILWAY

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Office of the  
DRM/W/RNY  
Dated 07.08.05.

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

**ORDER:**

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

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

"I have gone through the case thoroughly.

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

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

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

Speaking order is enclosed.

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

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

Copy to:-

1. DFM/RNY.
2. DPO/RNY.
3. FS/Section.
4. ADEN/SPL/RNY.
5. Notice Board.

Witness

*Hareeswar Singh*  
Hr. Clerk.

*R. L. Meena*  
09/08/05  
(R. L. MEENA)  
Sr. DEN/C/RNY  
Senior Divisional Engineer  
N. F. Rly, Guwahati

R/o  
29.8.05

Attested by  
*Bhadracharya*  
Hr.



To,

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

IN THE MATTER OF :

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

- AND -

IN THE MATTER OF :

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

- AND -

IN THE MATTER OF :

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

The appellant above named.

Contd.....

R  
21/9/05

Received  
21/9/05  
C/S

Attested by  
Sundhary  
Adv.

- 2 -

MOST RESPECTFULLY BEGS TO STATE:

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

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

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

Contd.....

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

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

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

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

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

Contd.....

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

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

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

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

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

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

*Contd.....*

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

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

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

A copy of the letter dated 15.06.05 is annexed herewith and marked as ANNEXURE - VI.
18. That the appellant received order No. W/87/DAR/RNY/W-8 dated 05.08.05 from the disciplinary authority whereby the order of his suspension dated 02.02.05 was revoked w.e.f. 05.08.05.
19. That to the utter shock and surprise of the appellant he has now received order issued under Memo No. W/87/DAR/RNY/W-8 dated 09.08.05 from the disciplinary authority on 24.08.05 removing him from service with immediate effect. *Contd.....*

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

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

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

G R O U N D S

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

Contd.....

- 8 -

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

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

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

64

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Original Application No. 165 of 2006

Date of Order : This the 30th day of June 2008.

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

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

... Applicant.

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

- Versus -

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

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

... Respondents.

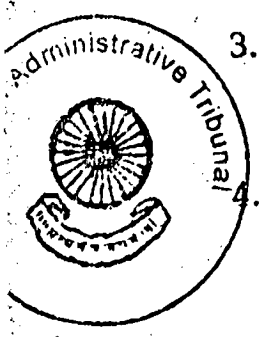
By Advocate Dr. J.L. Sarkar, Railway Standing Counsel.

....

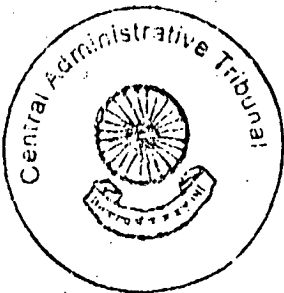
**ORDER (ORAL)**

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

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



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



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

2. Heard Mr. B. Choudhury, learned counsel for the Applicant and Dr. J.L. Sarkar, learned standing counsel for the Railways (who was represented by Ms. U. Das, learned counsel).
3. Learned counsel for the Applicant submitted that the findings of the Inquiry Officer, which was accepted by the Disciplinary Authority, that the Applicant was unauthorisedly absent from duty

from 03.02.2005 and therefore, he was found guilty and removed from service, is not correct since the documents indicate that the applicant was suspended from 02.02.2005. The question is, how come a suspended employee could be unauthorisedly absent ? The Respondents committed a mistake in having that finding which is perverse. The Applicant also filed appeal on 21.09.2005 against the order of removal, which is yet to be disposed of. Learned counsel for the applicant submitted that he will be satisfied if a direction is given to the Respondents to dispose of the appeal dated 21.09.2005 as expeditiously as possible and pass appropriate order and communicate the same to the Applicant.

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

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

Sd/VICE CHAIRMAN



TRUE COPY

प्रतिलिपि

*N. S. ...*  
19/1/06

अनुभाग अधिकारी

Section Officer (Judl)

Central Administrative Tribunal

सुभाहारी न्यायपीठ

W. B. BENCH

काठमाडौं, नेपाल-5

*K. S. ...*  
19/1/06

Attested by  
*Choudhary*  
Adv.

- 12 -  
NORTHEAST FRONTIER RAILWAYOffice of the  
DRM/W/RNY  
Dated. 23.08.2006  
67

NO: W/87/DAR/RNY/W-8/680

Order against the appeal submitted by Sri Kiran Gaur, Emergency Peon since removed from service.Fact of the Case:-

1. A major memorandum was issued vide No. W/87/DAR/RNY/W-8/815 dated. 7.02.05 to Shri Kiron Gaur, E/Peon is scale of Rs. 2550-3200/- as he could not carry out his duty properly and also could not maintained his punctuality/devotion to duties, even issued warning letter against Shri Gaur vide this office Letter No. W/415/RNY/W-8 dated. 25.11.04 advising him to be punctual, and to work properly.
2. An inquiry officer appointed to enquire the fact and accordingly a report has been submitted by I. O. with the charges leveled against Shri Gaur.
3. Shri Gaur, E/Peon was unauthorisedly absent w.e.f. 03.02.05 till date which is very much irregular, negligency of duties and misconduct of behaviour.

Order against the appeal as forwarded by Shri Kiron Gaur, E/Peon:-

1. Procedure laid down for imposing penalties and conducting proceedings has been followed in this case. Major memorandum was served to Shri Gaur vide Memo No. W/87/DAR/RNY/W-8/815 dated. 07.02.05. Shri Gaur was asked to attend the hearings fixed on 09.06.05, 15.06.05 and 05.07.05. The signature of Shri Gaur is available on the letters issued for hearing dates as an acknowledgement his received of his letter but he didn't attend the hearings. Hence, proceedings was conducted as per the law and sufficient opportunities was given to him to put forward his defence.
2. Shri Gaur had been absenting himself very regularly which is indicative of the fact that he was not fit for the duty entrusted to him as an emergency peon. Hence, removal from the service is only logical and reasonable.
3. As brought out in Para -I, sufficient opportunities was given to Shri Gaur for presenting his case but he didn't appear for the hearings on the given dates. That again emphasizes his negligence and carelessness towards duties.
4. As Shri Kiron Gaur has never came for hearings on the given dates, so question of asking the ex-parte inquiry report by him from the disciplinary authority does not arise.
5. His absence from the service has been put on the record and there is no question of any personal grudge.
6. All opportunities for clarifications have been given to him but since Shri Gaur didn't appear for the hearings, no clarification was sought by him.

Attested by  
A. S. D. S. S.  
Adv.Kiran Gaur  
Adv.

Since the case has been forwarded for appeal and the Hon'ble Court has taken a view that the Competent Authority shall dispose of the appeal dated. 21.9.05 filled by the applicant giving weightage to the observation made above and pass a speaking order and communicate the same to the applicant.

**SPARING ORDER:-**

I have gone through the case and appeal. Itemwise remarks against the grounds of appeal has been elaborated in above paras.

In view of the above fact and Enquiry Officer's reports, the earlier order of removal of Shri Kiron Gaur, E/Peon remains valid and there are not sufficient grounds in appeal for changing the decision.

*[Signature]*  
[Anil Kumar]  
Sr. Divl. Engineer (Co.)  
Rangiya Division, N. F. Railway

*copy*

To,

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

*Discrepancy*

①

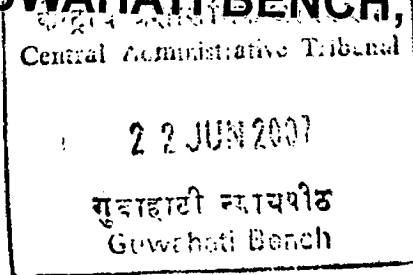
69

Sri Kiran Gaur

- VS -

U.O.I. & Others

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



O.A. NO. ....325/2006

Sri Kiran Gaur

- VS -

U.O.I. & Others

Written statement on behalf of the respondent No.-1, 2, 3 and 4.

The respondent no. 1, 2, 3 and 4 MOST RESPECTFULLY SHEWETH:

- (1) That respondents have gone through the O.A. and understood the contents thereof.
- (2) That in reply to para 5, 6 and 7 it is stated that the applicant did not submit any authentic certificate form any railway doctor or private doctor for reporting sick. He was not available at Head Quarter (Rangia) and left Head Quarter without permission of the competent authority. One registered letter had to be send to his home address as his where about were not known. He fails for many occasions on the dates though he was given number of opportunities being fully aware of the inquiry dates.
- (3) That in reply to the statements made in para 8 to 15 it is stated that the inquiry has been conducted as per provisions of Discipline and Appeal rules, 68. The chargesheet was framed within of 90 days of suspension. The applicant did not attend before IO and the expert Inquiry Report was submitted by the I.O. and the applicant was removed from service by order dated 9/8/05.
- (4) That in reply to the statements made in para 16 to 23 of the O.A. it is stated that the Inquiry Officer i.e. I.O. functions impartially. It is denied that the object was to bring about the removal of the applicant (para 16). It is stated that the inquiry report was never asked by the C.O. and it can be made available to the C.O. at any time he desires. The procedural short coming of appeal being disposed by

সংলগ্ন কার্যক্রম অধিকারী  
Divisional Officer  
প. ম. রেল, রংগিয়া  
N. F. Railway - Rangia

Filed by S.N. Tamuli  
for Rly S.C. Dr. J.L. Sankar.  
Advocate

Disciplinary authority can be set right and is curable. The fact remains that charges against the applicant has been proved and decision taken accordingly.

He was very casual and careless employee and left H.Q. without permission. His non cooperation has also been well established during the conduct of inquiry on 3/6/05, 9/6/05 and 15/6/05 when he deliberately absented and did not face inquires. It is denied that there was intention to appoint other person in his place as alleged. It is in the interest of the Railway that such employees cannot continue in Railway Service under the circumstances explained above.

(5) That in the circumstances the O.A. deserve to be dismissed with cost.

*Chanderbhat*

सं. उ. ल. कार्यालय अ. अधिकारी  
Divisional Officer  
प. सी. नं. १०००  
N. T. १०००

VERIFICATION

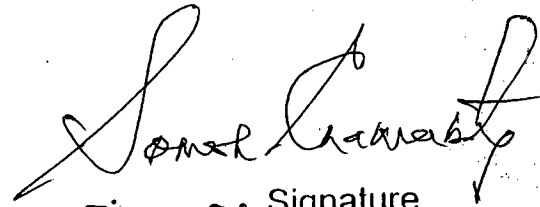
I, Sri Suresh Chakraborty aged about 56 years, Son of Late Sri Suresh Chandra Chakraborty working as DPO/IC/ky do hereby verify that statements made in para 1 to 5 are true to my knowledge and belief and I have not suppressed any material facts.

AND I sign this verification on this 14<sup>th</sup> day of June, 2007 at

.....

Date: 14.6.2007

Place: Gurukul



Signature  
मंडल कार्यालय अधिकारी  
District Officer  
पुणे जिल्हा परिषद  
N. F. ... angiya