

FORM NO. @
 (See Rule 42)
 CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH.

ORDER SHEET

Original Application No. 33/06
 Misc. Petition No. _____
 Contempt Petition No. _____
 Review Application No. _____

Applicant(s) Biswanath Banerjee
 Respondent(S) U.O.I. Joms

Advocate for the Applicants G.P. Bhownik, A Verma
J. Purkayastha

Advocate for the Respondent(S) J. h. Sankar CCSC
Rly St. Counsel

Notes of the Registry	Date	Order of the Tribunal
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The application is filed in Form No. 266319044 dated 20.1.06.

Dy. Registrar

[Signature]

Steps taken with
 envelopes.
 one copy sent.

15.02.2006

At the request of learned counsel for the parties let the case be posted on 17.02.2006.

[Signature]

Vice-Chairman

mb

17.2.06

The matter pertains to the applicant for not granting of back wages though he has been reinstated vide order dated 25.5.04. The grievance of the applicant is that the respondents is not granting backwages to the applicant in view of the order dated 27.2.04 passed by this Tribunal in O.A.No.290 of 02.

Application is admitted. Issue notice to the respondents.

Post the matter on 4.4.06.

[Signature]

Vice-Chairman

Im

1) Pl. comply order dated 15.2.06.
 NS 20.2.06.
 2) Issue 3 copies to the respondents No. 1-3 except.
 4. NS 16.3.06.

4.4.06.

The counsel for the respondents would like to file written statement. Let it be done. Post the matter on 28.4.06.

Vic -Chairman

Notice & order sent to D/section for issuing to resp. nos. 2 to 4 by regd. A/D post.

16/3/06. D/No = 336 to 338 Dt = 20/3/06.

28.4.2006

Mr.K.K.Biswas, learned Railway counsel submits that he would like to have some more time to file reply statement. Let it be done. post on 14.6.2006.

Vice-Chairman

31-3-06

bb

14.6.2006

Mr.K.K.Biswas, learned Railway counsel requested for further time to file reply statement. Let it be done post on 17.7.2006.

Vice-Chairman

- 1) Service report awaited
- 2) Reply not yet filed

27-4-06

No W/S has been filed.

bb

17.7.2006

Mr.K.K.Biswas, learned Railway counsel prays for four weeks time to file reply statement. Let it be done. It is made clear that this is the last chance. post on 21.8.2006.

Vice-Chairman

Re-alotment filed by Mr. K.K. Biswas, Rail. counsel.

26.4.06

13-6-06

No W/S has been filed.

bb

21.8.06.

The counsel for the Respondents prays for some more time to file written statement. Time is granted. Post the matter on 7.9.06.

Vice-Chairman

17-7-06

No W/S filed.

lm

No W/S has been filed.

18.8.06

O.A 33706

Notes of the Registry	Date	Order of the Tribunal
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7.9.06
 W/S Submitted
 by the Respondents.

24.10.06 Written statement has been filed. The applicant is at liberty to file rejoinder if any.
 post on 24.11.2005.



Vice-Chairman

bb

No rejoinder has been filed.

24.11.2006 Present: Hon'ble Sri K.V. Sachidanandan
 Vice - Chairman.

Learned Counsel for the Applicant wanted time to file rejoinder. Let it be done. Post on 01.01.2007.



Vice-Chairman

23.11.06.

No rejoinder has been filed.

/mb/

17.1.07. Rejoinder has not been filed by the applicant. Post the matter on 7.2.07 as a last chance. ~~Rest the matter~~



Vice-Chairman

lm

No rejoinder has been filed.

6.2.07.

7.2.2007 Mr. G. P. Bhowmick, learned counsel for the Applicant submitted that rejoinder has been submitted. Let it be brought on record, if it is otherwise in order.

Mr.K.K.Biswas, learned counsel for the Railways requested for time to go through the same and file additional statement, if necessary. Let it be done.

Post the case on 9.3.2007.



Vice-Chairman

/bb/

12.2.07
 Rejoinder filed by the Applicant. page No.1 to 40.

W/S and rejoinder has been filed.

8.3.07.

9.3.07.

Counsel for the respondents wanted time to file reply statement on the rejoinder. Let it be done. Post the matter on 12.4.07. Interim order shall continue.

Vice-Chairman

Im

The case is ready for hearing.

11.5.07.

Counsel for the respondents has submitted that he has received the copy of the rejoinder and he wants to get instructions. Four weeks time is granted to file written statement. Post the matter on 13.6.07.

Vice-Chairman

Im

Wks and rejoinder has been filed.

13.6.2007

Two weeks' further time as a last opportunity is given to file reply to the rejoinder. No further opportunity will be granted.

Post on 29.06.2007.

Wks and rejoinder filed by the parties.

Vice-Chairman

2.7.07

/bb/

3.7.2007

Mr.K.K.Biswas, learned Railway counsel submitted that reply to the rejoinder is ready. He is directed to file before the Registry. He is also directed to serve a copy of the same with all annexures to the counsel for the Applicant.

Post the case on 17.7.2007.

Vice-Chairman

2.7.07

/bb/

5.7.07
objection filed against Rejoinder filed by Applicant. page 1 & 49. Copy served.

5

17.7.2007

None for the applicant. Counsel for the respondents submit that pleadings are complete.

Post on 30.7.07. Counsel for the respondents will inform the counsel for the applicant.

The case is ready for hearing.

27.7.07

Vice-Chairman

pg

30.7.07.

The case is ready for hearing.

21.8.07

Post the matter on 2.8.07..

Vice-Chairman

lm

22.8.2007

The matter is adjourned on the assurance of Ms.J.Purkayastha, learned counsel for the Applicant that if her senior is not present, she will definitely argue the matter on behalf of the Applicant on the next date. No further adjournment shall be granted thereafter.

The case is ready for hearing.

30.8.07

Post on 31.8.2007.

Vice-Chairman

/bb/

31.8.2007

Let the case be posted on 20.9.2007

Vice-Chairman

2.11.07

/bb/

No Hearing matters are taken on 20.9.07 as desired by the Honble then vs.

lm

05.11.2007

None appears for the parties. Post the case on 28.11.2007 for hearing.

[Signature]
Member (A)

/bb/

The case is ready for hearing. 28.11.2007.

27.11.07

On the request of learned counsel for the Applicant and the fact that the counsel for the Respondents is not present in the Court.

Call this matter on 2nd January, 2008.

[Signature]
(Khushiram)
Member(A)

21.28.11.07

The order was erroneously typed out in OA No. 23/07 and order copies have also been communicated. Copy of this order will be sent to the Respondents a fresh, it signed.

W. 108

28.11.2007

Mr.G.P.Bhowmick, learned counsel for the Applicant and Mr.K.K. Biswas learned counsel for the Railway are present. During the course of the argument the learned counsel for the Applicant has drawn my attention to the last part of the order dated 27th February, 2004 passed in O.A.No.290 of 2002 which has been part implemented by the Respondents but "the period of his absence" before joining has not been decided as per order of this Tribunal. The learned counsel for the Respondents seeks time to take instructions from the Respondents.

Call this matter on 17.01.2008. Copy of the order be given to the Respondents to get instructions from the Railway for implementing the order of this Tribunal as cited above.

(Khushiram)
Member(A)

Dt. 28.11.07

pl. send order copy to the Respondents.

order dt. 28/11/07 sent to D/Section for issuing to Respt. Nos. 1 to 7 and another copy issuing to learned Advocate for Respondents.

D/NO. 1668 to 1675

Dt 3/12/07

20.2.08

Additional written argument submitted by the Respondents. Undated is given for Service.

Liu

[Signature]

OA 33/07
33/06
28.11.07.

- OA 33/06

X

Mr.G.P.Bhowmick, learned counsel for the Applicant and Mr.K.K.Biswas learned counsel for the Railway are present. During the course of the argument the learned counsel for the Applicant has drawn my attention to the last part of the order dated 27th February, 2004 passed in O.A.No.290 of 2002 which has been part implemented by the Respondents but "the period of his absence" before joining has not been decided as per order of this Tribunal. The learned counsel for the Respondents seeks time to take instructions from the Respondents.

Call this matter on 17.01.2008. Copy of the order be given to the Respondents to get instructions from the Railway for implementing the order of this Tribunal as cited above.

Recd. copy of order
24/01/08
M. Advocate



(Khushiram)
Member(A)

Dt. 28.11.07.

Pl. send order copy to the Respondents

↓ 17.01.2007

Order dt-28/11/07 sent to D/Section for issuing to resp. nos. 1 to 7 and another copy issuing to learned advocate for respondents.

Ms.J.Purkayastha, learned counsel appearing for the Applicant is present. Mr.K.K.Biswas, learned counsel for the Railways, seeks adjournment to collect some details from the Respondents.

Call this matter on 08.02.2008 for hearing.

3/12/07 D/No-1668 to 1675
Dt. 3/12/07 - /bb/



(Khushiram)
Member (A)



(M.R.Mohanty)
Vice-Chairman

order dt. 28/11/07, after doing the necessary correction by concerned Court Master copy sent to D/section for issuing to R. No- 1 to 4.

3/11/08 D/No-32 to 35. DT= 4/01/08. S.O (5).

08.02.2008

Mr G.P. Bhowmick, learned Counsel for the Applicant, and Mr K.K. Biswas, learned Counsel for the Respondents are present.

The case is ready for hearing.

ms
16.1.08

Call this matter on 20.02.2008.

The case is ready for hearing.


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

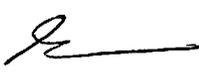
nkm

ms
7.2.08

20.02.2008

On the Request of Mr.J.Purkayastha, learned counsel appearing for the Applicant, matter may be taken up tomorrow on 21.02.2008. Mr.K.K.Biswas, learned Railway Counsel appearing for the Respondents is present.

Call this matter on 21.02.2008


(Khushiram)
Member(A)

21.02.2008^{lm}

Heard Mr. G. P. Bhowmick, learned counsel appearing for the Applicant and Mr.K.K.Biswas, learned Railway Counsel appearing for the Respondents.

Hearing concluded. Judgment reserved.

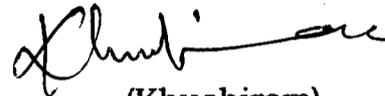

(Khushiram)
Member (A)

O.A. 33/2006

a

25.02.2008

Mr K.K.Biswas, learned counsel for the Respondents is present. Judgment pronounced in open Court, kept in separate sheets. The application is dismissed in terms of the order recorded separately with a cost of Rs. 1000/- levied on the applicant.


(Khushiram)
Member(A)

pg

Received:
Jayati Purkayastha
Advocate
5.3.08.

11/3/08
Copy of the Judgment
sent to the Dy Sec.
for issuing the
dine to the Respondent.
alongwith a copy to
the Rty. Counsel.
K.P.

17.3.08
sent vide D/No.
1362 to 1365
Dd. 14.3.08.
K.P.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

.....

Original Application No. 33/2006

DATE OF DECISION : 25-02-2008

Shri Biswanath Banerjee

.....Applicant/s

Mr G.P. Bhowmick

.....Advocate for the
Applicant/s

-Versus -

Union of India & Ors.

.....Respondent/s

Mr. K. K. Biswas, Railway counsel

.....Advocate for the
Respondent/s

CORAM

THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the judgment ? ~~Yes/No~~
2. Whether to be referred to the Reporter or not ? ~~Yes/No~~
3. Whether their Lordships wish to see the fair copy of the judgment ? ~~Yes/No.~~


Mamber(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 33/2006.

Date of Order : This the 25th Day of February, 2008.

THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER

Shri Biswanath Banerjee,
Son of Late Sudhir Chandra Banerjee,
Makum Junction, Digboi Road,
P.O. Makum Junction,
Dist. Tinsukia, Assam - 786170.Applicant

By Advocate Sri G.P.Bhowmick

Versus -

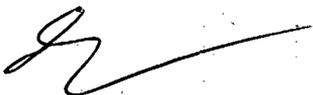
1. Union of India,
Represented by the General Manager,
N.F.Railway, Maligaon,
Guwahati-781011.
2. The Divisional Railway Manager,
N.F.Railway, Tinsukia,
P.O. Tinsukia-786125.
3. The Sr. Divisional Mechanical Engineer,
N.F.Railway, Tinsukia,
P.O. Tinsukia, Pin-786125.
4. The Divisional Railway Manager (Personnel),
N.F.Railway, Tinsukia,
P.O. Tinsukia, Pin-786125. ... Respondents

By Sri K.K. Biswas, Railway counsel

ORDER

KHUSHIRAM (MEMBER-A)

The Applicant is working as Confidential Stenographer in the office of DRM (M)/N.F.Railway at Tinsukia. He applied for leave from 31.05.1988 to 2.6.88 and was supposed to report back to duty on 03.06.1988. He however, remained absent from duty, without any



further information, till 16.6.88. On 17.7.88 the Applicant reported about his sickness without obtaining any sick memo (as required under Railway Rules) and, in the said premises, Disciplinary Proceedings were started against him on 6.10.89; when charge sheet, for major penalty, was issued and, ultimately, he was removed from service. The Order of removal was modified, on appeal, and he was reinstated in service with lowest stage of pay with condition to produce Medical Certificate for the whole period. Meanwhile Applicant has filed the following cases in CAT and High Court:-

Sl.	Case No.	Facts on which the case Was filed by the applicant	Orders passed by the Hon'ble/ CAT & Court & action taken by Respondents
1.	OA No.99 of 1994 filed in CAT/GHY Order passed on 08.08.1995	To provide adequate and effective medical treatment i.e. Homeopathic. To regularize absented period from 03.06.1988 till his resumption.	The application was dismissed by the Hon'ble CAT/GHY
2	OA No. 60 of 1997 filed in CAT/GHY Order passed on 04.02.2000	To quash the order of appointment of Board of Inquiry vide L/No. ES-B/334 dtd. 02.12.96. Claimed full pay and allowances etc. when the DAR inquiry ended in favour of the applicant.	For other grievances the Applicant was also advised to represent his grievances to the competent authority.
3	Writ Petition (C) No.1166 of 2000. Judgment was passed on 15.03.2000	This was against the order passed by CAT/GHY as mentioned in Sl.No. 2 above) filed in the Gauhati High Court.	In the judgment Applicant was directed to represent within a period of three weeks to the (Railway) competent authority. The Rly. Competent authority finalised the DAR proceedings within six weeks of submission of the representation.

4.	OA No.290 of 2002 filed in CAT/GHY. Its Order was passed on 27 th February,2004	In the order the applicant was directed to produce all his relevant medical certificates form 1988 till filing of the OA No.99/1994. The same shall be considered by the respondents and a decision would be taken by them within one month from the filing of the certificates. Thereafter the applicant would be allowed to resume duties.	Applicant was directed to resume duty immediately. Applicant after dilly-dalling resumed duty on 30.04.2004
5	OA No.33/2006 filed in CAT/GHY. It is awaiting adjudication and order.	Claimed of back wages for the period of unauthorized absence from 09.07.88 to 26.05.04, i.e. for about 16 years by treating the absence "on duty".	Instant case under disposal

As is apparent from the above, the instant Original Application has been filed by the Applicant to claim the back wages for his long unauthorized absence of 15 years 11 months and 7 days during which he neither joined the duty, nor he performed any task with the Respondents.

2. In this Original Application filed under section 19 of the Administrative Tribunals Act, 1985, the Applicant has prayed for the following main reliefs:-

- i) Direct the Respondent to treat the period from 18.06.1988 till resumption of duty as on duty.
- ii) To direct the Respondents to pay all arrears of salary and allowances from 18.06.1988 till 26.05.2004 by giving effect of his due increments, revision of pay scale and benefit under Assured career progression (ACP) scheme.



3. I have heard Mr G.P.Bhowmick, learned counsel appearing for the Applicant and Mr K.K.Biswas, learned counsel appearing for the Respondents/Railways and perused the materials placed on record.

4. The learned counsel for the Applicant elaborated the various phases of this case, the difficulties faced by the Applicant to resume duty and the circumstances under which he could not join duty. He pressed that the claim of the Applicant (for back wages for the period of his absence) to be just and proper. The learned for the Applicant stated that the period from the date of initial absence in 1988 upto 20.04.1994 has already been adjudicated upon in O.A.99/1994 vide order dated 08.08.1995. The Applicant was dismissed from service (on account of his long unauthorized/willful absence) on 12.06.2000 and was reinstated at the lowest scale of pay by the appellate Authority on 22.01.2001. Therefore, from 12.06.2000 to 22.01.2001, since he remained under dismissal, he was not supposed to account for his absence, nor was he supposed to furnish any medical certificate to regularize the same. He resumed duties on 27.05.2004. The Applicant submitted a number of letters in between, but the Respondent authorities did not help him in seeking 'Duty Fit Certificate' (DFC for short) from the Railway Medical Authorities. On the basis of papers he had submitted before the authorities they have not decided the issue of his (unauthorized) absence from duty by granting him leave or otherwise. The learned Counsel for the Applicant cited the case of Union of India and others Vs. K.V.Jankiraman and others, (1991) 4 SCC 109, wherein it was held that the employee cannot be denied back wages on the basis of principle of 'no work no pay', where "the



although he is willing to work is kept away from work by the authorities for no fault of his.”

The learned counsel for the Respondents stated that the Applicant has already got his dues in the sense that Applicant has already got the job (after many years of unauthorized absence) and has been let off with minor punishment with reinstatement on the lowest scale of pay in his grade. He also stated that in O.A.99/1994 his request for regularization of absence has already been rejected by this Tribunal vide order dated 08.08.1995 and that, therefore, the claim of wages for the period (regularization of which was rejected) is a res-judicata. The learned counsel cited the case of General Manager, Appellate Authority, Bank of India and another Vs. Mohd. Nizamuddin, (2006) 7 SCC 410, wherein it was held that, “Long unauthorized absence (three years long) of bank officer holding a responsible post..... is detrimental to public interest – Hence, grave enough to warrant dismissal from service – High Court erred in holding that punishment of dismissal was disproportionate to the gravity of the said misconduct”. The learned counsel also cited the case of North Eastern Karnataka RT Corpn. Vs. ASHAPPA, (2006) 5 SCC 137, wherein it was held that, “Remaining absent for a long time cannot be said to be a minor misconduct”. In the said case three years absence was treated to be long enough and held that the punishment of removal imposed on the delinquent Government servant “is absolutely correct and not disproportionate.” The learned counsel next cited the case of A.P. SRTC and another Vs. B.S. David Paul, (2006) 2 SCC 282, wherein it was held that a Government servant “held guilty of unauthorized absence



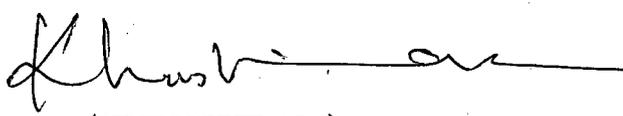
from duty cannot claim the benefit of increments notionally earned during the period of unauthorized absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service." Similarly, the learned counsel cited the case of State of Rajasthan and another Vs. Mohd. Ayub Naz, (2006) 1 SCC 589, wherein it was held that, "removal from service is the only proper punishment to be awarded to the respondent herein who was willfully absent (for 3 years) without intimation and, therefore, he will not be entitled to pay back wages or any other emoluments for the period for which he was absent." In view of these citations the OA deserves to be dismissed as the Applicant being willfully absent for over 15 years is not entitled to any relief sought by him.

5. I have considered the arguments and submissions made by learned counsels appearing for both the parties and have gone through the records placed before me. In O.A.99/1994 this Tribunal passed the order (08.08.1995) holding that "Neither in limitation nor on merits any relief can be granted on the frame of this application, which does not disclose any cause of action or a grievance which can be redressed under the law. In the peculiar situation where he is neither on duty, nor his services were terminated what the respondents should do or the applicant should do is a matter for those parties to consider" and while disposing of the application for the reliefs "to regularise the period of absence from 03.06.1988 onwards till his resumption of duty treating the period on leave" (as sought for by the Applicant) was rejected. The arguments of the learned counsel for the Applicant regarding the principle of "no work no pay"



has to be seen in the light of the facts of the case. Had the Respondents at any stage refused to give him work he would have been entitled to the back wages for the period of his absence under the principle of no work no pay but in the instant case Applicant willfully remained on unauthorized absence which ultimately resulted in his dismissal and (on appeal) reinstatement in lowest scale of pay in the grade. Therefore, the principle of "no work no pay" does not entitle him for any back wages. The applicant's prayer for the relief "directing the respondents to pay all arrears of salary and allowances from 18.06.1988 till 26.05.2004 by giving effect of his due increments, revision of pay scale and benefit under Assured Career Progression (ACP) Scheme" in the light of above discussion and citations is devoid of any merit and does not merit consideration. It is for the Respondents to treat his unauthorized absence according to the rules and regulations of the Department.

6. Accordingly this O.A being devoid of any merit is dismissed and a cost of Rs.1000/- is also levied on the Applicant for filing the futile litigation.


(KHUSHIRAM)
ADMINISTRATIVE MEMBER

(2006) 2 Supreme Court Cases 282

(BEFORE ARIJIT PASAYAT AND R.V. RAVEENDRAN, JJ.)

A.P. SRTC AND ANOTHER

Appellants;

Versus

B.S. DAVID PAUL

Respondent.

Civil Appeals No. 2956 of 2000[†] with Nos. 2957-58 of 2000,
decided on February 1, 2006

Labour Law — Back wages — Entitlement to — Not automatic on reinstatement — In a reference as to validity of termination of service, Labour Court holding the termination to be bad and directing reinstatement — Held, Labour Court exercising its jurisdiction under S. 33-C(2), Industrial Disputes Act erred in holding the employees concerned to be entitled to back wages merely on the basis of such an award — Contention of the employees that back wages were natural consequence of reinstatement, rejected — Case-law discussed — Industrial Disputes Act, 1947, Ss. 33-C(2), 10 and 11 (Paras 12, 4 and 2)

A.P. SRTC v. S. Narsagoud, (2003) 2 SCC 212 : 2003 SCC (L&S) 161; *A.P. SRTC v. Abdul Kareem*, (2005) 6 SCC 36 : 2005 SCC (L&S) 790; *Rajasthan SRTC v. Shyam Bihari Lal Gupta*, (2005) 7 SCC 406 : 2006 SCC (L&S) 67; *State Bank of India v. Ram Chandra Dubey*, (2001) 1 SCC 73 : 2001 SCC (L&S) 3; *State of U.P. v. Brijpal Singh*, (2005) 8 SCC 58 : 2005 SCC (L&S) 1081, *relied on*

Appeals allowed

H-M/Z/33798/CL

Advocates who appeared in this case :

G. Ramakrishna Prasad, K.P. Kylashanatha Pillai, Mohd. Wasay Khan and Abhijit Sengupta, Advocates, for the Appellants;
T.N. Rao, A. Ramesh and D. Mahesh Babu, Advocates, for the Respondent.

Chronological list of cases cited

	on page(s)
1. (2005) 8 SCC 58 : 2005 SCC (L&S) 1081, <i>State of U.P. v. Brijpal Singh</i>	285b-c
2. (2005) 7 SCC 406 : 2006 SCC (L&S) 67, <i>Rajasthan SRTC v. Shyam Bihari Lal Gupta</i>	284a
3. (2005) 6 SCC 36 : 2005 SCC (L&S) 790, <i>A.P. SRTC v. Abdul Kareem</i>	284a
4. (2003) 2 SCC 212 : 2003 SCC (L&S) 161, <i>A.P. SRTC v. S. Narsagoud</i>	283e-f
5. (2001) 1 SCC 73 : 2001 SCC (L&S) 3, <i>State Bank of India v. Ram Chandra Dubey</i>	284a

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J.— These appeals involve identical issues and are therefore disposed of by this common judgment.

2. The Andhra Pradesh State Road Transport Corporation (in short “the Corporation”) calls in question legality of the judgments rendered by the High Court holding that the respondent in each of the appeals was entitled to back wages.

[†] From the Judgment and Order dated 1-7-1999 of the Andhra Pradesh High Court in Writ Appeal No. 860 of 1999

3. A brief reference to the factual position which is almost undisputed would suffice:

The respondents who claimed to be employees of the appellant Corporation claimed before the Labour Court, Hyderabad (in short “the Labour Court”) that their services were illegally terminated. Reference was made by the State Government under the Industrial Disputes Act, 1947 (in short “the Act”).

4. The appellant Corporation took the stand that they were not its employees and, in fact, were employees of independent contractors. The Labour Court did not accept the stand and held that the termination was bad and the applicants concerned were entitled to reinstatement. It is not in dispute that the appellant Corporation has reinstated the respondents. Subsequently, the respondents filed application before the Labour Court stating that they were entitled to back wages for the period they were out of employment and they were entitled to be paid back wages in terms of Section 33-C(2) of the Act.

5. The Corporation resisted the claim on the ground that there was no direction for payment of back wages and, therefore, Section 33-C(2) had no application. The Labour Court did not accept the stand and directed payment. Such adjudication was challenged before the High Court which dismissed the writ application.

6. Learned counsel for the appellant submitted that when the only direction given by the Labour Court was reinstatement, there was no question of payment of any back wages and in any event Section 33-C(2) had no application.

7. Learned counsel for the respondents on the other hand submitted that when the reinstatement was directed, back wages were the natural consequence.

8. The principle of law on point is no more *res integra*. This Court in *A.P. SRTC v. S. Narsagoud*¹ succinctly crystallised the principle of law in para 9 of the judgment on SCC p. 215:

“9. We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorised absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorised absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service.”

9. The above position was reiterated in *A.P. SRTC v. Abdul Kareem*² and in *Rajasthan SRTC v. Shyam Bihari Lal Gupta*³.

10. In *State Bank of India v. Ram Chandra Dubey*⁴ this Court held as under: (SCC pp. 77-78, paras 7-8)

"7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

8. The principles enunciated in the decisions referred by either side can be summed up as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that

2 (2005) 6 SCC 36 : 2005 SCC (L&S) 790

3 (2005) 7 SCC 406 : 2006 SCC (L&S) 67

4 (2001) 1 SCC 73 : 2001 SCC (L&S) 3

merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages."

11. The position was recently reiterated by a three-Judge Bench in *State of U.P. v. Brijpal Singh*⁵.

12. The orders of the Labour Court as affirmed by the High Court are indefensible, deserve to be set aside, which we direct.

13. The appeals are allowed but without any order as to costs.

(2006) 2 Supreme Court Cases 285

(BEFORE ARIJIT PASAYAT AND R. V. RAVEENDRAN, JJ.)

K.C. SKARIA

Appellant;

Versus

GOVT. OF STATE OF KERALA AND ANOTHER

Respondents.

Civil Appeals Nos. 6885-86 of 2003[†], decided on January 10, 2006

A. Civil Procedure Code, 1908 — Or. 20 R. 16 and Or. 26 R. 11 — Suit for rendition of accounts — When maintainable — Held, such a suit can be maintained only if the person suing has a right to receive an account from the defendant — Cases when such right can subsist, enumerated, being (1) when conferred by statute, (2) based on a fiduciary relationship, or (3) claimed in equity when relationship is such that rendition of accounts is the only relief which will enable person seeking account to satisfactorily assert his legal right — Why such right could not be claimed on ground of convenience or hardship, explained — Situations in which such right is recognised in law, enumerated — Clarified that Or. 20 R. 16 does not confer any such right — It merely refers to a rule of procedure and applies only where there is an existing right to seek rendition of accounts — Court Fees Act, 1870 — S. 7(iv)(f) — Accounts/Accountancy/Accountants — Kerala Court Fees and Suits Valuation Act, 1959 (10 of 1960), S. 35

B. Contract Act, 1872 — Ss. 65, 67 and 73 — Works contract — Suit for rendition of accounts, held, is not maintainable by contractor against employer for payment for work done — Reasons for, discussed — Such suit is not maintainable even if the contract provides for payment on basis of measurements to be recorded by employer — In case employer does not cooperate or prevents contractor from taking physical measurements,

⁵ (2005) 8 SCC 58 : 2005 SCC (L&S) 1081

[†] From the Judgment and Order dated 12-11-2002 of the Kerala High Court in ASs Nos. 697 of 1991 and 481 of 1992

pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well settled that Parliament has employed the expression 'the termination by the employer of the service of a workman for any reason whatsoever' while defining the term 'retrenchment', which is suggestive of the legislative intent to assign the term 'retrenchment' a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term 'retrenchment', and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of 'retrenchment' *dehors* the reason for termination. To be excepted from within the meaning of 'retrenchment' the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within categories (a), (b), (bb) and (c) would fall within the meaning of 'retrenchment'."

28. In *Nilajkar*⁴ this Court cannot be said to have laid down a law having universal application. In that case also back wages had been denied by the learned Single Judge of the High Court which order was held to be just and reasonable. Therein, the question which arose was whether in fact the appellants therein were appointed in a project work.

29. The said decision has been distinguished by this Court in various decisions including *Executive Engineer, ZP Engg. Divn. v. Digambara Rao*⁵ which in turn has been followed in a large number of decisions.

30. However, there cannot be any dispute that provisions of Section 6-N of the U.P. Industrial Disputes Act have not been complied with. We are, however, of the opinion that instead and in place of issuing a direction for reinstatement of service, interests of justice shall be subserved if compensation of Rs 30,000 per person is directed to be paid.

31. It goes without saying that the respondents would be entitled to wages and other remunerations in terms of the interim order passed by the High Court so long they have actually worked. We, furthermore, hope and trust that in all future appointments, the appellant shall strictly follow the provisions of the Adhinyam and the rules.

32. The appeal is allowed in part and to the extent mentioned hereinbefore. No costs.

(2006) 5 Supreme Court Cases 137

(BEFORE S.B. SINHA AND P.K. BALASUBRAMANYAN, JJ.)

a NORTH-EASTERN KARNATAKA RT CORPN. Appellant;

Versus

ASHAPPA Respondent.

Civil Appeal No. 2637 of 2006[†], decided on May 12, 2006

Labour Law — Misconduct — Absence — Nature of misconduct of, and appropriate punishment for — Absence of a bus conductor of State Road Transport Corporation for a long time (three years and five days in this case), held, not a minor misconduct deserving leniency — More so, when he did not resume his duties despite being given several opportunities and had remained unauthorisedly absent on several other occasions in the past — Hence, orders of Labour Court/High Court interfering with the punishment of dismissal, set aside

The respondent was a conductor in the employment of the appellant Transport Corporation. He remained unauthorisedly absent from 27-11-1990 to 2-12-1993. His leave record showed that he had repeatedly remained unauthorisedly absent. On the said charges a departmental enquiry was instituted against him, which culminated in his dismissal. The Labour Court set aside the departmental enquiry on the ground that the same was not fair and legal and granted interim relief. However, in view of that very fact, the Labour Court substituted the punishment of dismissal by the lesser punishment of denial of back wages and continuity of service from the date of dismissal till the date of reinstatement under the order of interim relief. It also granted back wages at a certain rate. The High Court upheld the award. The Corporation then filed the present appeal by special leave.

Before the Supreme Court the appellant contended that absence for a long period could not be treated to be a minor misconduct and could not be treated leniently.

Allowing the appeal, the Supreme Court

Held :

Remaining absent for a long time cannot be said to be a minor misconduct. The appellant runs a fleet of buses. It is a statutory organisation. It has to provide public utility services. For running the buses, the service of the conductor is imperative. The respondent had been given opportunities to resume his duties. Despite such notices, he remained absent. He was found not only to have remained absent for a period of more than three years, his leave records were seen and it was found that he had remained unauthorisedly absent on several occasions. In this view of the matter, it cannot be said that the misconduct committed by the respondent herein has to be treated lightly. (Para 8)

Delhi Transport Corpn. v. Sardar Singh, (2004) 7 SCC 574 : 2004 SCC (L&S) 946; *State of U.P. v. Sheo Shanker Lal Srivastava*, (2006) 3 SCC 276 : 2006 SCC (L&S) 521; *A. Sudhakar v. Post Master General*, (2006) 4 SCC 348 : (2006) 3 Scale 524; *State of Rajasthan v. Mohd. Ayub Naz*, (2006) 1 SCC 589 : 2006 SCC (L&S) 175, *relied on* *Hombe Gowda Educational Trust v. State of Karnataka*, (2006) 1 SCC 430 : 2006 SCC (L&S) 133, *referred to*

H-M/34299/CL

[†] Arising out of SLP (C) No. 9644 of 2005. From the Judgment and Order dated 2-3-2005 of the High Court of Karnataka at Bangalore in Writ Appeal No. 3976 of 2002 [LK]

Advocates who appeared in this case :

Ms Anitha Shenoy, Advocate, for the Appellant.

Chronological list of cases cited

	<i>on page(s)</i>	
1. (2006) 4 SCC 348 : (2006) 3 Scale 524, A. Sudhakar v. Post Master General	140e	a
2. (2006) 3 SCC 276 : 2006 SCC (L&S) 521, State of U.P. v. Sheo Shanker Lal Srivastava	140c-d	
3. (2006) 1 SCC 589 : 2006 SCC (L&S) 175, State of Rajasthan v. Mohd. Ayub Naz	141e	
4. (2006) 1 SCC 430 : 2006 SCC (L&S) 133, Hombe Gowda Educational Trust v. State of Karnataka	140f-g	b
5. (2004) 7 SCC 574 : 2004 SCC (L&S) 946, Delhi Transport Corpn. v. Sardar Singh	140a-b	

The Judgment of the Court was delivered by

S.B. SINHA, J.— Leave granted.

2. This appeal is directed against a judgment and order dated 2-3-2005 passed by the Karnataka High Court in Writ Appeal No. 3976 of 2002 whereby and whereunder the writ appeal filed by the appellant herein from a judgment and order dated 11-6-2002 passed by a learned Single Judge of the said High Court in WP No. 25259 of 1999 was dismissed.

3. The respondent was working as a conductor. He remained unauthorisedly absent from 27-11-1990 to 2-12-1993. He did not report for duty with effect from 16-5-1992. His leave records were seen and it was found that he had repeatedly remained unauthorisedly absent. On the aforementioned charges, a departmental proceeding was initiated against him. He was found guilty of commission of the said misconduct and was directed to be dismissed from service by an order dated 6-8-1994. He raised an industrial dispute in relation to the said order of dismissal from service culminating in a reference being made by the Government of Karnataka to the Labour Court, Gulbarga for resolution of the said dispute. A preliminary issue was raised before the Labour Court and by a judgment and order dated 30-4-1996, it was found that the disciplinary proceedings held as against the respondent were not fair and legal. The parties thereafter adduced their respective evidence before the Labour Court. By an award dated 28-6-1996, it was held that the respondent remained absent from 27-11-1990 to 2-12-1993 and, thus, committed a misconduct. It was, however, opined:

“23. In the normal course the reasonable punishment would be to disallow the back wages and continuity of service from the date of dismissal till the date of reinstatement. But in this case the DE has been set aside and the claimant has been granted interim relief. If the back wages and continuity of service are disallowed from the date of dismissal to the date of reinstatement the punishment would be somewhat unreasonable one. I am of the opinion that it is a fit case to disallow the back wages and continuity of service from the date of dismissal i.e. 6-8-1994 till the date of granting the interim relief i.e. 29-1-1995 as a lesser punishment.”

4. It was, however, directed:

“The respondent is directed to reinstate Claimant I party to his original post. Claimant I party is entitled for back wages at the rate of 75% of the wages that he was getting at the time of dismissal or 75% of the wages in the current rate whichever is more from the date of granting the interim relief 30-1-1995. The claimant is deemed to have been continued in service from the said date.

It is hereby ordered that Claimant I party is not entitled to back wages and continuity of service from the date of dismissal i.e. 6-8-1994 till the date of granting the interim relief i.e. 29-1-1995 as a lesser punishment. I direct both the parties to bear their respective costs.”

5. A writ petition was filed thereagainst by the appellant which was dismissed by a learned Single Judge of the High Court holding:

“When a worker has remained unauthorisedly absent for such a long duration in the normal circumstances, the Labour Court was not justified in interfering with the order of punishment imposed by the management but on the facts of the case, the workman was awarded some interim relief in the year 1995 and by an interim order of this Court in the year 1999 he has been reinstated and has been working.

Taking these factors into consideration and having regard to the long absence of the workman, it is a fit case that he should be denied the payment of back wages from the date of dismissal till the date of reinstatement.”

As noticed hereinbefore, the writ appeal filed by the appellant has been dismissed.

6. The learned counsel appearing on behalf of the appellant would submit that the Labour Court as also the High Court committed a serious error in arriving at a finding that absenting oneself from duty for such a long time can be treated to be a minor misconduct and remaining absent from duty for 129 days should not have been treated leniently and as such, the impugned judgment cannot be sustained. He also pointed out that the finding of the Labour Court in para 19 of its award was that the absence was from 27-11-1990 to 2-12-1993, a period of three years and five days.

7. The charges against the respondent were proved. Even the Labour Court, before whom the parties adduced evidences, found that the respondent was absent for over three years. The Labour Court, however, proceeded on the basis that overstaying on leave or absence from duty partook to the nature of a minor offence.

8. Remaining absent for a long time, in our opinion, cannot be said to be a minor misconduct. The appellant runs a fleet of buses. It is a statutory organisation. It has to provide public utility services. For running the buses, the service of the conductor is imperative. No employer running a fleet of buses can allow an employee to remain absent for a long time. The respondent had been given opportunities to resume his duties. Despite such notices, he remained absent. He was found not only to have remained absent

for a period of more than three years, his leave records were seen and it was found that he remained unauthorisedly absent on several occasions. In this view of the matter, it cannot be said that the misconduct committed by the respondent herein has to be treated lightly. a

9. In *Delhi Transport Corpn. v. Sardar Singh*¹ this Court opined: (SCC p. 579, para 11)

"11. Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorised. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. Clause (ii) of para 4 of the Standing Orders shows the seriousness attached to habitual absence. In clause (i) thereof, there is requirement of prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the absence unauthorised." b c

10. Yet recently in *State of U.P. v. Sheo Shanker Lal Srivastava*² it was opined that the industrial courts or the High Courts would not normally interfere with the quantum of punishment imposed upon by the respondent stating: (SCC p. 285, para 22)

"22. It is now well settled principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well settled that the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience." d

11. The said principle of law has been reiterated in *A. Sudhakar v. Post Master General*³ stating: (SCC pp. 358-59, paras 27-28) e

"27. Contention of Dr. Pillai relating to the quantum of punishment cannot be accepted, having regard to the fact that temporary defalcation of any amount itself was sufficient for the disciplinary authority to impose the punishment of compulsory retirement upon the appellant and in that view of the matter, the question that the third charge had been partially proved takes a back seat. f

28. In *Hombe Gowda Educational Trust v. State of Karnataka*⁴ this Bench opined: (SCC pp. 436-37, paras 17-20)

'17. The Tribunal's jurisdiction is akin to one under Section 11-A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises g

1 (2004) 7 SCC 574 : 2004 SCC (L&S) 946

2 (2006) 3 SCC 276 : 2006 SCC (L&S) 521

3 (2006) 4 SCC 348 : (2006) 3 Scale 524

4 (2006) 1 SCC 430 : 2006 SCC (L&S) 133

a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate. a

18. This Court repeatedly has laid down the law that such interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment. The Tribunal may furthermore exercise its jurisdiction when relevant facts are not taken into consideration by the management which would have direct bearing on the question of quantum of punishment. b

19. Assaulting a superior at a workplace amounts to an act of gross indiscipline. The respondent is a teacher. Even under grave provocation a teacher is not expected to abuse the head of the institution in a filthy language and assault him with a chappal. Punishment of dismissal from services, therefore, cannot be said to be wholly disproportionate so as to shock one's conscience. c

20. A person, when dismissed from service, is put to a great hardship but that would not mean that a grave misconduct should go unpunished. Although the doctrine of proportionality may be applicable in such matters, but a punishment of dismissal from service for such a misconduct cannot be said to be unheard of. Maintenance of discipline of an institution is equally important. Keeping the aforementioned principles in view, we may hereinafter notice a few recent decisions of this Court." d

12. In *State of Rajasthan v. Mohd. Ayub Naz*⁵ this Court held: (SCC pp. 596-97, para 18) e

"18. For the foregoing reasons, we are of the opinion that a government servant who has wilfully been absent for a period of about 3 years and which fact is not disputed even by the learned Single Judge of the High Court, has no right to receive the monetary/retiral benefits during the period in question. The High Court has given all retiral benefits which shall mean that a lump sum money of lakhs of rupees shall have to be given to the respondent. In our opinion, considering the totality of the circumstances, and the admission made by the respondent himself that he was wilfully absent for 3 years, the punishment of removal imposed on him is absolutely correct and not disproportionate as alleged by the respondent." f

13. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. No costs. g

5 (2006) 1 SCC 589 : 2006 SCC (L&S) 175

(2006) 7 Supreme Court Cases 410

(BEFORE H.K. SEMA AND P.K. BALASUBRAMANYAN, JJ.)

GENERAL MANAGER, APPELLATE
AUTHORITY, BANK OF INDIA
AND ANOTHER

Appellants;

Versus

MOHD. NIZAMUDDIN

Respondent.

Civil Appeal No. 575 of 2005†, decided on September 7, 2006

A. Service Law — Misconduct — Penalty/Punishment — Proportionality — Gravity of misconduct — Determination of — Held, gravity of misconduct has to be measured in terms of the nature of misconduct — Long unauthorised absence (three years long in this case) of a bank officer holding a responsible post of Middle Management Officer, Grade II is detrimental to public interest — Hence, grave enough to warrant dismissal from service — High Court erred in holding that punishment of dismissal was disproportionate to the gravity of the said misconduct — Banks

B. Service Law — Misconduct — Conduct unbecoming of a responsible officer — Delinquent, a Middle Management Officer, Grade II in a Bank, required by several notices to attend the departmental enquiry against him — He ignoring the notices and not participating in the enquiry proceedings — Such conduct, held, unbecoming of a responsible officer holding the said position — Departmental enquiry — Banks

Allowing the appeal, the Supreme Court
Held :

It is well settled that the gravity of misconduct must necessarily be measured in terms of the nature of the misconduct. A bank officer holding the post of Middle Management Officer, Grade II which is a responsible post absented himself unauthorisedly for about three years which was undoubtedly detrimental to the public interest. Such an act cannot be said to be not grave misconduct which would warrant dismissal from service. The High Court's view that the punishment of dismissal from service on the proved misconduct was disproportionate to the gravity of the misconduct is fallacious. Moreover, despite the receipt of several notices issued to him he remained adamant and shied away from participating in the enquiry proceedings. That conduct was also unbecoming of a responsible officer holding the position as a Middle Management Officer, Grade II. (Para 9)

C. Service Law — Voluntary retirement — Condition precedent for — Voluntary retirement from the service of Bank of India, held, is not automatic at the option of the employee — It has to be preceded by an exit interview in accordance with the Bank's OM dated 13-12-1993 — Banks (Para 10)

H-M/34950/CL

† From the Judgment and Order dated 14-8-2003 of the High Court of A.P. at Hyderabad in Writ Appeal No. 1359 of 2003

Advocates who appeared in this case :
Gopal Jain, Ms Nina Gupta, Ms Shweta Chadha, Ms Akanksha and Ms Bina Gupta.
Advocates, for the Appellants;
G. Ramakrishna Prasad, Dr. K.P. Kyalasanatha, Mohd. Wasay Khan, Syudhan Byrapaneni and Venkat Subramaniam T.R., Advocates, for the Respondent.

The Judgment of the Court was delivered by
H.K. SEMA, J.— Heard the parties.

2. This appeal is preferred by the General Manager, Appellate Authority, Bank of India.

3. The challenge in this appeal is to the order dated 14-8-2003 passed by the Division Bench of the Andhra Pradesh High Court affirming the order of the Single Judge passed on 2-5-2003.

4. Briefly stated, the facts leading to the filing of the present appeal are as follows:

The respondent joined the appellant Bank as a Probationary Officer in 1972. He was thereafter promoted as Middle Management Officer, Grade II in 1981. The respondent unauthorisedly absented himself from duty with effect from 1-2-1994 onwards. By a letter dated 7-2-1994, he was asked to report for duty immediately. On 7-2-1994 the respondent applied for extraordinary leave from 1-2-1994 to 31-3-1994. He did not report for duty on 1-4-1994. On 10-5-1994 the Bank requested the respondent to immediately report for duty. On 19-5-1994 the respondent instead of unauthorised absence and opted for voluntarily retiring from the services of the appellant Bank. In response to the request of the respondent the appellant Bank by letters dated 13-7-1994 and 8-11-1994 requested the respondent to appear for an exit interview to consider his request for voluntary retirement. This was repeated by another letter dated 9-7-1996. In the interregnum the appellant Bank decided to draw a disciplinary proceeding against the respondent. On 9-7-1996 the following charges were framed against the respondent:

1. Shri Mohd. Nizamuddin availed a loan of Rs 80,000 from Secunderabad Branch for purchase of vehicle. However, he misutilised the funds so lent without actually purchasing any vehicle and subsequently deposited an amount of Rs 95,120 after a lapse of 2 years and 2 months to close the account.

2. Shri Mohd. Nizamuddin availed LTC advance of Rs 39,780 during October 1993, originally proposing to avail LTC facilities during 10-9-1993 to 21-9-1993. However, he availed LTC facilities during the period within which he was unauthorisedly absent, and submitted claim to the branch. The claim, was therefore, not sanctioned. Mr Nizamuddin, thereafter, did not refund the LTC advance availed by him. In this manner, he misutilised the advance of Rs 39,780.

3. Shri Mohd. Nizamuddin remained unauthorisedly absent from duties from 1-2-1994 and submitted leave application dated 7-2-1994 for

extraordinary leave from 1-2-1994 to 31-3-1994. Mr Nizamuddin did not report for duties on 1-4-1994. The branch reminded him to report for duties vide letters dated 7-2-1994 and 10-5-1994. The registered letters sent by the branch were returned undelivered. It is observed that Shri Mohd. Nizamuddin did not report for duties till date. In this manner Shri Nizamuddin remained unauthorisedly absent from duties and left the headquarters without prior permission from the competent authority."

5. The aforesaid charge-sheet was sent at the address of the respondent and it was received by the family member of the respondent, namely, Naseem Fatima, wife of the respondent, on 12-7-1996. Thereafter, by the letters dated 30-8-1996, 11-9-1996, 20-9-1996 and 7-10-1996 the appellants Bank informed the respondent about the appointment of inquiry officer, and the date of inquiry proceeding. Since the respondent failed to participate in the inquiry proceeding held on 19-9-1996 the copies of the inquiry proceedings were sent to him, intimating him about the next date of inquiry proceeding. On 11-10-1996 the respondent in response to the letter dated 7-10-1996, contended that he had already submitted his resignation letter about three years back and the same was pending acceptance by the appellants Bank. It was further stated that in the absence of any communication from the Bank on his resignation within the stipulated time, his resignation was deemed to have been accepted and the respondent blatantly refused to participate in the inquiry proceedings. Thereafter, on 19-10-1996, 7-11-1996 and 2-12-1996 the appellants Bank once again requested the respondent to attend the inquiry proceedings. However, the respondent failed to attend the inquiry proceedings on 16-10-1996, 31-10-1996 and 5-11-1996, the same was concluded ex parte on 5-11-1996. Vide letter dated 7-11-1996 the respondent was requested to submit his written brief which he failed to do. Thereafter, vide letter dated 20-1-1997 the copies of the inquiry report dated 2-12-1996 were furnished to him. The inquiry officer found the charges proved and held the respondent guilty of serious misconduct by remaining unauthorisedly absent for over two years and misutilising the car loan of Rs 80,000 sanctioned in his name. The disciplinary authority accepted the finding of the inquiry officer and by order dated 21-1-1997 imposed a penalty of dismissal from service with immediate effect.

6. Aggrieved thereby the respondent carried an unsuccessful appeal before the Appellate Authority. The Appellate Authority dismissed the appeal. Aggrieved thereby he filed a writ petition before the learned Single Judge of the High Court of Andhra Pradesh.

7. We noted with dismay that in spite of the facts as adumbrated, the learned Single Judge interfered with the penalty imposed by the disciplinary authority and affirmed by the Appellate Authority by its judgment and order dated 2-5-2003. The operative portion of which reads as under:

"Viewed from any angle and applying the ratio decided by the Apex Court in a catena of judgments relied on by the learned counsel for the petitioner and referred to above with regard to the proportionality of the punishment vis-à-vis gravity of misconduct proved, I am of the opinion

that the dismissal of the petitioner from service is quite disproportionate to the gravity of the charge of misconduct alleged and proved against the petitioner and having regard to the abovesaid circumstances, I hold that the dismissal is unwarranted and the punishment of dismissal is disproportionate to the gravity of the charge, and, at the same time, I prefer to remit the matter back for reconsideration, of the penalty on the charges levelled against the petitioner and imposition of lesser punishment in proportion to the misconduct proved."

8. As already noticed that the view taken by the learned Single Judge has been affirmed by the Division Bench of the High Court, which in our view is unsustainable in law.

9. It is now well-settled principle of law that the gravity of misconduct must necessarily be measured in terms of the nature of the misconduct. A bank officer holding the post of Middle Management Officer, Grade II which is a responsible post absented himself unauthorisedly for about three years which is undoubtedly detrimental to the public interest cannot be said to be not grave misconduct which would warrant dismissal from service. The High Court's view that the punishment of dismissal from service on the proved misconduct is disproportionate to the gravity of the misconduct, in our view, is fallacious. There can never be a more grave misconduct than a bank officer holding a responsible post absenting himself unauthorisedly for a period of three years detrimental to the public interest. That apart, despite the receipt of several notices issued to him he remained adamant and shied away from participating in the inquiry proceedings. This conduct is also unbecoming of a responsible officer holding the position as Middle Management Officer, Grade II.

10. Learned counsel for the respondent contended that since the respondent opted for voluntary retirement by a letter dated 19-5-1994 he would be deemed to have been retired from the Bank's service from that date. This submission, in our view, has no substance. Voluntary retirement from the Bank's service is not automatic. It is preceded by an exit interview. Specimen of exit interview form attached to the office memorandum dated 13-12-1993 shows detailed criteria prescribed to be followed in the exit interview before granting request for voluntary retirement. These are amongst others, educational qualifications, date of promotion to officer grade, details of branches/offices served (last five postings), reasons for leaving the Bank's service, date of interaction/interview held, name of the interviewing authority, designation, etc. Format of exit interview is therefore not an empty formality.

11. For the aforesaid reasons, the orders of the learned Single Judge and the Division Bench of the High Court are set aside. The writ petition stands dismissed. The appeal is allowed. No costs.

(2006) 7 Supreme Court Cases 558

(BEFORE H.K. SEMA AND D.K. JAIN, JJ.)

OM PRAKASH MANN

Appellant;

Versus

DIRECTOR OF EDUCATION (BASIC)
AND OTHERS

Respondents.

Civil Appeal No. 6014 of 2004†, decided on August 29, 2006

A. Service Law — Dismissal — Probation/Probationer — Charge-sheet — Alleged to be vague — But while giving reply to the charges, no ground was taken by delinquent appellant that charge-sheet was vague and he was unable to give effective reply to the charges — Appellant also participated in disciplinary proceedings without demur — Held, appellant estopped from raising such issue before court — Practice and Procedure — Plea — Estoppel

(Para 7)

B. Service Law — Departmental enquiry — Natural justice — Non-furnishing of copy of enquiry report to delinquent appellant — Since delinquent appellant unable to show how he was prejudiced thereby, held, there was no violation of principles of natural justice

(Paras 8 and 9)

C. Service Law — Departmental enquiry — Natural justice — Enquiry initiated against probationer and dismissal order passed during his probation period — Held, no opportunity is required to be given to him and therefore, question of violation principles of natural justice does not arise in the given facts of the case

(Para 10)

D. Service Law — Misconduct — Headmaster — His conduct must be a role model — He was charged for intentional serious dereliction of duty, misappropriation of fund and not proving his integrity during period of probation — Charges proved in departmental enquiry — Held, he committed a grave misconduct which would warrant his dismissal

(Para 11)

E. Administrative Law — Natural justice — Violation of — Non-observance of principles of natural justice must be shown to have caused prejudice to the person concerned

The doctrines of principle of natural justice are not embodied rules. They cannot be applied in a straitjacket formula. To sustain the complaint of violation of the principle of natural justice one must establish that he has been prejudiced by non-observance of the principle of natural justice.

(Para 9)

Appeal dismissed

R-M/Z/34909/CL

Advocates who appeared in this case :

Gaurav Jain and Ms Abha Jain, Advocates, for the Appellant;
Subodh Markandeya, Senior Advocate (Ms Chitra Markandeya, Vinod Chetan and Ms Vibha Arora, Advocates, with him) for the Respondents.

The Judgment of the Court was delivered by

H.K. SEMA, J.— The challenge in this appeal is to the order dated 16-9-2003 dismissing the writ petition by confirming the order dated 22-2-1992 passed by the Director of Education (Appellate Authority) dismissing the appeal.

† From the Judgment and Order dated 16-9-2003 of the High Court of Judicature at Allahabad in CMWP No. 14452 of 1992

2. We have heard the parties.

3. Few facts may be noted:

(1) The appellant was appointed as Headmaster on probation by an order dated 22-10-1984 (despite repeated request, the appointment order has not been placed on record). It is, however, admitted that the appellant was on probation.

(2) The service of the appellant was terminated by an order dated 11-8-1989 as required under the rules, preceded by an inquiry. He has carried an unsuccessful appeal before the Appellate Authority. Aggrieved thereby the appellant filed a writ petition which has been dismissed by the High Court. Hence the present appeal.

4. On 1-2-1989 the following charges were framed against the appellant:

"You are charged for intentional serious dereliction of duty, misappropriation of funds, not proving your integrity during the period of probation, etc. and other charges which are enclosed as evidence and being sent to you by post. An action against you is proposed according to Resolution 2 passed on 8-1-1989 by the Committee of Management under Rules 32-37 of Chapter 3 of Service Conditions (see 16th Chapter) of the U.P. Intermediate Education Act, 1921.

You are called upon to submit your reply within three weeks of the receipt of charge-sheet and also indicate as to whether you want to personally appear before the Enquiry Committee so that you can be informed about the date and time of the enquiry proceedings."

5. Thereafter, an enquiry was initiated against the appellant. Undisputedly, the appellant participated in the enquiry proceedings and he was afforded an opportunity to defend himself.

6. The following contentions have been raised by the appellant:

(a) the charge-sheet is vague, and

(b) no copy of the enquiry report was furnished to the appellant.

These are the two main grounds which have been urged before the learned Single Judge as well as before us.

7. With regard to the first ground, as noticed above, in the charges framed on 1-2-1989 he was called upon to submit a reply within three weeks of the receipt of charge-sheet. It appears that he had replied to the charges on 17-2-1989 but no ground was taken that the charge-sheet was vague and he was unable to effectively give reply to the charges. The appellant also participated in the disciplinary proceedings without demur and he is now estopped from raising such issue.

8. The second ground that no copy of the enquiry report had been furnished to the appellant thereby violating the principle of natural justice has also no substance. On this ground the learned Judge recorded a finding that the appellant was unable to show as to how he has been prejudiced for non-furnishing of the copy of the report. We agree with the finding of the learned Judge of the High Court.

25

9. By now it is well-settled principle of law that the doctrines of principle of natural justice are not embodied rules. They cannot be applied in a straitjacket formula. To sustain the complaint of violation of the principle of natural justice, one must establish that he has been prejudiced by non-observance of the principle of natural justice. As held by the High Court the appellant has not been able to show as to how he has been prejudiced by non-furnishing of the copy of the enquiry report. The appellant has filed a detailed appeal before the Appellate Authority which was dismissed as noticed above. It is not his case that he has been deprived of making effective appeal for non-furnishing of copy of enquiry report. He has participated in the enquiry proceedings without any demur. It is undisputed that the appellant has been afforded enough opportunity and he has participated throughout the enquiry proceedings, he has been heard and allowed to make submission before the Enquiry Committee.

10. Admittedly, the enquiry was also initiated against the appellant when he was on probation. It is well-settled principle of law that if the probationer is dismissed/terminated during the period of probation no opportunity is required to be given and, therefore, the question of violation of principle of natural justice does not arise in the given facts of this case.

11. The appellant was appointed as Headmaster of the Institute. The conduct of the appellant, therefore, must be a role model. Considering the conduct of the appellant as revealed in the charge-sheet, in our view, the appellant has committed a grave misconduct which would warrant his termination from service.

12. For the reasons aforesaid, this appeal being devoid of merit is accordingly dismissed.

(2006) 7 Supreme Court Cases 560

(BEFORE B.P. SINGH AND R.V. RAVEENDRAN, JJ.)

SHEETAL MANOJ GORE

Petitioner

Versus

STATE OF MAHARASHTRA AND OTHERS

Respondents.

Writ Petition (Crl.) No. 26 of 2006†, decided on August 21, 2006

A. Preventive Detention — Detention order — Delay in passing detention order — Validity of the order — Not to be tested on the same standard as applied to the case of consideration of representation of detenu — However, in case of inordinate delay in passing the detention order live link between the prejudicial activity of detenu and purpose for which the order is passed is snapped and the order becomes a stale one — Having regard to the detailed explanation given by detaining authority, held, voluminous material against detenu were collected and continuously

processed and considered at different stages in the Home Department of the State Govt. which consumed time whereafter only detention order could be issued and detaining authority was conscious of the urgency of the matter — In the circumstance delay of ten months in issuing the order would not render the order invalid — Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, S. 3(1)

It was submitted that the first statement of the detenu was recorded under Section 108 of the Customs Act by the officers of DRI on 29-3-2005. Thereafter, several statements of his were recorded, the last one on 28-4-2005. Similarly, the statements of his accomplices were also recorded between March and June 2005. The detenu was arrested on 30-3-2005 in connection with a criminal case registered against him but he, as well as one of his accomplices, was released on bail on 12-4-2005. On 10-1-2006 the impugned order of detention was passed. It was submitted that the prejudicial activity of the detenu must have come to the notice of the detaining authority sometime in March 2005, but the order of detention was passed 10 months later. It was, therefore, submitted that from March 2005 till January 2006 no order of detention was passed and this inordinate delay in issuing the order of detention itself established that there was no urgency in the matter. Neither was there material to reach the alleged subjective satisfaction, nor was it necessary to detain the detenu under the provisions of the Act.

Held:

The time taken in completing the process for issuance of order of detention has not to be tested applying the same standard as is applied in the matter of consideration of representation of a detenu. No doubt, if there is inordinate delay in issuing the order of detention, it may well be argued that the live link between the prejudicial activity of the detenu and the purpose for which the order of detention is issued is snapped, and being stale there was no justification for issuance of an order of detention. (Para 7)

In this case the detaining authority has given a very detailed and vivid account of the manner in which the file was dealt with in the Home Department of the Government of Maharashtra. It will appear that the sponsoring authority had collected large volume of evidence, which was required to be examined. At the same time, several representations were received from time to time which also were required to be considered at various levels. In the meantime the sponsoring authority had also collected more documents which it had sent to the office of the detaining authority. All this took time. Therefore, it is not as if the detaining authority was oblivious of the importance and urgency of the matter. The detailed account given by the detaining authority shows that the matter was being continuously processed and considered. It was on account of the consideration of voluminous material which was received at different stages that some time was consumed. In the facts and circumstances of the case, it must be held that the details furnished by the detaining authority provide sufficient explanation for the time taken in issuing the order of detention. The detaining authority was conscious of the fact that the matter required immediate attention, but in view of the voluminous record which had to be scanned and scrutinised before issuance of the order of detention, the order could not be issued earlier. Thus there was no delay on the part of the authorities in taking necessary steps in connection with issuance of the order of detention. (Paras 6 and 7)

† Under Article 32 of the Constitution of India

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 See Jus Latium.
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 184 U.S. 436, 444, 471,
 16 L.Ed.2d 694.
 ed in composition,
 n of the meaning.

"miscomputation" or "misaccounting," i.e., false reckoning.
Mise /máyzə/. In old English law, the mise or issue in a writ of right; a compact or agreement; a form of compromise.
Misadventure. A mischance or accident; a casualty caused by the act of one person inflicting injury upon another. Homicide "by misadventure" occurs where a man, doing a lawful act, without any intention of hurt, unfortunately kills another.
Misallege /misaléj/. To cite falsely as a proof or argument.
Misapplication. Improper, illegal, wrongful, or corrupt use of application of funds, property, etc. See also *Misappropriation*.
Misappropriation. The act of misappropriating or turning to a wrong purpose; wrong appropriation; a term which does not necessarily mean peculation, although it may mean that. Term may also embrace the taking and use of another's property for sole purpose of capitalizing unfairly on good will and reputation of property owner. *Pocket Books, Inc. v. Dell Pub. Co.*, 19 Misc.2d 252, 267 N.Y.S.2d 269, 272.
Misbehavior. Ill conduct; improper or unlawful behavior. So as to support contempt conviction is conduct inappropriate to particular role of actor, be he judge, juror, party, witness, counsel or spectator. *U. S. v. Seale*, C.A.III., 461 F.2d 345, 366.
Misbranding. False or misleading labeling. *People v. Rosenbloom*, 119 Cal.App. 759, 2 P.2d 228, 231. Such practices are prohibited by federal and state statutes; e.g. *Fair Packaging and Labeling Act*.
Miscarriage /mískæraj/mískæraj/. Poor management or administration; mismanagement.
Miscarriage of justice. Decision or outcome of legal proceeding that is prejudicial or inconsistent with substantial rights of party.
 As used in constitutional standard of reversible error, "miscarriage of justice" means a reasonable probability of more favorable outcome for the defendant. *People v. Lopez*, 251 Cal.App.2d 918, 60 Cal. Rptr. 72, 76. A miscarriage of justice, warranting reversal, should be declared only when the court, after examination of entire cause, including the evidence, is of the opinion that it is reasonably probable that a result more favorable to appealing party would have been reached in absence of the error. *People v. Bernhardt*, 222 C.A.2d 567, 35 Cal.Rptr. 401, 419.
Miscarriage of justice from erroneous charge to jury, under statute declaring that no judgment shall be set aside or new trial granted on basis of error which does not result in such miscarriage, results only when an erroneous charge is reasonably calculated to confuse or mislead. *Marley v. Saunders*, 114, 249 So.2d 30, 35.
Miscogeneration /mískəjanéyshan/mískəjə*. Mixture of races; marriage between persons of different races, as between a white person and a Negro.
Mischarge. An erroneous charge; a charge, given by a court to a jury, which involves errors for which the judgment may be reversed.

Mischief. In legislative parlance, the word is sometimes used to signify the evil or danger which a statute is intended to cure or avoid.
 In the phrase "malicious mischief," (q.v.) it imports a wanton or reckless injury to persons or property.
 A person is guilty of criminal mischief if he: (a) damages tangible property of another purposely, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means, or (b) purposely or recklessly tampers with tangible property of another so as to endanger person or property; or (c) purposely or recklessly causes another to suffer pecuniary loss by deception or threat. *Model Penal Code*, § 220.3.
Misconduct. A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are, *misdeanor*, *misdeed*, *misbehavior*, *delinquency*, *impropriety*, *mismanagement*, *offense*, but not *negligence* or *carelessness*. Term "misconduct" when applied to act of attorney, implies dishonest act or attempt to persuade court or jury by use of deceptive or reprehensible methods. *People v. Sigal*, 249 C.A.2d 299, 57 Cal.Rptr. 541, 549. Misconduct, which renders discharged employee ineligible for unemployment compensation, occurs when conduct of employee evinces willful or wanton disregard of employer's interest, as in deliberate violations, or disregard of standards of behavior which employer has right to expect of his employees, or in carelessness or negligence of such degree or recurrence as to manifest wrongful intent or evil design. *Wilson v. Brown*, La.App., 147 So.2d 27, 29. See also *Wanton misconduct*.
Misconduct in office. Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act. See also *Malfeasance*; *Misfeasance*.
Miscontinuance. In practice, an improper continuance; want of proper form in a continuance; the same with "discontinuance."
Miscreant /mískriyənt/. In old English law, an apostate; an unbeliever; one who totally renounced Christianity. 4 Bl.Comm. 44.
Misdate. A false or erroneous date affixed to a paper or document.
Misdelivery. Delivery of mail, freight, goods, or the like, to person other than authorized or specified recipient. The delivery of property by a carrier or warehouseman to a person not authorized by the owner or person to whom the carrier or warehouseman is bound by his contract to deliver it.
Misdemeanant /mískdəmiynənt/. A person guilty of a misdemeanor; one sentenced to punishment upon conviction of a misdemeanor.
Misdemeanor /mískdəmiynər/. Offenses lower than felonies and generally those punishable by fine or imprisonment otherwise than in penitentiary. Under federal law, and most state laws, any offense other than a

16. *Bank of India v. T.S. Kelawala*⁵: in the above case, the Industrial Court accepted the evidence of the witness of the Company that the workmen had not worked for full 8 hours on any day in the month concerned and that they were working intermittently only for some time and were sitting idle during the rest of the time. According to the Company, the workers had worked hardly for an hour and 15 to 20 minutes per day on an average during the said months. The Industrial Court had recorded a finding that the pro rata deduction of wages made by the Company for the month did not amount to an act of unfair labour practice. The Company deducted wages on the basis of each day's production. In view of the fact that there is a finding recorded by the Industrial Court that there was a go-slow resorted to by the workmen and the production was as alleged by the Company during the said period, which finding is not challenged before this Court. It is not possible for the Court to interfere with it in the appeal. All that was challenged was the right of the employer to deduct wages even when admittedly there is a go-slow which question has been answered in favour of the employer earlier. This Court said go-slow is a serious misconduct being a covert and a more damaging breach of the contract of employment. Hence once it is proved, those guilty of it have to face the consequences which may include deduction of wages and even dismissal from service. This Court, applying the principle "no work no pay" held that deliberate abstention from work, whether by resort to strike or go-slow or any other method, legitimate or illegitimate, resulting in no work for the whole day or part of a day or days, will entitle the management to deduct pro rata or otherwise, wages of the participating workmen notwithstanding absence of any stipulation in the contract of employment or any provision in the service rules, regulations or standing orders. In the instant case, the respondent was deliberately absent for a period of about 3 years and, therefore, he has violated Rule 86(3) of the Service Rules which contemplated removal from service and, therefore, he will not be entitled to any back wages or any other emoluments for the period for which he was absent.

17. *Syndicate Bank v. K. Umesh Nayak*⁶ (five Judges): this Court applying the "no work no pay" principle held that wages during the strike period are payable only if strike is both legal and justified but not payable if strike is legal but not justified or justified to be illegal.

18. For the foregoing reasons, we are of the opinion that a government servant who has wilfully been absent for a period of about 3 years and which fact is not disputed even by the learned Single Judge of the High Court, has no right to receive the monetary/retiral benefits during the period in question. The High Court has given all retiral benefits which shall mean that a lump sum money of lakhs of rupees shall have to be given to the respondent. In our opinion, considering the totality of the circumstances, and the admission made by the respondent himself that he was wilfully absent for 3 years, the punishment of removal imposed on him is absolutely correct and not

5 (1990) 4 SCC 744 : 1991 SCC (L&S) 170 : (1991) 15 ATC 747

6 (1994) 5 SCC 572 : 1994 SCC (L&S) 1197 : (1994) 28 ATC 146

disproportionate as alleged by the respondent. The orders passed by the learned Single Judge in SB Civil Writ Petition No. 2239 of 1991 dated 24-8-2001 and of the order passed by the Division Bench in LPA No. 1073 of 2001 dated 13-12-2001 are set aside and the punishment imposed by the disciplinary authority is restored. However, there shall be no order as to costs.

(2006) 1 Supreme Court Cases 597

(BEFORE ASHOK BHAN AND S.H. KAPADIA, JJ.)

ASSOCIATED CEMENT COMPANIES LTD.

Appellant;

Versus

GOVT. OF A.P. AND ANOTHER

Respondents.

Civil Appeal No. 6122 of 2000[†], decided on January 4, 2006

A. Sales Tax — Andhra Pradesh General Sales Tax Act, 1957 (6 of 1957) — Ss. 6-C (as amended in 1995), 9(1) and Sch. I Entries 18(a) & (b) & 19 (as amended in 1996 and 1997, respectively) — Levy of tax on cement under Entry 18(b) at a rate higher than that prescribed for the very same commodity under Entry 18(a) — Constitutionality — Held, *intra vires* Art. 14 — Object of such higher rate restated — Case-law on wideness of the discretion of State in tax matters including classification of the objects to be taxed and rates of taxation, reviewed — Constitution of India — Arts. 245 & 246 and 14 — Commodities/Goods — Cement — Cement sold at a price inclusive of the price of packing material and cement sold otherwise — Different rates of sales tax in the said two cases — Constitutionality

B. Sales Tax — Andhra Pradesh General Sales Tax Act, 1957 (6 of 1957) — S. 6-C (as amended in 1995), held, is *in pari materia* with Ss. 5(5) & (6), Kerala General Sales Tax Act, 1963 — Kerala General Sales Tax Act, 1963 (15 of 1963), Ss. 5(5) & (6) — Statute Law — *Pari materia* provisions

The appellants were engaged in the manufacture and sale of cement and had various factories in different locations in India including a unit in A.P. State. After the substitution of Section 6-C of the A.P. General Sales Tax Act, 1957 (6 of 1957) (for short "the Act") in a modified form in 1995, Entry 18 of Schedule I to the Act was amended in 1996 and Entry 19 relating to packing material was amended in 1997. Simultaneously, the State Government, in order to see that the value of the packing materials was not taxed twice, exercised the power under Section 9(1) of the Act and provided for set-off of the tax paid on packing materials. Consequent to the said amendments of 1995 and 1996, sales tax on cement was levied @ 16% where the sale price included the value of the packing material but where cement was sold along with separate sale of packing material, sales tax was charged @ 20%. After unsuccessfully challenging the constitutionality of Entry 18 (as amended in 1996) with reference to Article 14 of the Constitution before the High Court, the appellants filed the present appeal by special leave.

Before the Supreme Court, the appellants contended that the same commodity i.e. cement could not be subjected to different rates of taxation

[†] From the Judgment and Order dated 8-9-2000 of the Andhra Pradesh High Court in Writ Petition No. 19304 of 1996 : (2001) 121 STC 201

Court Cases 588

(Petitions)

(BEFORE H.K. SEMA AND DR. AR. LAKSHMANAN, JJ.)

BOMBAY DYEING & MFG. CO. LTD. (1) v. BOMBAY ENVIRONMENTAL ACTION GROUP

Petitioner;

a

BOMBAY ENVIRONMENTAL ACTION GROUP AND OTHERS

Respondents.

SLPs (C) No. 23040 of 2005[†] with Nos. 23500, 24418, 23607, 23609, 23616, 23632, 23700, 23794, 23810, 23815, 26193, 26088, 26089, 25000 of 2005, decided on January 13, 2006

b

Constitution of India — Arts. 136, 32 — Sick textile mills in Bombay — Sale of lands of — Interim order passed in *Bombay Dyeing (1) case*, (2006) 1 SCC 586, modified — Auction-purchasers of lands belonging to National Textile Corporation permitted to create third-party rights and/or raise constructions on said lands, subject to informing such third parties that rights created in their favour would be subject to ultimate decision in these petitions

c

Bombay Dyeing & Mfg. Co. Ltd. (1) v. Bombay Environmental Action Group, (2006) 1 SCC 586, modified

D-M/33757/C

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Chronological list of cases cited

1. (2006) 1 SCC 586, *Bombay Dyeing & Mfg. Co. Ltd. (1) v. Bombay Environmental Action Group*

588f-g

ORDER

1. Mr Arun Jaitley, learned Senior Counsel made his arguments from 2.00 p.m. to 2.25 p.m. Thereafter, Dr. Rajeev Dhavan, learned Senior Counsel made submissions up to 2.40 p.m. Thereafter, Mr Mukul Rohatgi, learned Senior Counsel made his submissions up to 2.50 p.m. Mr F.S. Nariman, learned Senior Counsel made submissions from 2.50 p.m. to 3.10 p.m. Mr T.R. Andhyarujina, learned Senior Counsel made his submissions for ten minutes.

e

2. Arguments concluded. Judgment reserved. Written submissions, if any, to be filed by Monday, 16-1-2006.

3. After hearing the learned counsel appearing on behalf of the petitioners and learned counsel appearing on behalf of the writ petitioner-respondents, the interim order dated 14-12-2005¹, passed by us, is modified to the extent that the petitioners concerned i.e. those who are auction-purchasers of the lands belonging to National Textile Corporation and are otherwise covered by clause (e) of para 329 of the judgment of the High Court, shall be entitled to create third-party rights and/or raise constructions subject to the condition that before creating such rights the third parties should be informed that the same shall be subject to the ultimate decision of these petitions.

f

g

Court Masters

[†] From the Judgment and Order dated 17-10-2005 in WP No. 482 of 2005 of the High Court of Bombay

h

¹ *Bombay Dyeing & Mfg. Co. Ltd. (1) v. Bombay Environmental Action Group*, (2006) 1 SCC 586

(2006) 1 Supreme Court Cases 589

(BEFORE H.K. SEMA AND DR. AR. LAKSHMANAN, JJ.)

STATE OF RAJASTHAN AND ANOTHER

Appellants;

a

Versus

MOHD. AYUB NAZ,

Respondent.

Civil Appeal No. 939 of 2003[†], decided on January 3, 2006

b

A. Service Law — Misconduct — Absenteeism — Punishment for — Proportionality of — Dismissal from service if, on facts, justified — Respondent employee remaining absent from service without intimation for about three years — After disciplinary enquiry respondent dismissed from service in accordance with R. 86(3) of State Service Rules, which provided for dismissal for wilful absenteeism exceeding one month — High Court despite finding that factum of absence of three years was an admitted fact, reducing punishment of dismissal to compulsory retirement with all retiral benefits — Unsustainability — Held, High Court committed a grave error in doing so — Order of removal from service is the only proper and proportionate punishment to be awarded to respondent employee who was wilfully absent for three years without intimation to the Government — R. 86(3) of State Service Rules is proved against him and therefore he was rightly removed from service — Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — R. 86(3) — Applicability — Labour Law

c

d

B. Service Law — Penalty/Punishment — Quantum of — Scope of judicial review — Held, role of administrative authority is primary and that of court is secondary, to be exercised only on well-settled *Wednesbury* principles

e

Om Kumar v. Union of India, (2001) 2 SCC 386 : 2001 SCC (L&S) 1039; *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44 : AIR 1996 SC 484; *V. Ramana v. A.P. SRTC*, (2005) 7 SCC 338, followed

Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA), referred to

f

C. Service Law — Penalty/Punishment — Quantum of — Scope of judicial review — Relief that may be granted by court (Supreme Court) — Remand to administrative authority for fresh decision as to quantum of punishment or final disposal — There having been a long delay between initiation of disciplinary proceedings against respondent and disposal of proceedings by Division Bench of High Court (about twenty years), held, in such cases, Supreme Court can substitute its own view as to quantum of punishment — Punishment of removal from service for wilful absenteeism without intimation, imposed by disciplinary authority, restored by Supreme Court — Labour Law

g

B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44 : AIR 1996 SC 484, followed

D. Service Law — Pay — No work no pay — Applicability of principle of — Absenteeism — Held, following *T.S. Kelawala case*, (1990) 4 SCC 744,

h

[†] From the Judgment and Order dated 13-12-2001 of the Rajasthan High Court in DB Civil Special Appeal No. 1073 of 2001

deliberate abstention from work, whether by resort to strike or go-slow or any other method, legitimate or illegitimate, resulting in no work for the whole day or days or part of a day or days, will entitle management to deduct pro rata or otherwise, wages of participating workmen, notwithstanding absence of any stipulation in contract of employment or any provision in service rules, regulations or standing orders — Therefore, a government servant who has wilfully been absent for a period of about three years has no right to receive monetary/retiral benefits for the period for which he was absent (Paras 16 and 18)

Bank of India v. T.S. Kelawala, (1990) 4 SCC 744 : 1991 SCC (L&S) 170 : (1991) 15 ATC 747, followed

Syndicate Bank v. K. Umesh Nayak, (1994) 5 SCC 572 : 1994 SCC (L&S) 1197 : (1994) 28 ATC 146, relied on

D-M/TZ/33683/CL

Advocates who appeared in this case :

Aruneshwar Gupta and Navin Singh, Advocates, for the Appellants;
Surya Kant, Vinay Garg, Vivek Sharma, Neeraj Sharma and Vishal Sharma, Advocates; for the Respondent.

Chronological list of cases cited

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1. (2005) 7 SCC 338, <i>V. Ramana v. A.P. SRTC</i>	595e-f
2. (2001) 2 SCC 386 : 2001 SCC (L&S) 1039, <i>Om Kumar v. Union of India</i>	593f-g
3. (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44 : AIR 1996 SC 484, <i>B.C. Chaturvedi v. Union of India</i>	594c, 594f-g
4. (1994) 5 SCC 572 : 1994 SCC (L&S) 1197 : (1994) 28 ATC 146, <i>Syndicate Bank v. K. Umesh Nayak</i>	596f
5. (1990) 4 SCC 744 : 1991 SCC (L&S) 170 : (1991) 15 ATC 747, <i>Bank of India v. T.S. Kelawala</i>	596a
6. (1948) 1 KB 223 : (1947) 2 All ER 680 (CA), <i>Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.</i>	595g

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J.— The above appeal arises from the final judgment and order dated 13-12-2001 passed by the High Court of Rajasthan in Division Bench (Civil) Special Appeal No. 1073 of 2001 wherein the appeal filed by the State of Rajasthan was dismissed by the High Court by a non-speaking order.

2. The respondent herein joined the services of the Government of Rajasthan in the Cooperative Department. He was promoted as UDC in March 1965. He applied for 3 days' leave while he was working as UDC. According to him, he became sick and could not attend the office for the period from 9-1-1978 to 19-1-1981. He was charge-sheeted under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. The enquiry was held and the respondent attended the enquiry. It is his further case that he was not allowed to join duty even though he was marking his presence from 13-8-1984 to 23-8-1984. His services were terminated by way of publication in newspaper *Dainik Navjyoti* dated 27-8-1984. He filed the appeal which was dismissed vide order dated 8-3-1988. It is also his case that notice which was sent to the respondent was deliberately sent to a wrong

address. Aggrieved against the orders dated 15-11-1984 and 8-3-1988, the respondent filed a writ petition in the High Court in the year 1991 i.e. after a gap of about 3 years.

3. The learned Single Judge of the High Court though endorses that the respondent did remain absent for about 3 years and that there was no satisfactory explanation to justify the absence of 3 years, still proceeded to reduce the punishment of removal to compulsory retirement with consequential retiral benefits. It is useful to reproduce the concluding portion of the order passed by the learned Single Judge which is as follows:

"However, it goes without saying that the petitioner remained absent for about 3 years. He was asked time and again to join duties. There are hardly any medical certificates placed on record. Even if the enquiry would have been conducted in accordance with law after giving proper opportunity, the admitted fact of absence was borne out from the record and in such situation, in my opinion, even if the petitioner would not have been present in the enquiry, it would not have made any difference at all as the petitioner himself has admitted that he was absent for about three years for the period mentioned above though the only circumstance which he could have brought on record was his justification for remaining absent or producing the medical certificate which was in any case not attached with the leave applications and in such situation, he could have prayed for some lesser punishment.

Viewing all the aspects of the case and in the circumstances, in my opinion for the reason that he has put in already 18 years of service, a lesser punishment could have been imposed. It is a fit case where in view of the above circumstances, instead of reinstatement in service, the lesser punishment of compulsorily retiring the petitioner can be passed and he can be retired as if he has qualified the minimum service to obtain retiral benefits which may be available to him.

It is a fit case where in view of the above circumstances, the petitioner can be deemed to have retired after seeking of service of 20 years with all retiral benefits, which may be available to him. With the abovesaid observations, the writ petition is disposed of."

4. The Division Bench in the letters patent appeal refused to interfere and the appeal filed by the appellant was dismissed *in limine*. The order passed by the Division Bench in the letters patent appeal reads as follows:

"The only grievance made out by the learned counsel for the appellants is that the direction of the learned Single Judge for giving a lesser penalty to the respondent was not called for. We find no reason to interfere. The appeal fails and is dismissed."

5. Aggrieved by the above judgment, the State has come in appeal before this Court. We heard Mr Aruneshwar Gupta, learned counsel for the appellant and Mr Surya Kant, learned counsel for the respondent.

6. Mr Aruneshwar Gupta, learned counsel for the appellant, submitted that in order to mitigate rampant absenteeism and wilful absence from

service without intimation to the Government, Rule 86(3) was inserted in the Rajasthan Service Rules which contemplated that if a government servant remains wilfully absent for a period exceeding one month and if the charge of wilful absence from duty is proved against him, he may be removed from service. Arguing further, learned counsel submitted that in this case the person has wilfully been absent for a period of about 3 years and this fact is not disputed even by the learned Single Judge of the High Court. Still the learned Single Judge has interfered in the punishment of removal from service and replaced it with compulsory retirement with all consequential benefits. He would further submit that the doctrine of proportionality is not applicable while deciding the quantum of punishment as it acts as the Court, acts as a secondary review and that the Court can only intervene if there is any breach of Wednesbury principle which is secondary and not primary. It was further submitted that the High Court cannot interfere with the decision of imposing punishment once the High Court finds the finding of the delinquent being absent for a period of 3 years as correct. It was further stated that the High Court cannot reduce the punishment even if it finds that the delinquent had committed an act which warranted a particular imposition of penalty and commission of that act is not being assailed by the High Court in its decision. Thus, he submitted that the High Court without any justifiable reason interfered with the decision of the disciplinary authority and affirmed by the Appellate Authority simply on the basis that facts and circumstances warrant a lesser punishment. He would also further submit that the learned Single Judge has erred in coming to the conclusion that no proper opportunity of hearing was given to the respondent during the disciplinary proceedings. In fact, the respondent was given ample opportunity of hearing including paper publication but the respondent failed to avail of the same.

7. Mr Surya Kant, learned counsel appearing for the respondent, submitted that the respondent was deprived of attending the enquiry proceedings without any fault on his part and that he was not allowed to sign the attendance register and not allowed to work. Supporting the finding of the learned Single Judge, the learned counsel submitted that the learned Single Judge, after according the finding in favour of the respondent, was right in passing the impugned order on the basis of which the respondent was entitled to reinstatement with all back wages. But the total relief was not granted and that the learned Single Judge has granted the lesser relief to the respondent. Even from the judgment and enquiry report, it is borne out that the respondent was absent on medical grounds and this situation cannot be treated as wilful absence from duty and that the High Court has not given a lesser punishment but in fact only a lesser relief and that the High Court after holding on merit that the removal order cannot be sustained instead of reinstatement with full back wages lesser relief of compulsory retirement has been granted and, therefore, the order passed by the learned Single Judge and as affirmed by the Division Bench does not call for any interference. It was further submitted that considering the 18 years' period of service a lesser

punishment has been imposed which does not call for any interference. Thus the present civil appeal raises the following questions of law:

- (a) Whether the High Court can interfere with the decision of imposing punishment once the High Court finds that the finding of the delinquent being absent for a period of 3 years is correct;
- (b) Whether the High Court is right in converting the punishment of removal into compulsory retirement with consequential retiral benefits after endorsing that the respondent did remain absent for about 3 years and that there was no satisfactory explanation to justify the absence of 3 years.

8. We have carefully gone through the pleadings, annexures filed along with this appeal and the judgments passed by the High Court.

9. Absenteeism from office for a prolonged period of time without prior permission by government servants has become a principal cause of indiscipline which has greatly affected various government services. In order to mitigate the rampant absenteeism and wilful absence from service without intimation to the Government, the Government of Rajasthan inserted Rule 86(3) in the Rajasthan Service Rules which contemplated that if a government servant remains wilfully absent for a period exceeding one month and if the charge of wilful absence from duty is proved against him, he may be removed from service. In the instant case, opportunity was given to the respondent to contest the disciplinary proceedings. He also attended the enquiry. After going through the records, the learned Single Judge held that the admitted fact of absence was borne out from the record and that the respondent himself had admitted that he was absent for about 3 years. After holding so, the learned Single Judge committed a grave error that the respondent can be deemed to have retired after rendering of service of 20 years with all retiral benefits which may be available to him. In our opinion, the impugned order of removal from service is the only proper punishment to be awarded to the respondent herein who was wilfully absent for 3 years without intimation to the Government. The facts and circumstances and the admission made by the respondent would clearly go to show that Rule 86(3) of the Rajasthan Service Rules is proved against him and, therefore, he may be removed from service.

10. This Court in *Om Kumar v. Union of India*¹ while considering the quantum of punishment/proportionality has observed that in determining the quantum, rôle of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor has any irrelevant fact been taken into account nor any illegality committed by the authority nor was the punishment awarded shockingly disproportionate. The punishment was awarded in the instant case after considering all the relevant materials, and,

therefore, in our view, interference by the High Court on reduction of punishment of removal was not called for.

11. It was argued by learned counsel for the respondent that this Court while reviewing punishment and if it is satisfied that the *Wednesbury* principles are violated, it has normally to remit the matter to the administrative authorities for a fresh decision as to the quantum of punishment. We are unable to countenance the said submission. In the instant case, the disciplinary proceedings were initiated against the respondent in the year 1981 and the Division Bench disposed of the LPA only in December 2001. Therefore, there has been a long delay in the time taken by the disciplinary proceedings and in the time taken in the courts and, therefore, in such rare cases, this Court can substitute its own view as to the quantum of punishment.

12. In this context, we can usefully refer to *B.C. Chaturvedi v. Union of India*² (three Judges) wherein this Court held thus: (AIR p. 484)

“*Ramaswamy, J. for himself and B.P. Jeevan Reddy, J.*—Disciplinary authority, and on appeals, Appellate Authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/Appellate Authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.” (SCC p. 762, para 18)

13. Therefore, we do not propose to issue a direction to the disciplinary/Appellate Authority to reconsider the penalty imposed. As pointed out by this Court in the above judgment and in order to appropriately mould the relief and to shorten the litigation, we ourselves impose the punishment of removal from service which was imposed by the disciplinary authority in the instant case which, in our view, is the appropriate punishment.

14. This Court in *B.C. Chaturvedi v. Union of India*² further held that the Court/Tribunal cannot interfere with the findings of fact based on evidence and substitute its own independent findings and that where the findings of the disciplinary authority or the Appellate Authority are based on some evidence the Court/Tribunal cannot reappreciate the evidence and substitute its own findings. Observing further, this Court held that judicial review is not an appeal from a decision but a review of the manner in which the decision is made and that power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the

² (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44 : AIR 1996 SC 484

authority reaches is necessarily correct in the eye of the Court. This Court further held as follows: (SCC p. 759, paras 12-13)

When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the Appellate Authority has coextensive power to reappreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case.

15. *V. Ramana v. A.P. SRTC*³ (*Arijit Pasayat and H.K. Sema, JJ.*): the challenge in the above matter was to the legality of the judgment rendered by a Full Bench of the Andhra Pradesh High Court holding that the order of termination passed in the departmental proceedings against the appellant was justified. This Court in para 11 has observed thus: (SCC p. 348, para 11)

“11. The common thread running through in all these decisions is that the court should not interfere with the administrator’s decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury case*⁴ the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.”

³ (2005) 7 SCC 338

⁴ *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)

File in Court on.....
21/2/08
Court Officer.

5

Filed By

Gunpata Bhawanik.
Attorney for the
applicant.
20.2.08

**Before the Central Administrative Tribunal,
Guwahati Bench**

O.A. No.33/2006

Written Submissions of the Applicant

May it please Your Lordships

The applicant has already filed a written synopsis and submissions on the basis of pleadings and document to substantiate his case. Now in continuation thereof the applicant begs to high-light some relevant points necessary for adjudication of the issues involved, viz.

1. Applicant's endeavor to obtain Sick-Memo/Duty-Fit-Certificate:-

In Para 4.4 and 4.5 and in Annexure-Q series (page-26 to 36) to the applicant's rejoinder, it has been urged to the railway authority many-many times to issue DFC enabling the applicant to resume duty but he was disappointed. Letter dated 24.2.93 (Annexure-Q₁ at page-27) Sr.DMO/TSK did not issue D.F.C. and same position was repeated number of times.

Hon'ble Tribunal by order dated 27.2.2004 (page-42 in O.A.) modified the order of Disciplinary Authority to submit medical papers up to 20.4.1994 so the applicant could resume duty.

2. Regarding the charge of unauthorized absence the applicant has been inflicted punishment by way of demotion to initial pay-scale although by furnishing

medical papers and acceptance thereof by the authority allowing the applicant to resume duty, the said period cannot be treated as unauthorized.

?

Duty find
Certi'ficate

3. After 20.4.1994 and till 30.6.2000, when appellate authority modified punishment by concluding disciplinary proceeding, respondent authority by their action of not issuing D.F.C. to the applicant virtually restrained him to resume duty. The authority did not formulate any charge treating this period as unauthorized absence. So this period is to be treated as deemed suspension and the applicant is entitled to monetary benefit for the entire period till his resumption to duty.

?

4. From 30.6.2000 till resumption of duty on 25.5.2004 this period was spent during pending of O.A. No.33/02. This period was neither treated as unauthorized nor any charge-sheet alleging mis-conduct was issued for this period.

OA 33/02

Hon'ble Supreme Court in AIR 1991 SC 2010 held - "Employee not even visited with punishment of censor-cannot be deprived of benefit of salary etc. - Principle of 'no work no pay' is not applicable to such persons".

5. In the written argument of the respondents it has been repeatedly mentioned that DRM(P)/TSK passed several letters during 30.6.88 to 16.5.2001 repeatedly asking the applicant to report to ADMO/ Makum Jn. or DMO/TSK for his medical examination (vide Para 10);

and that after long five years the applicant approached the respondents by his letter dated 2.4.93 to issue sick-memo for obtaining DFC from the Railway doctor (vide Para 5). In this connection the applicant clarified the position in his pleadings and further submits that in pursuant to the order dated 20.4.94 the applicant furnished medical papers for the period up to 20.4.94 and upon consideration thereof the applicant was allowed to resume duty so the respondent authority is estopped to re-open this chapter again.

6. That in the written argument filed by the respondents it has been mentioned in the concluding para 22 imputing wrong representation unauthorized absence for whole period and also raised the question of limitation and Res-Judicata regarding payment of Back-Wage etc. but failed to substantiate as to how and what period is to be treated as unauthorized absence of the applicant in absence of any charge/proceeding to that effect except a small period in 1988. The question of limitation and Res-Judicata are also not maintainable under the facts and circumstances of the case.

7. That the applicant under the facts and circumstances of the case and in view of his long suffering due to apathetic attitude of the respondent authority, the Hon'ble Tribunal may kindly consider the whole matter under the provision of law and equity and grant relief to the applicant as prayed for in the Original Application.

Gurupada Bhawanish.
Advocate
for the applicant.
20/2/08.

Central Administrative Tribunal
Guwahati Bench
GUWAHATI

20.11.07

20.4.1994
duty 25.4.2004 to

20.4.94 - 5

12.6.2000 - Dimmed

04 290/2003

1.8.2000 = lowest
scale.

27.5.2004 = Resumed
duty

Central Administrative Tribunal
Guwahati Bench
GUWAHATI

36

16.11.95 - GA - 65
Att

18.11.95 - DMO

Resp.

Case is for
① Back wages

② - Resumption
of duty

290/2002 -

Period upto 1994

Central Administrative Tribunal
Guwahati Bench
GUWAHATI

37

has not been accepted
~~found~~ by medical
certification -

No certification produced
in compliance of Tribunal
orders -

None of the doctors -

No prescriptions
produced



Central Administrative Tribunal
Guwahati Bench
GUWAHATI

38

Tribunal

3.6.88 - 16.6.88

Sick leave

Unauthorized absence

~~30.6.88~~ / 16.6.88

Rly Code-5/0

No leave can be
regularised - Rly Bd.

Matter adjudic - matter
not sent to Rly Board

Private Doctors

Central Administrative Tribunal
Guwahati Bench
GUWAHATI

39

Certificate -

Para - 541 - - DFC -
Annual Duty Certificate

~~1132~~

Confidential
Assistant - Private
doctor to Rly Certificate

OA 290/2002 - Division.

Ons conduct -
Unauthorized absence -

Long young Service
Habitual absentee
No bank wages.

Central Administrative Tribunal

Guwahati Bench

GUWAHATI

1994 - to Present

40

20/2000 -

may - 2004 - joined

1994 - 2000 -

How to be treated

AIR 1991 SC -

2010 -

Janakaram

41

Date-Chart showing the chronological events of Sri Biswanath Banerjee, Confidential Steno under Divisional Mechanical Engineer, N. F. Railway, Tinsukia in connection with the case OA No. 33 of 2006 in CAT/GHY.

Date	Status & Particulars	Remarks	Reference of Annexure/page
30/5/88, 31/5/88 to 2/6/88	Applied for 3 days LAP & one day CCL on 30/5/88	Sanctioned by the Controlling officer	
3/6/88 to 16/6/88	Remained unauthorized absent	No medical certificate or sick memo submitted.	
17/6/88	Applicant informed that he had been suffering from Homeopathic Aggravation	Do	
23/6/88	Requested from his residence to grant him LHAP from 18/6/88 to 24/6/88.	Did not mention anything regarding his unauthorized absence from 3/6/88 to 17/6/88.	
30/6/88, 18/11/88, 20/12/88, 29/8/91, 8/11/95, 16/11/95,	Letters issued to applicant to report for duty.		Annexures 1 to 5 at pages 10 to 14 of the Written Argument.
28/12/88	ADMO/N. F. railway/Makum Junction examined him at his residence and found him sick of Hypertension. But the applicant became hostile to take Allopathic medicine. so, he was not in Rly doctor's sick-list.	There was no system in the Rly of Homeopathic treatment at Tinsukia Division.	Annexure 6 at page 15 of Written Argument.
6/10/89	Disciplinary proceeding started by issuing chargesheet, as no response from applicant for resuming his duties or submitting medical memo was received by the Respondents.		Annexure 3 at page 21 of Objection Petition.
29/8/91 & 9/9/91	Applicant asked the Respondents for providing him Homeopathic treatment. Filed OA No 99/94 in CAT/GHY for providing him adequate medical treatment of Homeopathy and regularize his absent period till his resumption.	No medical certificate or Sick memo was produced. OA WAS DISMISSED ON 8/8/95 FINDING NO MERITS AND NO CAUSE OF ACTION.	Annexure 3 & 7 at pages 12 and 16 of written Argument.
12/3/93, 2/4/93	Applicant approached the Respondent for issuing sick-memo expressing his willingness for resumption but for some troubles faced by him.	No medical Certificate was produced in support of his sickness.	
16/11/95	Letter for resumption for duty was issued by the Respondent.		Annexure 5 at page 23 of Objection Petition.
20/11/95	Applicant wrote for special Medical Examination.	No medical certificate was produced.	Annexure 6 at page 24 of Objection petition.

Date	Status & Particulars	Remarks	Reference of Annexure/page
4/2/2000	Order in OA No. 60/97 passed	CAT directed the applicant to submit representation to the Respondents.	
15/3/2000	Order Against CAT In OA No 60/97 Applicant Filed Writ Petition (C) No. 1166 of 2000 in Gauhati High Court for setting aside CAT's order.	High Court disposed the Writ Petition directing the Respondents to finalize DAR proceedings within time frame.	
12/6/2000	Punishment of Removal from service was imposed by Disciplinary Authority for violation of Rly. Service Conduct Rules.		
1/8/2000	Appellate Authority considered Applicant's Appeal dated 1/8/2000 and reduced punishment of removal from service to the lowest stage in his present pay scale and directed him to produce medical certificates for resumption to duty.	But Applicant filed OA No. 290/2002 in CAT.	
27/2/04	Order passed in OA No. 290/2002 for producing all medical certificates from 1988 till filing of OA No. 99/94.	Applicant submitted medical certificates mostly of 1993, but no medical certificate submitted for 1988 for remaining his unauthorized absence.	Annexure 20 at page 29 (Five pages) of Written Argument.
18/3/2004	Applicant submitted the letter enclosing medical certificates, but no medical certificate submitted for 1988.		
12/4/2004	Applicant approached for Duty Fit Certificate for his resumption on re-instatement.		
27/5/04	Applicant joined on his duty on re-instatement in service.	TOTAL ABSENT PERIOD 15 YEARS 11 MONTHS 17 DAYS.	Annexure 17 at page 26 of Written Argument.

OA

W.P. 1166/2000

OA-290

OA 99/94

Place: - Guwahati

Date: - 08/02/08

Filed by


 (K. K. Biswas) 8/2/08
 Advocate/CAT

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

OA NO. 33 of 2006

Sri Biswanath Banerjee Applicant

-VS-

Union of India and others Respondents.

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IN THE MATTER OF WRITTEN ARGUMENT BY THE RESPONDENTS.

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**Place: - Guwahati
Date: - 08/02/08**

Filed by
K. K. Biswas
(K. K. Biswas)
Advocate/CAT 8/2/08

*Recd
S. P. Bhowmik -
Adm. Secy.
8/2/08
11:15 AM*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
AT GUWAHATI.

O.A.No.33/2006.

Sri Bishwanath Banerjee.Applicant.

-Vrs-

Union of India and Ors.Respondents.

IN THE MATTER OF :

WRITTEN ARGUMENT ON BEHALF OF THE
RESPONDENTS.

MOST RESPECTFULLY SHEWETH :

That the salient points of the Argument for contesting the case by the Respondents are as follows:

1. That the answering Respondents have gone through the copy of the SYNOPSIS (unsigned) filed by the above named Applicant's learned Counsel on the last date of hearing on 28.11.07 for and on behalf of the Applicant and understood the contents thereof. Save and except the statements which have been admitted herein below or those, which are borne on records, all other averments/allegations/submissions made in the application and the Re-joinder and also in the Synopsis by the Applicant, are hereby emphatically denied and the Applicant is put to the strictest proof thereof.

2. That the Applicant Sri Bishwanath Banerjee while working as Confidential Steno in the Divisional Mechanical Engineer at Tinsukia applied for 3 days LAP with effect from 31.5.88 to 2.6.88 in continuation of one day CCL on 30.5.88 in lieu of 29.5.88 which was sanctioned by the Competent authority on 31.5.88. After availing of the said sanctioned leave the Applicant was to resume his duties on 3.6.88; but instead he absented himself unauthorisedly from duty and did not communicate any kind of information with regard to his unauthorized absence till 16.6.88. On 17.6.88 Sri Banerjee informed that he had been suffering from Homeopath aggravation ailment but did not feel it necessary to obtain sick memo

Contd....P/2..as per...

44
Filed by:
N.K. Banerjee
08/2/08
Advocate

বিশ্বনাথ বানার্জী
Sr. Divisional Personnel Officer
পূ.সী. রেভে, তিনসুকিয়া
N.F. Rly. TINSUKIA

11211

45
वरिष्ठ कर्मचारी अधिकारी
Sr. Divisional Personnel Officer
पू.सो. रेलवे, तिनसुकिया
N.E. Rly. TINSUKIA

as per Railway Rules which in his working capacity as Confidential Steno was very much within his knowledge, from the Controlling Officer. The Applicant Sri Banerjee in a subsequent letter dated 23.6.88 addressed to Divisional Railway Manager (M), N.F.Railway, Tinsukia requesting from his residence to grant him LHAP from 18.6.88 to 24.6.88 without mentioning anything about his unauthorized absence from 3.6.88 to 17.6.88. Even after informing by the DRM(P), Tinsukia on 30.6.88 that disciplinary proceedings were to be initiated as per Rules against the Applicant in case he failed to resume his duty or communicate anything and/or submit a medical sick memo for his remaining unauthorized absent, the Applicant kept silent.

Advocate
8/10/88

3. That finding no response from the Applicant in regard to resuming his duty or submitting medical certificate from doctor, Railway or private, for his unauthorized absence disciplinary proceedings were started on 6.10.89.

4. That during the pendency of the DAR proceeding the Applicant filed O.A. No.99 of 1994 in CAT, Guwahati for providing him adequate effective medical treatment of Homeopathy and regularize his absent period from 3.6.88 till his resumption. Finding no merits in the case, the Hon'ble Tribunal dismissed the O.A. on 8.8.1995.

OA
99/94

5. That after a period of long five years the Applicant approached the Respondents vide his letter dated 2.4.93 to issue sick-memo for obtaining necessary "Duty Fit Certificate" from the Railway Doctor.

6. That without waiting for the reply of his above letter the Applicant approached the Hon'ble CAT and filed O.A No.99/94 which according to the Administrative Tribunals Act was not lawful and dismissed without having any merits in it.

7. That the Hon'ble Tribunal's observation in the said O.A. were as under :

"NEITHER ANY LIMITATION NOR ON MERITS ANY RELIEF

Contd... P/3... can be...

11/311

CAN BE GRANTED ON THE FRAME OF THIS APPLICATION WHICH DOES NOT DISCLOSE ANY CAUSE OF ACTION OR A GRIEVANCE WHICH CAN BE REDRESSED UNDER THE LAW."

8. That against the order of his removal from service the Appellate Authority considered his appeal dated 1-8-2000 and reduced punishment of removal from service to the penalty of putting him to the lowest stage in his present Pay-Scale and directed him to obtain medical certificate for resumption of duty. But the Applicant without adhering to the Respondents' instructions filed another O.A. in CAT under No.290/2002.

9. That in compliance with the orders of the Hon'ble Guwahati High Court in Writ Petition No.1166(C) of 2000 which was disposed on 15.3.2000, to finalise the disciplinary proceedings, the Disciplinary Authority imposed punishment of removable from service with effect from 12.6.2000 for violation of the Railway Service Conduct Rules.

10. That the contention of the application that he was not allowed to resume his duty was not at all true. The DRM(P)/Tinsukia passed several letters dated 30.6.1988, 18.11.1988, 20.12.1988, 29.8.1991, 16.11.1995, 7.12.2000, 22.1.2001, 16.5.2001 repeatedly asking the applicant to report to ADMO/Makum Junction or DMO/Tinsukia for his medical examination. But he did not respond to any of the above letters. As per Respondents' advice the ADMO/Makum Junction examined him at his residence on 28.12.88 and found him sick, but the Applicant was not willing to take any treatment or medicine from Railway Hospital, hence, he was not in the sick-list of the Railway Doctor. The Applicant insisted for rendering him Homeopathic treatment which at Tinsukia the Railway had no facility. The Applicant was advised that he might continue the Homeopathic treatment according to his will, even from a private Registered Medical Practitioner, but in that case he was to inform his Controlling Officer regarding his sickness and submit the medical certificate in support of his sickness and asked for the sick-memo from the concerned Railway Doctor for regularizing his unauthorized

Contd.....P/4...absence...

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290/02

Advocate

11411

27
वरिष्ठ कर्मचारी अधिकारी
Sr. Divisional Personnel Officer
ए.सी. रेलवे, तिजुकिया
N.E. Rly. TINSUKIA

absence from duty. This part of compliance on the part of the Applicant had never been complied with till the orders of the Hon'ble CAT passed on 27.2.2004 in O.A. No. 290/2002.

^{above letters,}
Copies of Railway's doctor's Report & the Applicant's letter dated 9.9.91 for providing him Homeopathic treatment are enclosed as ANNEXURES-1 to 7

11. That it is pertinent to mention that it is not a fact that the Applicant had never undergone in any Allopathic treatment, rather the certificates produced by him after the Hon'ble CAT's order in O.A No. 290/2002 and also on earlier and subsequent occasions are mainly and mostly of the Certificates of Prescriptions and diagnosis and test of the Allopathic system by which his personal case has become voluminous; and a few of such Allopathic certificates of his treatment taken by himself are submitted herewith as ANNEXURES- 8 to 16.

12. That it is only after the order passed by the Hon'ble Tribunal in O.A. No.290 of 2002 passed on 27.2.04 the Applicant submitted his application dated 18.3.04 with medical certificates for resumption of his duty and after following the procedural formalities and Railway Rules he was directed to resume his duty which he joined on 27.5.2004.

A copy of his joining report though submitted earlier along with the written statement is again submitted herewith as ANNEXURE 17

13. That being in a confidential capacity of the Respondent's establishment it was very well-known to the Applicant that for a government employee and according to the Service Conduct Rules he was to maintain discipline, punctuality, integrity, good behavior, good character, diligence and conscientiousness. But he on the contrary violated all the Rules of Service Conduct and accordingly for remaining his long unauthorized absence he was taken up under the Disciplinary and Appeal Rules for the Railway Servants 1968, and was punished according to the gravity of his offence, though eventually in accordance with the orders of the Hon'ble CAT he was taken into service by his

Contd.....P/5...reinstatement....

W. D. S. Adv. Secy.

reinstatement which he had resumed on 27.5.2004 mentioned in the foregoing para.

14. That the crux of the whole case of the Applicant for his long unauthorized absence has been detailed in the relevant portions of the objection petition filed by the Respondents under Paras-1.3,1.4(a,b,c), 1.6,1.9, 2, 3, 7, 8, 9.

15. That the Applicant ^{under para-8} in his Re-joinder of the Respondent's Written Statement mentioned that the Respondents did not know what the term 'misconduct' meant. The Respondents respectfully submit that the word "Misconduct" according to the Black's Legal Dictionary means:

" Misconduct. A Transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, wilful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness. Term "misconduct" when applied to act of attorney, implies dishonest act or attempt to persuade court or jury by use of deceptive or reprehensible methods. People v. Sigal, 249 C.A. 2d. 299.57 Cal.Rptr. 541,549. Misconduct, which renders discharged employee ineligible for unemployment compensation, occurs when conduct of employee evinces wilful or wanton disregard of employer's interest, as in deliberate violations, or disregard of standards of behavior which employer has right to expect of his employees, or in carelessness or negligence of such degree or recurrence as to manifest wrongful intent or evil design. Wilson v. Brown, La.App., 147 So.2d 27,29. See also Wanton misconduct."

Thus, if remaining unauthorized absence for years together does not tantamount to Misconduct then what the Misconduct is! In this connection it is humbly submitted that the Hon'ble Supreme Court in the undermentioned Case-Laws repeatedly mentioned that prolong unauthorized absence is a serious Misconduct.

16. That in this connection it is pertinent to mention further that after remaining unauthorized absence he made the first communication to his

Contd.....P/6...Disciplinary....

Mishra's Advocate

11611

49

वरिष्ठ कागजात अधिकारी
Sr. Divisional Personnel Officer
पू.सो. रेलवे, तिरागुकिपा
N.E. Rly. TINSUKIA

Disciplinary Authority, the official of the Respondents, only ^{on} 12.3.93 followed by 2.4.93 after completion ^{of} complete 4 years, which being a Confidential capacity of his employment was very well known to him that it was irregular, unfair and unlawful on the part of any government employee.

Copies of the above letters are annexed as ANNEXURES 1 & 19

17. That it is submitted that in stead of joining his duty and performing his services he was rather very much inclined to go on fighting the Court cases one after another for the reasons best known to him, which normally a man of ordinary prudence shall not be inclined to do so. The series of Court Cases have been furnished in Tabular form both in the Written Statement and also in the Objection Petition. ^{filed by him}

18. That the averments embodied in the objection petition filed by the Respondents against the Re-joinder of the Applicant in the instant O.A. were neither challenged nor countered. The submission of the SYNOPSIS filed on the previous date of hearing was an after-thought and only to safeguard his own whimsical actions and inactions for remaining unauthorized absence for more than one and half decades.

19. That according to the Industrial Employment (Standing Order Act, 1946), Para-14(3) of Schedule(1) of the Industrial Employment (standing Order), Central Rules, 1946, as construed for "willful insubordination or disobedience whether alone or in combination with others to any lawful and reasonable order of a Superior and according to (e) of the said Rule means "habitual absence without leave or absence without leave for more than 10 days"" warrants Misconduct on the part of the employee. In this connection it is humbly submitted that the Hon'ble Apex Court has time and again in the series of its decided cases have categorically and emphatically mentioned that remaining on unauthorized absence beyond a reasonable period for any reasons of whatsoever nature constitute serious offence of grave misconduct and liable for the loss of employment/service by dismissal, removal or compulsory retirement from service.

20. That it is humbly submitted that the Applicant was asked at the time of his

Contd.....P/7....resumption...

Subscribed
Advocate

वरिष्ठ कर्मचारी अधिकारी
Sr. Divisional Personnel Officer
पु.सो. रेलवे, ति. तु. क. य. त.
N.F. Rly. TINSUKIA

resumption of his duty that he was to produce all other medical certificate for remaining his unauthorized absence till his resumption so that period of his unauthorized absence from 18.6.88 to 26.5.2004 can be regularized by granting him leave due or as admissible as per Rules. Since he did not perform any work for the long 15 years 11 months 17 days so the question of his payment of the backwages does not arise on the settled law of "no work no pay". Leave salary or sick-leave pay is paid based on availability of leave at credit of the staff. If no leave is at credit the period is treated and/or regularized as leave without pay. The Applicant has not responded in submitting anything in support of his sickness and no application for regularizing and/or making the period of his absence regularized as per rules submitted by the Applicant and instead he has filed the subject O.A in this Hon'ble Tribunal which is awaiting adjudication. Since the matter still remains "subjudice" the treatment of his whole absent period from 18.6.1988 till his removal from service could not be settled as yet for non-co-operation of the Applicant. He has not submitted any medical certificate for 1988. Photo copy of his letter dt 18.3.04 is enclosed as Annexure - 20.

21. That apart from the above submissions, reiterating the earlier submissions of the Respondents made in their written statement and also the Objection Petition, the Respondents rely on the following References of the Railways' Codal Provision, Rules and the Case Laws.

RLY'S CODAL PROVISIONS

- (i) The Service Conduct Rule under Rule 3(i), (ii), (iii), Rule 3(23)(i), and (8) of the Railway Service Conduct Rules 1966.
- (ii) The Railway Servants' Discipline and Appeal Rules 1968.
- (iii) Rules 602 to 609 of the Indian Railway Establishment Code, Volume-I.
- (iv) Rules 541(1) & 542 of the Indian Railway Medical Manual, Volume-I.

The provisions under the said Rules are re-produced ad verbatim:

22. PRAYER.

That in the premises above, the Respondents respectfully pray that the O.A. has no merit at all and suffers from limitation, Res-Judicata, wrong representation and the like infirmities and therefore, does not deserve any consideration for payment of "Back-Wages" for the period he remained unauthorized absent and did not do any work for his employment and for the period he remained out of employment and for which in none of the Court cases filed by the Applicant the Hon'ble Courts/Tribunal made any order and is, therefore, the above O.A. liable to be dismissed.

-VERIFICATION-

I, Sri A. Narayanan S/O,.....aged about 38 years, at present working as Senior Divisional Personnel Officer, N.F.Railway, Tinsukia, do hereby solemnly affirm and state that the statements made in the paragraphs-2 to 14 are derived from the records and true to my knowledge and believe them to be true and the rest all are my humble and respectful submissions and I have not suppressed any material facts,

And I sign this Verification on this 7 th day of February, 2008, at

Place: Guwahati.

Date: 7-2-08.

A. Narayanan
SIGNATURE OF THE DEPONENT.

वरिष्ठ कार्मिक अधिकारी
Sr. Divisional Personnel Officer
पू.सी. रेलवे, तिनसुकिया
N.F. Rly. TINSUKIA

*M. B. ...
Advocate*

53

10

Annexure - I

190
RECD. WITH ACK. DUE

N. F. RAILWAY.

OFFICE OF THE
DIVISIONAL RAILWAY MANAGER (P)/TINSUKIA.

Tinsukia, dated : 30th June, 88.

No. ES/B/334,

To : Shri Biswanath Banerjee,
C/o. Shri Sudhir Ch. Banerjee,
Near Old Railway Health Unit,
Dighoi Road, P.O. Makum Junction,
Distt. Dibrugarh - 786 125.

Sub : Unauthorised absence.
---000---

It is observed that you applied for 3 days' LAP from 31.5.88 to 2.6.88 from your residence and thereafter absconding without any authority or any intimation to that effect.

You are hereby advised to report for duty immediately otherwise disciplinary action will be initiated against you.



Sudhanu
17/5/88
Divl. Mech. Engineer (C&N),
N. F. Railway, Tinsukia.

SC 21/30/88

attested
SC 21/30/88
Advocate

Recd. with A/O.

11
N. F. Railway.

Answer-2

No. ES/B/334

Office of the
Divl. Rly. Manager (P)/TSK
Dated. 20-12-88.

To

Shri Biswanath Banerjee,
C/O Shri Sudhir ch. Banerjee,
Near Old Railway Health Unit,
Digboi Road, P.O. Makum Jn.
Dist. Dibrugarh, 786125.

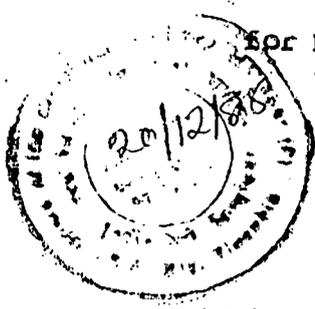
Sub: Unauthorized absence.

It is seen that you have been absenting w.e.f. 18.6.88 on grounds of illness without authority or without producing any medical certificate.

So, you are advised to report to ADMO/MJN or DMO/TSK for medical examination.

for Divl. Railway Manager (P)
N.F. Railway, Tinsukia.

Copy to: 1) ADMO/MJN
2) DMO/TSK.



for Divl. Railway Manager (P),
N.F. Railway, Tinsukia.

Handwritten signature
e/c
20/12/88

Handwritten notes:
attested
20/12/88
Advocate

(REGISTERED WITH A/D.)

Amuzawa 3

N.F. Railway.

DRM(P)/TSK's Office
Dt: 29-8-1991.

~~HarxBS/B/334~~
No. ES-B/334.

To
Shri- Biswanath Banerjee,
Confdt. Stone to DME/TSK.
C/o Shri- Sudhir Ch. Banerjee
Near old Rly. Health Unit, Digbel Road.
P.O. - Makum Janotien
Dist.- Tinsukia, (Assam).

Sub:- Resumption for duty.

You are absenting from duty unauthorisely w.e.f 3-6-88 and you were requested earlier also to report for duty vide this office letter No. ES-B/334 dt. 30-6-88, but you have not joined.

You are hereby given another chance to resume duty within one month from the date of issue this letter, otherwise action as per rules will be taken against you.

Please acknowledge receipt.

WAS 29/8
Divnl. Mechanical Engineer (O&W)
N.F. Railway/ Tinsukia.

e/c 29/8/91

29/8/91
29/8/91
29/8/91

Shri B. Banerjee
29/8/91
Associate

13

Annexure - 4
182

N.F.Rly/Insukta

Office of Divl. Rly. Manager(P),
N.F.Rly/Insukta
Dated -08.11.95

ES-13/334

To
Sr. DMO/TSKG

Sub:- Medical examination for duty fit certificate.

The following information are furnished below in respect of the under mentioned staff for arrangeing his medical examination and for issue of duty fit certificate if he is fit to resume duty:-

- 1. Name of the staff - Sri Biswanath Banerjee
- 2. Designation and Sta - Confdl Steno - TSK
- 3. Date of apptt - ~~16-7-72~~ 22-7-72
- 4. Place of working - Under DME/TSK
- 5. Medical category - C/1
- 6. Period of absence - 18-6-88 to till date.
- 7. Whether he produced PPMC: NO
- 8. Identification marks : one black mole on the left cheek.

The PPMC may be returned after doing the needful:-

for Divl. Rly. Manager(P)/
N.F.Rly/Insukta

C/C PA

21/11/95
5:00 P.M.

Subd
Advocate
8/108

14

Answer-5
184

NORTHEAST FRONTIER RAILWAY

OFFICE OF THE
DIVL. RAILWAY MANAGER (P).
TINSUKIA.

date. 16.11.95

No: ES-E/334

To

Shri Biswanath Banerjee,
Confidential Steno to DME/TSK
C/o Shri Sudhir Chandra Banerjee
Near old Rly. Health Unit
Digboi Road.

P.O. Makum Junction
Dist: Tinsukia (Assam)
Pins- 786 170.

r(P).

the
issue

Subs- P.P.M.C.

Since the ground of your unauthorized
absence from Rly. service arose on account of Medical
reasons, you are hereby advised to obtain a duty fit
certificate from a competent Railway Medical Officer in
order to resume duty.

For this you may collect forwarding memo
from this office and proceed to MS/IC/DBRT along with
necessary Medical Certificate/Documents from your side.

for Divl. Railway Manager (P).
N. F. Railway, Tinsukia.

- Copy to:- 1. DME/TSK
2. MS/IC/DBRT

for Divl. Railway Manager (P).
N. F. Railway, Tinsukia.

7c
Office of the
Divl. Railway Manager
Tinsukia

S.K.B.
Fried A. Day
16/11/95

Shri
16/11/95
Advocate

ek.

15

Annexure - 658

TRUE COPY

No. PAT/7/89

Date- 28-01-89

From DMO/MJN

To DRM (P)/TSK

Sub: Sri Biswanath Bannerjee.

Ref: Your Office L. No-ES/B/334 dated 21-11-88.

I have attended the above named staff at his residence at Makum on 28-12-88. I have examined him & found him to be suffering from Hypertension. He is not willing to take any allopathic medicine from Rly Health Unit to be referred to Hosp, DBRT. He is not in my sick list. This is for your information please.

Sd. Illegible

28-01-89
DMO/MJN/NFR

True copy of
the Annexure-6
placed below
Vire K...
8/1/88
H...state

Annexure - 6

85/15

Annexure - 6

Date: 28.12.89

No. PAT/7/89
From DMO/MJN

To DRN(P) / sk

Sub: Sri. Biswanath Banerjee
Ref: Your office L.No. ES/B/334 dated: 21.11.88

I have attended the above named staff at his residence at Makum on 28.12.88. I have examined him & found him to be suffering from Hypertension. He is not willing to take any allopathic medicine for Hb. unit or to be referred to MRS or to go to DRN. He is not in my tick list. This is for your information please.



28/12/89

DMO | MJN | MPR

Attended
28/12/88
M. K. Banerjee

16
TRUE COPY

Annexure - 7

To,
The Divisional Mechanical Engineer (C&W)
N.F. Railway, Tinsukia.

Sir,

Sub: - Resumption to duty.

Ref: - Your letter No. ES-B/334, dt. 29-08-91.

With profound respect and humble submission, I beg to inform you that I have received your above letter on 06/09/91 wherein your honour have mentioned that I have not joined duty in spite of your letter of even No. dt. 30/06/88. The reasons which had me to the absence have been explained in my defence to the charge sheet No. ES/B-334 dt. 06-10-89. You have appointed Enquiry Officer vide your order No. ES/B-334 dt. 29/08/91 to enquire into the charge of unauthorised absence against me.

2. Homeopathy is a recognized system of treatment practised all over India. There is no provision available of Homeopathy treatment in Rly. Hospitals of DBRT/TSK/MJN by the duly qualified Homoeopathist who can issue sick certificate. Had there been such provision, I could have produced sick certificate much earlier.

3. Vide your letter under reference, you have ordered me to join duty within Sept/91. I am also interested to join my duty, as for non-attending duty I have lost monetarily from Sept/88 to Sept/91 @ 1958.00 pm x 37 months = Rs. 72,446/- excluding annual increments, subsequent ADAS. But some discomfort disturbing me.

4. In view of above, I would request you cordially to inspect me in our house along with a Doctor who will examine me in your presence, and you will hear him and myself and thereafter form an independent opinion. Your presence is solicited because as a disciplinary authority you will decide the matter, for which your satisfaction is necessary and moreover on two occasions Rly. Doctors annoyed with me for my arguments.

With regards,

Dated, Makum Jn.
On 09/09/91

Yours faithfully

Sd/-

Biswanath Bannerjee
Comfedl. Steno/DME/TSK
N.F. Railway

True copy of
the Annexure - 7
placed below
W.P. Bannerjee
29/08/91
Advocate

16
Annexure - 7

13

To: The Divisional Mech. Engineer (C&W),
N.F.Rly., Tinsukia.

Sir,
Sub:- Resumption to duty.
Ref:- Your letter No. ES-B/334,
dt. 29/8/91.

With profound respect and humble submission, I beg to inform you that I have received your above letter on 6/9/91 wherein your honour have mentioned that I have not joined duty in spite of your letter of even No. dt. 30/6/88. The reasons which led me to the absence have been explained in my defence to the chargesheet No. ES/B-334, dt. 6.10.89. You have appointed Enquiry officer vide your order No. ES/B-334, dt. 29/8/91 to enquire into the charge of unauthorised absence against me.

2. Homoeopathy is a recognised system of treatment practised all over India. There is no provision available of Homoeopathy treatment in Rly. Hospitals of DBRT/TSK/MGN by the duly qualified Homoeopathist who can issue sick certificate. Had there been such provision, I could have produced sick certificate much earlier.

3. Vide your letter under reference, you have ordered me to join duty within Sept. 91. I am also interested to join my duty, as for non-attending duty I have lost monetarily from Sept. 88 to Sept. 91 @ 1953.00 p.m. x 37 months = Rs. 72, 446/- excluding annual increments, PLBs, subsequent ADAs. But some discomfort disturbing me.

4. In view of above, I would request you cordially to inspect me in our house alongwith a doctor who will examine me in your presence; and you will hear him and myself and thereafter form an independent opinion. Your presence is solicited because as a disciplinary authority you will decide the matter; for which your satisfaction is necessary and moreover on two occasions Rly. Doctors annoyed with me for my arguments.

With regards;

Yours faithfully;

Dated, Mathum In.
The 9/9/1991.

Biswanath Banerjee,
confdl. steno to DME/TSK,
N.F.Rly.

SA
16/9/91

Handwritten signatures and initials at the bottom right of the page.

To
DME (Power)
N. F. Railway/TSK

17

Annexure-8 62

Sir,

I have the honour to inform you that I was scheduled to resume duty on 16/8/83 after availing 15 days C.L. w.e.f. 27/7/83 which was duly sanctioned. Unfortunately, I have suffered from blood decency on 1/8, 2/8 & 3/8 and from 5/8/83 to 12/8/83, I suffered from hip-pain I could move, but from 13/8/83 the pain is show acute that I cannot move and consequently ADMO/N. F. Railway/MJN attended in my house and examined me and advised to take bed-rest. So, I am under the treatment of ADMO/MJN w.e.f. 16/8/83, but as I could not move to go to Railway Hospital to sign the sick-memo, therefore no sick certificate could be produced. This is for your information please, and DME (C & W)/TSK may kindly be informed.

I have got 169 days LAP in credit. Therefore, sick period may kindly be regularized from 16/8/83 till my resumption by grant of LAP, if possible as per rules.

Yours faithfully

Dated: - MJN
17/8/83

Sd/-Biswanath Banerjee,
Confidential Stenographer
Under DME/TSK

*To me copy of
the Annexure-8
placed below.
New Poores
8/2/88
Advocate*

66
 1978
 DME (Power)
 N.F. Ry. / TSK

17
 3
 Anwarjee
 Shri Bansjee Steuo was sd
 lays C.L. from 27.7.83 vice his
 application attached. Excluding Sunday
 & holiday he was due to resume
 on 16.8.83 but instead he has
 sent his application requesting
 requesting granting of KAP till
 his resumption.

Submitted for information,
 DME(P)
 8/17/83

Maay
 16/20/83

I have the honour to inform
 you that I was scheduled to resume
 duty on 16/8/83 after availing 15 days
 C.L. w.e.f. 27/7/83 which was duly
 sanctioned. Unfortunately, I have
 suffered from blood decendency on 1/8, 2/8
 and 3/8 and from 5/8/83 to 12/8/83
 though I suffered from hip-pain I could move,
 but from 13/8/83 the pain is so acute
 that I cannot move and consequently
 ADMO/N.F. Ry. / MTN attended in my
 house and examined me and advised
 to take ~~rest~~ bed-rest. So, I am under
 the treatment of ADMO MTN w.e.f.
 16.8.83, but as I could not move
 to go to Hospital to sign the sick-memo,
 therefore, no sick certificate could be
 produced. This is for your information
 please, and DME (C&W) / TSK may kindly
 be informed.

I have got 169 days L.A.P. in credit.
 Therefore, sick-period may kindly be
 regularised from 16/8/83 till my resumption
 by grant of L.A.P. if possible on such
 rules.

Dated: MTN.
 17/8/83

Yours faithfully,
 B/S Anwarjee
 (B.N. Anwarjee)
 Counsel. 57/No
 to DME / TSK

Pls. to
 W.P. 208
 Advocate

17/83.
 urgent n
 interme-
 1.8.83
 already
 11a-
 you
 MEs
 xcluding
 pear

7/83.
 a.

EM
 18/8

18

64

To
DRM (P) / TSK

Annexure - 9

Sir,

I have the honour to inform you that I was in Railway sick under DMO/TSK/N. F. Railway, from 9/4/86 to 17/6/86. I would therefore, request you to kindly regularize my above sick period by grant of LAP Rly. Medical Fit certificate No. 31 dated 18/6/86 issued by DMO/TSK is enclosed herewith in original for your record please.

DA/- One in original.

Yours faithfully,

Sd/-Biswanath Banerjee,
S/Cno to DME/TSK

Dated: - 19/6/86

*True copy of the
Annexure is placed
before me &
collected
recovery
- 08/7/88
Advocate*

18

~~77~~

Annexure - 9

To: ORM(P)/TSK.

Sir,

I have the honour to inform you that I was in Railway sick under SMO/TSK/N. F. Rly. from 9/4/86 to 17/6/86. I would, therefore, request you to kindly regularise my above sick period by grant of L.A.P. Rly. medical Fit certificate no. 31 dt. 12/6/86 issued by SMO/TSK is enclosed herewith in original for your record please.

D A/- one in original.

yours faithfully

B. Banerjee

19/6/86

(B. N. Banerjee
Steno to SMO/TSK

dt: 19/6/86.

attested
me 8/2/08
Advocate

ODELAB

(BUILT TO DIAGNOSIS)

LOI AVENUE
VARH - 786005 - PHONE : 22517

10
389

26

19

Radiology Division Annexure - 10

NAME Mr. B. Banerjee AGE _____ SEX _____ NO. _____
DATE 5.5.93
REF. BY Prof S.C. Jain FRCS

Report on Ultrasonography

ORGANS EXAMINED :

- KYEXX
- Gall bladder is normal. No calculi seen in the lumen.
- CBD is normal.
- Liver shows normal echotexture. No parenchymal lesion seen. Intrahepatic vascular pattern and biliary tree are normal.
- Pancreas shows normal echopattern.
- Both kidneys reveal normal echoanatomy. No parenchymal lesion seen. No pelvicalyceal dilatation or calculi seen. Perinephric areas are normal and movements of the kidneys with respiration are normal.
- Ureters are not dilated and no calculi seen in the lumen.
- Urinary bladder is normal. No intravesical calculi or soft tissue mass seen.
- Both iliac fossas were scanned. No evidence of any abnormal mass or thickened bowel loops seen.
- No free fluid seen.
- Para-aortic areas are normal.

IMPRESSION: Normal GB, Liver, CBD, pancreas
Normal KUB
Normal Para-aortic and iliac areas.

Subra
20/5/93
92/08
Advocate

Modelab

(DEVOTED TO DIAGNOSIS)
 CENTRAL LAB : BORDOLOI AVENUE,
 DIBRUGARH-786 005. PHONE : 22517

g
 Annexure - 11

MR. B. N. BANERJEE.

AGE 43YR SEX M

NO. 34

DATE 05-05-93

REF. BY Prof. S. C. JAIN.

HAEMOGRAM REPORT

TEST
HAEMOGLOBIN
ESR
WBC COUNT
PLATELET COUNT
DIFFERENTIAL COUNT
NEUTROPHIL
LYMPHOCYTE
EOSINOPHIL
MONOCYTE
BASOPHIL

REPORT	%
11.79 g/dl	
20 mm AEFH	
5000 /cmm	
	58 %
	32 %
	4 %
	5 %
	%

NORMAL RANGE
MALE 13-18gms %
FEMALE 11-16gms %
MALE 0-20 mm AEFH
FEMALE 0-30 mm AEFH
4,000-10,000/Cmm
1,50,000-4,00,000/Cmm
40-75%
20-45%
1-6%
2-8%
0-1%

- IMMATURE CELLS:
- PARASITES:
- PERIPHERAL FILM:
- BLEEDING TIME:
- COAGULATION TIME:
- A B O Grouping:
- Rh Grouping:
- BLOOD FOR MP :
- VDRL & KAHN TEST :

1. RANDOM BLOOD SUGAR :- 100mg/dl.
(Normal Range 120mg/dl).
2. BLOOD UREA :- 24.5mg/dl.
(Normal Range 10-50mg/dl).

Signature
 Advocate
 8/108

MODELAE

OLOI AVENUE
JGARH - 786005 - PHONE : 22517

392

(DEVOTED TO DIAGNOSIS)

Answer-12

NAME Shri. Biswanath Banerjee AGE 43yrs SEX M NO. 25
REF. BY Dr. S. U. Jain; F.R.C.S. DATE 5.5.93

PART EXAMINED : P.P. ABDOMEN:

REPORT :

- No radio-opaque calculus seen in KUB area.
- Renal outlines are clear.
- Psoas shadows are normal.
- Bowel gas pattern is normal.

: -No radio-opaque calculus seen.

Banerjee

*Shri. Biswanath Banerjee
20/08/93
Advocate*

22
394
395
College & Hospital

BUS STATION
6003
20405

As:

L. BRUGARH.

Answer-13

OUT PATIENT DEPARTMENT

Date

10.5.93

10.5.93

Hospital No

784213

Name

Biswanath Dutta

Age

43yr

Sex

M

Service:

Neurology

- R.
- 1) Neurobion inj
 Sy: 1 amp im on alternate days x 7
 - 2) Noveron SR tab
 Sy: 1 tab daily after food x 10

[Signature]
10.5.93

[Signature]
Advocate

23
23
1701
398
Prof. (Dr.) Shantanu Lahkar

M.B.B.S. (Lib), M.S. Orth, A. I. I, M. S. (Now Delhi),
Prof. & Head, Dept. of Orthopaedic Surgery,
Assam Medical College, Dibrugarh
Pin - 786 002, India.

Founder Professor of Post-graduate Teaching
in Orthopaedic Surgery, A. M. C

LIFE MEMBER : 1. The Indian Orthopaedic Association

- 2. The Association of Spine Surgeons of India.
- 3. World Orthopaedic Concern,
- 4. Association for the Study of Application and Methodology of ILIZAROV.
- 5. International Union against Tuberculosis.
- 6. Indian Foot Society.

- 7. Indian Cancer Society.
- 8. Indian Arthroscopy Society.
- 9. Indian Red Cross Society
- 10. I. M. A. Academy of Medical Specialities.
- 11. Association of Surgeons of Assam.
- 12. Assam Science Society.

Residence : APQ - 4, K. Lane
Assam Medical College Campus,
Dibrugarh - 786 002,
Phono - 21422 (Resi)
70380 (Resi)
- 22062 (Chamber)

Answer - 14

For

MR. B. N. Banerjee.

1) Trental 400

1 x 3m daily at interval x 3 weeks

2) Bunk 400

1 x 3m daily at interval x 2 weeks

3) Malarvacin 500 mg (7)

1 amp x 1 p a day.

13/5/95

Please donot substitute this prescription.

Substituted
22/5/95
Advocate

DR. SATYAJYOTI DUTTA

MBBS, D. L. O. MS.

Assistant Professor
Department of ENT
Assam Medical College
Dibrugarh-786002

Phone - 21792

Date 10-5-73

Answer-15

Mr. B. N. Banerjee. 43 yrs.

P (1)

Aeromox (250mg) x (15)

One tab. every 8 hours
aft. food x 5 days

(2)

Actifed tab - (14)

One tab. twice daily
aft. food.

(3)

Sandocal 500 x (20)

One tab. daily
aft. food.

Abd. SUR

Filed
10/5/73

Subscribed
10/5/73
Advocate

25

Annexure-16

25

149

WMD
24/1/06

24-1-06

534

To: The Divisional Rly. Manager (Mechanical),
N.F. Railway, Tinsukia.

Reg:- Regularization of sick period.

Sir,

With due deference and humble submission I beg to state the following lines for your perusal and kind consideration please.

That Sir, I was under sick under Rly. Medical Sick & Certificate No.266 dated 23.11.2005 from 23.11.2005 to 20.01.2006 issued by Medical Supdt./IC/N.F. Railway Hospital/NTSK and was given Fit Certificate No.266 dated 21.01.2006 giving me a fit for duty w.e.f. 21.01.2006 issued by the above Rly. Medical authority. Prior to 23.11.2005, I could not come to duty on 22.11.2005 for the same trouble for which I was under sick during the above mentioned period. Therefore, the date of absence on 22.11.2005 needs to be added with the above cited sick period. Sick & Fit certificates had already been submitted to your office.

That sir, on obtaining the above quoted Fit Certificate on 21.01.2006 (Saturday), I came to this office for reporting to duty. But as 21.01.2006 was office closed for Saturday, so, I could not sign the attendance register. Therefore, I signed the attendance register on 23.01.2006 (Monday). Hence the dates 21.01.2006 (Saturday) and 22.01.2006 (Sunday) needs to be treated as on duty by prefixing the date of reporting on 23.01.2006 (Monday).

That Sir, it is learnt from Cadre dealing section of DRM (Personnel)/TSK, following nature of leaves accrued to me :-
LAP = 30 days, LHAP = 31 days (both leaves prior to 22.11.05)
LAP = * 15 days, LHAP = 10 days (both leaves to be credited w.e.f. 01.01.2006)
So, total LAP = 45 days and total LHAP = 41 days. = 26 Total 36 day.

That Sir, I pray for regularising the above mentioned sick period as followsxx with retrospective effect:-

- a) From 22.11.2005 to 30.11.2005 = 9 days into LAP
- b) From 1.12.2005 to 31.12.2005 = 31 days into LAP
- c) From 01.01.2006 to 20.01.2006 = 20 days into LHAP

~~A line in confirmation is highly solicited~~

With regards;

Yours faithfully;

Biswanath Banerjee
24.1.06

(Biswanath Banerjee)
Confdl. Steno
DRM (M)'s Office, N.F. Rly
Tinsukia.

Dated:- 24.01.2006

Forwarded to SRM(D)/TSC
for necessary action please

Chief Office Supdt. (G)
N. F. Railway, Tingulda

[Handwritten signatures and initials]

979270

26

422

177

~~422~~
424

Annexure-17

N.F.Railway

Office of the
Divl. Rly. Manager (Mech)
Tinsuka.

Dt. 3 /06/04.

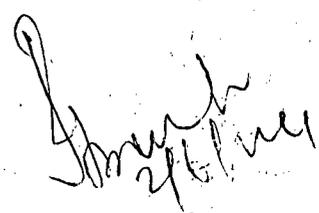
No. M-E/1-G (Staff)

To,
DRM (P)/TSK ✓
N.F.Railway.

Sub:- Resumption of duty.
Ref:- Your letter No.ES-B/334 dtd. 25.05.04.

As per your letter referred above Shri Biswanath Banarjee,
C/Steno to Sr.DME/TSK has resumed this office on 27.05.2004.

This is for your information please.



For DRM(M)/TSK

Copy to:- OS(P)/EM/Bill for your information.

Handwritten notes:
26/06/04
Advocate

For DRM(M)/TSK

9361

(COPY)

(27)

(Annexure-A)

B.

Answer-18

For The Divisional Railway Manager,
M.F. Railway, Tinsukia.

(Through Proper channel).

Sir,

With profound respect and humble submission, I beg to state that I have requested Senior DME(Power)/Tinsukia vide my application dt.10.2.93 to issue me a Rly. sick memo. (copy of the application dt.10.2.93 is enclosed for your kind perusal please. Messenger awaited in DME/TSK's Office Section on 10.2.93 and it was learnt by him from office that few days time will be required as to whether sick memo will be issued to me or not. Messenger again went to DME/TSK's office on 17/2/93 to obtain sick memo; but he learnt from DDM(Personnel Branch)/Tinsukia for necessary action and he learnt from O.S. (Estt.) that my application has been given for his mother's serious illness. As I have not received sick memo, therefore on 24/2/93 I reported directly to Senior DMO(Incharge)/M.F.Rly./Tinsukia, and shown him DDM(P)/TSK's letter No.ES-D/334, dt.18.11.88 (copy enclosed as Annexure-B) and requested him for medical examination. He wrote letter No.11/93/ISK, dt.24.2.93 to DDM(P)/TSK (copy enclosed as Annexure-C). ADMO/MJN attended me on 28/12/88.

2. As I am always intending to resume duty, but facing some troubles and I need a sick memo to attend/check-up the troubles and as I have not received sick memo, I met Senior DME(Power)/ISK on 24/2/93 at about 3.30 p.m. and requested him to issue me a sick memo. He told me that he will be guided by Rules, for which there is Personnel Branch to guide him with rules and if rules permit then he may issue me sick memo. However, I have not yet received sick memo.

3. In view of circumstances mentioned above, I would request your honour to kindly look into my case sympathetically so that Personnel Branch give rulings to Senior DME(Power)/ISK at the earliest to enable him to issue me a sick memo, and for which act of your kindness I shall remain overgrateful.

With regards,

Yours faithfully,

Sd/-
(Biswanath Banerjee)
Confdl. Steno to DME/ISK,
M.F. Railway.

Encl: As above.

Date: 12/3/1993.

at Makum Jn.
C/o. Sri Sudhir Ch. Banerjee,
Makum Jn.; Digbol Road,
(Near Assam Sahitya Bhawan)
P.O. Makum Jn. (Assam).

Handwritten notes:
28/11/07
Advocate
CAT/GHJ

A copy of this application is sent in advance (with enclosure), as I am feeling trouble.

Handwritten notes:
Advocate

149
17/3/93
62-13
3
176
88.

27
Hawarna-18
215
The Divisional Railway Managers,
N. F. Railway Tinsukia.

(Thro: Proper Channel).

Sir, With profound respect and humble submission, I beg to state that I have requested Senior DME (Power) Tinsukia vide my application dt. 10.2.93 to issue me a Rly. Sick memo. Copy of the application dt. 10.2.93 is enclosed for your kind perusal please. Messenger awaited in DME/TSK's Office section on 10.2.93 and it was learned by him from Office that few days time will be required as to whether sick memo. will be issued to me or not. Messenger again went to DME/TSK's Office on 17/2/93 to obtain sick memo; but he learnt from office that my application dt. 10.2.93 has been sent to DRM (Personnel Branch) Tinsukia for necessary action and he learnt from P.S. (Estt.) that my application has been given to Dealing Clerk (Estt.) who took leave on urgent basis for his mother's serious illness. As I have not received sick memo, therefore, on 24/2/93 I reported directly to Senior DMO (Incharge) N.F.Rly Tinsukia, and shown him DRM (P)/TSK's letter No. ES/B-334, dt. 18.11.88 (Copy enclosed as Annex. B) and requested him for medical examination. He wrote letter No. H/93/TSK, dt. 24.2.93 to DRM (P)/TSK (Copy enclosed as Annex. C). ADMO/MJN attended me on 28/12/88.

2. As I am always intending to resume duty, but feeling some troubles and I need a sick memo to attend/cheek up the troubles and as I have not received sick memo, I met Senior DME (Power)/TSK on 24/2/93 at about 3:30 PM, and requested him to issue me a sick memo. He told me that he will be guided by rules, for which there is Personnel Branch to guide him with rules and if rules permit, then he may issue me sick memo. However, I have not yet received sick memo.

3. In view of circumstances mentioned above, I would request your honour to kindly look into my case sympathetically so that Personnel Branch give rulings to Senior DME (Power)/TSK at the earliest to enable him to issue me a sick memo, and for which act of your kindness I shall remain ever grateful.

With regards;

Encl:- As above.

Date: 12/3/1993.

Yours faithfully;

B/Banerjee
(Biswanath Banerjee)
Confid. Steno to DME/TSK,
N.F. Railway

at Makum Jn.
c/o. Sri Sudhir Ch. Banerjee,
Makum Jn; Digboi Road,
(Near Assam Sahitya Bhawan),
P.O. Makum Jn. (Assam).
PIN - 786170.

A copy of this application
is sent in advance (with enclosures),
as I am feeling troubles.

12/3/93
19/08
Advocate

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

28
176
Annexure - 19

(Through proper channel)

Sir,

With profound respect and humble submission I beg to state a following few lines for your perusal and sympathetic consideration please, for which I beg apology for intruding upon your valuable time.

That Sir, I requested Sr. DME (power)/N.F. Railway/Tinsukia for a Railway sick memo vide my application dt. 10/2/93 (copy enclosed as Annexure - A). As no Rly sick memo has been received, therefore, I met Sr. DMO/ In charge/N.F. Railway/Tinsukia on 24/2/93 and shown him DRM (P)/ N.F. Railway /Tinsukia's letter No. ES/B - 334 dt. 18/11/88 (copy enclosed as Annexure - B). Sr. DMO/IC did not examine me, for which he wrote letter to DRM (P)/TSK vide his letter no. H/93/TSK, dt. 24/2/93 (copy enclosed as Annexure - C). On 24/2/93 I met Sr. DME (Power) / TSK at about 3.30 PM in his chamber and told him that I require a railway sick memo and that Sr. DMO/IC did not examine me and that Sr. DMO/IC has written letter to DRM (P)/TSK. During discussion with Sr. DME (Power), inter-alia told me that he will be guided by rules, for which according to him there is Personal Branch to guide him with rules and if rules permit then he may issue me sick memo. As no Rly. Sick memo has been received by me, I made application to Divisional Railway Manager/Tinsukia vide my application dt. 12/3/93 (copy enclosed as Annexure - D) requesting him to look into the matter sympathetically so that Personal Branch give rulings to Sr. DME (power)/TSK.

That Sir, it is now 51 lays already elapsed since 10/2/93 (the date of my application asking for Rly. Sick memo) to 2/4/93 (the date of writing this letter),

- a) Neither I have received Rly. Sick memo.
- b) Nor received letter from Sr. DME (Power)/TSK stating that Railway sick memo cannot be issued, quoting the relevant provisions of rules, if any furnished by Personnel Branch as desired by Sr. DME (Power)/TSK,
- c) Nor received copy of letter, if issued by DRM (P)/TSK, addressed to me with copy to Sr. DMO (In charge)/TSK directing me for medical examination in response to Sr. DMO (In charge)/TSK's letter no. H/93/TSK, dt. 24/2/93.

True copy
the Annexure-19
placed below.
W. J. S. 29/08
Advocate
Contd..... P-2

28/1

-2-

177

That Sir, in view of circumstances mentioned above, I would request your magnanimity to look into the matter Sympathetically so that I may get a Railway sick memo, as I am feeling troubles which are required to be checked up so that I may obtain DFC, as I am always cherishing desire to resume duty and for which act of your kindness I shall remain ever grateful to you.

With regards,

Yours faithfully,

Encl: - As above

Dated: - 2/4/1993

**Sd/- Biswanath Banerjee,
Confidential Stenographer,
Office of the DRM (Mechanical),
N. F. Railway, Tinsukia
C/O - Sri Sudhir Ch. Banerjee.
Makum Junction, Digboi Road,
Near Assam Sahitya Bhawan
P.O.- Makum Junction, Assam
Pin - 786170**

True copy,

(Signature)
Advocate

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

(thro: Proper channel).

Annexure-19

178

Sir, With profound respect and humble submission, I beg to state a following few lines for your perusal and sympathetic consideration please, for which I beg apology for intruding upon your valuable time.

That sir, I requested Sr. DME (Power)/N.F. Rly./Tinsukia for a Railway sick memo vide my application dt. 10.2.93 (copy enclosed as Annexure-A). As no Rly. sick memo has been received, therefore, I met Sr. DMO/Incharge/N.F. Rly./Tinsukia on 24/2/93 and shown him DRM (P)/N.F. Rly./Tinsukia's letter No. ES/B-334, dt. 18.11.88 (copy enclosed as Annexure-B). Sr. DMO/IC did not examine me, for which he wrote letter to DRM (P)/TSK vide his letter No. H/93/TSK, dt. 24.2.93 (copy enclosed as Annexure-C). On 24/2/93 I met Sr. DME (Power)/TSK at about 3:30 PM in his chamber and told him that I require a Railway sick memo and that Sr. DMO/IC did not examine me and that Sr. DMO/IC has written letter to DRM (P)/TSK. During discussion with Sr. DME (Power), he inter-alia told me that he will be guided by rules, for which according to him there is Personnel Branch to guide him with rules and if rules permit then he may issue me sick memo. As no Rly. sick memo has been received by me, I made application to Divisional Railway Manager/N.F. Rly./Tinsukia vide my application dt. 12/3/93 (copy enclosed as Annexure-D) requesting him to look into the matter sympathetically so that Personnel Branch give rulings to Sr. DME (Power)/TSK.

That sir, it is now 51 days already elapsed since 10/2/93 (the date of my application asking for Rly. sick memo) to 2/4/93 (the date of writing this letter);

- (a) neither I have received Rly. sick memo,
- (b) nor received letter from Senior DME (Power)/TSK stating that Railway sick memo cannot be issued, quoting the relevant provisions of Rules, if any, furnished by Personnel Branch as desired by Sr. DME (Power)/TSK,
- (c) nor received copy of letter, if issued by DRM (P)/TSK, addressed to me with copy to Senior DMO (Incharge)/TSK directing me for medical examination in response to Sr. DMO (Incharge)/TSK's letter No. H/93/TSK, dt. 24.2.93.

That sir, in view of circumstances mentioned above, I would request your ~~honour~~ magnanimity to look into the matter sympathetically so that I may get a Railway sick memo.

(contd. to page-2).

Jul 10 1993
2/08
2/08

28/11 (2)

161

SN-11 A
129

16

ack memo, as I am feeling troubles which are required to be checked up so that I may obtain FC, as I am always cherishing the desire to resume duty.

And for which act of your kindness I shall remain evergrateful to you.

With regards;

Yours faithfully;

M. Banerjee

Encl: As above.

Dated 2/4/1993.

(Biswanath Banerjee)
Confdl. Steno to DME/TSK,
N.F. Railway / Tinsukia.

Address.

C/o. Sri Sudhir Ch. Banerjee,
Makum Jn, Digboi Road,
(Near Assam Sahitya Bhawan)
P.O. Makum Jn. (Assam),
PIN - 786170.

An advance copy of this application (together with enclosures) is sent to G.M./N.F.Rly./Maligaon, as I am feeling troubles.

(COPY)

47
180

29

Answer - 20

To
The Divisional Railway Manager (Mechanical),
H.F. Railway, Tingukia.

Sub :- Medical records vis-a-vis.
resumption to duty.

Ref :- Hon'ble C.A.T./ Guwahati
Bench's Order dt. 27-2-2004 passed on O.A.
290 of 2002/

Reverend Sir,

With profound respect and humble submission I beg to
enclose herewith copy of Hon'ble C.A.T.'s aforesaid order which has
been received by me by Postal Dak from my Advocate from Guwahati.
I hereby report to you.

That Sir, I beg to enclose herewith copy of Homeo-
pathist (Dr. R.K. Dutta, M.D.(H))'s certificate dated 30-10-87 cer-
tifying treatment under him from 10-9-87. But I was working duty
simultaneously from 10-9-87. He told me that treatment under him
would take a long time. While working duty I was taking medicine
from time to time after time gap after time gap (i.e. not continu-
ously) as per modus operandi of his treatment. While I told him
about my exhaustion due to heavy burden of office work load for years
he replied me that he had nothing to do for my amelioration on account
of heavy burdens of office work load and that this aspect was purely
to concern with Rly. Administration and that Rly Admn. know as to how I
would be ameliorated on account of heavy burden of office work load.
I worked lastly upto 29-5-88. *but unfortunately* I was feeling gradual exhaustion on
account of shouldering of heavy burden of office work load for years
and on the other hand simultaneously I was feeling troubles after
appendix operation done in Rly Hospital/DBRT on 14-5-86, head and tail
of the cause of troubles could not be understood. I fell sick from
30-5-88 due to severe vertigo and other troubles and remained house
confined bed ridden. Though I deputed messenger to the aforesaid Homeo-
pathist from house from time to time after interval after interval and
obtained medicine, but the messenger seen and could learnt from others
sometime in 1988, as far as I can remember, that the chamber of the afore-
said Homeopathist was not available and he left the place and his where-
about could not be known and as such modus operandi of his treatment
could not be finalised with him.

Contd. 2

Advocate
9/2/08

3. The Rly Admn. took cognizance of my sickness vide D.R.M. (P)/TSK's letter No. ES-B/334, dated 18-11-1988 by which advised me to report to ADMO/MJN or IMO/TSK for medical examination (copy enclosed). The said letter was received by me on 20-12-88. The ADMO/MJN medically examined me at our residence on 28-12-88 in reference to aforesaid letter and found me sick in bed-ridden condition. He did not provide or arrange proper medical attendance and treatment to me; rather gave me merely a prescription dt. 28-12-88. I requested the ADMO/MJN to issue me a Rly. medical certificate clearly defining the nature of the illness and the period for which ^{was} likely to be ^{unable} to perform my duties so that I could have submitted Rly. medical certificate to my controlling officer; but the ADMO told me that he would submit his medical examination report dt. 28-12-88 to my controlling officer in reference to IRM (P)'s said letter, and that is why the ADMO/MJN did not give Rly. medical certificate to me and also he told me that my case is an idiopathic medical case and he explained the term "idiopathic" to me as there was no cause. Copy of his prescription is enclosed herewith. It was seen only through written statement dated 2-2-2003 of Rly. with which annexed ADMO/MJN's letter No. PAT/7/89 dt. 28-1-89 addressed to IRM (P)/TSK (copy enclosed) in which ADMO certified my sickness; but his letter contains adverse remarks against me, and such adverse remarks were never communicated to me and I had not been given reasonable opportunity in the interest of natural justice and for the sake of justice, equity and good conscience to defend the adverse remarks. I never told the ADMO that I was not willing to take any allopathic medicine from Rly. Health Unit or to be referred to NWSF Hospital/DERT; So, ADMO's aforesaid letter contains two aspects - one aspect was about certifying of my sickness by him which is itself medical certificate in substance and the other aspect was about his adverse remarks against me which I do not accept. After having taken his prescribed medicine I again deputed messenger to him at MJN Rly. Health Unit on 11-1-89 alongwith Rs. 10/- sent to him as Doctor's fees with the request to examine me further at home. He told the messenger to get me checked up by private doctor and returned the Doctor's fees.

4. Copy of Dr. D.N. Chatia's medical certificate dt. 1-11-89 and copies of his prescriptions dated 1-1-89, 27-1-89 and 21-10-89 are enclosed herewith.

5. Copy of Dr. B. Sen's medical certificate dt. 6-8-90 and copies of his prescriptions dt. 3-2-90 and 7-7-90 are enclosed herewith.

6. Copy of Dr. B. Sen's medical certificate dated 28-12-90 and copies of his prescriptions dated 28-8-90 and 25-12-90 are enclosed herewith.

7. Copy of Dr. D.N. Chotia's medical certificate dated 28-8-91 and copy of his prescription dated 1-1-91 are enclosed herewith.

8. Copy of Dr. U.N. Singh's Homeopathist certificate dated 17-9-92 and copy of his prescription alongwith copy of my application dt. 18-9-1992 are enclosed herewith ; In my application I had requested to direct me to Rly. medical authority for pathological investigation to enable me to obtain DFC. I had been taken interview on 18-9-92 by DME (C & W), Sr. DME (Power)/TSK and the Enquiry officer (i.e. Sri P.G. Keshavan, the then APO/I/TSK) and they found me fit and I was held up for DAR enquiry in reference to major penalty chargesheet No. ES-B/334, dt. 6-10-1989 for alleged unauthorised absence w.e.f. 18-6-88 and the DAR enquiry was held on 28-9-92 in which enquiry I attended. The Enquiry officer submitted his DAR enquiry report dated 29-9-92 to the Disciplinary authority in October 1992 ; but I was not supplied with copy of Enquiry officer's DAR enquiry report alongwith Disciplinary authority's order till filing of O.A. No. 99 of 1994 in the Hon'ble C.A.T./Guwahati Bench on 20-5-1994. So, the period from 28-9-92 to 20-5-1994 was spent on account of DAR enquiry proceedings and after the DAR enquiry held on 28-9-92 I was not directed to Rly. medical authority for pathological investigation for obtaining D.F.O.

9. From 9-2-93, I was feeling pain ^{and} troubles in lumbo-sacral region and nasal troubles. Local Dr. B. Sam was called on 9-2-93 who attended me and he advised me for further investigation and treatment by Orthopaedic Surgeon, Neuro Surgeon and ENT specialist. Copy of his certificate dt. 9-2-93 is enclosed herewith. As I was without salary income for years, so, it was not possible on my part to get done such treatment.

10. On 10.2.93, I requested for issue of Railway Sick Memo (copy enclosed). But I was not issued with Rly. Sick Memo till filing of O.A. 99/94 in Hon'ble C.A.T./Guwahati due to DAR enquiry proceedings. Finding no other alternative, I attended before Sr. DMO/ia/TSK on 24-2-93 on the strength of IRM(P)/TSK's letter No. ES-B/334 dt. 18-11-88 in reference to which ADMO/MJW had already examined me at our residence at Makum Jn. on 28-12-88 as mentioned on para 3 above. But Sr. DMO/ia/TSK did not examine me as he learnt from me that there was disciplinary proceedings against me, DAR enquiry held on 28-9-92, Enquiry officer submitted his report to Disciplinary authority in Oct. 92, Rly. Sick Memo asked for on 10-2-93 had not been issued to me. However, Sr. DMO/ia/TSK issued his letter No. H/93/TSK dt. 24-2-93 to IRM (P) /TSK with the request to issue a fresh letter (copy enclosed)

11. Thereafter, I had been submitting applications from time to time to authorities till filing of O.A. 99/94 in Hon'ble C.A.T./Guwahati on 20.5.94 requesting for issue of Rly. Sick Memo; but Rly. Sick Memo was

490
183

PAGE - 4

not issued to me till filing of O.A. 99/94 due to disciplinary proceedings, and hence the disciplinary proceedings (i.e. major penalty charge-sheet No. ES-3/334 dt. 6-10-89 , proceedings of DAR enquiry held on 28-5-92, Enquiry Officer's DAR enquiry report dt. 29-9-92 and the Disciplinary authority's order passed on the enquiry report were main matters in issue during sub-justice of O.A. 99/94. Copies of my applications dt. 12-3-93, 2-4-93, 29-4-93, 31-5-93, 22-9-93, 28-12-93 (2 applications) and copies of two X-Ray reports requesting for issue of Rly. Sick Memo, submitted to authorities till filing of O.A. 99/94, are enclosed herewith.

12. Prior to filing of O.A. 99/94 on 20-5-93 I got choked up by other Doctors. Though I took their medicines, but proper further investigation and treatment could not be done due to my acute financial scarcity on account of without salary income for years. Copies of following medical documents are enclosed herewith:

a) Copy of Dr. S.G. Jain's medical investigation dt. 5-5-93 is enclosed and he found no abnormality. He advised to get done some tests and sonography. Copies of sonography report, haemogram report, urine and stool report dt. 5-5-93, X-Ray report of P.P. abdomen dt. 5-5-93 are enclosed herewith. He referred me to Dr. D.N. Patwary for valued opinion and advice.

b) Copy of Dr. D.N. Patwary's prescription dt. 6-5-93 is enclosed.

c) Copies of Assam Medical College & Hospital, Dibrugarh, Neurology Deptt.'s prescription dt. 10-5-93 are enclosed herewith.

d) Copy of Dr. M.M. Mada's prescription dt. 6-5-93 is enclosed herewith. He opined the problem may be ~~varicose~~ ^{varicose} (written varicose on the back side of the prescription).

e) Copy of Dr. Satyajyoti Dutta's prescription dt. 10-5-93 is enclosed. He wrote DNS (L) sinusitis on the back of the prescription.

f) Copy of Dr. Shantanu Lalker's prescription dt. 13-5-93 is enclosed.

Copies of X-Ray report of L/S spine as per advice of AMCH/DIRT and copy of X-Ray report of P.N.S. as per advice of Dr. Satyajyoti Dutta had been enclosed with my application dt. 28-12-93.

Contd...5

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13. The Hon'ble Tribunal passed his order dated 8-8-95 on O.A. 99/94 and order published on 19-10-95. I had submitted certified copy of the order with my application dt. 30-10-95 to DRM (M)/TSK.

14. I would request your honour to allow me to resume duty after taking necessary action.

With regards ;

Encls : As above.

Dated :- 18th March, 2004.

Yours faithfully,

P. B. Banerjee

(Blawmath Banerjee)
Confidential Steno
DRM (Mechanical) Office
N.F. Railway, Tinsukia.
(now at office)

Filed by:-
 Gurupada
 Bhattacharya
 Advocate for Petitioner

Before the Central Administrative Tribunal: Guwahati Bench

O.A. No. 33/2006

B.N. Banerjee

-vs-

Union of India (N.F.Rly.)

S Y N O P S I S

Absence
 The applicant is working as a confidential stenographer in the office of DRM (M) N.F.Rly, Tinsukia since 22.7.72. During the period from 31.5.88 to 2.6.88 the applicant was sick and remained absent with prior application. ADMO/MNJ although examined the applicant in his residence but did not issue medical fitness certificate for resumption of duty.

?
 On 6.10.88 a major charge sheet was issued imputing unauthorised absence from 18.6.88 against which the applicant submitted defence statement but enquiry officer was appointed on 29.8.91 i.e. after about 3 years of issuing charge sheet.

?
 On 28.9.92 a summary enquiry was held in violation of DA Rule, 1968 but no enquiry report was supplied nor any action was taken on the other hand salary of the applicant was stopped since the month of August, 1988.

||
 The applicant filed O.A. 99/94 wherein the order-dated 8.8.95 this Hon'ble Tribunal directed the authority to consider the case of the applicant.

Thereafter DME/TSK appointed a Board of Enquiry to hold fresh DRA. — *Subsequently on O.A. withdrawn with order 1.5.97*

O.A. 60/97
On 19.3.97 applicant filed O.A. 60/97 inter-alia praying to allow the petitioner to resume duty as because during the period 1993 to 1998 several representations were given to the Railway Authority for issuing medical fitness certificate without which the applicant could not resume duty.

On 4.2.2000 Hon'ble Tribunal in O.A. 60/97 directed the respondent to consider the representation of the applicant within 3 months.

Removal from service
DME/TSK as disciplinary authority by order-dated 12.6.2000 imposed penalty of removal from service. Against this order applicant preferred an appeal. The appellate authority by order-dated 9.12.2000 modified the punishment reducing the applicant to lowest stage of pay with a condition to produce with medical certificate for the whole period. The applicant preferred a revision petition to the appropriate authority, which was not disposed of for long.

O.A. 290/2002
At this stage the applicant filed 290/2002 which was finally disposed of on 27.2.04. The Hon'ble Tribunal disposed of the O.A. 290/2002 with the direction to the applicant to produce all his relevant certificate only for the period from 1988 till filing of O.A. 99/94 and the respondents to take a decision within one month.

The Hon'ble Tribunal further directed that, thereafter the applicant would be allowed to resume

duty and the intervening period would be decided as per observations made above etc.

-vide Annexure-'L' at page 42 & 43

94 65 }
2002 - 5 }
C

On 18.3.04 representation made by the applicant to the DRM (M) with the relevant documents as directed by the Hon'ble Tribunal.

-vide Annexure-'M' at page 44-48

On 25.5.04, the applicant resumed duty on receipt of duty fit certificate from CMS/DBRT dated 23.4.04.

-vide Annexure-'N' page-49

Submissions :-

(i). The Respondent authority although allowed the applicant to resume duty on 26.5.04 but no consideration has been made regarding past dues w.e.f. August 1988 till 25.5.04,

(ii). The applicant was sick from 31.5.88 to 2.6.88 when he remained absent submitting leave application but he could not resume duty as medical fitness certificate was not issued to him by the appropriate authority and thereby he was restrained to resume duty; on the other hand his salary was stopped without putting the applicant under suspension thus this condition was continuing for about 12 years during that period although a DRA enquiry was held in violation of the Rules but the matter was kept in abeyance till 2002 and only after the order of this Hon'ble Tribunal the

disciplinary authority imposed penalty by order dated 12.6.2000 and the appellate authority by 9.12.2000 modified the punishment to lowest stage of pay with the absurd condition of producing medical certificate of last 12 years which was not possible as because applicant was sick for 2 months only in 1988. However the Hon'ble Tribunal was kind enough to remove the said absurd condition and asked the applicant to produce medical papers upto 1994 only.

(iii). Under the aforesaid position the authority by their action forced the applicant to remain out of duty without any pay for about 12 years during which period the applicant was not gainfully employed in any job which also he cannot.

(iv). The applicant is entitled to full back wages with all increments and revision of pay scale, as there was no fault on his part under FR 54-A & B.

Vide grounds for relief at para 5.1 to 5.10

Decision & Law :-

FR 54 A & B

~~AIR 1991 SC 2010~~

AIR 1991 SC 1490

1994 (Supple-3) SCC 671

1998 (1) GLJ 336

2006 (4) SCC 733

AIR 2006 SC 2304

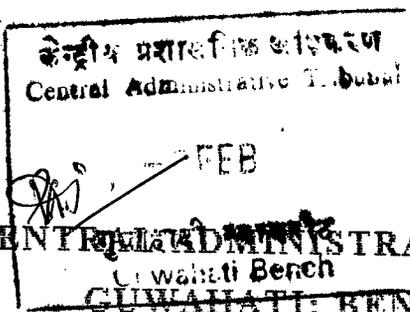
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

Original Application No. 33/06

1. a) Name of the Applicant:- B. Banerjee
b) Respondants:- Union of India & Ors.
c) No. of Applicant(S):-
2. Is the application is the proper form:- Yes/No. No.
3. Whether name & description and address of the all the papers been furnished in cause title :- Yes/No. No.
4. Has the application been duly signed and verified :- Yes/No. No.
5. Have the copies duly signed :- Yes/No. No.
6. Have sufficient number of copies of the application been filed :- Yes/No. No.
7. Whether all the annexure ~~parties~~ are impleaded :- Yes/No. No.
8. Whether ~~English~~ translation of documents in the Language:- Yes/No. No.
9. Has the application is in time :- Yes/No. No.
10. Has the Vokatlatnama/Memo of appearance /Authorisation is filed: Yes/No. No.
11. Is the application by IPO/BD/for Rs. 50/- 266319044
12. Has the application is maintainable : Yes/No. No.
13. Has the Impugned order original duly attested been filed:- Yes/No. No.
14. Has the legible copies of the annexurea duly attested filed: Yes/No. No.
15. Has the Index of the documents been filed all available :- Yes/No. No.
16. Has the required number of enveloped bearing full address of the respondants been filed:- Yes/No. No.
17. Has the declaration as required by item 17 of the form: Yes/No. No.
18. Whether the relief sought for arises out of the Single: Yes/No. No.
19. Whether interim relief is prayed for :- Yes/No. No.
20. Is case of Condonation of delay is filed is it Supported :- Yes/No. No.
21. ~~Whether this Case can be heard by Single Bench/Division Bench:~~
22. Any other pointd :-
23. Result of the Scrutiny with initial of the Scrutiny Clerk:
The application is in order.

SECTION OFFICER(J)

DEPUTY REGISTRAR



O.A. No. 33 /2006

Shri Biswanath Banerjee ... Applicant

-Versus-

Union of India

Represented by the General Manager

N.F. Railway, Maligaon & Ors.

... Respondents

I N D E X

<u>Sl.No.</u>	<u>Particulars</u>	<u>Annexure</u>	<u>Page no.</u>
1.	Application & Verification -		1 - 17.
2.	Certificate of Appreciation dated 29.7.85.	A	18.
3.	Letter dated 18.11.88 issued by the D R M (P), Tinsukia. B	B	19.
4.	Charge sheet dated 6.10.89	C	20 - 22
5.	Defence statement submitted by applicant on 3.11.89	D	23 - 27.
6.	Order dated 2.12.96 appointing Board of Enquiry.	E	28
7.	Letter dated 10.12.96 regarding DAR, enquiry.	F	29.
8.	Judgment & order dated 4.2.2000 passed in O.A 60/97	G	30 - 34.
9.	Order dated 15.3.2000 pass by Hon'ble High Court in W.P (C) 1166/2000	H	35 - 37.
10.	Order dated 12.6.2000 of DME, Tinsukia.	I	38 - 39.

- 1911
11. Order dated 7.12.2000
Of DRM (P) Tinsukia,
N.F. Railway. J 40.
12. Order dated 22.1.2001
Of DRM (P) Tinsukia,
N.F. Railway K 41
13. Order dated 27.2.04 passed
By CAT in O.A. 290/2002 L 42-43.
14. Applicant's representation
Dated 18.3.04 M 44-48.
15. Order dated 25.5.04
For resumption of duty. N 49.

Filed by:

J. Purkayastha
Advocate 30.1.06

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192
Filed by: -
The Appellant
Through: -
Jayanti Purkayastha
Advocate
30.1.06.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI: BENCH

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

O.A. No. 33 /2005

In the Matter of :

Shri Biswanath Banerjee,
S/o. Late Sudhir Chandra Banerjee,
Makum Junction, Digboi Road,
P.O. Makum Junction,
Dist. Tinsukia, (Assam)
Pin-786170

..... Applicant

-Versus-

1. Union of India,
Represented by the General Manager,
N.F. Railway, Maligaon,
Guwahati-781011.
2. The Divisional Railway Manager,
N.F. Railway, Tinsukia,
P.O. Tinsukia-786125.
3. The Sr. Divisional Mechanical Engineer,
N.F. Railway, Tinsukia,
P.O. Tinsukia, Pin-786125.

Biswanath Banerjee

4. The Divisional Railway Manager(personal)
N.F. Railway,
P.O. Tinsukia,

... Respondents

Details of Application

1. Particulars of the order against which the Application is made:

a) The application is directed against the illegal and arbitrary action of the respondents in not granting backwages to the applicant for the period 1988 till resumption of duties in view of the order dated 27.2.04 passed by the Central Administrative Tribunal, Guwahati Bench, Guwahati in O.A. no. 290/02.

2. Jurisdiction:

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

3. Limitation:

The applicant declares that the application is not time barred and well within the period of limitation.

4. Facts of the Case:

4.1 That the applicant is a citizen of India and permanent resident of Makum Junction Town, District of Tinsukia in the State of Assam and as such he is entitled to all the rights and privileges guaranteed under the Constitution of India and the laws framed there under.

4.2. That the applicant is an employee of N.F. Railway, appointed on 22.7.72 as a stenographer and posted under the

Biswanath Barmanjee

Works Manager, N.F. Railway, Mechanical Workshop, Dibrugarh. The applicant in the same capacity was transferred to Tinsukia. He got promotion as confidential stenographer and was posted in the office of the DRM (Mechanical) N.F. Railway, Tinsukia, w.e.f. 8.8.80 vide order-dated 7.8.80. The applicant was confirmed in service w.e.f. 1.1.82.

4.3 That the applicant while functioning as confidential stenographer had to work under DME (carriage & wagon) and also under DME (Power) and other officers including DRM, Tinsukia as and when assigned, consequent, to which your humble applicant had to discharge heavy work load continuously for hours together even after schedule office hours. In spite all physical and mental strain the applicant was discharging his duties very diligently and sincerely without consideration for his comfort and health for which he got admiration of the officers. The applicant for his dutious, sincerely and hard work received certificates of appreciation from the than DRM, N.F. Railway, Tinsukia dated 29.7.85.

A copy of the certificate-dated 29.7.85 is filed hereto and marked as Annexure-'A'.

4.4 That the heavy work load as confidential steno for many years casted bad effect on the health of the applicant as a result of which various complicacies and diseases raised their heads viz; hypertension, vertigo inflamation, burning pain in the abdomen, backaches etc. since July, 1986. The applicant also had to undergo appendix operation at Dibrugarh, Railway Hospital on 14.5.86.

4.5 That when the cumulative effect of various ailment brought down the applicant into bed ridden condition then

Priswanath Barman

under compelling circumstances he remained absent from duty after 30.5.88 on medical ground and submitted LHAP from 31.5.88 to 2.6.88 and there after also he had been applying for leave in peace meal to DRM, (Mech), Tinsukia in the following manner:

- a) Applied for LHAP on or about 6.6.88 for leave from 3.6.88 to 17.6.88.
- b) Application dated 23.6.88 for leave from 18.6.88 to 24.6.88.
- c) Application dated 6.7.88 for leave from 25.6.88.

The applicant being in bad ridden condition submitted all the applications through messenger and so after 2/3 days of sending last leave application he could learn that his prayer for leave was not sanctioned.

4.6 That on 20.12.88 the applicant had received the letter dated 18.11.88 from the DRM(P), Tinsukia under the subject: unauthorised absence and contended inter-alia follows:- "It is seen you have been absenting w.e.f. 18.6.88 on the ground of illness without producing any medical certificate, so you are advised to report to ADMO/MJN or DMO/TSK for medical examination.

A copy of the letter dated 18.11.88 is filed hereto and marked as Annexure-B.

4.7 That the respondent authority instead of providing proper medical treatment to the ailing applicant opted to issue a charge sheet dated 6.10.89 on the purported charge of unauthorized absence from 18.6.88. The applicant on receipt of

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the charge sheet submitted his defence statement vide letter dated 3.11.89 denying the charge.

A copy of the charge sheet dated 6.10.89 and defence statement dated 3.11.89 are filed hereto and marked as Annexure- C & D respectively.

4.8 That in the meantime the salary of the petitioner was stopped without any valid reason. It is pertinent to mention that the applicant was neither suspended nor he was allowed to resume duty. In such a position after a long gap by letter dated 4.9.92 the Enquiry Officer so appointed by the department informed the applicant that the DAR enquiry would be held on 28.9.92 in his chamber at 10 hours and the applicant personally appeared before the Enquiry Officer. When the enquiry was held it was held in a summary manner without following procedures as required under the Rules and principles of natural justice.

It is note worthy that the enquiry report was not supplied to the applicant prejudicing him to represent against the enquiry report dated 29.9.92. Thereby, the respondents have committed gross irregularity and violation of the rule 12 of the DAR rules.

After conclusion of the purported BAR enquiry no further action was taken and the position of the applicant remained uncertain.

4.9 That under the aforesaid circumstances the applicant had preferred the O.A. no. 99/94 before the CAT Guwahati on 20.5.94 contending inter-alia that he had been suffering from

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various ailment since the month of May, 1988 and getting no result in allopathic treatment the applicant resorted to homeopathic treatment whereby he got good result. But, the railway authority did not sanction leave on the ground that homeopathic treatment was not recognized under the Railway Rules and circulars. Further, grievance raised about non-receipt of copy of EO's DAR enquiry report dt. 29.9.1992 etc. etc. The applicant in O.A. 99/94 sought reliefs namely,

- (i) To provide adequate and effective medical treatment etc.
- (ii) To regularize the period of absence from 3.6.1988 till his resumption to duty treating the period on leave.

4.10. That the Hon'ble Tribunal while disposing of the O.A. no. 99/94 vide order dated 8.8.95 was pleased to observe that applicant was not terminated from service at any point of time nor the disciplinary enquiry resulted in any order adverse to the applicant and while holding so, the Tribunal came to the conclusion as follows:-

"..... in the peculiar situation where he is neither on duty nor his services are terminated what the respondents should do or the applicant should do is a matter for those parties to consider".

4.11 That thereafter surprisingly the DME, N.F. Railway, Tinsukia i.e. Disciplinary Authority vide order dated 2.12.96 appointed a Board of enquiry to hold fresh DAR, enquiry denovo against the applicant and it was also clarified by him by his subsequent letter dated 10.12.96 that DAR, enquiry would be held in reference to the charge sheet dated 6.10.89 which meant second time enquiry de novo on the same charge.

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Copies of the order dated 2.12.96 & 10.12.96 are filed hereto and marked as Annexure-E & F respectively.

4.12 That at this juncture your humble applicant again approached this Hon'ble Tribunal and filed the O.A. no. 60/97 on 19.3.97 seeking relief for quashing the annexures 7 & 8 letters and further to allow him to resume duty, to treat the period from 18.6.88 as on duty and other consequential benefits.

4.13 That while 60/97 was pending adjudication DRM (P), Tinsukia, vide letter dated 1.7.97 communicated cancellation of the Board of Enquiry, dated 2.12.96. The DRM (P) in his letter dated 1.7.97 made the observation to the effect that before finalizing the case an opportunity should be given to Sri B.N. Banerjee, confidential steno to represent within 15 days as to why he could not be taken up for misconduct remaining unauthorized absent from duty w.e.f. 9.7.88 with violation of Rule 3(i), (ii), & (iii) of Railway service conduct Rule.

4.14 That the O.A. no. 60/97 was finally disposed of on 4.2.2002 upon hearing both sides and while disposing of the O.A. no. 60/97 the Hon'ble Tribunal held that from the letter dated 1.7.97 it appears that the Disciplinary Authority came to the conclusion that the disciplinary proceeding initiated against the applicant was defective. However, the authority contemplated a fresh proceeding and for the purpose the applicant was given an opportunity to prefer a written brief within 15 days for consideration before finalizing the disciplinary proceeding. It appears that the question before the disciplinary authority was that whether the applicant could be charged for unauthorized absence from duty after expiry of the

Biswanath Banerjee

period of leave applied for and ultimately directed the applicant to submit a representation to the competent authority within a period of one month from the date of receipt of the order and the respondents shall communicate a speaking order within a period of 3 months.

A copy of the judgment and order dated 4.2.2000 passed in O.A. no. 60/97 is filed hereto and marked as Annexure-G.

4.15 That thereafter the applicant preferred W.P.(C) No. 1166/2000 before the Hon'ble High Court assailing the aforesaid order of the Tribunal passed in O.A.60/97. The Hon'ble High Court vide order dated 15.3.2000 upheld the findings of the Hon'ble Tribunal and directed the applicant to make representation before the Railway authority within a period of 3 weeks and further directed the authorities to finalise the proceedings within 6 weeks of submission of the representation by the applicant.

A copy of the order-dated 15.3.2000 is filed hereto and marked as Annexure-H.

4.16 That as per direction of the Hon'ble High Court your humble applicant submitted his representation dated 17.4.2000 before the respondent authority. On such representation being made the authority did not take into consideration the various contentions made in the representation and passed a non-speaking order dated 12.6.2000 holding that the applicant was not at all willing to abide by the Railway Rules, and lawful instructions of the authority thereby violating the Railway Service Rules, 3(i), (ii), & (iii) of 1996 and hence came to the

Biswanath Banerjee

conclusion in terms of Rule 301 (6) R.I. and 5(10) R.I. and imposed the penalty of removed from service w.e.f. 12.6.2000.

A copy of the order dated 12.6.2000 is filed hereto and marked as Annexure-I

4.17 That the applicant being aggrieved by the removal order preferred an appeal dated 1.8.2000 to the DRM, N.F. Railway, Tinsukia, who is the appellate authority. The applicant in the memo of appeal prayed for setting aside the order of removal and to allow the applicant to resume duty.

The appellate authority by order-dated 7.12.2000 modified the order of punishment by reduction to the lowest stage in applicant's present pay scale with adverse future effect. Further, the DRM (P), Tinsukia, who communicated appellate authority's order in his letter no. ESB/334 dated 7.12.2000 and in its said letter advised the applicant to report to the office within 15 days from the receipt of the letter with proper medical certificate covering the period.

A copy of the order-dated 7.12.2000 is filed hereto and marked as Annexure-I.

4.18. That the applicant begs to state that the order of appellate authority does not contain the period for which the applicant has been asked to produce the medical certificate, which shows that how whimsically and with pre-conceived mind the appellate authority gave its findings. Under, such circumstances the applicant made a representation on 16.1.2001 before the appellate authority seeking speaking order/clarification of the order dated 7.12.2000.

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4.19 That after receipt of the representation DRM (P), communicated the order dated 22.1.2000 directing the applicant to report to the office within 15 days with proper medical certificate covering the period etc. and it was added that if the applicant would not report for duty within 15 days with medical certificates covering the period as per direction it will be presumed that the applicant is not willing to report for duty and the order of penalty as passed by the disciplinary authority would hold good.

A copy of the order-dated 22.1.2001 is filed hereto and marked as Annexure-K.

4.20 That the applicant remained aggrieved preferred a Revision application dated 8.3.2001 before the General Manager, N.F. Railway, Maligaon, but that revision application was never disposed of

4.21 That setting thus, the applicant preferred the original application no. 290/2002 before the Central Administrative Tribunal, Guwahati Bench, seeking the following reliefs.

(i) Setting aside the order of the respondent no.2 the Appellate Authority issued under no. ES-B/334 dated 7.12.2000 and the order no. ES-B/334 dated 22.1.2001; and the order of removal from service dated 12.6.2000 passed by the respondent no.3.

(ii) To set aside and quash the major penalty charge sheet dated 6.10.89 as invalid and void ab-initio.

(iii) To direct the respondent to allow the applicant to resume duty without imposing any condition.

Biswanath Banerjee

(iv) Directing the respondent to treat the period from 18.6.88 till resumption of duty as on duty and to give him all consequential benefit the applicant is entitled on the law and equity.

(v) To pass any other order or orders as deem fit and proper by the Tribunal.

4.22) That the said O.A. no. 290/2002 came up for final hearing on 27.2.04 and was disposed of on the same date. The Hon'ble Tribunal after hearing the rival submissions of the parties disposed of the same with a direction to the applicant to produce all his medical certificates from 1988 to till the filing of O.A. no. 99/94. It further directed that the same shall be considered by the respondents and a decision would be taken by them within one month from the filing of the certificates. Thereafter, the applicant would be allowed to resume duty and the intervening period would be decided. The Hon'ble Tribunal in its order-dated 27.2.2004 directed the respondents to take a compassionate view to the rights of the applicant however, terminal benefits are concerned.

A copy of the order-dated 27.2.04 passed by the CAT is filed hereto and marked as Annexure-L.

4.23 That after receiving the certified copy of the order dated 27.2.04 the applicant moved the representation to the DRM (Mechanical) N.F. Railway, Tinsukia, dated 18.3.04 praying for resumption of duty.

A copy of the representation dated 18.3.04 is filed hereto and marked as Annexure-M.

Biswanath Banerjee

4.24 That ultimately vide order-dated 25.5.04 issued by the DRM (P) N.F. Railway Tinsukia, the applicant was allowed to resume duty and was asked to report to senior DME/TSK for his further duty; and the applicant resumed duty on 26.5.04. Sub
A copy of the order dt. 25.5.04 is filed herewith as annexure-N.

4.25 That the applicant begs to state that the Hon'ble CAT while disposing of the O.A. no. 290/2002 has not specifically directed that how and in what manner the back wages of the applicant would be considered by the respondents. However, it is obligatory on the part of the Tribunal to direct the respondents as to the entitlement of the back-wages. }

4.26 That the applicant begs to state that since he was put off the duty several annual increments was accrued and there was Revision of pay scale on the basis of the recommendation of the last Central Pay Commission; moreover the monitory benefit under the scheme of Assured career progression (ACP) was also accrued and the applicant now deserves to be considered for all those benefits in computing the arrear dues.

4.27) That the applicant begs to state that the circumstances which culminated into the non-resumption of duty by the applicant will reveal that it is the authority who have not allowed the applicant to resume duty. In that view of the matter the rule of no work no pay would not be applicable here as the employee i.e. the applicant although was willing to work but was kept away from work by the authority for no fault of his which amounts to forced absence. Hence the applicant is entitled for back wages treating the intervening period from 1988-1994 and from 1994 to the date of his resumption on duty in service on 26.5.2004.

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4.28 That the applicant under the aforesaid position has approached this Hon'ble Tribunal for redressal of his grievances.

5. Grounds for relief with Legal provisions:

5.1 For that the principle of no work no pay is not applicable in the case of the applicant as he has on several occasions approached the respondent authorities for resumption of duties. But, it is the respondent authorities who have forced him in absenting from duty. In that view of the matter the applicant is entitled for the service benefits for the period from 1988 till resumption of duty on..

5.2 For that the Apex Court in Union of India -Vs- K.V. Janakiraman reported in AIR 1991 SC 2010 has held that rule of no work no pay is not applicable where the employee although was willing to work but was kept away from work by the authority for no fault of his.

5.3 For that the only charge brought against the applicant was for unauthorized absence and not for any other misconduct and that the long period since, after the period of absence by leave application was spent due to pendency of the DAR enquiry/disciplinary proceeding and dilatory tactics resorted by the concerned officer at different stages. So the applicant cannot be held responsible in any way for long pendency of the matter. In that view of the matter he is entitled for the back wages for the period from 1988 till resumption of duty.

5.4 For that the Railway Authority since inception of the present tangle instead of providing proper Medical treatment to the applicant for the ailments suffered by him, he resorted to

Biswanath Banerjee

punitive action viz, issuance of charge-sheet, non-payment of salary, non-sanction of medical and other leaves and keeping the whole matter in abeyance indefinitely. From a bare perusal of the entire aspect it is crystal clear that it is the authority who has caused the applicant in absenting from duty and in that view of the matter the applicant is entitled for back wages from the period 1988 till resumption of duty.

5.5 For that the applicant approached on several occasions to the Railway Medical Authority to obtain duty-fit certificate (DFC) but the same was avoided or in other words not given to the applicant showing procedural technicalities which prevented him from resumption of duty. Hence, the applicant is entitled for the back wages as he was always willing to work, but it is the authority who did not allow him to resume duty.

5.6 For that the scrutiny of the entire aspect, which culminated into the present feature, will show that the imposition of penalty was not attributable to any circumstance, which was beyond the control of authorities. Rather, it was sheer negligence and carelessness on the part of the authorities, which prohibited the applicant from resumption of duty.

5.7 For that, if the back wages shall not be granted to the applicant it will be violative of the provisions of Article 21 of the Constitution of India.

5.8 For that, due to the illegal action of the Respondent authority the petitioner was deprived of the several annual increments, revision of pay scale on the basis of the recommendation of the last central pay commission and also

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the monetary benefit under the scheme of Assured Career Progression (ACP).

5.9. For that, during the period from 18.6.88 to 17.9.99 the applicant was absent from duty due to sickness with intimation to the authority and on 18.9.92 he reported to DME /C&W for referring him to railway medical authority enabling to obtain duty fitness certificate (DFC); and from 18.9.92 to 9.2.93 his joining duty/non-issuance of DFC was deferred on the plea of holding DRA Enquiry.

5.10 For that, the applicant is entitled to all arrears of salary and allowances from 18.6.88 till 26.5.2004, when he was allowed to resume duty.

6. Details of Remedy Exhausted:

That there is no other alternative and efficacious remedy available to the applicant except invoking the jurisdiction of this Hon'ble Court under Section 19 of the Administrative Tribunal Act, 1985.

7. Matters not previously filed or pending before any other court:

The applicant further declares that he has not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, authority or any other bench of this Hon'ble Tribunal nor any such, application, writ petition or suit is pending before any of them.

8. Relief prayed for:-

Under the facts and circumstances stated above in this application the applicant prays for the following reliefs:-

Biswanath Banerjee

8.1 Directing the respondent to treat the period from 18.6.88 till resumption of duty as on duty.

8.2 Directing the respondent authorities to pay all arrears of salary and allowances from 18.6.88 till 26.5.04 by giving effect of his due increments Revision of pay scale and benefit under Assured career progression (ACP) scheme.

8.3 To pass any other order or order as deem fit and proper by the tribunal.

8.4 Cost of the case

9. Interim Order

Pending final decision of this application the applicant prays for an interim order directing the respondents to make payment of rupees one lakh to the applicant.

10. Application is filed through advocate.

11. Particulars of I.P.O.

I.P.O. No.:- 266 319044.

Dt. Of issue:- 30.1.06.

Issued from:- Guwahati GPO.

Payable at:- Dy. Registrar, CAT, Guwahati.

12. List of Enclosures

As stated in index.

Biswanath Banerjee

Verification

I, Shri Biswanath Banerjee, son of Late Sudhir Chandra Banerjee, aged about 54 years, working as confidential stenographer, N.F. railway, Tinsukia, do hereby verify that the statements made in paragraphs 4.9, 4.12, 4.26, 6 & 7 are true to my knowledge and those made in paragraphs 4.6, 4.10, 4.11, 4.13, 4.27, 11, 12 are true to my information derived from records and the rest are my humble submissions before this Hon'ble Tribunal.

I sign this 3rd day of January 2006 at Makum.

Date:

Place: Makum Jn.

Dist. Tinsukia.

Biswanath Banerjee
Signature -

ANNEXURE—

A

~~26~~ - 18 -
209
Annexure - I

Raj Kumar

B.E. (Hons.)

Indian Rly. Service of Engineers.

TO WHOM EVER IT MAY CONCERN

During my tenure of one year as Divisional Railway Manager, Shri Biswa Nath Banerjee worked and assisted me as an very able, sincere and devoted stenographer. He was always available in office even when office hours had expired. He is professionally very competent and totally dedicated to his work without consideration for his comforts and health.

I wish him a prosperous & healthy future in official as well as personal life.

Sd/- Illegable.
27.7.85

Divisional Railway Manager,
NF. Railway/Tinsukia.

Certified to be true copy

J. Purkayastha
Advocate

ANNEXURE - B

210
~~27~~-19-

Recd. with 2/10

N. F. Railway.

No. ES/B/334

Office of the
Divl. Rly. Manager (P), TSK
Dated: 19-11-88.

To

Shri Biswanath Banerjee,
C/O Shri Sudhir Ch. Banerjee,
Near Old Railway Health Unit,
Digboi Road, P.O. Makha Jn.
Dist. Dibrugarh, 786125.

Sub: Unauthorized absence.

It is seen that you have been absenting w.e.f. 18.6.88 on grounds of illness without authority or without producing any medical certificates.

So, you are advised to report to ADMO/AMN or DMO/TSK for medical examination.

[Signature]
for Divl. Railway Manager (P),
N.F. Railway, Tinsukia.

Copy to: 1) ADMO/AMN
2) DMO/TSK

Certified to be true copy
J. Purkayastha
Advocate

for Divl. Railway Manager (P),
N.F. Railway, Tinsukia.

(Rule 9 of the Rly. servants (Discipline and appeal) Rules, 1968).
No. ES-8/33A
DAMPUR TSK (Name of Rly. Administration) -
(Place of Issue).

Date 6.10.1989

MEMORANDUM

The undersigned ~~has~~ / has assigned proposer(s) to hold an inquiry against Sri B.N. Banerjee CS/TSU under rule 9 of the Rly. servants (discipline and appeal) rules, 1968. The substance of the imputations of misconduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement or articles of charge (Annexure - I). A statement of the imputations of misconduct or mis-behaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annex-III & IV). Further, copies of documents mentioned in the list of documents, as per Annex-III are enclosed.

2. * Sri B.N. Banerjee C. Slew / TSK is hereby informed that if he so desires, he can inspect and take extracts, from the documents mentioned in the enclosed list of documents (Annex-III) at any time during office hours within ten days of receipt of this Memorandum. For this purpose he should contact D.P.M. (P)/TSU immediately on receipt of this memorandum.

3. Sri B.N. Banerjee C. Slew / TSK further informed that he may, if he so desires, take the assistance of any other Rly. Servant and an official of Rly. Trade Union (who satisfies the requirements of rule 9(15) of the Rly. servants (discipline and appeal) rule, 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 ~~of~~ of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Rly. Servant(s) or Rly. Trade union official(s), Sri B.N. Banerjee C. Slew / TSK should obtain an undertaking from the nominee(s) that he (they) is (are) ~~will~~ to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case(s) if any, in which the nominee(s) had already undertaken to assist, and the undertaking should be furnished to the undersigned General Manager of ~~the~~ Railway along with the nomination.

4. Sri B.N. Banerjee C. Slew / TSK is thereby directed to submit to the undersigned (through General Manager ~~of~~ Railway & a written statement of his defence (which should reach the said General Manager) within ten days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of his defence and within ten days after completion of inspection of documents if he desires to inspect documents, and also

Cont/2

P.T. 22.12.86

Certified to be true copy
J. P. W. K. G. S. R.
Advocate

Dist. - Tirupur

~~APPENDIX~~ - C (Series)

-2-

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

5. Shri B. N. Bawryje if informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit / deny each article of charges.

6. Shri B. N. Bawryje 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 Rly. servants (Discipline and Appeal) Rules, 1960, or the orders / directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry ex-parte.

7. The attention of Shri B. N. Bawryje is invited to rule 20 of the Rly. servant (Conduct) Rules, 1966, under which no Rly. servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri B. N. Bawryje 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 Rly. services (conduct) Rules, 1966.

8. The receipt of this memorandum may be acknowledged.

Enc/om

By order in the name of the president.

Signature: [Signature]
 Name & Designation of Competent authority:
 To: VI [Signature]
 Divisional Road Engineer (C&W)
 W. Railway/Tinsukia
 (Designation)
 Dist - Dibrugarh (Assam).

To
 Shri Biswanath B. Bawryje c/Secy
 of Shri B. N. Bawryje
 Naty. old Rly Health Unit
 Oigher Road, Bq. Makum. Dist - Dibrugarh (Assam).
 Copy of Shri DME (C&W) / TSN (Name & Design. of the pending 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 ~~competent~~ documents or who would be arranging for inspection of the documents to enable that authority being mentioned in the draft memorandum.

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

ANNEXURE - C (Series)

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ANNEXURE TO STANDARD FORM NO. 5.
MEMORANDUM OF C/SHEET UNDER RULE 9 OF THE RS(D&A) RULES, 1968.

ANNEXURE-1.
Statement of articles of charge framed against Sri B. N. Bawrye
Cable Steno/TSU (Name and Designation of the Railway
Servant).

ARTICLE-1.
That said Sri B. N. Bawrye while functioning as Cable Steno
TSU during the period 1.1.78 to 31.12.78 is charged
with the following under

ARTICLE-11.
That during the aforesaid period while functioning in the aforesaid
office, the said Sri B. N. Bawrye (here enter defini-
nite and distinct article of charge).

ARTICLE-III.
That during the aforesaid period while functioning in the aforesaid
office, the said Sri B. N. Bawrye (here enter defini-
nite and distinct article of charge)

ANNEXURE-11.
Statement of imputation of mis-conduct or misdemeanour in support
of the articles of charge framed against Sri B. N. Bawrye
Cable Steno/TSU (name & designation of the Rly. Servant).

ARTICLE (1) Unauthorized absence with effect from 1.1.78

ARTICLE-111
ANNEXURE-111
List of documents by which the articles of charges framed against
Sri B. N. Bawrye (name & Designation of the Rly. Servant)
that process to be sustained. Attendance Register kept
in DME's office with O.S/M

[Signature]
5.10.78
Divisional Mech. Engineer (C&W)
Rly. Railway/Insular

ANNEXURE-IV
List of witness by which the articles of charges framed against
Sri B. N. Bawrye (name & designation of Rly. servant)
to be sustained.

Neeraj and Rly. Health Council, Digha Road
PO - Makum junction
Dist - Tirupur, Andhra

ANNEXURE ^D
(COPY)

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(CONFIDENTIAL).

To:
The Divisional Mech. Engineer (C&W),
N.F. Rly./Tinsukia.

Sir,

Ref:- Major Penalty chargesheet
No. ES-B/334, dt. 6.10.89
issued to me by you.

1. With profound respect and humble submission, I beg to state that I have received the above chargesheet on 27.10.89 at about 14 hours, and it is noted that I have been charged with unauthorised absence from 18/6/88. It will not be wise to term my absence as unauthorised, ~~because~~ because I applied for leave as follows:-

- (1) Applied for LHAP from 18/6/88 to 24/6/88 - Sent thro: Sri C.L. Bardhan, Peon of our office who came to my house on 23/6/88.
- (1.1) Applied from 25/6/88 to 8/7/88 on 6/7/88 in ref. to your letter No. ES/B-334, dt. 30/6/88 - Sent thro: my brother.

2; Thereafter I could not apply for any further leave, and the reasons which led me to remain absent from duty are indicated below :-

- 2.1. From previous prescriptions of Rly. medical, it will be seen I had been given treatment of chronic amoebiasis from 1979 to 1981.
- 2.2. I attended AMO/MJN on 11/12/81 for pain on left hypochondrium.
- 2.3. Being unsatisfied with treatment, I got private X-Rayed on 28/11/82 and pathology as abdomen Koch.
- 2.4. I was referred to DMO/DBRT on 6/12/82 alongwith AMO/MJN's report. I attended DBRT Hospital on 7/12/82 where I have been examined by DMO Laskar, Dr. Newar, etc. and they saw my X-Ray report and examined my stool and urine on 8/12/82. Dr. Newar reported that clinically I do not seem to be a patient of Kochis abdomen, and as they found RWO ovum, so, I was prescribed the treatment of helmenthiasis, and returned me to AMO/MJN with the instruction to come after one month for X-Ray examination. Accordingly I took treatment of helmenthiasis, but no RWO was evacuated. I was X-rayed on 12/10/1/83 of my U.G.I.T. and reported as NAD (whereas in the X-Ray it is seen stomach contraction and duoden cap cannot be visualised), appendix portion was not X-Rayed. (In the meantime on 17/12/82 I got stool examined privately and nothing abnormal found about amoebiasis).
- 2.5. On 13/8/83 severe pain in sacro-joint felt. So, private Dr. was consulted (as Rly. Dr. was not available) who advised me to do X-Ray. However, on availability of AMO/MJN, he examined me on 15/8/83, prescribed and allowed bed rest. On 22/10/83 I attended AMO/MJN for the same trouble, who examined me and proscribed medicines.

Certified to be true copy

J. Purkayastha

Advocate

(Contd. to... p/2).

- 2.6. On 15/3/84, I reported to AMO/A for the same trouble, and referred to DMO/DBRT, and remained in the hospital from 16/3/84 to 26/3/84. Stool and urine were examined on 17/3/84. In urine calox was found and stool NAD, but no amoeba. As no fruitful result was forthcoming, as per advice of Dr. Newar my stool was examined on 22, 23 and 24/3/84 and veg. cell & RWO(+) was seen.
- 2.7. After examination also in DBRT hospital blood was coming with stool. So, on 28/3/84 I attended AMO/MJN for abdomen pain who examined and prescribed and advised me to take much water.
- 2.8. On 8/9/84 I reported to ADMO/MJN for the same trouble who examined me and prescribed medicines.
- NB:- So far B/P had been checked by all the Doctors at every time and found normal, and as such no mention made in prescriptions.
- 2.9. On 20/2/85, I attended AMO/MJN for the same trouble and I was referred to BMO/DBRT on 21/2/85. DMO/Dr. Bordoloi examined me, who recorded B/P as 160/100. I told him that B/P may be for original trouble. But he prescribed B/P medicines. My nose was checked by the specialist, my anus was checked by the surgeon and found fissure with piles and prescribed medicines. I was under sick from 18/2/85 to 24/3/85. (Original records seized by AMO/MJN).
- 2.10. I reported to ADMO/MJN on 15/2/86 for the same trouble who diagnosed me as chronic amoebiasis and prescribed medicines. ADMO/MJN on 18/2/86 investigated me in details and prescribed medicines for the same troubles. As prescribed by ADMO, I purchased one of the medicines Polyzyme from market.

As I was not satisfied with the treatment, so, I examined my stool and urine privately in the Presidential Clinic and Assam Laboratory on 8/3/86 and no trace of amoeba was found. I showed both the reports to ADMO/MJN to Dr. A. Chakraborty who told me he does not believe these reports. That is why, ADMO/MJN referred me with his letter dt. 13/3/86 to DMO/DBRT. DMO Dr. Bordoloi examined me on 14/3/86, and as per his advice I went to Prof. A.M. Rahaman (fees paid by me) who examined me after seeing the X-ray and stool and urine reports, and prescribed medicines for me. The prescription was shown to DMO/DBRT Dr. Bordoloi who approved to take the medicines as prescribed and advised ADMO/TSK to send me to DBRT Hospital after one week for fresh X-Ray. Accordingly I took the medicines of the Prof. (On my request to DRM/TSK Sri C.D. Srinivasan, it has been confirmed by DMO/DBRT Dr. Bordoloi to DRM that it is gastric ulcer medicines; whereas Rly. X-ray done on 10/1/83 did not show any gastric ulcer. As ADMO/TSK was busy with CMO's inspection programme and for other official works and perhaps he went on leave and as the case was being delayed, I got X-rayed of stomach and appendix privately at Modern X-Ray clinic on 30/3/86 on the prescription of private doctor and it has been diagnosed as elongation of appendix and duodenum cap deformed. I was referred to DMO/DBRT and my appendix was operated upon on 14/5/86 and discharged from hospital on 2/6/86. During stay at DBRT Hospital after operation for a few days blood oozed out with stool with obstinate constipation and anus.

swelled and difficulty experienced in evacuating. P.K.Choudhury examined the anus and told that anus was fissured and by the by said that Class-IV staff are not good enough to give enema. However, he prescribed acriflavin with hot water heat in anus and to apply fucidin ointment locally. Accordingly, I did so. Surgeon P.K.Choudhury advised me to get the B/P checked up from time to time at MJN/TSK Rly. Hospital and I used to do this. Excision of the appendix could have been avoided had diagnosis made properly well in time. Not a single RWO could have been evacuated even after taking helmenthiasis treatment by Rly.

3. On the other hand, in working side I have been put in additional burden of CA-to-DRM's work over and above work of Steno of DMEs, as the post of R CA-to-DRM was vacant perhaps from 17/2/83 to end of 1986. As the post of Steno-to-DSO was lying vacant since long, therefore, I have been sometimes ordered to attend Accident enquiries (by the order of DRM or on request of DSO to DMEs where DMEs were not members, or by DMEs where they are members) in office and sometimes it happened when I was attending accident enquiries or taking dictation of DMEs or DSO (with the permission of DMEs on his request), DRM called me for urgent dictation which I took and typed instantaneously or later on. My nature of work in those period run into so minute details that I cannot remember each and every event at this distant date. However, a brief account is given below:-

- 3.1. DRM or DMEs marked papers as CA/Steno for connection and put up, which I took to Sections and got put up in files and take to them for dictations to avoid delay, took dictations, typed and give dealing Sections of all Branches directly by me. Putting up is done during office working hours, dictation taken sometimes after office hours and typed thereafter (~~when~~ when officers not present) for sign and despatch on next days.
- 3.2. Custody of cash imprest of DMEs (details a/c kept by Stores Deptt.). It was perhaps Rs.3000/- later raised to Rs.10,000/-. Moreover, separate cash is kept for supply of gas cylinders to Running Room.
- 3.3. With the newly created post of DME/C&W paper work increased for me, especially Inspection notes of various types over and above that of DME(P) which I took dictations.
- 3.4. Huge DRM's inspection notes.
- 3.5. Joint Inspection notes of DMEs with other Branch officers (especially safety drives).
- 3.6. Typed hand-written Inspection Notes/letters of DME(P), DSO, DME/C&W when they could not give me dictations, as I was busy with DRM during office working hours.
- 3.7. When DRM was not available in TSK, I used to type his dictations taken in previous days and took dictations of DMEs/DSO.
- 3.8. When DMEs, DRM were not available in TSK, I worked in connection with sorting out and placing of CRs for E.B./Selection/Review of service. Filing of confidential papers in DMEs and DRM's confd. Sections. Issuing reminders to letters from DME and DRM's Confd.

(Contd.to...P/4)

2/7

Section. Follow up of Vigilance preventive check reports of Mech. Deptt. (viz. issuing letters to Sheds/Depots for obtaining remarks therefrom, replying to MLG HQ, issuing of charge sheet & follow up).

Maintenance of Confdl. reports of Mech. Deptt., which includes getting the CRs initiated by Sr. Subordinates, AME, DMEs/Review/acceptance, Despatch to HQ CRs and in case of CRs of FIs remarks from Dy. CME(F) and that of AWTI from CMT were to be obtained.

CRs of all Branches were to be got reviewed/accepted by DRM and to be sent to respective Branches. CRs of all Branch officers after initiation by DRM sent to HQ.

Reply to confdl. letters, where possible, had to be prepared by me after collecting information from Sections or put up to DRM/DMEs for dictation.

3.9. Dictation and typing of PCDOs and remarks to HODMs and other meetings by DRM.

3.10. Suppose DRM's forwarding letters were of few lines, but enclosures run into few pages, so, I had to type the enclosures, because there was no photostat machine in DRM's Office at that time. So, I had no alternative. It was procured perhaps in 1985-86 (actual date I cannot remember).

3.11. ~~As~~ As others officers like DEE, DSTE had no steno, therefore, their manuscript drafts after approval by DRM had to be typed by me (when their typists were not available) for despatch to HQ under DRM's signature on urgent basis.

4. My CRs from 1982-83 to 1986-87 will speak for myself for hard work rendered to the Administration. DRM also commended that I had worked without consideration of my comforts and health during his tenure. It is learnt that DRMs had awarded Rly. Week awards which I did not like to take.

The quantum of work rendered to the Administration by me during that period was abnormally beyond my capacity and it has certainly had bad effect on health and mind gradually thereafter, and I do not know what will be termed in medical terminology of such a state of affairs.

5. However, I have been feeling a kind of vertigo, etc. So, in order to overcome this I took homoeopathy treatment sometimes from Sept./87. The Homoeopathist told that homoeopathy is based on symptoms; so, it would take time to work their system and each of their medicine has a reasonable period of working upto which they will wait and according to symptoms medicines will be changed and antidotes, etc. While I have been waiting for feeling total symptoms for selecting homoeopathy remedy, I have received DRM(P)/TSK's letter No. ES/B-334, dt. 18/11/88 advising me to report to ADMO/MJN or DMO/TSK for medical examination. ADMO/MJN has been requested to attend me at home, who attended me on 28/12/88 and gave prescription on 1/1/89 and I took his medicines. On 11/2/89 I sent him information to check up me at home. He told the messenger to get me checked up by private doctor and returned the fees of Rs. 10/- x sent to him as Doctor's fees. If you like, you can ask him about me.

(Contd. to...P/5)

6. Considering my above facts, you are requested to look into the matter sympathetically and exonerate me from the charge and allow me to wait at least one month as fluctuation of giddiness is ~~xxx~~ there. A letter may please be issued by you addressed to DMO/TSK, ADMO/MJN with copy to me for medical check-up if I desire to do so, or as you deem fit.

With regards;

Yours faithfully;

Sd/-

Dated, Makum Jn.
3/11/89.

(Biswanath Banerjee)
Confdl. Steno. to
DME/TSK,
N.F.Rly.

---oOo---

N. F. RAILWAY

Standard Form NO. VII

STANDARD FORM OF ORDER RELATIVE TO APPOINTMENT OF ENQUIRY OFFICER/BOARD OF INQUIRY (RULE 2(2) OF N.F. (D.M.) RULES, 1960.

NO. ES-B/334

N. F. RAILWAY:-NAME OF ADMIN.
(DRM(F)'S Office -Place of issue -TSK

Dated: 02.12.1996.

ORDER

There are in inquiry under rule 9 of the Rly. Servant (Discipline and Appeal) Rules 1960 is being hold against Sri Biswanath Banerjee (Name & Designation of Rly. servant) and whereas the undersigned consider(S) that a Board of Inquiry and Inquiry Officer should be appointed to inquire in to the charges framed against him.

Now, therefore, the undersigned in exercise of the powers conferred by Rule 2(2) of the said rules, hereby appoint(S).

Board of inquiry consisting of :-

1. Sri S. Lahiri, AME/crw/TSK
2. B.C. Roy, AFO/1/TSK.
3. _____

Here enter names and designation / Members of the Board of inquiry.

Shri _____ OR _____

Divisional Mechanical Engineer,

(Name & Designation of N.P. Railway, Tinsukia.

Inquiry Officer) and Inquiry officer to inquire into the charges framed against the said shri Biswanath Banerjee

(Signature) Name
Designation of the
Disciplinary Authority.

Copy to:- Shri Biswanath Banerjee (Name & Designation of the Rly. Servant) He will please refer para of the Board's

NO. EB-S/334 date 02.12.96 and send the names of Defence counsels (atleast three) in order of preference with their consent letters if he so desires to assist him in the inquiry and to enable this office to fix the date of inquiry. He should intimate the names of his witnesses if any to arrange their attendance accordingly.

Copy to: S. Lahiri, AME(crw)/TSK & B.C. Roy, AFO-1/TSK. (Name & Designation of the Members of the Board of Inquiry/ Inquiry officer)

Copy to: _____ (Name & Designation of the _____ authority)

Note to be inserted in the copy sent to the Rly. servant.

(Confidential) Memo to AME/TSK
c/o - Sri Suddan Ch. Banerjee -
Near old Rly. Colony Health Unit,
Digboi Road, P.O. Mulum Jm.
DIN - 786170, Dist: TINSUKIA
(ASSAM)

Certified to be true copy
J. Purkayastha
Advocate

No. EB-~~1~~ ANNEXURE

DIVISIONAL RAILWAY MANAGER(M),
N.F. RAILWAY, TINSUKIA Dt: 10.12.96.

TO:
Sri Biswanath Banerjee,
Confidential Steno to DME/TSK,
N.F.Rly, Tinsukia.

Sub:- Issuance of S.F.VII under No.
ES-B/334 dt: 02.12.96./

In reference to your letter No. NIL dated:
09.12.1996, it is to inform you that no fresh Memorandum
of Charge was issued vide No. EB-S/334 dt: 02.12.1996 which
was wrongly written in the above S.F.VII.

Please read the Original Memorandum No.
ES-B/334 dt: 6.10.89 in place of Memorandum No. EB-S/334
dt: 02.12.96 which was issued from this Office.

This is for your information and necessary
please.

[Signature]
Divisional Mechanical Engineer(P),
N.F. Railway, Tinsukia.

Copy to:-

- a) MME(C&W)/TSK, N.F.Rly. for information please.
- b) APO-D/TSK(SriB.C.ROY) -do- -do-

Divisional Mechanical Engineer,
N.F. Railway, Tinsukia.

0000000000

Certified to be true copy
J. Purkayastha
Advocate

ANNEXURE - III G

Original Application No. 60 of 97

Date of Order : This the 4th Day of February 2000

HON'BLE MR. JUSTICE D. N. BARUAH, VICE-CHAIRMAN

HON'BLE MR. G. L. SANGLYINE, ADMINISTRATIVE MEMBER

Shri Biswanath Banerjee,

S/O late Sudhir Chandra Banerjee,
Makum Junction, Digboi Road,
(Near Assam Sahitya Sabha Bhawan),
P.O. Makum Junction,
Dist. Tinsukia (Assam) PIN-786170.

By Advocate Mr. C. Parma, Ms. B. Rajkhowa

-Vs-

1. Union of India represented by the Chairman,
Railway Board, Rail Bhawan, New Delhi.
2. The General Manager,
N. F. Railway, Maligaon,
Guwahati-781011.
3. The Chief Mechanical Engineer,
N. F. Railway, Maligaon,
Guwahati-781011.
4. The Chief Personnel Officer,
N. F. Railway, Maligaon,
Guwahati-781011.
5. The Divisional Railway Manager,
N. F. Railway,
Tinsukia.
6. The Divisional Mechanical Engineer,
N. F. Railway,
Tinsukia.
7. The Divisional Railway Manager (Mechanical)
N. F. Railway,
Tinsukia.
8. The Divisional Railway Manager (Personnel)
N. F. Railway,
Tinsukia. ... Respondents.

By Advocate Mr. S. Sengupta,

O R D E R.

G. L. SANGLYINE, MEMBER (A):

This application was submitted by the applicant
seeking the following reliefs :-

contd/-2

Certified to be true copy

J. Purokayastha
Advocate

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- a) To set aside and quash the order of appointment of Board of Inquiry issued under order No.ES-B/334 dated.2.12.96(Annexure A-1) in reference to the charge sheet of 6.10.89 as clarified vide letter No.ES-B/334 dated 10.12.96(Annexure A-2).
- b). To direct the respondents to pay the applicant the arrears of pay and allowances with effect from 29.9.92(i.e. subsequent to 28.9.92 when the DAR enquiry ended in favour of the applicant) and treat the period as on duty for all purposes. And to allow the applicant to resume duty.
- c) To treat the period from 18.6.88(i.e. the date from which the alleged unauthorised absence was shown in the charge sheet Ni.ES-B/334 dated. 6.10.89) to 28.9.92(i.e.. the date when the DAR enquiry was held) as due 'leave-on-average pay' (in short LAP) and rest as extra-ordinary leave on the principles of justice, equity and good conscience for the following purposes :-
 - 1) For counting the period for qualifying service for pensionary and incremental benefits and other consequential benefits as per existing rules.
- d) To pass any other order/orders as deemed fit and proper under the facts and circumstances stated in this application as per law and on the principles of justice, equity and good conscience.
- e) Cost of the case.
- f) To set aside - 'but he can be charged for being unauthorised absence from duty after the expiry of the period of leave applied for', as appearing in para (11) of Annexure A.24."

The respondents have contested the application.

2. We have heard learned counsel of both sides. We are of the view that this application has no merit. Prayer No.(a) has become infructuous in view of the letter dated.1.7.1997 issue by the Divisional Railway Manager(P) Tinsukia to the effect that constitution of Board of Enquiry by Annexure (A-1) was cancelled. Annexure (A-2) is a corrigendum issued by the respondents to read memorandum EB-S/334 dated.2.12.96 as original memorandum No.ESB/334 dated.6.10.89. In view of the aforesaid letter dated. 1-7-1997 this corrigendum has lost significance. Prayer No.(f) above is premature in view of the contents of the letter dated.1.7.1997. After cancelling the constitution of the Board of Enquiry dated.2.12.1996 the disciplinary authority made the following observations in the aforesaid letter :

"(1) Major Penalty Chargesheet was not framed in proper way as can be seen from the office copy of the chargesheet at SN-101 and 102 that

(a) No definite charge of Article-1 of Annexure-1 was mentioned. It simply mentioned as under "That said Sri E.N.Banerjee while functioning as Confidential Steno/TSK during the period- is charged as under"

(b) Statement of Imputation of misconduct/ misbehaviour was not completely brought out in Article-I of Annexure II and that also without any relevant reference of Service Conduct Rule.

(ii) On going through the enquiry report and notings and counter notings available in the file, I am in the conclusion that though Sri B.N.Banerjee, Confidential Steno/TSK cannot be held responsible for being unauthorised absence from duty w.e.f. 18.6.88 to 8.7.88 as he applied for leave and denied by sanctioning contd/4.

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authority, but he can be charged for being unauthorised absence from duty after the expiry of the period of leave applied for. Thus, before finalising the case an opportunity should be given to Shri B.N.Banerjee, Confidential Steno to represent within 15(fifteen) days as to why he could not be taken up for misconduct remaining unauthorised absence from duty w.e.f. 9.7.88 with violation of Rule 3(1) (ii) & (iii) of Railway Service Conduct Rule."

It appears that according to this letter the disciplinary authority came to the conclusion that the proceeding started was defective. However he contemplated a fresh proceeding and for the purpose the applicant was given an opportunity to prefer a written brief within 15 days for consideration before finalising the disciplinary proceedings. It appears that the question before the disciplinary authority was whether the applicant could be charged for unauthorised absence from duty after expiry of the period of leave applied for. The applicant did not avail of the opportunity provided to him and did not allow the disciplinary authority an opportunity to come to a conclusion after hearing him whether such charge could be taken against him. Thus this prayer is premature. The applicant may submit a written brief as called for by the respondents authority within 1 month from the date of receipt of this order and, if action of the disciplinary authority is against him, the applicant is at liberty to agitate afresh without prejudice to the contention in this present application. Prayer No.(b) and (c) are of consequential nature. Moreover, we have

contd/-5.

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ANNEXURE - H

आवेदन के लिए आदेश की तारीख Date of application for copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की तिथि Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
23-3-2000	28-3-2000	28-3-2000	28-3-2000	28-3-2000

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MAHAPUR, TRIPURA,
MIZORAM AND ARUNACHAL PRADESH)

WRIT PETITION (C) NO. 1166 OF 2000.

Shri Biswanath Banerjee,
s/o late Sudhir Ch. Banerjee,
Makun Junction,
district Tinsukia, Assam.

... Petitioner.

-Versus-

The Union of India and 6 others.

.... Respondents.

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR. BRIJESH KUMAR
THE HON'BLE MR. JUSTICE A.K. PATNAIK.

For the petitioner : Mr. G. Sarma, Ms.M.Deka, Advocates.

For the respondents : Standing Counsel for NF Rly.

Date of Hearing and Judgment : 15th March, 2000.

JUDGMENT AND ORDER

BRIJESH KUMAR, C.J. :-

This petition is preferred against the order dated February 4, 2000, passed by the Central Administrative Tribunal, Guwahati Bench in OA No. 60 of 1997.

We have heard Shri G. Sarma, learned counsel for the petitioner. Shri B.K. Sharma, learned counsel has accepted notice on behalf of the respondents.

It appears that disciplinary proceedings were initiated against the petitioner on the purported charge of unauthorised absence from duty. It further transpires that enquiry was completed; but while still the matter was under consideration of the disciplinary

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J. Purkayastha
Advocate

authority, the said authority thought it appropriate that 15 (fifteen) days' time should further be allowed to the petitioner to represent as to why he could not be taken up for misconduct remaining unauthorisedly absent from duty with effect from 2.7.88 in violation of Rule 3(i), (ii) and (iii) of Railway Service Conduct Rule.

The Tribunal ~~took~~^{had} the view that it would be appropriate for the petitioner to make a representation in response to the notice, instead of agitating the matter before the Tribunal.

Learned counsel for the petitioner has vehemently urged that second enquiry for the same alleged misconduct is not permissible. Therefore, there is no occasion to submit any second explanation on the basis of the order given by the disciplinary authority. In connection with this point as raised, suffice it to say that the earlier proceedings do not seem to be finalised. What transpires is that after the enquiry was over by the Enquiry Officer, the matter was still pending ^{reconsideration} before the Disciplinary Authority. The Disciplinary Authority at that stage thought it feasible to provide 15 days' time to represent against the alleged unauthorised absence for a specified period. Therefore, it is difficult to find that any second enquiry was initiated. As found by the Tribunal, we feel, it would be appropriate for the petitioner to make representation to the authority concerned taking any point in defence, as the petitioner may feel are open to him to take in that reply, including the points which have been raised by the petitioner in this petition.

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Needless to emphasise that in case petitioner makes such representation, the authority concerned would obviously consider the same while passing any order in the disciplinary proceedings. Since the time granted to the petitioner is already over, we provide that the petitioner may make such representation within a period of three weeks. Since the matter is quite old, the authority concerned is directed to expedite the finalisation of the proceedings, say, the proceedings would be finalised within six weeks of submission of the representation by the petitioner.

The petition stands disposed of in the manner indicated above.

S/- A.K. Patraik
Judge

S/- Brijesh Kumar
- High Justice

28/3/2000
GAL... COURT
Author... Act of 1970

28/3/2000

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- 50 -

E. P. Railway.

~~ANNEXURE~~ I

No. ES-B/334.

Office of the
Divl. Railway Manager (M),
Tinsukia, Dated. 12.6.2000

To,
Shri Biswanath Banerjee,
(Confidential Steno to DM/TSK)
C/O. Late S. C. Banerjee,
Makum Jn. Digboi Road,
Near Assam Sahitya Sabha Bhawan,
P.O. Makum Junction, Dist. Tinsukia
(Assam) Pin - 786170.

Sub: DAR, Major Memorandum No. ES-B/334 dt.6.10.89.

Ref: Your representation dated 17.4.2000.

-000000-

On going through your appeal date 17.4.2000, as preferred by you in terms of CAT/Guwahati's Order date 16.2.2000 and High Court/Guwahati's Order date 28.3.2000, the undersigned being the Disciplinary Authority has passed the following orders :-

*I have pursued the DAR case of Shri Biswa Nath Banerjee, Confidential steno arising due to his unauthorised absence w.e.f. 09.07.88.

I have gone through the reports and findings of the Enquiry Officer and my observation was communicated to you vide DM(P)/TSK's L/No. ES-B/334 dated 1/7.7.97 with the advice to submit representation if any within 15 (fifteen) days as a matter of natural justice and good conscience on the part of the Disciplinary Authority but you did not respond to it.

1) Shri Banerjee was advised to report ADM/MJN for medical examination vide DM(P)/TSK's letter No. ES/B/334 dated 20.12.88 but he did not respond.

II) Shri Banerjee was advised to resume duty vide DM(P)/TSK's L/No. ES/B/334 dated 30.6.88 and 29.8.91, but he did not respond.

III) After long gap of more than 4 (four) years he reported to Sr. DM/IC/TSK on 24.2.83. Sr. DM/TSK asked him to bring a fresh letter from DM(P)/TSK. A fresh letter No. ES/B/334 dated 8.11.85 was issued directing him to obtain DFC from Sr. DM/TSK. Sr. DM/TSK immediately vide his letter No. N/219/1 dated 9.11.85 advised him to bring a PPMC in support of his sickness, but he did not respond.

attached
1

IV) Again vide DM(P)/TSK's letter No. ES/B/334 dated 16.11.85 he was advised to medical authority to obtain DFC for his resumption, but he did not respond.

From the above it is established that Shri Banerjee was not at all willing to abide by Railway Rules and lawful instruction of the Authority and violated the Railway service Conduct Rule 3 (1) (II) & (III) of 1968.

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J. P. Warkayastha
Advocate

(Contd..... P/2)

(Page/2)

The charge levelled against him regarding deliberate and intentional absence from duty w.o.f. 9.7.88 was thus proved beyond doubt.

I therefore come into conclusion in terms of Rule 301 (6) RI and 5(0) RI and pass speaking order that Shri B. N. Banerjee, Conf. steno can not be allowed to resume duty as he was absenting from duty unauthorisidly w.o.f. 9.7.88 which is beyond 5 (five) years and order for removal from service with effect from 12.5.2000 (A.N.).

Appeal if any, lies with the higher Authority (Appellate Authority) within 45 days.


12/6/00 (N.K. DAS)
Divisional Mechanical Engineer,
N. F. Railway, Tinsukia.

Copy forwarded for information and necy. action to:-

- 1. COS(G) to DME/TSK.
- 2. COS(P) EM Oandro and COS(P) bill/EM.

Divisional Mechanical Engineer,
N. F. Railway, Tinsukia.

ANNEXURE - J

N. F. RAILWAY

NO .ES -B/334

OFFICE OF THE
DIVISIONAL RAILWAY MANAGER(P),
TINSUKIA : DATED : 07.12.2000.

TO :
Shri Biswanath Banerjee,
EX Confidential Steno to DME/TSK
S/O : Late Sudhir Ch. Baherjee,
P.O .MAKUM JUNCTION, DIGBOI ROAD,
NEAR ASSAM SAHITYA BHAVAN,
DIST : TINSUKIA (ASSAM).
PIN : 786170.

Sub :- Interview with DRM/TSK on 02.11.2000

Ref :- Your appeal addressed to BRM/TSK against
this Office NIP of ~~WEM~~ even no. dated:
12.6.2000.

the appellate authority

After personal hearing on 02.11.2000, DRM/TSK has
passed the following Orders :-

" However, on ground of mercy I modified the punishment as reduction to the lowest stage in his present pay scale with adverse future effect. His resumption of duty is subject to his being found fit by the Medical authority of the appropriate level and also the employee furnishing relevant records/Certificates about his alleged illness/outside treatment to the satisfaction of the appropriate authority. After this requirement is complied with the regularisation of the entire period of absence (from 1988 to till date of resumption of duty) as due leave can be considered."

As such, you are hereby advised to report to this Office immediately with proper medical Certificates covering the period so as to consider you to direct to the Rly. Medical authority for obtaining D.F.C . for resumption to duty.

Rb
for Divnl. Rly. Manager (P),
N.F. Railway, Tinsukia.

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J. P. Warkayastha
Advocate

ANNEXURE - K

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N. F. RAILWAY

No. ES-B-334

OFFICE OF THE
DIVISIONAL RLY. MANAGER(P),
TINSUKIA: DATED: 22.01.2001

TO:

Shri Biswanath Banerjee, EX-Confidential Steno to DME/TSK
S/O: Late Sudhir Ch. Banerjee, P.O. MAKUM JUNCTION,
P.O. MAKUM JUNCTION, DIGBOI ROAD, NEAR ASSAM SAHITYA BHAVAN,
DIST: TINSUKIA (ASSAM) PIN: 786170.

Sub:- Your appeal dated: 16.01.2001.

Ref:- Your Previous appeal dated: 12.6.2000 addressed to DRM/TSK
against this Office NIP No. ES-B/334 dated: 12.6.2000.

Having been personal hearing on 02.11.2000, the Appellate Authority, i.e., DRM/TSK has passed the following Orders:

" I have gone through the appeal submitted by Shri Banerjee against the punishment of re-removal from service imposed by the Disciplinary Authority for continuous unauthorised absence from 09.7.88 and observe that:

1. The procedure prescribed in the relevant D & A Rules applicable to Railway servants, have been correctly followed.

2. The findings of the Disciplinary Authority are warranted by the evidence of records.

A perusal of the DAR case including the available documents report of the E.O. the representation of Shri Banerjee against the enquiry report indicate that ample time and opportunity (in Writing) was provided to him to either report for duty or seek treatment of railway doctor. Shri Banerjee did neither and wanted to resume duty after a long gap of nearly 5 years that too without complying with relevant rules regarding treatment ~~at home~~, he should have ~~gone~~ by non-railway given by doctors. If he was not satisfied with the treatment of railway doctors and wanted to take treatment elsewhere, he should have got his leave sanctioned by the Competent authority, which he failed to comply with. Hence I am satisfied that the charge of long unauthorised absence is substantiated. The various points raised by him about the role and responsibility of the Supervisor/Officer alleged discrepancies between the Article of Charges and in the Wordings of the DA's orders, are trivial in nature and do not alter the basic facts of the case namely, long absence without following the prescribed procedure/approved of the competent authority, as required under extent rules.

However, on ground of mercy I modify the punishment as reduction to the lowest stage in his present pay scale, with adverse future effect. His resumption of duty is subject to his being found fit by the Medical Authorities of the appropriate level and also the employee furnishing relevant records/certificates about his alleged illness/outside treatment to the satisfaction of the appropriate railway medical authority. After this requirement is complied with, the regularisation of the entire period of absence (from 1988 to till date of resumption of duty) as leave due, can be considered."

As such, you are hereby advised to report to this Office within 15 (fifteen) days from the date of receipt of this letter with proper medical Certificates covering the period so as to consider you to direct to the Railway Medical authority for obtaining D.F.C. for resumption to duty, failing which it will be presumed that you are not willing to report for duty and order of Penalty as passed by the Disciplinary Authority will hold good.

CC: 2 copies

J. P. W. K. J. S. S.

for Divisional Rly. Manager(P),
N.F. Railway, Tinsukia.

ANNEXURE- L

233 - 41-

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.290 of 2002.

Date of Order: This, the 27th Day of February, 2004.

THE HON'BLE SHRI SHANKER RAJU, JUDICIAL MEMBER.

THE HON'BLE SHRI K.V.PRAHLADAN, ADMINISTRATIVE MEMBER.

Shri Biswanath Banerjee
S/o Late Sudhir Chandra Banerjee
Makum Junction, Digboi Road
(Near Assam Sahitya Sabha Bhawan)
P.O: Makum Junction
Dist: Tinsukia, (Assam)
Pin - 786170.

..... Applicant.

By Advocates Mr.G.P.Bhowmick, Alok Verma & Sanjay Roy.

- Versus -

1. Union of India
Represented by the General Manager
N.F.Railway, Maligaon
Guwahati-781 011.

2. The Divisional Railway Manager
N.F.Railway, Tinsukia
P.O: Tinsukia - 786125.

3. The Divisional Mechanical Engineer
N.F.Railway, Tinsukia
P.O: Tinsukia, Pin - 786 125.

4. The Divisional Railway Manager (Personal)
N.F.Railway, Tinsukia, P.O: Tinsukia..... Respondents

By Advocates Mr.S.Sarma, Mr.U.K.Nair & Ms.U.Das.

ORDER (ORAL)

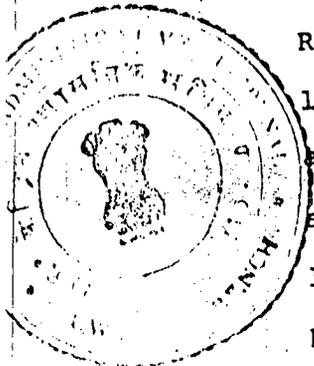
SHANKER RAJU, MEMBER(J):

We have heard Mr.G.P.Bhowmick, learned counsel for the applicant and also Mr.U.K.Nair, learned counsel for the Railways.

1. Against the removal order dated 12.6.2000, the applicant preferred an appeal. On appeal the appellate authority modified the punishment reducing him to the lowest stage. His resumption of duty has been subject to his being found fit by the Medical Authorities.

2. Earlier the applicant, in O.A.99/1994 approached this Tribunal where his plea of direction to the respondents to provide his adequate and effective

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J. Purkayastha
Advocate

भारतीय डाक



SUSHRANTI GPO (781001)
RL 305A
PA : JNCT
TODR. BANARJEE.
HARSHI JN,PTA:

At: 2004 AM5
P.O. NO. 00, AMBIPR. 00, 00/00/0004, 1412119
HAVE A GOOD DAY

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homeopathy treatment was cancelled. It is not disputed and admitted that the applicant was sick from 1988 till the filing of O.A.99/1994. But his sickness from 1988 till the filing of O.A.99/1994 is to be authenticated by relevant medical certificates. Applicant has already completed 18 years of qualifying service. A compassionate view as to his qualifying service is required to be taken in a view to his right to terminal benefits.

3. The respondents have already taken a compassionate view in the matter and modified the punishment reducing his pay scale to the lowest stage.

4. Having regard to the rival contentions, in the circumstances, the O.A. is disposed of with a direction to the applicant to produce all his relevant medical certificates from 1988 to till the filing of O.A.99/1994. (20.4.1994) The same shall be considered by the respondents and a decision would be taken by them within one month from the filing of the certificates. Thereafter the applicant would be allowed to resume duties and the intervening period would be decided as per our observations made above. No costs.



Sd/MEMBER (J)

Sd/MEMBER (Adm)

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ANNEXURE- M

235-43-

To

The Divisional Railway Manager (Mechanical),
M.F.Railway, Tinsukia.

Sub :- Medical records vis-a-vis.
resumption to duty.

Ref :- Hon'ble C.A.T./ Guwahati
Bench's Order dt. 27-2-2004 passed on O.A.
290 of 2002/

Reverend Sir,

With profound respect and humble submission I beg to enclose herewith copy of Hon'ble C.A.T.'s aforesaid order which has been received by me by Postal Dak from my Advocate from Guwahati. I hereby report to you.

That Sir, I beg to enclose herewith copy of Homeopathist (Dr. R.K.Dutta, M.D.(H))'s certificate dated 30-10-'87 certifying treatment under him from 10-9-'87. But I was working duty simultaneously from 10-9-'87. He told me that treatment under him would take a long time. While working duty I was taking medicine from time to time after time gap after time gap (i.e. not continuously) as per modus operandi of his treatment. While I told him about my exhaustion due to heavy burden of office work load for years. He replied me that he has nothing to do for my amelioration on account of heavy burdens of office work load and that this aspect was purely so concern with Rly. Administration and that Rly Admn. know as to how I would be ameliorated on account of heavy burden of office work load. I worked lastly upto 29-5-'88. I was feeling gradual exhaustion on account of shouldering of heavy burden of office work load for years and on the other hand simultaneously I was feeling troubles after appendix operation done in Rly Hospital/DERT on 14-5-'86. head and tail of the cause of troubles could not be understood. I fell sick from 30-5-'88 due to severe vertigo and other troubles and remained house confined bed ridden. Though I deputed messenger to the aforesaid Homeopathist from house from time to time after interval after interval and obtained medicine, but the messenger seen and could learnt from others sometime in 1988, as far as I can remember, that the chamber of the aforesaid Homeopathist was not available and he left the place and his whereabouts could not be known, and as such modus operandi of his treatment could not be finalised with him.

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Advocate

3. The Rly Admt. took cognizance of my sickness vide D.R.M. (P)/TSK's letter No. ES-B/334, dated 18-11-1988 by which advised me to report to ADMO/MJN or IMO/TSK for medical examination (copy enclosed). The said letter was received by me on 20-12-88. The ADMO/MJN medically examined me at our residence on 28-12-88 in reference to aforesaid letter and found me sick in bed-ridden condition. He did not provide or arrange proper medical attendance and treatment to me; rather gave me merely a prescription dt. 28-12-88. I requested the ADMO/MJN to issue me a Rly. medical certificate clearly defining the nature of the illness and the period for which ^{it was likely to be} ~~capable~~ to perform my duties so that I could have submitted Rly. medical certificate to my controlling officer; but the ADMO told me that he would submit his medical examination report dt. 28-12-88 to my controlling officer in reference to IRM (P)'s said letter, and that is why the ADMO/MJN did not give Rly. medical certificate to me and also he told me that my case is an idiopathic medical case and he explained the term "idiopathic" to me as there was no cause. Copy of his prescription is enclosed herewith. It was seen only through written statement dated 2-2-2003 of Rly. with which annexed ADMO/MJN's letter No. PAT/7/89 dt. 28-1-89 addressed to IRM (P)/TSK (copy enclosed) in which ADMO certified my sickness; but his letter contains adverse remarks against me, and such adverse remarks were never communicated to me and I had not been given reasonable opportunity in the interest of natural justice and for the sake of justice, equity and good conscience to defend the adverse remarks. I never told the ADMO that I was not willing to take any allopathic medicine from Rly. Health Unit or to be referred to NWS Hospital/DERT; So, ADMO's aforesaid letter contains two aspects - one aspect was about certifying of my sickness by him which is itself medical certificate in substance and the other aspect was about his adverse remarks against me which I do not accept. After having taken his prescribed medicine I again deputed messenger to him at MJN Rly. Health Unit on 11-1-89 alongwith Rs. 10/- sent to him as Doctor's fees with the request to examine me further at home. He told the messenger to get me checked up by private doctor and returned the Doctor's fees.

4. Copy of Dr. D.N. Chetia's medical certificate dt. 1-11-89 and copies of his prescriptions dated 21-1-89, 27-1-89 and 21-10-89 are enclosed herewith.

5. Copy of Dr. B. Son's medical certificate dt. 6-8-90 and copies of his prescriptions dt. 3-2-90 and 7-7-90 are enclosed herewith.

6. Copy of Dr. B. Sen's medical certificate dated 28-12-90 and copies of his prescriptions dated 28-8-90 and 25-12-90 are enclosed herewith.
7. Copy of Dr. D.N. Chetia's medical certificate dated 28-8-91 and copy of his prescription dated 1-1-91 are enclosed herewith.
8. Copy of Dr. U.N. Singh's Homoeopathist certificate dated 17-9-92 and copy of his prescription alongwith copy of my application dt. 18-9-1992 are enclosed herewith ; In my application I had requested to direct me to Rly. medical authority for pathological investigation to enable me to obtain DFO. I had been taken interview on 18-9-92 by DME (C & W), Sr. DME (Power)/TSK and the Enquiry officer (i.e. Sri P.G. Keshavam, the then APO/I/TSK) and they found me fit and I was held up for DAR enquiry in reference to major penalty chargesheet No. ES-B/334, dt. 6-10-1989 for alleged unauthorised absence w.o.f. 18-6-88 and the DAR enquiry was held on 28-9-92 in which enquiry I attended. The Enquiry officer submitted his DAR enquiry report dated 29-9-92 to the Disciplinary authority in October 1992 ; but I was not supplied with copy of Enquiry officer's DAR enquiry report alongwith Disciplinary authority's order till filing of O.A. No. 99 of 1994 in the Hon'ble C.A.T./Guwahati Bench on 20-5-1994. So, the period from 28-9-92 to 20-5-1994 was spent on account of DAR enquiry proceedings and after the DAR enquiry held on 28-9-92 I was not directed to Rly. medical authority for pathological investigation for obtaining D.F.C.
- 9.
9. From 9-2-93, I was feeling ^{and} pain/troubles in lumbo-sacral region and nasal troubles. Local Dr. B. Sen was called on 9-2-93 who attended me and he advised me for further investigation and treatment by Orthopaedic Surgeon, Neuro Surgeon and ENT specialist. Copy of his certificate dt. 9-2-93 is enclosed herewith. As I was without salary income for years, so, it was not possible on my part to get done such treatment.
10. On 10.2.93, I requested for issue of Railway Sick Memo (copy enclosed). But I was not issued with Rly. Sick Memo till filing of O.A. 99/94 in Hon'ble C.A.T./Guwahati due to DAR enquiry proceedings. Finding no other alternative, I attended before Sr. DMO/ia/TSK on 24-2-93 on the strength of DEM(P)/TSK's letter No. ES-B/334 dt. 18-11-88 in reference to which ADMO/MJN had already examined me at our residence at Makum Jn. on 28-12-88 as mentioned on para 3 above. But Sr. DMO/ia/TSK did not examine me as he learnt from me that there was disciplinary proceedings against me, DAR enquiry held on 28-9-92, Enquiry officer submitted his report to Disciplinary authority in Oct. 92, Rly. Sick Memo asked for on 10-2-93 had not been issued to me. However, Sr. DMO/ia/TSK issued his letter No. H/93/TSK dt. 24-2-93 to DEM (P) /TSK with the request to issue a fresh letter (copy enclosed)
11. Thereafter, I had been submitting applications from time to time to authorities till filing of O.A. 99/94 in Hon'ble C.A.T./Guwahati on 20.5.94 requesting for issue of Rly. Sick Memo; but Rly. Sick Memo was

P A G E - 4

not issued to me till filing of O.A. 99/94 due to disciplinary proceedings and hence the disciplinary proceedings (i.e. major penalty charge-sheet No. ES-8/334 dt. 6-10-89 , proceedings of DAR enquiry held on 28-9-92, Enquiry Officer's DAR enquiry report dt. 29-9-92 and the Disciplinary authority's order passed on the enquiry report were main matters in issue during sub-justice of O.A. 99/94. Copies of my applications dt. 12-3-93, 2-4-93, 29-4-93, 31-5-93, 22-9-93, 23-12-93 (2 applications) and copies of two X-Ray reports requesting for issue of Rly. Sick Memo, submitted to authorities till filing of O.A. 99/94, are enclosed herewith.

12. Prior to filing of O.A. 99/94 on 20-5-93 I got checked up by other Doctors. Though I took their medicines, but proper further investigation and treatment could not be done due to my acute financial scarcity on account of without salary income for years. Copies of following medical documents are enclosed herewith:

a) Copy of Dr. S.C. Jain's medical investigation dt. 5-5-93 is enclosed and he found no abnormality. He advised to get done some tests and sonography. Copies of sonography report, haemogram report, urine and stool report dt. 5-5-93, X-Ray report of P.P.abdomen dt. 5-5-93 are enclosed herewith. He referred me to Dr. D.N.Patowary for valued opinion and advice.

b) Copy of Dr. D.N.Patowary's prescription dt. 6-5-93 is enclosed.

c) Copies of Assam Medical College & Hospital, Dibrugarh, Neurology Deptt.'s prescription dt. 10-5-93 are enclosed herewith.

d) Copy of Dr. M.M.Huda's prescription dt. 6-5-93 is enclosed herewith. He opined the problem may be ^{varicose} varicocele (written varicocele on the back side of the prescription).

e) Copy of Dr. Satyajyoti Dutta's prescription dt. 10-5-93 is enclosed. He wrote DNS (L) sinusities on the back of the prescription.

f) Copy of Dr. Shantanu Laliker's prescription dt. 13-5-93 is enclosed

Copies of X-Ray report of L/S spine as per advice of AMCH/DRT and copy of X-Ray report of P.N.S. as per advice of Dr. Satyajyoti Dutta had been enclosed with my application dt. 28-12-93.

Contd... 5

PAGE - 5

13. The Hon'ble Tribunal passed his order dated 8-8-95 on O.A. 99/94 and order published on 19-10-95. I had submitted certified copy of the order with my application dt. 30-10-95 to IBM (M)/TSK.

14. I would request your honour to allow me to resume duty after taking necessary action.

With regards ;

Yours faithfully,

Encls : As above.

Biswanath Banerjee

(Biswanath Banerjee)
Confidential Steno

IBM (Mechanical) Office
M.F. Railway, Tinsukia
(now at office)

Dated :- 18th March, 2004.

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N.F.Railway

Office of the
Divl,Railway Manager(P)
Tinsukia, Dated:-25-5-04

No. ES-B/334

To,
Shri Biswanath Banarjee
(C/stano to DME/TSK)
C/o s/o Late S.C.Banarjee
Makum Jn. Digboi Road
Near Assam sahitya sabha Bhawan.
P.O.Makum jn. Dist Tinsukia (Assam)

Sub:- Resumption of Duty

In reference to this office letter of even No dated 30-4-04 on receipt of duty fit certificate from CMS/DBRT vide Certificate No 2.dt 23-4-04 you are hereby allowed to resume duty with immediate effete. Hence you are here by directed to report to Sr. DME /TSK for your further duty please.

This has the order of Sr. DME/TSK.

For Divl. Railway Manager (P)
N.F. Railway , Tinsukia

Copy forwarded for information and neey.action to:-

- 1) Sr DME/TSK
- 2) OS(P) EM/Bill
- 3) DFM/TSK
- 4) COS(G)DRM(Minutes)office/TSK
- 5) CMS/DBRT in ref .to his L/No.H/219/I dt.24.5.04.
- 6) GM(P)/MLG(For personal attention of Shri B.Sharma APO/Legal cell/MLG) in ref .to his L/No.E/170/LC/NS/239/2002 dt23.3.04

For Divl, Railway Manager (P)
N.F. Railway , Tinsukia

Certified to be true copy
J. Purkayastha
Advocate

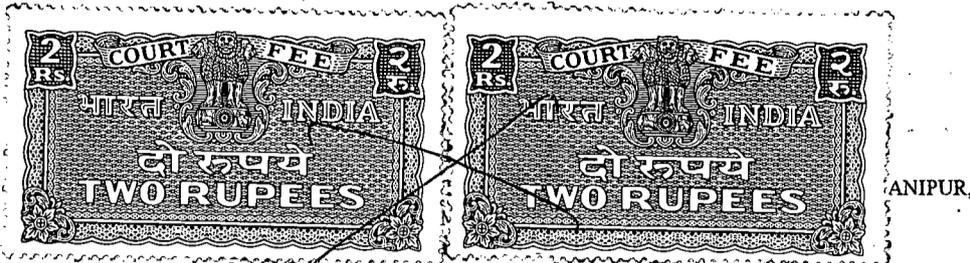


District -

VAKALATNAMA

Biswanath Banerjee

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O. A. NO. OF 199 2006.

Shri. Biswanath Banerjee

Appellant
Petitioner

Versus

Union of India & ors.

Respondent
Opposite party

Know all men by these presents that above named Appellant

do hereby nominate, constitute and appoint Shri G. P. Bhowmik, A. Verma,

J. Purkayastha

Advocate and such of the undermentioned

Advocate / Advocates as shall accept this Vakalatnama to be my / our true and lawfull Advocate to appear and act/plead for me/us in the matter noted above and in all Miscellaneous and interlocutory matters in connection therewith including review and execution of decree or orders, if any, and effect compromise and for that purpose to do all acts whatsoever in that connection including depositing or drawing money, filing in or taking out papers, deed of composition etc for me/us and on my/our behalf and I / we agree to ratify and confirm all acts so done by the said Advocate/ Advocates as mine / ours to all intents and purposes. In case of non-payment of the stipulated fee in full, no Advocate will be bound to appear or act or to do any such act for which he is so authorised.

In witness whereof I / we hereunto set my / our hand this 30th day of January 19 2006.

ADVOCATES



Shri
wami

- Guru Pada Bhowmik
- Chapal Kumar Sarma Baruah
- Ram Prasad Sarma
- Arunesh Deb Roy
- Haladhar Kalita
- Nishitendu Chaudhury
- Bhupen Chandra Bhattacharjee
- Binod Kumar Bora
- Alok Verma
- Rajib Hazarika .



udhury

Received from the executant
Satisfied and accepted

And Accepted

And Accepted

Gurupada Bhowmik
30/1/06

Alok Verma

Jayati Purkayastha

Advocate

Advocate

Advocate

- NOTICE -

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To,
The Rly. S.C.,
CAT Guwahati.

Ref:- O.A. no. 106.

Shri. Biswanath Banerjee

-VS-

Union of India & ors.

Sir,

Please acknowledge the receipt of a copy of the above referred case which is going to be filed in this Hon'ble Tribunal court.

Thanking you.

Copy Received:-

I undertake to serve a copy to the opposite party.

Jayati Purkayastha
Advocate.

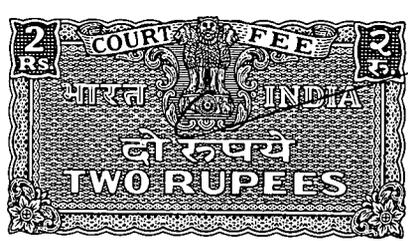
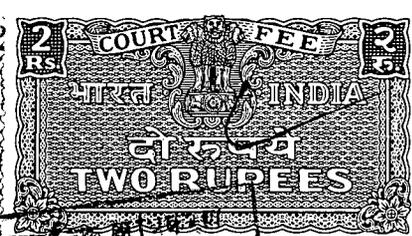
6.2.06.

Recd,
7/2/06
S.C. P/S

Yours faithfully

Jayati Purkayastha
Advocate.

06.2.06.



Filed by: 243
Mr. Biswas
26.4.2006
Advocate

केन्द्रीय प्रशासनिक न्यायालय
Central Administrative
26 April
गुवाहाटी न्यायालय
Guwahati Bench

**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.**

OA No. 33 of 2006

*** Sri Biswanath Banerjee**

-Versus-

U.O.I & Ors

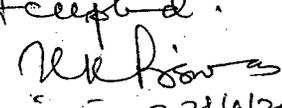
We A. Narayanan, J. P. S. / T. S. K.

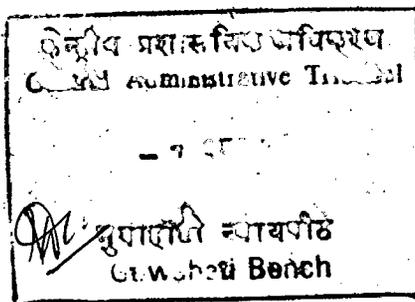
of the Northeast Frontier Railway Administration, who is also ex-officio authorised to act for and on behalf of the Union of India, as representing the Northeast Frontier Railway Administration do hereby appoint and authorised Shri/Smt. Mr. K. K. Biswas, Railway Advocate to appear, act, apply, plead in and prosecute the above described suit/appeal/proceedings on behalf of the Union of India to file and take back document, to accept processes of the court to appoint and instruct counsel, Advocate or pleader, to withdraw and deposit moneys and generally to represent the Union of India in the above described suit/appeal proceedings and to do all things incidental to such appearing, acting, applying, pleading and presenting for the Union of India SUBJECT NEVERTHELESS to the condition that unless express authority in that behalf has previously been obtained from the appropriate officer of the Govt. of India, the said Counsel/Advocate/Pleader or any counsel, Advocate or Pleader appointed by him shall not withdraw or withdraw from or abandon wholly or partly the suit/appeal/claim/defense/proceedings against all or any defendants/respondents/ appellants/ plaintiffs/opposite parties or enter into agreement, settlement or compromise hereby the suit/appeal/proceedings is/are wholly or partly adjusted or refer all or any matter or matters arising out in dispute therein to arbitration PROVIDED THAT IN exceptional circumstances when there is not sufficient time to consult such appropriate officer of the Govt. of India and on omission to settle or compromise would be definitely prejudicial to the interest of the Govt. of India the said Pleader/Advocate or Counsel may enter into any agreement, settlement or compromise whereby the suit/ appeal proceedings is/are wholly or partly adjusted and in every such case the said counsel/advocate/pleader shall record and communicate forthwith to the said officer the special reasons for entering into the agreement, settlement or compromise.

I hereby agree to ratify all acts done by the aforesaid Shri/Smt Mr. K. K. Biswas, Railway Advocate in pursuance of the authority.

IN WITNESS WHERE OF THOSE presents are duly executed for and on behalf of the Union of India this 18 day of April 2006.


1214/06
FOR AND ON BEHALF OF UNION OF INDIA
D. D. Bhatnagar
C. D. Bhatnagar

Accepted.

22/4/2006
Railway Advocate
CAT / G#7 (Guwahati).



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A. Narayanan
9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

O.A.No. 33 of 2006.

Sri Biswanath Banerjee... Applicant.

-Vrs-

Union of India and others... Respondents.

IN THE MATTER OF:

WRITTEN STATEMENT BY THE

ANSWERING RESPONDENTS.

The answering Respondents most respectfully sheweth,

1. That the answering Respondents have gone through the copy of the application filed by the above named Applicant and understood the contents thereof. Save and except the statements which have been specifically admitted herein below or those which are borne on records all other averments/allegations made in the application are hereby emphatically denied and the Applicant is put to the strictest proof thereof.

2. That for the sake of brevity meticulous denial of each and every allegation/statement made in the application has been avoided. However the answering Respondents confined their replies to those points/allegations/averments of the Applicant which are found relevant for enabling a proper decision on the matter.

3. That the Respondents beg to state that for want of the valid cause of action for the Applicant the application merits dismissal as the application suffers from wrong representation and lack of understanding of the basic principles followed in the matter as will be clear and candid from the statements made hereunder:

4. The answering Respondents most humbly submit the case history on the subject above of the Applicant as under:

4.1. That the Applicant Sri Biswanath Banerjee was appointed as an employee of N.F. Railway Organisation and while working as Confidential Steno under

Contd...P/2..Divisional..

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A. Narayan
J. G. and
U. P. and
U. P. and

removal from service of the Applicant Sri Benarjee to the lowest stage in his present Pay Scale with adverse future effect and allowed resumption to duty subject to he was found fit by the medical authority. Instead, against the said order of the Hon'ble CAT/Guwahati, the Applicant Sri Benarjee moved to the Hon'ble High Court which also disposed of his case vide order dated 28.3.2000. observing "We provide that the petitioner may make such representation within a period of three weeks Since the matter is quite old, The authority concerned to expedite the finalization of the proceedings, say, the proceeding would be finalised within six weeks of submission of the representation reply by the Petitioner". The Applicant then submitted a further O.A. No.290/02 for his redressal which was disposed of by the Hon'ble CAT on 27.2.04 with a direction to the Applicant to examine the case upon medical certificates of the Applicant from 1988 till the filling of O.A. No.99/94 and considered for his resumption to duty and thereon decide the intervening period. In compliance to the Hon'ble CAT's order in O.A. No.290/02 the Respondents issued letter dated 01.04.2004 to the Applicant and the Applicant resumed his duty on 30.4.04. The present O.A. has been filed by the said Applicant again for regularization of his absent period as on duty and to pay all back wages and benefits of his absent period which he himself deliberately had caused and violated all principle of Law and cannons of prevailing system.

In this connection it is further highlighted that the conduct of the Applicant Sri Benarjee postulates to be a man of trouble shooter for inviting litigations one after another for the same cause of action which he himself had caused deliberately by his neglect of duty, misconduct, careless and callousness to abide by the Service Rules and the prevailing system. Sri Benarjee has filed as many as 5 court cases right from 1994 to 2006 in CAT, Guwahti and Gauhati High Court for the cause of his absent period which he himself willingly made and avoided all Rules and repeated requests for resumption of his duty and submission of medical reports and sick memo in the event of his being sick which he had not intimated to his employer after the expiry of his sanctioned leave. The following table of Court cases will give the picture at a glance the motive made by the Applicant Sri Benarjee in filing the cases in the Hon'ble CAT & High Court.

// 4 //

TABLE

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A. Narayanan
P. O. No. 100
P. O. No. 100
P. O. No. 100

Sl. No.	CASE NO.	RELIEF SOUGHT	HOW DISPOSED OF	COMPLIANCE
1.	O.A.99/94	To provide effective medical treatment and regularize absent period.	No relief granted by CAT.	Does not arise.
2.	O.A.60/97	To give a chance to represent.	To allow representation and finalization of Disciplinary Proceedings expeditiously within 6 weeks.	Disciplinary Proceeding finalized on.....and punishment of removable from service modified and reduced to the lowest Grade of the cadre by the Appellate Authority.
3.	W.P. in High Court No.W.P© 1166 of 2000.	To provide the petitioner for representation.	High Court disposed of Writ petition almost summarily only with a relief to consider the representation by the Respondents and finalize proceedings within six weeks.	Proceedings finalized within the time frame.
4.	O.A.290/02	-	To consider Applicant's intervening period of compassionately.	Respondents complied with the CAT's direction and issued letter No.....dt.....to the Applicant resumed duty after dilly-dalleing himself only on 30.4.2004.
5.	O.A.33/2006	To treat the absent period as "on Duty" and payment of all backwage for the absent period.	The case is awaited decision of the Hon'ble Tribunal.	-

In this connection the Respondent further said that they were obliged to comply with the directions of the Hon'ble CAT and High Court communicated through the above OAs and Writ Petition to settle the case of the Applicant considering his 18 years of service in the Railway and accordingly his punishment was modified and reduced and he was reinstated in service. But, it is humbly stated, that such kind of consideration can not be made at all times, in all matters and on all events disregarding the existing laws, Rules, Procedures and system. The Applicant was out of service, in fact for more than 5 years, might be because

4.7. That with regard to the statement made under para 4.15. the Respondents beg to submit that the Applicant submitted his representation dated 13.3.2000 under direction of CAT/GHY's order dt. 4.2.2000. While the matter was under active consideration of the Respondents the Applicant being aggrieved by the CAT/GHY's order, filed a Writ Petition before the Hon'ble High Court Guwahati as W.P© No.1166/2000. The Hon'ble HC/GHY vide order dated 28.3.2000 disposed of the petition with the observation that the Applicant may make representation within a period of two weeks and directed the Respondents to expedite the finalization of DAR proceeding within six weeks of submission of representation by the Applicant.

4.8. That with regard to the statement made under para 4.16 the Respondents beg to submit that under the direction of Hon'ble High Court/GHY the Respondents have concluded the DAR proceeding by passing speaking order dt.12.6.2000 with conclusion in terms of Rule 501(6)RI and 510 RI that the Applicant could not be allowed to resume duty as he was absent unauthorisedly from duty w.e.f 9.7.88 which is beyond 05 years and ordered for his removal from service w.e.f 12.6.2000.

4.9. That with regard to the statement made under Para-4.17 the Respondents beg to submit that the Applicant preferred an appeal against the order of removal before the DRM/Tinsukia. The Appellate authority by order 7.12.2000 modified the order of punishment by reduction to the lowest stage in Applicant's present pay with adverse future effect and communicated the same to the applicant vide DRM(P)/Tinsukia's letter No.ES-B/334 dt.22.1.2001 and advised him to report duty within 15 days on receipt of this letter for obtaining Duty Fit Certificate to resume his duty, but the Applicant remained silent for a further period of 7 days.

A photo copy of the above order is annexed as ANNEXURE-B.

4.10. That with regard to the statement made under Para-4.18 the Respondents beg to submit that on receipt of the order dated 7.12.2000, the Applicant instead of reporting his duty, asked the Appellate authority vide application dt.29.1.2001 to clarify the punishment imposed by the Appellate authority as well as reduction to the lowest stage in present scale with future adverse effect. From such attitude

of the Applicant it transpires that he was not willing to abide by the lawful instructions and Rules of Railway. In case he was not satisfied, with the Appellate Authority's action his next course of remedy was to resume his Duty first and then prefer representation to the Revisioing Authority for his redressal.

A copy of the above letter is annexed as ANNEXURE-C.

4.11. That with regard to the statement made under Para-4.19 the Respondents beg to submit that in response to the letter dated 29.1.2001 of the applicant, DRM(P)/Tinsukia vide letter dt. 16.5.2001 clarified the matter stating that the punishment imposed upon him was as per Rule 6(VI) of D & A rules, 1968, i.e. his pay will be fixed at the minimum/initial in the present scale of pay which he was enjoying with future effect contention of DRM(P)/Tinsukia in letter dt.22.1.2001 has been made in accordance with the order of appellate authority. Failing which it will be presumed that he was not willing to report for duty and order of penalty as passed by the DA will hold good was also in the order of the appellate authority. Hence, the objection of the Applicant was baseless and can negative attitude speaks that he was not willing to resume to duty and not in need of Railway service but to invite litigations one after another.

A copy of the above letter ^{is} annexed as ANNEXURE-D ^{and} E.

4.12. That with regard to the statement made under Para-4.20 the Respondents beg to submit that his revision petition to G.M as alleged, has never submitted by him. Had it been so, he should have submitted a photo copy of the same petition like other Annexures which he had submitted in his 49 pages application. Even if it was submitted, for honesty's sake, if it is taken in to consideration, the Applicant why could not wait for the finalization of the DAR proceeding and straightway came to the Court of Law. The facts of which have been detailed by the Respondents in the Para No 4.1 above. The Respondents had left no stone unturned to guide him and bring him back to the resumption of duties and to remain under the care of the Respondents whose hospital is very much within the walking distance of the Applicant's residence, but the applicant was so much adamant and hostile to abide by the Respondents' good wishes that he had to remain out of employment for more than 5 years to which he himself was entirely responsible for his hostile attitude and misconduct. In case he was not interested with the Railways free medical treatment and wished to spend lavish expenditure

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A. Narayanan
9. 01. 2001
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of his money, he could at least intimate his controlling officer that he was sick the rule which was very much known to him by virtue of his official capacity as a confidential Steno. His attitude and actions are clear proof of his misbehavior, misconduct, arrogance, disobedience of a hostile and unwilling worker.

4.13. That with regard to the statement made under Para-4.21 the Respondents beg to submit that the Applicant again preferred an O.A.290/2002 before CAT/Guwahati to set aside the order dated 7.12.2000 of the Appellate authority and order of removal from service passed by respondent dt.12.6.2000. The said O.A. No.290/2002 was disposed of on 27.2.2004 with a direction to the Applicant to produce all his medical certificates from 1988 till the filing of the O.A.99/94. It was further directed that the same shall be considered by the Respondents and a decision would be taken by them within one month on submission of the certificates.

4.14. That with regard to paras 4.22, 4.23 & 4.24 are about the court cases filed by the Applicant and the course of actions taking by the Respondents which were detailed in the foregoing paras and thus the repetitions are avoided by the Respondents.

4.15. That with regard to the statement made under Para-4.25 the Respondents beg to submit that the DAR proceedings initiated in the instant case was within the DAR Rules,1968, providing more opportunities to resume his duty. But the Applicant did not avail the same. By such unwanted activities, he had dishonoured the Administration caused the loss of the valuable time of the Hon'ble Courts. Whereas the Applicant files this present O.A. No.33/06, for seeking direction from the Hon'ble CAT/Guwahati, to regularize his absent period as 'on duty and to pay all back wages and arrear,' which is not possible, for, previously he was given sufficient opportunities to resume his duty, and undergo medical treatment of the Respondents, but he failed. In this connection the Respondents beg to state that millions of Railway men and their members of the families are being freely treated by the Respondents' medical Experts and are cured all over the country. The Applicant is the exception to it and all along avoided the Respondents' help at his need, and rather, tried and caused unwanted

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A. Narayanan
P. O. No. 121
U. P. Eastern Railway

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plethora of problems one after another.

4.16. That with regard to statement made under Para-4.26 the Respondents beg to state that all pay and allowances admissible to him as per Rules were paid to him. However the Respondents said that in case it is found that still there are some amount of his pay and allowances are due and admissible to the Applicant, arrangement shall have to be made for its expedite payment. The Railway Administration being a model employer shall in no way stand on the lawful claims of its employees, but it is desired at the same time that the humble claimant must maintain a good rapport with his employer which in the instant case were not found. However, the pending payment if any due to the Applicant, will definitely be paid to the Applicant.

4.17. That with regard to the statement made under Paras-4.27 and 4.28 of the Written Statement of the Applicant it is submitted that these are the representations of his earlier submission to which the Respondents have emphatically and respectfully answered to in the foregoing Paras.

4.18. That so far the ground for filing this Application the applicant made in the instant O.A., it is submitted that those are not at all sustainable in the eye of law and as well as in the facts and the prescribed Railway's own set of Rules. In the instant case when the Applicant deliberately made himself unauthorisedly absent and remained out of employment for more than 5 years without caring for the good advices of his employer, the Respondents, and inspite of issuance of repeated letters for resumption to duty and to take necessary sick memo for consulting the Railway Doctors for the diagnosis and the treatment of his illness, if at all he needed and suffered to,

Moreover, there was no violation of any Constitutional provision or safeguard for the Applicant as he himself violated the Service Conduct Rules, made misconduct by neglect of duty and remained unauthorized absent and out of employment for more than 5 years despite the issuance of repeated letters from the Respondents and the directions of the Hon'ble Court of laws mentioned in the summary of the case above.

4.19. That the instant O.A. has no merits and it suffers from waiver, acquiescence,

Contd....P/11..estoppel...

2-53
A. Narayanan
P. O. No. 123
G. S. Narayanan
G. S. Narayanan

estoppel and, hence, liable to be rejected ab initio and in limine with cost to the Respondents.

4.20. That in initiating and conducting the DAR Proceeding according to DAR, 1968 all reasonable opportunities were given to the Charged Official herein the Applicant, and the Natural Justice was also observed in the proceedings to settle the case on its merit, but the Charged Official herein the Applicant, could not feel it to be expedient and exigency for his part to co-operate with the Disciplinary Authority and the Authorities for such initiative and finalization of the Departmental proceedings which were within the framework of statutory Rules and procedures.

4.21. That it does not give any sense at all that an employee who had remained out of employment for more than 5 years of his own accord, volition and adamant attitude without caring for the necessary prescribed Rules and now demands and claim for the regularization of his absent period to "treat it on duty" and thereby payment of all backwages when his case was considered by the Respondents leniently and with a compassionate and complacent view in accordance with the direction of the Hon'ble CAT and High Court and modified his removal order and allowed him his resumption of duty vide letter dated 1.4.04 and the Respondent carried out the order only on 30.4.04 remaining a further period of 30 days absent. The conduct of the Applicant a single evidence for resumption of his duty even after the direction of the Hon'ble Court in O.A. No.290/02 by order dated 27.2.04 will be significant to note that it took long 2 months time for him for submission of his Duty Fit Certificate and resumption of duty. Thus the all along attitude, action & conduct of the Applicant do not warrant any consideration for his further relief and the instant O.A. is therefore, liable to be dismissed with cost to the Respondents.

4.22. That the Respondents crave leave of this Hon'ble Tribunal to file Additional Written Statement in the form of Rejoinder, if necessary.

-VERIFICATION-

I, Sri ✓ A. Narayan.....S/O Alagar Samy at present working as...DPO/TSK.....N.F.Railway, Tinashia..., do hereby solemnly affirm and state that the statements made in the paragraphs 4.1 to 4.17 are derived from the records, true to my knowledge and believe and the rest all are my humble and submission and I have not suppressed any material facts.

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

✓ A. Narayan
Signature of the Deponent.

গোপনীয় নথি
কেন্দ্রীয় নথি
কেন্দ্রীয় নথি

To
The Deputy Registrar,
Central Administrative Tribunal,
Guwahati

13
N. F. RAILWAY.

RECD. WITH ACK. DUE 23/6/88

OFFICE OF THE
DIVISIONAL RAILWAY MANAGER (P)/TINSUKIA.

No. ES/B/334,

Tinsukia, dated : 30th June, 88.

To : Sri Biswanath Banerjee,
C/o. Sri Sudhir Ch. Banerjee,
Near Old Railway Health Unit,
Digboi Road, P.O. Makum Junction,
Distt. Dibrugarh - 786 125.

Sub : Unauthorised absence.

—000—

It is observed that you applied for 5 days' LAP from 31.5.88 to 2.6.88 from your residence and thereafter absconding without any authority or any intimation to that effect.

You are hereby advised to report for duty immediately otherwise disciplinary action will be initiated against you.

Shukla
17/08
Divl. Mech. Engineer (C&M),
N. F. Railway, Tinsukia.

Attended
23/8/88
Assistant Personnel Officer-II
T. F. Railway, Tinsukia

NO.ES-B-334

OFFICE OF THE
DIVISIONAL RLY. MANAGER(P),
TINSUKIA:: DATED: 22.01.2001

TO:

Shri Biswanath Banerjee, EX-Confidential Steno to DME/TSK
S/O: Late Sudhir Ch. Banerjee, P.O.MAKUM JUNCTION,
P.O.MAKUM JUNCTION, DIGBOI ROAD, NEAR ASSAM SAHITYA BHAVAN.
DIST: TINSUKIA(ASSAM) PIN:786170.

Sub:- Your appeal dated: 16.01.2001.

Ref:- Your Previous appeal dated:12.6.2000 addressed to DRM/TSK
against this Office NIP No.ES-B/334 dated:12.6.2000.

Having been personal hearing on 02.11.2000, the Appealate
Authority, i.e. DRM/TSK has passed the following Orders:

" I have gone through the appeal submitted by Shri
Banerjee against the punishment of re-moval from service
imposed by the Disciplinary Authority for continous
unauthorised absence from 09.7.88 and observe that:

1.The procedure prescribed in the relevant D& A Rules
applicable to Railway servants, have been correctly followed.

2.The findings of the Disciplinary Authority are warranted
by the evidence of records.

A persual of the DAR case including the available documents
report of the E.O. the p representation of Shri Banerjee
against the enquiry report indicate that ample time and
opportunity(in Writing)was provided to him to either report for
duty or seek treatment of railway doctor shri Banerjee idid
neither and wanted to resume duty after a long gap of nearly
5 years that too without complying with relevant rules regarding
treatment ~~elsewhere~~, he should have got by non-railway ~~by~~
doctors.If he was not satisfied with the treatment, ~~of~~ railway
doctors and wanted to take treatment elsewhere, he should have
got his leave sanctioned by the Competent authority, which he
failed to comply with. Hence I am satisfied that the charge of
long unauthorised absence is substaniated. The various points
raised by him about the role and responsibility of the
Supervisor/Officer alleged discipencies between the Article of
Charges and in the Wordings of the DA's orders, are trivial in
nature and do not alter the basic facts of the case namely,
long absence without following the prescribed procedure/approved
of the competent authority, as required under extant rules.

However, on ground of mercy I modify the punishment as
reduction to the lowest stage in his present pay scale, with
adverse future effect. His resumption of duty is subject to
his being found fit by the Medical Authorities of the appropriate
level and also the employee furnishing relevent records/
certificates about his alleged illness/outside treatment to the
satisfaction of the appropriate railway medical authority.
After this requirement is complied with, the regularisation of the
entire period of absence(from 1988 to till date of resumption of
duty)as leave due, can be considered."

As such, you are hereby advised to report to this Office
within 15(fifteen)days from the date of receipt of this letter
with proper medical Certificates covering the period soas to
consider you to direct to the Railway Medical authority for
obtaining D.F.C. for resumption to duty, failing which it will be
presumed that you not willing to report for duty and order of
Penalty as passed by the Disciplinary Authority will hold good.

Bellected

22/01/01
Assistant Personnel Officer
N. F. Railway, Tinsukia

22-1-01
Divisional Rly. Manager(P),
N.F. Railway, Tinsukia./

ANNEXURE

15

25

N . F. RAILWAY

NO. 83-8/334

OFFICE OF THE
DIVISIONAL RAILWAY MANAGER(P),
TINSUKIA : DATED : 07.12.2000.

TO :
Shri Biswanath Banerjee,
EX- Confidential Steno to DME/TSK
S/O : Late Sudhir Ch. Banerjee,
P.O. MAKUM JUNCTION, DIGBOI ROAD,
NEAR ASSAM SAHITYA BHAVAN,
DIST : TINSUKIA (ASSAM).
PIN : 786170.

225 (B)

Sub :- Interview with DRM/TSK on 02.11.2000

Ref :- Your appeal addressed to DRM/TSK against
this Office NIP of ~~xxx~~ even no. dated:
12.6.2000.

the appellate authority

After personal hearing on 02.11.2000, DRM/TSK has
passed the following Orders :-

" However, on ground of mercy I modified the punishment
as reduction to the lowest stage in his present pay scale with
adverse future effect. His resumption of duty is subject to his
being found fit by the Medical authority of the appropriate level
and also the employee furnishing relevant records/Certificates
about his alleged illness/outside treatment to the satisfaction
of the appropriate authority. After this requirement is complied
with the regularisation of the entire period of absence (from
1988 to till date of resumption of duty) as due leave can be
considered."

As such, you are hereby advised to report to this
Office immediately with proper medical Certificates covering
the period so as to consider you to direct to the Rly. Medical
authority for obtaining D.S.C . for resumption to duty.

Attested
20/12/06

Assistant Personnel Officer-II
N. F. Railway, Tinsukia

Bhs
for Divnl. Rly. Manager (P),
N.F. Railway, Tinsukia.

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To: Divisional Rly. Manager (Personnel),
N. F. Railway,
Tinsukia.

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Subj: Disciplinary & Appeal Rules proceedings - Imposition of punishment as reduction to the lowest stage in my present pay scale with adverse future effect imposed by DRM/TSK on my appeal dt. 1.8.2000.

RECEIVED
DIVISION OF PERSONNEL
N.F. RAILWAY
TINSUKIA
28/01/2001
412

- Ref: -
- 1) Your letter No. ES-B/334 dated 7.12.2000 addressed to me.
 - 2) My application dt. 16.1.2001 addressed to you with regard to inter alia the term "with adverse future effects".
 - 3) My application dt. 16.1.2001 addressed to DRM/TSK submitted through you regarding inter alia the term "with adverse future effect".

Sir,

With profound respect I beg to state that as per Rule - 322 (i) of Indian Railway Establishment Manual - Volume - I (Revised Edition - 1989) and as per Rule 1323 (F.R. 29) (1) of Indian Railway Establishment Code - Volume - II (Sixth Edition - 1987) it is evident that reduction to the lowest stage in a time scale for unspecified period, or as a permanent measure is not permissible under the rules. So, I have requested DRM/TSK in my application dt. 29.1.2001 to specify the period of reduction in the lowest stage in my present pay scale and to specify as to whether on the expiry of such period of reduction, the period of reduction will or will not operate to postpone the future increments of my pay in my present pay scale. In this connection my application dt. 29.1.2001 addressed to DRM/TSK (thru: DRM (Personnel)/TSK) is enclosed herewith in original for your necessary action please.

with regards;

Yours faithfully;

Encls: - Application
dt. 29.1.2001
addressed to DRM/TSK
in original.

Banerjee

Dated: - 29.1.2001

Biswanath Banerjee
Principal Steno
(Mechanical)'s
N. F. Railway,
Tinsukia.

Attested
29/1/01

PC-100
29/1/01

16 ~~17~~ / 1

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ANNEXURE - "D"

To
Divisional Rly. Manager (Personnel),
N. F. Railway,
Tinsukia.

Sub :- Disciplinary & Appeal Rules proceedings – Imposition of punishment as reduction to the lowest stage in my present pay scale with adverse future effect imposed by DRM/TSK on my appeal dt. 1.8.2000.

- Ref :-
- 1) Your letter No. ES-B/334 dated 7.12.2000 addressed to me.
 - 2) My application dt. 16.1.2001 addressed to you with regard to inter alia the term "with adverse future effect".
 - 3) My application dt. 16.1.2001 addressed to DRM/TSK submitted through you regarding inter alia the term "with adverse future effect".

Sir,

With profound respect I beg to state that as per Rule – 33 (i) of Indian Railway Establishment Manual – Volume-I (Revised Edition – 1989) and as per Rule 1323. (F. R. 29) – (1) of Indian Railway Establishment Code – Volume-II (Sixth Edition – 1987) it is evident that reduction to the lowest stage in a time scale for unspecified period or as a permanent measure is not permissible under the rules. So, I have requested DRM/TSK in my application dt. 29.12.2001 to specify the period of reduction in the lowest stage in my present pay scale and to specify as to whether on the expiry of such period of reduction, the period of reduction will or will not operate to postpone the future increments of my pay in my present pay scale. In this connection my application dt. 29.1.2001 addressed to DRM/TSK (Thro : DRM (Personnel)/TSK is enclosed herewith in original for your necessary action please.

With regards ;

Your's faithfully,

Enclo. :- Application dt. 29.1.2001
addressed to DRM/TSK
in original.

Dated :- 29.1.2001.

Sd/-
(Biswanath Banerjee)
Confidential Steno,
D.R.M. (Mechanical)'s
Office / N. F. Railway,
Tinsukia.

17/18

To:
The Divisional Railway Manager,
N. F. Railway,
Tinsukia.

(Through:- D.R.M. (Personnel)/N.F.Rly./
Tinsukia.)

Reg:- Imposition of punishment as reduction to the lowest stage in my present pay scale with adverse future effect imposed by DRM/TSK on my appeal dt. 1.8.2000.

Ref:- My application dt. 16.1.2001 to DRM/TSK submitted through D.R.M. (Personnel)/N.F.Rly./Tinsukia.

Sir,

With profound respect and humble submission I beg to request you kindly to refer to my aforesaid application in which I had stated that the term, "to the effect with adverse future effect", as written in the above quoted punishment is not understood as to ~~which~~ in which respect adverse future effect will apply, and as such I had requested you in my aforesaid application dt. 16.1.2001 to communicate me as to in which respect adverse future effect will apply. But I have not been communicated the same. However, in this connection I beg to quote the following rulings for your information.

2. That sir, I beg to quote the Rule-322 (i) of Indian Railway Establishment Manual - Volume-I (Revised Edition-1989) as follows:-

322. Effect of reduction in pay or grade -

(i) Reduction to lower stage in the time scale. Reduction in pay, as distinct from reduction from a higher grade or class to a lower grade or class, does not affect a railway servant's position on the seniority list. The authority ordering reduction should invariably state the period for which it shall be effective and whether, on restoration, the period of reduction shall operate to postpone his future increments, if so, to what extent.

3. That sir, further I beg to quote Rule 1323 (F.R. 29) (1) of Indian Railway Establishment Code - Volume-II (Sixth Edition-1987) as follows:-

1323 (F.R. 29) - (1) If a railway servant is reduced as a measure of penalty to a lower stage in his time scale, the authority ordering such reduction shall state the period for which it shall be effective and whether, on restoration, the period of

(Contd. to - 2)

(2) 18

reduction shall operate to postpone future increments and, if so, to what extent.

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3. That sir, from the above rulings it is evident that reduction to the lowest stage in a time scale for unspecified period or as a permanent measure is not permissible under the rules. In view of above, you are requested to specify the period of reduction in the lowest stage in my present pay scale and to specify as to whether on the expiry of such period of reduction, the period of reduction will or will not operate to postpone the future increments of my pay in my present scale.

With regards;

Yours faithfully;

Banarjee

(Biswanath Banerjee)
Confidential Steno,
D. R. M. (Mechanical)'s
Office/N.F. Railway,
Tinsukia.

Dated: 29.1.2001.

An advance copy of this application is sent to DRM/TSK.

Attested

29/1/01
DRM/TSK
N. F. Railway, Tinsukia

17
18/1

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ANNEXURE - B

To,

The Divisional Railway Manager,
N. F. Railway,
Tinsukia.

(Through : D.R.M. (Personnel) / N.F.Rly. / Tinsukia.

Reg :- Imposition of punishment as reduction to the lowest stage in my present pay scale with adverse future effect imposed by DRM/TSK on my appeal dt. 1.8.2000.

Ref :- My application dt. 16.1.2001 to DRM/TSK submitted through D.R.M. (Personnel)/N.F.Railway/Tinsukia.

Sir,

With profound respect and humble submission I beg to request you kindly to refer to my aforesaid application in which I had stated that the term to the effect "with adverse future effect", as written in the above quoted punishment is not understood as to in which respect adverse future effect will apply, and as such I had requested you in my aforesaid application dt. 16.1.2001 to communicate me as to in which respect adverse future effect will apply. But I have not been communicated the same. However, in this connection I beg to quote the following rulings for your information.

2. That Sir, I beg to quote the Rule - 322 (i) of Indian Railway Establishment Manual - Volume-I (Revised Edition - 1989) as follows :-

"322, Effect of reduction in pay or grade -

(i) Reduction to lower stage in the time scale. Reduction in pay, as distinct from reduction from a higher grade or class to a longer grade or class, does not affect a railway servant's position on the seniority list. The authority ordering reduction should invariably state the period for which it shall be effective and whether, on restoration, the period of reduction shall operate to postpone his future increments, if so, to what extent."

3. That Sir, further I beg to quote Rule 1323 (F.R. 29) (1) of Indian Railway Establishment Code - Volume-II (Sixth Edition - 1987) as follows :-

"1323 (F.R. 29) :- (1) If a railway servant is reduced as a measure of penalty to a lower stage in his time scale, the authority considering such reduction shall state the period for which it shall be effective and whether, on restoration, the period of reduction shall operate to postpone future increments and, if so, to what extent."

Contd... P/2.

18/1

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// 2 /

4. That Sir, from the above rulings it is evident that reduction to the lowest stage in a time scale for unspecified period or as a permanent measure is not permissible under the rules. In view of above, you are requested to specify the period of reduction in the lowest stage in my present pay scale and to specify as to whether on the expiry of such period of reduction, the period of reduction will or will not operate to postpone the future increments of my pay in my present scale.

With regards ;

Your's faithfully,

Dated :- 29.1.2001.

Sd/-

(Biswanath Banerjee)
Confidential Steno,
D.R.M. (Mechanical)'s
Office / N. F. Railway,
Tinsukia.

An advance copy of this application is sent to DRM/TSK.

ANNEXURE

19/05

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N. F. RAILWAY

NO. ES-B/334

OFFICE OF THE
DIVISIONAL RLY. MANAGER (P),
TINSUKIA : DT : 16.5.2001.

TO :
Shri Biswanath Banerjee,
EX- Con. Steno to DME/TSK
S/O Late Sathir Ch. Banerjee,
P.O. Makum Junction, Dighoi Road Near Assam Sahitya Bhavan,
Dist : Tinsukia (ASSAM) Pin code - 786170.

Sub :- Clarification

Ref :- Your appeal dt : 29.01.2001.

In reference to the above, this is to inform you that the punishment imposed upon you is very much clear under rule 6(vi) of D. & Appeal Rules, 1968, i.e., your pay will be fixed at the minimum/initial in the present scale of pay which you were enjoying, with future effect permanent.

for *B. Gar*
Divnl. Rly. Manager (P),
N. F. Railway, Tinsukia.

Attested

23/05/06
Assistant Personnel Officer-II
N. F. Railway, Tinsukia

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From:
Sri K.K. Biswas,
Advocate,
Central Administration Tribunal,
Guwahati.

To:
Sri G. P. Bhoomick,
Advocate,
CAT/Guwahati.

Dear Sir,

Sub: O.A. No. 33 of 2006
Sri Biswanath Banerjee Applicant/Ptitioner
VS.

Union of India and Qrs. _____
Respondents/Opposite Parties.

Kindly acknowledge receipt of the enclosed "Service Copy" for the Advocate of the Respondents/Opposite Parties.

With thanks,

Yours faithfully,

(K.K. Biswas)

7/9/06

Dated 07.09.2006

Rey Advocate,
CAT/Guwahati.

I undertake
the responsibility of
handing over the
Service copy to the
Applicant's Advocate
K.K. Biswas
7/9/06
Advocate

1
IN THE CENTRAL ADMINIST.

GUWAHAT BENCH, GUWAHATI

केन्द्रीय प्रशासकीय न्यायालय
Central Administrative Tribunal
7.2.07
गुवाहाटी न्यायापीठ
Guwahati Bench

O.A. No. 33 /2006

Shri Biswanath Banerjee .. Applicant

-Versus -

Union of India & Ors. ... Respondent

Re-joinder by the applicant against the
written statement filed by the Respondents.

The Applicant Most Respectfully Sheweth:-

1. That the applicant after having gone through the written statement of the Respondents beg to submit that save and except the statements which have been specifically admitted hereunder and those which are borne by records all other averments/contentions/allegations made in the Written Statement are hereby emphatically denied and the Respondents are required to prove strictly thereof.

2. That for the sake of brevity meticulous denial of each and every averment/contention/allegation made in the written statement has been avoided. But the applicant confined his replies to those averments/contentions/allegations/statements of the Respondents, which are seemed to be relevant for arriving at just decision of the case.

3. That regarding paragraph 3 of the written statement, the applicant beg to submit that allegation made in paragraph-3 of the W.S. is not tenable as per law and on the principles of justice, equity and good conscience for the reasons stated in the subsequent paragraphs hereunder. The applicant emphatically denies the allegation of wrong representation and lack of understanding of the basic principles followed in the matter and such denial will be

Biswanath Banerjee
(Applicant)

Filed By:-
The Applicant
Through
Jayati Prakashyasti
267 Advocate
7.2.07.

clear from the statements made in the subsequent paragraph hereunder.

4. That with regard to the statements made in para 4.1 of the written statement the applicant begs to state that the respondents have sought to twist the entire facts and circumstances and presented a camouflaged presentation of the successive events resulting in the filing of the original application. The actual fact has already been detailed in the original application no. 33/06. The applicant vehemently opposes the twisted circumstances sketched on the written statement. He asserts that it is the Respondents/departmental authorities who did not allow the applicant to join/ resume his duty by showing baseless and concocted administrative reasons and to save their skin they had issued letters asking the applicant to join. But, whenever the applicant approached the concern officer for joining, hurdle had been created by putting some absurd pre-conditions, so the Respondent authority acting through the concerned officers were responsible for the present state of affairs caused to the applicant. It is the department who is at fault and the applicant was put to suffer because of their fault. Hence, it is wrong on the part of the Respondents to hold him unauthorisedly absent for more than 5 years. If the documents & eventualities are weighed in proper perspective than it will be evident that the applicant is entitled to get the back wages.

4.1 That regarding averments made in the first sub-para of paragraph 4.1 of the W.S. about alleged unauthorised absence the applicant emphatically denies the same and submits that the Railway administration since inception was aware of sickness of the applicant, but despite that, Respondent authority did not take all possible steps, as required as per Sub-Clause (i) of Sub-Rule (2) of Rule-3 of the Railway Services (Conduct) Rules, 1966, as codified in the Indian Railway Establishment code-Volume-I (5th edition-1985) to ensure integrity and devotion to duty of the

Biswanath Banerjee
(Applicant)

applicant by way of directing the Railway Medical authority for arranging proper medical attendance and treatment to the applicant, as the nature of ailment require so that he could resume to duty. It was known to the Respondents authority that there was no qualified Railway Homoeopathist as well as no Railway Homoeopathy Dispensary in Tinsukia, Dibrugarh Town and Makum Jn. Railway Hospital (i.e. the localities in and around applicant's working and residence places), for which the applicant could not obtain Railway sick memo for obtaining Railway Homeopathic attendance and treatment. The Respondents authority did not communicate the applicant about modus operandi of the then prevailing system of obtaining Railway Homeopathy attendance and treatment so that he could have obtained the Railway Sick Memo for Railway Homoeopathic attendance and treatment. So the allegation of not obtaining sick memo by the applicant from the controlling officer as per prevailing system for Railway Homoeopathy treatment is emphatically denied. The applicant never remained unauthorised absence; rather it was only inaction of Respondents authority for not taking all possible steps as per statutory Railway service Conduct Rule Ibid, for which the applicant had to remain absent. The applicant beg to submit that DRM (P)/ Tinsukia' letter no. ES/B-344 dated 30.6.1988, as referred to in the W.S. became irrelevant/lost its significance/was of no consequence due to subsequent issue of DRM (P)/Tinsukia letter No. ES/B-334 dated 18.11.1988 (Annexure-B of the O.A and Annexure-A of the W.S) admitting sickness of applicant.

4.2 That regarding second sub-para of para-4.1 of the W.S. the applicant most respectfully begs to submit applicant's absent beyond his control did not warrant disciplinary action in the fact and circumstances of the case because prior to initiation of major penalty disciplinary proceedings with the issue of major penalty charge sheet No. ES/B-334, dated 06.10.1989 for alleged unauthorised absence w.e.f. 18.6.1988, Asstt. Divisional Medical Officer/N. F. Railway Dispensary / Makum Jn. (in short

Biswanath Banerjee
(Applicant)

ADMO/MJN) had already examined the applicant in applicant's residence at Makum Jn on 28.12.1988 in reference to DRM (P)/TSK's above mentioned letter dated 18.11.1988 and he found the applicant was in sickness in bed-ridden condition; but the ADMO/MJN did not provide or arrange proper medical attendance and treatment to the applicant, rather he gave merely a prescription dated 28.12.1988 to the applicant. While the applicant demanded a medical certificate from the ADMO/MJN clearly certifying the nature of illness and the probable date upto which the applicant would be unable to attend to his duty, the ADMO told the applicant that he would submit his medical examination report dated to Respondent authority in reference to DRM (P)'s above letter dated 18.11.1988. The ADMO/MJN submitted his medical examination report dt. 28.12.1988 to DRM (P) / TSK vide his letter No. PAT/7/89, dated 28.1.1989. The ADMO's said letter dt. 28.1.1989 had two aspects - in one aspect, he certified sickness of the applicant and in another aspect he communicated adverse remarks against the applicant to DRM (P)/TSK. Such adverse remarks of ADMO/MJN were never communicated to the applicant at any point of time. But it was a fact that the ADMO's above letter, which certified applicant's sickness was itself a Railway Medical, certificate in substance. While the Respondent was aware from the ADMO's above letter about applicant's sickness and while ADMO's letter contained adverse remarks against the applicant and while there was uncertainty about applicant's sickness, for which the applicant could not be held responsible, in that event it would have been in the fitness of things/appropriate and in the interest of natural justice either (i) to hold a fact finding enquiry by the Respondent authority by associating the examining ADMO/MJN to reveal the problem in issue, or (ii) to depute a Welfare Inspector for conducting a fact finding enquiry on the spot to ascertain the fact in issue, or (iii) to take all other all possible steps as per above mentioned Service Conduct Rule, or (iv) even the Respondent authority ought to have called for explanation in respect of adverse remarks of ADMO/MJN. But Respondent

Biswanath Banarjee
(Applicant)

authority did not take action in any of above manner, which warranted in the fact and circumstance of the case.

Acopy of the said letter no. PAT/7/89

Dated 28.1.1989 issued by DRM(P)/TSK

is filed hereto and marked as Annexure-O.

The deponent submits that though the Respondent authority issued above-mentioned charge sheet; but did not disclose the ADMO's letter ibid in the charge sheet and also did not make the examining ADMO/MJN as witness in the charge sheet for cross-examination by the applicant. Even during disciplinary enquiry proceedings held on 28.9.92 by the Enquiry Officer (i.e. Sri P.G. Keshavan, the then APO/I/N.F.Rly/Tinsukia) the contents of ADMO's said letter dt. 28.1.1989 were not recorded and examining ADMO/MJN was not called as witness for cross-examination. Further Respondents even did not submit Written Statement during pendency of earlier O.A. 99 of 1994 (filed in this Hon'ble Tribunal on 20.5.1994) and did not bring to light of this Hon'ble Tribunal and to applicant the contents of ADMO's said letter through WS, if any would have been submitted. So, there was violation of requirement of Rule 9(6) of the Railway Servants (Discipline & Appeal) Rules, 1968 (in short D & A Rules), violation of principle of Natural Justice and against the principles of Justice, Equity and good conscience. In this connection, applicant's brief averments in para-3 of his letter dt. 18.3.2004 (Annexure-M of the O.A.) may please be referred to. So, after observing a period of six months i.e. as stated by the Respondents in the instant W.S., was not necessary for waiting, rather all possible steps, as narrated above, ought to have been taken by the Respondent authority. So, for wasting a period of six months by the Respondents after receipt of ADMO's said letter, the applicant was not at all in any way responsible.

4.3 Though the major penalty charge sheet No. ES/B-334, dated 06.10.1989 for alleged unauthorised absence w.e.f. 18.6.1988 was issued, it was/is void ab-initio as can be seen very belatedly

Biswanath Banerjee
(Applicant)

from the contents of DRM (P)/TSK's letter no. ES/B-334, dated 01.7.1997 and this lapse in issuing the charge sheet has been accepted by the Respondent authority (i.e. Disciplinary Authority) itself. So, the adverse action emanated (i.e. imposition of punishment already imposed) out of the above mentioned void-ab-initio charge sheet was/is illegal, arbitrary, violation of D & A Rules, and violation of principles of Natural Justice and against the principles of Justice, Equity and good conscience.

A copy of DRM(P)/TSK's letter no.ES/B-334
Dated 1.7.97 is filed hereto and marked as
Annexure-P.

4.4 That the applicant emphatically denies herewith the allegation of the Respondents which inter-alia reads as "after a period of 5 years Sri Banerjee approached the Administration vide his letter dt. 2.4.93 to issue sick memo for obtaining necessary duty fit certificate from the Railway Doctor and without waiting for the reply in his said letter he approached this Hon'ble CAT, Guwahati vide O.A. No. 99/94." The applicant begs to submit that he had already attended DAR enquiry on 28.9.1992, Enquiry Officer had already submitted his DAR Enquiry report dated 29.9.1992 to Disciplinary authority (i.e. Respondent authority) in October 1992 but despite that the applicant had not been communicated anything in respect of disciplinary proceedings. The applicant submitted application dt. 10.2.1993 praying for issue of Railway sick memo, as fresh sickness of applicant occurred. As no Railway sick memo was ever issued, so, the applicant attended before Sr. DMO/IC/N.F. Railway Hospital/Tinsukia (in short Sr. DMO/IC/TSK) on 24.2.93 for medical examination. Sr. DMO/IC/TSK instead of medically examining the applicant wrote letter no. H/93/TSK, dated 24.2.1993 to DRM (P)/TSK with the request to issue fresh letter for medical examination, as Sr. DMO/IC/TSK learnt from the applicant that a disciplinary proceeding for alleged unauthorised absence was going on against applicant, that a Rly. Sick memo as asked for on 10.2.1993 was never issued. Hearing all these Sr. DMO/IC/TSK told the applicant

Bishwanath Banerjee
(Applicant)

that Sr. DMO/IC apprehended that the applicant might be removed from Rly. Service, and as such he wrote the above letter. Thereafter also, the applicant submitted following applications to the authorities from time to time till filling of earlier O.A. 99 of 1994 (filed in this Hon'ble Tribunal on 20.5.1994) praying for issue of Rly, Sick Memo or fresh letter to Sr. DMO/IC/TSK: - by applications dated 12.3.93, 2.4.93, 29.4.93, 31.5.93, 22.9.93 and 28.12.93. But no Rly Sick memo or fresh letter to Sr. DMO/IC/TSK had ever been issued till filling of OA 99/1994.

Copy of applicant's application from 10.3.93 to 28.12.93 are filed hereto and marked as Annexure-Q series.

The applicant believes that there was/is no extant Railway Rules that a Railway servant is debarred from obtaining Railway Medical Attendance and treatment during on-going disciplinary proceedings for alleged unauthorised absence or for whatever other charges. On the same analogy, the applicant also believes that a hard-core criminal is rendered medical attendance and treatment by the State during their trial and imprisonment. The applicant was not removed from Rly. Service till filling of O.A. 99/1994 (filed on 20.5.94). While the applicant believes so, the Respondents are put to strictest proof by quoting showing and supplying copy thereof as to whether any Rly. Rules existed/exists debarring a Rly. Employee in the above circumstances while the Rly. Employee was/is not at all removed from service. If no such Rly. Rules existed/exist, in that event the applicant had been denied the Rly. Sick memo illegally, arbitrarily.

The applicant submits that as the disciplinary proceedings was at the root for not issuing Rly. Sick memo or Fresh letter to Sr. DMO/IC/TSK and whereas the applicant had not been supplied with copy of DAR enquiry proceedings of 28.9.1992, copy of Enquiry Officer's DAR enquiry report dt. 29.9.1992 and copy of Disciplinary authority's order for submission of written reply therefore, the applicant had no other alternative but to file earlier O.A. 99 of 1994 in this Hon'ble Tribunal on 20.5.1994.

Bhawanath Banerjee
(Applicant)

During sub-judice of O.A. 99/94, disciplinary proceedings were the matters in issue. Therefore, the allegation of Respondents which reads as "After a period of long 5 years Sri Banerjee approached the Administration vide his letter dt. 2.4.93 to issue sick memo for obtaining necessary "Duty Fit Certificate" from the Railway Doctor without awaiting for the reply to his said letter, he approached this Hon'ble CAT, Guwahati vide O.A. No. 99/94 ..." is emphatically denied herewith and such allegation is nothing but to mislead this Hon'ble Tribunal, as no man of ordinary prudence would await for more than one year from 2.4.93 to 20.5.94 (date of filling OA 99/1994). While no response was forthcoming from the Respondent authorities in response to applicant's above-mentioned applications and while nothing had been communicated about fate of the disciplinary proceedings by the Respondent authorities, so, question of alleged 5 years did not arise. Moreover, as stated above, it was fresh sickness with the submission of application dt. 10.2.1993 *ibid*.

4.5 Regarding allegation of Respondents made in 2nd sub-para 4 of W.S which reads as "The Hon'ble CAT dismissed the O.A. observing neither", the applicant beg to submit that though O.A. 99/94 was dismissed partially from Limitation point of view and partially for procedural lapse for failure to disclose the cause of action on the frame of the OA, the disciplinary proceedings were the matters in issue during sub-judice of OA 99/94. There was no injunction of this Hon'ble Tribunal to keep in abeyance disciplinary proceedings during pendency of OA/1994. But the Respondents did not submit W.S., did not submit along with W.S. (if any would have been submitted) copy of ADMO/MJN's letter dt. 28.1.1989 (Annexure 'O' of this rejoinder), copy of DAR enquiry proceedings dated 28.9.1992 held by the Enquiry Officer, copy of Enquiry Officer's DAR Enquiry report dated 29.9.1992 (submitted to disciplinary authority - Respondent authority in October 1992) copy of Disciplinary Authority's order before this Hon'ble Tribunal and to applicant; consequently the

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applicant could not get opportunity in the interest of Natural Justice to rebut the allegation of alleged unauthorised absence during pendency of earlier OA 99/94, and hence this Hon'ble Tribunal as per Rules of pleadings held on the frame of its order dated 8.8.1995 passed in OA 99/1994 which inter-alia reads as "Thus the service of applicant was not terminated at any point of time. The disciplinary enquiry did not result in any order adverse to him" (vide para-3, page-5 of its above order). Though the OA 99/94 was dismissed, but for above observations of this Hon'ble Tribunal, the applicant was unable to prefer appeal against the dismissal. Although reliefs were not granted, but disciplinary proceedings were settled with its upholding in the above manner, and in view of above observations there was no direction of Hon'ble Tribunal to Respondent to finalize the disciplinary proceedings again in reference to the above mentioned void ab-initio Chargesheet dt. 06.10.1989 and hence there remained nothing to finalize the disciplinary proceedings. Rather this Hon'ble Tribunal left the matter to be decided between Respondents and applicant with the passing of following order: -

"..... Neither in limitation nor on merits any relief can be granted on the frame of this application, which does not disclose any cause of action or a grievance, which can be redressed under the law. In the peculiar situation where he is neither on duty nor his service are terminated what the respondents should do or the applicant should do is a matter for those parties to consider and from this order it is crystal clear that there remained nothing further to finalize the disciplinary proceedings again in reference to the same void ab-initio charge sheet dt. 06.10.1989."

That it is noteworthy to point out that disciplinary proceedings was initiated on 06.10.1989 in reference to above mentioned void ab-initio charge sheet No. ES/B-334 dated 06.10.1989 for alleged unauthorised absence w.e.f 18.6.1988, DAR enquiry held on 28.9.1992 by the Enquiry Officer (who was not the disciplinary authority) in an illegal manner by asking incriminatory questions in violation of Rule 9 (21) of D&A Rules, 1968 and by

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overlooking non-disclosure of statement of imputation of misconduct in the charge sheet and punishment of removal from service imposed illegally on 12.6.2000 (i.e. more than 10 years after issue of the charge sheet) at the cost of mental agony, monetary loss, loss of valuable/precious time of the applicant for no fault of the applicant, and deprived the applicant to resume duty for much earlier for so many years on the pretext of pending void ab-initio disciplinary proceedings and dilly dally practice. No prescribed formalities had been observed in imposing the punishment.

That the applicant reported for resumption to duty on 18.3.2004 vide his application dt. 18.3.2004 (Annexure-M of instant O.A), but, in fact, he was allowed to resume duty on 27.5.2004 due to high time taken for issuing of Duty Fit Certificate for administrative reason.

4.6 That the applicant begs to submit that the allegations in third sub-para of Para 4.1 of the WS are emphatically denied herewith, as compelling circumstances created by illegal, arbitrary inaction/illegal, arbitrary action on the part of the Respondents dragged the applicant to this Hon'ble Tribunal. The applicant was/is always at liberty as citizen of India to approach the Hon'ble Court of law for seeking justice against injustice. The applicant did not commit offence in having approached this Hon'ble Tribunal and Hon'ble High Court/Guwahati and there was no ill motive for seeking justice. The respondents did not submit correct Table of court cases in the W.S. The correct table of Court cases is as follows: -

Sl.	Case No	Brief cause of filling	Observations/decision and compliance
1	O.A. 99 of 1994	As the respondents did not communicate the result of disciplinary proceedings held in ref. to void ab-initio charge	The service of the applicant was not terminated at any point of time. The disciplinary enquiry did not result in any order adverse to

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		sheet dt. 6.10.1989 ibid during more than 4 years 7 months and on the pretext of illegal disciplinary proceedings of action had been taken on applicant's applications.	the applicant. What the respondents should do or the applicant should do is a matter for those parties to consider. The applicant, on receipt of Hon'ble Tribunal's orders dt. 8.8.95 passed on O.A. 99/94 submitted application dt. 30.10.1995 for resumption to duty but he was not allowed to resume duty.
2	OA 60 of 1997	As the disciplinary Authority (i.e. Respondent authority) nominated Board of Enquiry Officers to get done successive DAR enquiry denovo illegally, arbitrarily in ref. to the same void ab-initio charge sheet dt. 6.10.89 ibid.	Though board of Enquiry Officers cancelled during pendency of OA 60/97, but during subjudice of OA 60/97 asked for written brief from applicant by Disc. Authority, Hon'ble Tribunal directed applicant in submit representation. The applicant submitted representation dt. 13.3.2000 to Disc. Authority. But no advise order passed against the applicant by this Hon'ble Tribunal.
3	W.P. (C) No. 1166 of 2000 to Hon'ble High Court/Ghy	This was an appeal against the order dt. 4.2.2000 passed on OA 60/97 so that of any further retirement on said order could be done by Hon'ble High Court, as the chargesheet no. ES-B 334 dt. 6.10.1989 was/is	The Hon'ble High Court was in agreement with this Hon'ble Tribunal's said order dt. 4.2.2000 and directed applicant to submit representation to Respondent authority. So, the applicant canceling his earlier representation dt. 13.3.2000

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		void ab-initio and hence question of submitting writ brief did not arise.	submitted representation dt. 17.4.2000 to Disc. Authority.
4	O.A. 290 of 2002	Amongst other averments, it was one averment/grievance that order of appellate Authority did not contain the period for which the applicant had 'been asked to produce the medical certificate and another grievance was that, the order from the Revisioning Authority (i.e. G.M., N.E. Railway, Maligaion) in ref. in applicant's Revision application dt. 08.3.2001	This Hon'ble Tribunal directed applicant to produce all relevant medical certificates from 1988 to till the filling of O.A. 99/94 and directed the Respondents to allow the applicant to resume duties after receipt of the certificates from the applicant. The applicant produced all relevant medical certificates/records to Respondents vide application dt. 18.3.2004 (Annexure-M of the OA); but in fact the applicant has been allowed to resume duty very belatedly on 27.5.2004. Further while admitted OA 290 of 2002, this Hon'ble Tribunal passed order that pendency of this application shall not be bar on respondents to take initiative to resolve the matter. But, revisioning Authority never disposed off applicant's Revision application dt. 8.3.2001 by quashing illegal imposed punishment and did not allow the applicant to resume duty.

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5	Present OA No. 33/2006 (now subjudi ce)	Amongst other averments/grievances, one of the grievance is that this Hon'ble Tribunal while issued its order dt..... On past OA 290 of 2002 had not specifically directed the respondents as to how and in what manner back wages of the applicant would be considered by the respondents and that it is mandatory on the part of the Hon'ble CAT to direct the respondents as to the entitlement of the back wages. The grievance of never disposed of applicant's Revision Application dt. 8.3.2001 by the Revising Authority has been raised.	Now under subjudice.
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4.7 That regarding allegations of respondents in paga-4 continued to page-5 of their W.S. the applicant emphatically denied the allegations herewith and beg to submit that the respondents were fully aware since inception that the applicant was sick and confined to house. The applicant was unmarried. It was the statutory duty of the concerned Respondent authority (i.e. controlling officer who is the disciplinary authority) to take all possible steps in the fact and circumstances of the case to ensure integrity and devotion to duty of the applicant. There was/is relevant provision of statutory rule in this regard vide clause-(i), sub rule (2) of Rule-3 of the Railway Services (conduct) Rules.

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1966, as codified as Appendix-I in the Indian Railway Establishment Code, Volume-I (Fifth edition-1985), which is quoted below:-

"3, General - (1)

- (i) *****
- (ii) *****
- (iii) *****

(2) (i) Every railway servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all railway servants for the time being under his control and authority.

While above Rule was/is the statutory legal provision enjoined/commanded the Respondent authority (i.e. controlling officer who is the Disc. Authority in relation to the applicant) to take all possible steps on receipt of ADMO/MJN's medical examination report dt. 28.12.88 vide his letter No. PAT/7/89 dt. 28.1.1989 which was submitted after having medically examined the applicant at applicant's residence at Makum Jn. In ref. to DRM (P) / TSK's letter No. ES/B-334, dt. 18.11.1988 (Copy enclosed as Annexure-'O'). The ADMO certified applicant's sickness and simultaneously submitted adverse remarks against the applicant in the same above letter. The ADMO's certifying sickness of applicant in the above letter was a railway medical certificate itself in substance. But unfortunately ADMO's said letter was never disclosed to the applicant at any point of time, but only known to the Respondent authorities. So, while the applicant's nature of illness was uncertain, for which the applicant could not be held responsible and while the Respondent authorities had received adverse report from ADMO, in that event respondents ought to have taken all possible steps without loss of time to arrange for a fact-finding enquiry by associating the same examining ADMO/MJN so as to redress the problem, or to have communicated the applicant to attend Rly. Hospital by providing ambulance, or to have called for explanation from applicant in reference to ADMO's adverse report, or ought to have deputed Labour Welfare Inspector

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to conduct fact-finding enquiry on the spot (i.e. at applicant's residence) to ascertain the fact in issue. But respondents remained silent as a mere spectator in violation of above quoted statutory rule. Even the application submitted two applications both dt. 9.9.1991 for inspecting the applicant at applicant's residence by the Respondent authority (i.e. controlling officer who is the disciplinary authority) alongwith a Doctor for ascertaining the applicant's health status. But in violation of above mentioned statutory rule the said Respondent authority did not take all possible steps and did not communicate anything to the applicant.

Copy of the letter-dated 9.9.91 is filed

Hereto & marked as Annexure- R

The applicant had already attended on 18.9.1992 before the authorities (i.e. Sri N.K. Das, the then DME (C'&W) / TSK who was one of the controlling officers as also disciplinary authority of the applicant, Sri A.K. Jaataria, the then Sr. DME/TSK who was another controlling officer of the applicant and who was competent to act as disciplinary authority of the applicant and Sri P.G. Keshavan, the then APO/I/TSK who was the Enquiry Officer for the DAR enquiry), all of whom sat in a joint sitting in the chamber of Sr. DME/TSK in presence of the applicant. The applicant submitted application dt. 18.9.1992 to above disciplinary authority who was one of the controlling officers along with a homoeopathy certificate and requested therein to direct the applicant to Railway Medical authority for pathological investigation for obtaining Duty Fit Certificate (in short DFC) to enable the applicant to resume duty. The above authorities put questions to the applicant in a joint sitting, which the applicant replied to. The authorities found of their own that the applicant was fit and decided to get the DAR enquiry done by the above Enquiry Officer. Hence the applicant was detained for DAR enquiry which was to be held on 28.9.1992, but did not direct the applicant to Railway Medical authority at any point of time either before the DAR enquiry held on 28.9.1992 or after the DAR enquiry held. The authorities who are non-Medical personnel, even did not consider it necessary to direct the applicant

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to obtain railway medical fitness certificate from the Railway Medical authority before the DAR enquiry held while the subject matter of absence arose out of medical reason, DAR enquiry was held on 28.9.1992 by the Enquiry Officer, in which enquiry the applicant attended, so, the date 18.9.1992 was much before expiry of 5(five) years counting from 18.6.1988 (i.e. the date of alleged unauthorised absence w.e.f. 18.6.1988 as shown in the void ab-initio charge sheet no. ES/B-334, dated 06.10.1989 (Annexure-C of the instant OA).

Copy of the applicant's letter dated 18.9.92 is filed hereto and marked as Annexure-S.

The applicant repeats that the respondents authorities examined the applicant on 18.9.1992 in a joint sitting by putting questions and they took decision of their own that the applicant was fit did not direct the applicant to railway medical authority suo-motto before the DAR enquiry held on 28.9.1992 for obtaining DFC despite the authorities know fully that the subject matter was sickness. The authorities were non-medical officials. So, this was gross procedural violation on the part of the authorities without getting obtained Duty Fit Certificate from Railway Medical Authority before getting held the DAR enquiry on 28.9.1992. Further, pending the DAR enquiry, the authorities concerned did not direct the applicant to Rly. Medical Authority in reference to applicant's above mentioned application dt. 18.9.1992 for obtaining DFC, rather detained applicant for getting done the DAR enquiry on 28.9.1992. So, it was evident that the respondents had already pre-conceived on and before 18.9.1992 that the applicant would be removed from service by hook or crook in reference to the above cited void ab-initio chargesheet dt. 06.10.1989, and which was further evident from their subsequent conduct of not responding to applicant's applications submitted to them from time to time and that no all possible steps had been taken by them in the fact and circumstances of the case in gross violation of above motioned Rly. Service conduct rule to ensure integrity and devotion to due of the applicant by the supervising controlling

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officers. As already stated above, DAR enquiry was held on 28.9.1992 by the Enquiry Officer, in which enquiry the applicant attended, that Enquiry Officer submitted his DAR enquiry report dated 29.9.1992 alongwith DAR enquiry proceedings held on 28.9.1992 to the Respondent authority (i.e. disciplinary authority) in October 1992. SO, THEH RESPONDENTS ARE ESTOPPED UNDER THE RULE OF ESTOPPEL TO STATE THAT THE APPLICANT WAS EITHER CONTINUING SICKNESS OR ABSENTING SINCE 18.9.1992. The respondents dragged the disciplinary proceedings willfully, illegally, arbitrarily for abnormally prolong period from the date 06.10.1989 (i.e. date of issue of said chargesheet dt. 6.10.1989) to 12.6.2000) (i.e. the date of removal order No. ES/B-334 dt. 12.6.2000 - Annexure-I of OA) which was near about 10 years 8 months for no fault of the applicant at the cost of mental agony, monetary loss, lost of valuable/precious days of applicant's life which lost precious /valuable days cannot be regained or will no revisit. Their such willful, arbitrary and illegal inaction and action dragged the applicant to approach this Hon'ble CAT a number of times earlier as per Table of Court cases shown in forgoing paragraph. Therefore, it transpired for all practical purposes that the respondents had already pre-conceived illegally, arbitrarily and whimsically on or before 18.9.1992 that the applicant would be removed from service; otherwise respondents would have taken all possible step as per above mentioned Rly. Service Conduct Rule either suo-motto or in reference to applicant's applications. Only the respondents deferred issue of removal order to 12.6.2000.

5. That with regard to the statements made in para 4.2 of the written statement the applicant begs to offer no comments.

6. That with regard to the statements made in para 4.3 of the written statement the applicant reiterates his statements made in para 2 above. The applicant assets that in compliance with the order dated 14.9.88 when he approached the respondents for

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allowing him to resume duty he was asked to give duty fit certificate from the Railway Medical Officer and when he asked the same from RMO concerned he was not given the same citing the reason that he cannot issue such certificate as the applicant was taking Homeopathic treatment which was not recognized as per Railway service rules.

7. That the contentions of the respondents in para 4.4 of the written statement denied and in this regard the applicant reiterate his statements made in forgoing paragraphs of the re-jinder.
8. That with regard to the averments made in 4.5 of the written statements the applicant reiterates his statements made in para 4.9 to 4.13 of the Original Application. A mere reading of para 4.5 of the written statement filed by the respondents makes it crystal clear that they themselves do not know as to why the DAR enquiry against the applicant was started. It also signifies that they are not aware that what constitutes 'MISCONDUCT'.
9. That with regard to the statements made in para 4.6, the applicant begs to offer no comments.
10. That with regard to the statements made in para 4.7 & 4.8 the applicant begs to state that his representations dated 13.3.2000 was not taken in to consideration by the disciplinary Authority in its proper perspective and in a haste he imposed the penalty of removal from service w.e.f. 12.6.2000 vide order dated 12.6.2000.
11. That the contention of the respondents in para 4.9 are accepted how far they are borne by records, but, he denied the allegation to the effect that he remained silent for a further period of 7 days. Rather, he could not understand the meaning of the penalty imposed and so he wrote a letter to the appellate authority seeking clarification on 29.1.01.

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12. That the contention of the respondents in para 4.10 are partially accepted but, it is denied that does not want to resume his duty. He wrote the letter dated 29.1.01 only to know the meaning of the penalty imposed by the appellate authority and which right cannot be said untenable in the eye of law.

13. That with regard to the statements made in para 4.11 the applicant begs to state that he was always willing to resume duty but, he was subjected to penalty without there being any fault on his part.

14. That the contentions of the Respondents made in para 4.12 are denied in toto. The applicant asserts that he has filed a Revision petition before the General Manager, N.F. Railway on 8.3.01, but, that was never disposed of by the G.M. and is still pending.

15. That with regard to the statements made in para 4.13 and 4.14, the applicant begs to offer no comments.

16. That with regard to the statements made in para 4.15 and 4.16, the applicant begs to state that service is a contract governed by a bundle of rules called service rules. If any employee deviates from the rules governing conduct he is liable to penalty which is subject to certain procedural safeguards governing the service.

In the instant case, the applicant was suffering and that is undisputed. The moot question for adjudication is, whether the applicant is responsible for non-resumption of duty or the respondents did not allow him to resume duty taking the shelter of certain technicalities.

A perusal of the entire facts and circumstances with proper perspective would make it clear that the applicant is not at fault, but, it is the respondents who are responsible for delayed resumption of duty by the applicant. Hence, the applicant is

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entitled for the back wages treating the entire period of his absence as on duty.

17. That with regard the statements made in para 4.17, the applicant begs to offer no comments.

18. That with regard to the statements made in para 4.18 to 4.21, the applicant begs to state that he always intended to resume his duty but, it was the official respondents who did not allow him to join. In that view of the matter, the backwages to the applicant cannot be denied as no fault is attributable on his part. Hence, it can be said that the contention of the Respondents are statements made in vein with an intent to creat confusion in the mind of the Hon'ble Tribunal. Moreover, the principles of waiver acquisance and estoppels have no application in the instant case.

19. That the applicant further submits that the Apex Court and Hon'ble Gauhati High Court in a catena of decisions have held that an employee cannot be denied his emoluments for the fault of the department. In that light of the matter, the instant original application is required to be allowed and the applicant may be granted his full back wages treating the entire period of his absence, on duty.

VERIFICATION

I, Sri Biswanath Banerjee, son of Late' Sudhir Chandra Banerjee, do hereby solemnly affirm and state that the statements made in paragraphs 1,2,3,4,4.1,4.2,4.6 & 5 are true to my knowledge and those made in paragraphs 4.3,4.4,4.5,4.7 are being matters derived from record, true to my belief and informations and the rest are my humble submissions before this Hon'ble Court.

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

Signature of the Deponent :-
Biswanath Banerjee
 (Applicant)

ANNEXURE-O

NO. PAT/7/89

Date: 28.1.89

From DMO/MJN

To, DRM (P) /TSK

Sub: Sri Biswanath Banerjee

Ref Your office L. No. ES/B/334 dated 21.11.88

I have attended the above named staff at his residence at Makum on 28.12.83. I have examined him & found him to be suffering from Hypertension. He is not willing to take any allopathic medicine from Rly. H. Unit or to be referred to Rly. Hosp. DBR. He is not in my sick list. This is for your information please.

Sd/-

28.1.89

DMO/MJN/DBR

*Certified to be true copy**Advocate*

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Annexure P

N. F. RAILWAY

Office of the
Divl. Railway Manager (P),
Tinsukia.

Office of the
Divl. Railway Manager (P),
Tinsukia.

No: ES-B/334

dt. 1-7-97

Shri. Biswanath Banerjee,
(Confidential Steno to DME/TSK)
C/o Late Sudhir Ch. Banerjee,
Bigboi Road, near old Health Unit,
P.O. Makum Junction.
Pini- 786 170.

Sub:- DAR enquiry report and observation
of the disciplinary authority.

Enclosed, please find herewith a copy of the departmental enquiry report into the charges framed against you vide DME(C&W)/TSK's Memorandum No. ES-B/334 dt. 6-10-89 (in 8 pages). Further, to the above it is to inform you that the disciplinary authority has ordered for cancellation of the nomination of Board of Enquiry issued vide SF-7 No. ES-B/334 dt. 2.12.1996. Accordingly, the nomination of Board of Enquiry for holding fresh enquiry into your DAR case is cancelled. But the present disciplinary authority (Divl. Mechanical Engineer, N. F. Railway/Tinsukia) observes the following on the records available in the concerning file and advises to send the same to the delinquent:-

"(1) Major Penalty Chargesheet was not framed in proper way as can be seen from the office copy of the chargesheet at SN-101 and 102 that-

(a) No definite charge of Article-I of Annexure-I was mentioned. It simply mentioned as under-"That said Sri B. N. Banerjee while functioning as Confidential Steno/TSK during the period- is charged as under."

(b) Statement of Imputation of misconduct/misbehaviour was not completely brought out in Article-I of Annexure-II and that also without any relevant reference of Service Conduct Rule.

(ii) On going through the enquiry report and notings and counternotings available in the file, I am in the conclusion that though Sri B. N. Banerjee, Confidential Steno/TSK cannot be held responsible for being unauthorised absence from duty w.e.f. 18.6.88 to 8.7.88 as he applied for leave and denied by sanctioning authority, but he can be charged for being unauthorised absence from duty after the expiry of the period of leave applied for. Thus, before finalising the case an opportunity should be given to Shri B. N. Banerjee, Confidential Steno to represent within 15 (fifteen) days as to why he could not be taken up for

(Contd....2)

Certified to be true copy

Advocate

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misconduct remaining unauthorised absence from duty w.e.f. 9.7.88 with violation of Rule 3(i) (ii) & (iii) of Railway Service Conduct Rule."

In view of the enclosed DAR enquiry report an observation of the present disciplinary authority mentioned above you are given an opportunity to prefer your written brief to the Divisional Mechanical Engineer, N. F. Railway, Tinsukia for his consideration before finalising the DAR case. Such representation must be submitted within 15 days from the date of issue of this letter.

Encls: 1 in 8 sheets.

B.R. 1.7.97
(B. C. Roy)
APO/I/TSK
for Divl. Railway Manager (P),
N. F. Railway, Tinsukia.

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Report of the Departmental Enquiry into the charges framed against Shri Biswanath Banerjee, Confidential Stenographer under DME/C&W/N.F.Railway/Tinsukia

Introductory

The Divisional Mechanical Engineer (C&W), N.F.Railway, Tinsukia in exercise of a Disciplinary Authority nominated P.G.Kesavan, Assistant Personnel Officer (I), N.F.Railway, Tinsukia under Rule No.9(2) of R.S. (D&A) Rules, 1968, to act as Enquiry Officer to find out the truth or otherwise into the alleged charges framed against Shri Biswanath Banerjee, Confidential Stenographer vide Major Penalty memorandum No.ES-P/334 dated 6-10-1989. The delinquent submitted the defence as provided vide para-4 of the memorandum. The delinquent did not give any name to act as ~~the~~ Defence Counsel. The date for holding the enquiry was ~~fx~~ fixed vide letter No.ES-B/334 dated 4-9-92 fixing the date of enquiry on 28-09-1992. Accordingly the defendent attended the enquiry as fixed at 1000 hours on 28-9-1992.

Article of Charges

One article of charges was framed against the defendent Shri Biswanath Banerjee, Confidential Stenographer under DME/C&W/N.F.Railway/Tinsukia vide the major penalty memorandum of charges as under : -

" Unauthorised absence w.e.f. 18-06-88".

Examination of Evidence

The disciplinary authority proposed to sustain the charges against the defendent on the basis of the records maintained in the Office of the DME/N.F.Railway/Tinsukia.

Reasons for Findings

Articles of charge : As already stated Shri Biswanath Banerjee, Confidential Stenographer under DME/C&W/N.F.Railway Tinsukia has given his defence.

Shri Biswanath Banerjee was appointed as Stenographer in scale Rs. 130-300/- on the Railway on 22-7-1972. When the accused was asked whether he knows ~~against the Railway~~ ~~xxxxxx~~ ~~xxxx~~ about Rules No.3.1(ii) &(iii) of Railway Services (Conduct) Rules, 1966, he has answered that ~~yes, he knows it.~~ Further, when he was asked whether he knows that for absence beyond 48 hours, he is required to intimate his Controlling Officer regarding the absence, he stated that yes, he knows about this also. Vide Q.No. 8 when he was asked why did ~~not~~ he not give intimation regarding his absence from 18-6-88, ~~xxxxxx~~ he has stated that he informed DME/TSK about his sickness and asked for LAP from 31-5-88 to 2-6-88, LHAP from 3-6-88 ~~x~~ to 17-6-88, 18-6-88 to 24-6-88 and from 25-6-88 to 8-7-88. From records it is seen that his application for LAP from 31-5-88 to 2-6-88 and for LHAP from 18-6-88 to 24-6-88 and from 25-6-88 to 8-7-88 are available. When asked vide question No. 9 if he had taken any treatment from Railway Doctor at Makum where there is a Railway Doctor and where he is residing, he answered that he did not take any treatment from Railway Doctor. In ~~xxxx~~ answer to question No.11 he stated that

L vide Q. No.6

vide Q. No.7

Alexander
B. Banerjee
N.F. Railway
Tinsukia

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as far as he remembers he had taken medicines from Dr.R.K.Dutta Homeopath of Tinsukia by deputing man. He has stated in answer to question No.12 that since he could not approach him physically due to extreme vertigo. When he was asked why did he not intimate his controlling officer regarding his absence after 8-7-88 vide question No.13, the answer given by him is not convincing. Further, the reply to question No.14 to the effect of asking for medical memo for availing treatment from Railway Doctor is also not convincing. When he was asked did he submit any unfit certificate when 48 hours of his reporting sick vide question No. 15, the reply given by Shri Banerjee is not acceptable. From answer to question No. 20 it would be seen that he had called Doctors on 28-12-88, 10.10.91, 7-9-92 and 17-9-92. In answer to question No. 23, he has stated that he had taken sick memo on many occasions.

Shri Banerjee, Confidential Stenographer, being qualified and put in about 16 ~~ka~~ years of service as/ 8-7-88 /on and knows about Rule No. 3.1(ii) & (iii) and also knows that whenever a railway servant report sick he should submit the unfit certificate within 48 hours to his controlling Officer. Further, although he is well aware that for reporting sick ~~he~~ one has to take a sick memo, which had taken on many occasions failed to intimate his Controlling Officer, DME/C&W, about his sickness and and thereby remained unauthorised absence. It is a fact that in the major penalty memorandum issued vide No.ES-B/334 dated 6-10-89/although he had applied for LHAP upto 8-7-88. However, the facts remains that he failed to intimate his controlling officer regarding his sickness or otherwise from 9-7-88, thus he remained unauthorised absence from 9-7-88.

L he was shown as unauthorised absence from 18.6.88.

Findings

In the light of the facts and detailed discussions as present in the foregoing, it is held that the article of charges framed against Shri Piswanath Banerjee, Confidential Stenographer is substantiated partially without any element of motive.

A. K. Sengupta

[Handwritten signature]
 H. F. Mahapatra

[Handwritten signature]
 (P.G. Kesavan)
 Enquiry Officer
 (APO/I/TSK)

(COPY).

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Annexure - A
(Series)

To: (Through messenger)

Sr.DME(Power),
N.F.Railway, Tinsukia.

(For kind attention of Sri A.K.Jataria).

Reg:- D.F.C.

Ref:- DME(C&W)/TSK's chargesheet No.ES/B-334, dtd.6.10.89
and his DAR enquiry order No.ES-B/334, dt.29.8.91,
Enquiry Officer(APO/I/TSK's) letter
No.ES-B/334, dt.4.9.93 fixing date of DAR enquiry
on 28/9/92.

Sir,

With profound respect and humble submission, I beg to state that I have reported to DME(C&W)/TSK and Enquiry Officer (APO/I/TSK) on 18/9/92 alongwith a Homoeopathic certificate vide my letter dt.18.9.92 when both of them brought me to your chamber and you have heard me. On 23/9/92, I requested DME(C&W) to direct me for pathological investigation so that I may obtain DFC vide my letter dt. 23.9.92. It is learnt ~~that~~ my letter dt.23/9/92 has been put up to you by APO/I/TSK (Enquiry Officer) as per instruction of DME(C&W) on the body of my letter. On 24/9/92 I met you in your chamber for directing me for DFC. I attended the DAR enquiry against me held on 28/9/92 by APO/I/TSK (Enquiry Officer). On 13/10/92 I met Enquiry Officer in his chamber, and he discussed on phone with DME(C&W)/TSK Sri N.K.Das to the effect that I desired to meet with DME (C&W) pertaining to my DAR enquiry as well as for directing me for DFC, and I came to learn from Enquiry Officer's chamber that there was no necessity of meeting DME(C&W), and you were on leave from ~~13/10/92~~ 13/10/92.

2. You are requested to please communicate your order as regards directing me for DFC after pathological investigation. If your honour decide that I will not be directed for DFC after pathological investigation, then in that case I request your honour to kindly issue me a formal Railway sick memo, as I am feeling troubles, so that necessary pathological investigation can be done, treatment obtained (if required) and DFC may be obtained. You are requested, if possible, the sick memo may be issued on Maligaon Rly. Hospital with a forwarding letter, and if not possible, then either to DMO/DBRT or DMO/TSK alongwith a Rly. journey pass. You are requested to please send the sick memo alongwith Rly. pass through the bearer of this letter Sri Paritosh Roy Kar, Ex. Fitter Mistry of TSK Loco Shed, whose specimen signature is given below duly attested by me. If it is not possible to send the sick memo alongwith Rly. pass through him, then you are requested to send the same by Registered with A/D post at an early date as I am feeling troubles.

With regards;

Yours faithfully,

Date: 10/2/1993.

Sd/-

(Specimen signature of
Sri Paritosh Roy Kar,
Ex.Fitter Mistry of
TSK Loco shed.

Attested the above sign.

Sd/-
(Biswanath Banerjee) 10/2/93.

Sd/-
(Biswanath Banerjee)
Confdl.steno to

DME/TSK,
N.F.Railway,
at Makum Jn.

Certified to be true copy.

Jayanti Purkayastha
Advocate

Certified to be true
copy.
Attested:
Biswanath Banerjee
(Applicant)

(Copy)

(Annexure-A/6)

Office of the Sr.DMO/NFR/TSK.

No. H/93/TSK.

Date: 24-2-93.

To:
DRM(P)/TSK.

Subject:- Unauthorised absence of Shri Biswanath Banerjee, C/o. Shri Sudhir Ch.Banerjee, near old Rly. H.U., Digboi Road, P.O. Makum Jn.

Ref: Your office letter No.ES/B/334,dt. 18.11.88.

Above named appears before the undersigned on date (24.2.93) for medical examination as directed to ~~the~~ him by you vide your above quoted letter. As the above quoted letter was issued long back, no action could be initiated for his medical examination by the undersigned. It is requested that a fresh letter would be issued if his medical examination is still required.

Sr.DMO/IC/TSK.

Copy to :

Sri Biswanath Banerjee,
for information.

Sd/-

Sr.DMO/IC/TSK.
24.2.93

Senior D.M.O.(IC),
N.F.Railway, Tinsukia.

(Seal).

certified to be true copy 000---
Attested:
Banerjee
(Applicant)

-28
297

Annexure - Q2

(COPY)

(Annexure - A9)

To:
The Divisional Railway Manager,
N.F. Railway, Tinsukia.

(Through: Proper channel).

Sir,

With profound respect and humble submission, I beg to state that I have requested Senior DME(Power)/Tinsukia vide my application dt.10.2.93 to issue me a Rly. sick memo. (copy of the application dt.10.2.93 is enclosed for your kind perusal please. Messenger awaited in DME/TSK's Office Section on 10.2.93 and it was learnt by him from office that few days time will be required as to whether sick memo will be issued to me or not. Messenger again went to DME/TSK's office on 17/2/93 to obtain sick memo; but he learnt from office that my application dt.10.2.93 has been sent to DRM(Personnel Branch)/Tinsukia for necessary action and he learnt from O.S.(Estt.) that my application has been given to dealing clerk(Estt.) who ~~took~~ took leave on urgent basis for his mother's serious illness. As I have not received sick memo, therefore on 24/2/93 I reported directly to Senior DMO(Incharge)/N.F.Rly./Tinsukia, and shown him DRM(P)/TSK's letter No.ES-B/334, dt.18.11.88 (copy enclosed) as Annexure-B) and requested him for medical examination. He wrote letter No.H/93/TSK, dt.24.2.93 to DRM(P)/TSK (copy enclosed as Annexure-C). ADMO/MJN attended me on 28/12/88.

2. As I am always intending to resume duty, but feeling some troubles and I need a sick memo to attend/check-up the troubles and as I have not received sick memo, I met Senior DME(Power)/TSK on 24/2/93 at about 3.30 P.M. and requested him to issue me a sick memo. He told me that he will be guided by Rules, for which there is Personnel Branch to guide him with rules and if rules permit then he may issue me sick memo. However, I have not yet received sick memo.

3. In view of circumstances mentioned above, I would request your honour to kindly look into my case sympathetically so that Personnel Branch give rulings to Senior DME(Power)/TSK at the earliest to enable him to issue me a sick memo, and for which act of your kindness I shall remain evergrateful.

With regards,

Yours faithfully,

Enclo: As above.

Date: 12/3/1993.

Sd/-
(Biswanath Banerjee)
Confdl. Steno to DME/TSK,
N.F.Railway.
at Makum Jn.

C/o. Sri Sudhir Ch. Banerjee,
Makum Jn.; Digboi Road,
(Near Assam Sahitya Bhawan)
P.O. Makum Jn. (Assam).

A copy of this application is sent in advance (with enclosures), as I am feeling troubles.

Certified to be true copy
Attested;
Biswanath Banerjee
(Applicant)
(D.T.O.)

(COPY)

To:
The General Manager,
N.F. Railway, Maligaon,
Guwahati-11 (Assam).

(Through: Proper channel).

Sir,

With profound respect and humble submission, I beg to state a following few lines for your perusal and sympathetic consideration please, for which I beg apology for intruding upon your valuable time.

That Sir, I requested Sr.DME(Power)/N.F.Rly./Tinsukia for a Railway sick memo vide my application dtd.10.2.93 (copy enclosed as Annexure-A). As no Rly.sick memo has been received, therefore, I met Sr.DMO/Incharge/N.F.Rly./Tinsukia on 24/2/93 and shown him DRM(P)/N.F.Rly./Tinsukia's letter No. ES/B-334 dtd.18.11.88 (copy enclosed as Annexure-B). Sr.DMO/IC did not examine me, for which he wrote letter to DRM(P)/TSK vide his letter No.H/93/TSK dt.24.2.93 (copy enclosed as Annexure-C). On 24/2/93, I met Sr.DME(Power)/TSK at about 3.30 P.M. in his chamber and told him that I require a Railway sick memo and that Sr.DMO/IC did not examine me and that Sr.DMO/IC has written letter Max to DRM(P)/TSK. During discussion with Sr.DME(Power), he inter-alia told me that he will be guided by rules, for which according to him there is Personnel Branch to guide him with rules and if rules permit then he may issue me sick memo. As no Rly. sick memo has been received by me, I made application to Divisional Railway Manager/N.F. Rly./Tinsukia vide my application dtd. 12/3/93 (copy enclosed as Annexure-D) requesting him to look into the matter sympathetically so that Personnel Branch give rulings to Sr.DME(Power), TSK.

That Sir, it is now 51 days already elapsed since 10/2/93 (the date of my application asking for Rly. sick memo) to 2/4/93 (the date of writing this letter),

- (a) neither I have received Rly. sick memo,
- (b) nor received letter from Senior DME(Power)/TSK stating that Railway sick memo cannot be issued, quoting the relevant provisions of rules, if any, furnished by Personnel Branch as desired by Sr.DME(Power)/TSK,
- (c) nor received copy of letter, if issued by DRM(P)/TSK, addressed to me with copy to Senior DMO(Incharge)/TSK directing me for medical examination in response to Sr.DMO(Incharge)/TSK's letter No.H/93/TSK, dt.24.2.93.

That Sir, in view of circumstances mentioned above, I would request your magnanimity to look into the matter sympathetically, so that I may get a Railway sick memo, as I am feeling troubles which are required to be checked up so that I may obtain DFC, as I am always cherishing desire to resume duty.

And for which act of your kindness I shall remain ever grateful to you.

With regards,

Yours faithfully,

Sd/-

(Biswanath Banerjee)
Confdl.Steno to DME/TSK,
N.F.Railway/Tinsukia.

Enclo: As above.

Date: 2/4/1993.

Address.

C/o.Sri Sudhir Ch.Banerjee,
Makum Jn.; Digboi Road,
(Near Assam Sahitya Bhawan)
P.O.Makum Jn.(Assam)PIN-786170.

(P.T.O.)

certified to be true copy
Attested
Biswanath Banerjee
(Applicant)

-30-

2016

(35)

~~Annexure #1~~

- Page-2 -

An advance copy of this application (together with enclosures) is sent to G.M./N.F.Rly./Maligaon, as I am feeling troubles.

---oo---

Biswanath Banerjee
(Applicant)

-(Copy)-



Annexure - 2A

(ANNEXURE - A)

(Through messenger)

To:
The Senior DME (Power),
N.F. Railway, Tinsukia.

Ref:- My application dt.10/2/93 to you.
My application dt.12/3/93
to DRM/Tinsukia, and
my application dt.2/4/93 to
GM/N.F.Rly./Maligaoh. } submitted through proper channel.

Sir,

Most respectfully and with humble submission, I beg to state a following few lines for your perusal and sympathetic consideration please.

That Sir, I have requested your honour vide my application dt.10/2/93 to issue me a Railway sick memo. It is now 77 days already elapsed since 10/2/93 (i.e. the date of submission of my application dt.10/2/93 asking for Railway sick memo) to 28/4/93. But unfortunately I, being a Railway employee, have not yet been favoured with Railway sick memo, although I am always cherishing intention to resume duty but feeling some troubles in person. The Railway sick memo is urgently required to check-up the troubles, to take treatment (if required) so that I may obtain Duty Fit Certificate. In view of this, I would request your honour kindly to issue me a Railway sick memo urgently, as 77 days already elapsed, and it will be great help to me if the sick memo is sent through the bearer of this application Sri Chh Chunilal Prasad, whose specimen signature is given below duly attested by me.

That Sir, if you find difficulty in issuing me Railway sick memo in spite of the fact that I am a Railway employee as well as I am entitled to Railway sick memo, then in that case I would request you to let me know through official letter your inability to issue me Railway sick memo and the reasons therefor, and the letter may kindly be sent through the bearer of this letter Sri Chunilal Prasad to enable me to take the help of Court of Justice for speedy relief at any time after 1/5/1993, as I am feeling troubles in person.

That Sir, in lieu of Railway sick memo, your honour can issue a letter addressed to me with copy to Senior D.M.O. (Incharge), N.F.Railway, Tinsukia in response to Senior D.M.O. (Incharge), Tinsukia's letter No.H/93/TSK, dt.24.2.93 addressed to D.R.M.(Personnel)/N.F.Railway/Tinsukia, directing me for medical examination, and it will be of great favour to me if the letter is sent through the bearer of this application Sri Chunilal Prasad whose specimen signature is given below duly attested by me.

In view of the circumstances mentioned above, I would request you to take any of the actions as you deem fit and

(Contd.to...P/2).

Biswanath Banerjee
(Applicant)

-32-
798

(Annexure-A/14)

and proper and let me know through the bearer of this application, by official letter or by issue of Railway sick memo, as the case may be.

With regards;

Yours faithfully;

Dated: 29/4/1993.

Sd/-
(Biswanath Banerjee)
Cohafdl. Steno to D.M.E.,
N.F. Railway/Tinsukia.
at Makum Junction.

postal
address.

{ C/o Sri Sudhir Ch. Banerjee,
Makum Jn., Digboi Road,
(Near Assam Sahitya Bhawan),
P.O. Makum Jn. (Assam).
PIN-786170

Sd/-

(Specimen signature of Shri
Chunilal Prasad).

Attested the
above sign.

Sd/- 29/4/93.
(Biswanath Banerjee).

Certified to be true copy
Attested:
Biswanath Banerjee
(Applicant)

(Copy)



(ANNEXURE-A)

To:
The Senior DME (Power),
N.F. Railway/Tinsukia.

Ref:- My application dt. 29/4/1993 to you.

Sir,

With profound respect and humble submission, I beg to invite your kind attention to my application quoted above in which I have requested you kindly (1) either to issue me a Railway sick memo, or (2) if Railway sick memo cannot be issued to me in spite of the fact that I am a Railway employee and entitled to Railway sick memo, then in that case a letter of your inability to issue me a Railway sick memo may kindly be issued, or (3) in lieu of Railway sick memo, a letter may be addressed to me with copy to Senior DMO/Incharge/N.F. Railway/Tinsukia for medical examination. The above quoted application has been sent to your honour through messenger on 29/4/93 when he met you in your chamber and you have told him that I would be informed the result of your action ~~separately~~ separately and as such, you told the messenger is not required to meet you again.

That Sir, I have not yet been informed anything about the matter. I, therefore, request your honour kindly to communicate me any of the above through letter, and for which act of your kindness I shall remain evergrateful to you.

This application is sent to your honour through messenger Sri Barun Banerjee, whose specimen signature is given below duly attested by me.

With regards;

Yours faithfully;

Sd/-
(Biswanath Banerjee).
Confdl. Steno to DME,
N.F. Rly./TSK.
at Makum Jn.

Dated: 31/5/1993.

Sd/-

(Specimen signature of
Sri Barun Banerjee).

Attested.

Sd/- 31/5/93.
(Biswanath Banerjee).

---ooo---

Certified to be true copy
Attested:
Biswanath Banerjee
(Applicant)

(Copy)

(ANNEXURE - A)

To: The General Manager,
N.F. Railway, Maligaon,
Guwahati-11 (Assam).

(Through: Proper channel).

Sir,

With profound respect and humble submission, I beg to state a following few lines for favour of your perusal and kind consideration please. I beg your pardon for intruding upon your valuable time.

That Sir, I beg to invite your kind attention to my application dt. 2/4/93 addressed to your honour (through proper channel) which was submitted to Senior D.M.E. (Power), N.F. Railway, Tinsukia on 5/4/93, who is one of my controlling officers. An advance copy of the aforesaid application has been received in your office on 12/4/93 as can be seen in the Postal A/D card. In my aforesaid application I have earnestly requested your honour to look into the matter most sympathetically so that I can get a Railway sick memo.

That Sir, thereafter also I earnestly requested Senior D.M.E. (Power), N.F. Rly., Tinsukia vide my application dt. 29/4/93 either (i) to issue me a Railway sick memo, or

- (ii) if he finds any difficulty in issuing me Rly. sick memo, then in that case prayed for a letter of his inability to issue me a Rly. sick memo and the reasons therefor to enable me to take the help of Court of Justice, as I am feeling troubles, or
- (iii) in lieu of Railway sick memo, a letter from administration addressed to me with copy to Senior DMO (Incharge), N.F. Railway, Tinsukia in response to Sr. DMO (Incharge)'s letter No. H/93/TSK, dt. 24.2.93 addressed to D.R.M. (Personnel) N.F. Rly., Tinsukia.

A copy of my application dt. 29/4/93 is enclosed herewith for your kind perusal. Subsequently I sent reminder application dt. 31/5/93 to Senior D.M.E. (Power), N.F. Railway, Tinsukia, a copy of which is enclosed herewith for your kind perusal. It is my bad luck I have not yet received any of the above.

That Sir, as I am always cherishing intention to resume duty, but feeling troubles, therefore, medical examination is required so that I may obtain Duty Fit Certificate. I, therefore, fervently request you to be kind enough to look into the matter most sympathetically so that I am not victimised by injustice.

With regards;
Enclo:- 2 copies.

Dated: 22nd Sept., 1993.

Yours faithfully:

Sd/-
(Biswanath Banerjee).
Confdl. Steno to D.M.E.,
N.F. Rly./TSK.
at Makum Jn.

Address. (C/o. Sri Sudhir Ch. Banerjee,
Makum Jn.; Digboi Road,
(Near Assam Sahitya Bhawan),
P.O. Makum Jn. (Assam).
PIN- 785170

An advance copy of this application (together with enclosures) is sent to G.M., N.F. Rly., Maligaon, as I am feeling troubles.

certified to be true copy
Attested:
Biswanath Banerjee
(Applicant)

(COPY)

(ANNEXURE-A-14)

To:
The Senior D.M.E. (Power),
N.F. Railway,
Tinsukia (Assam).

Sir,

- Ref:-
- 1) My application dt.10/2/93 to your honour.
 - 2) My application dt.12/3/93 to D.R.M./N.F. Railway/Tinsukia, submitted through proper channel.
 - 3) My application dt.2/4/93 to G.M./N.F.Rly./Maligaon submitted through proper channel.
 - 4) My application dt.29/4/93 to your honour.
 - 5) My application dt.31/5/93 to your honour.
 - 6) My application dt.22/9/93 to G.M./N.F.Railway/Maligaon submitted through proper channel.

1. With profound respect and humble submission, I beg to state a following few lines for favour of your perusal and kind consideration please. I beg pardon for ~~ix~~ disturbing your valuable time.

2. That Sir, I would request your honour kindly to refer to my aforesaid applications.

3. That Sir, vide my above applications I have requested your honour very earnestly to take any one of the following actions:-

- (i) either to issue me a Railway sick memo, Or
- (ii) if your honour find any difficulty in issuing me Railway sick memo, ~~and~~ then in that case I have already prayed for a letter ~~from~~ of your inability to issue me a Railway sick memo and the reasons thereof to enable me to take the help of court of Justice, as I am feeling bodily troubles, or
- (iii) in lieu of Railway sick memo, a letter from Administration addressed to me with copy to Senior D.M.O. (Incharge), N.F.Rly., Tinsukia in response to Senior D.M.O. (Incharge)'s letter No.H/93/TSK, dated 24/2/93 addressed to D.R.M. (Personnel), N.F.Rly., Tinsukia.

4. That sir, I have neither yet been given Railway sick memo by your honour nor given any letter in terms of prayer at paragraphs 3(ii) or 3(iii) above. Therefore, I have no other alternative, but to take recourse to the court of Law for appropriate immediate relief as mentioned in paragraphs 3(i) and 3(iii) above.

5. That Sir, it is learnt that Railway servants who seek redress of their grievances arising out of their employment or conditions of service from the court of Law, cannot have ~~recourse~~ recourse to the Court of Law without obtaining previous sanction of Government. In view of this rule I have addressed my application dated 28th.Dec./93 to the General Manager, N.F.Railway, Maligaon requesting him to communicate me sanction of the Government to enable me to have recourse to the court of Law for appropriate ~~re~~ immediate relief as mentioned in paragraphs 3(i) and 3(iii) above, and such application dt.28/12/93, quoted above, is enclosed herewith, in duplicate,

(Contd.to...P/2).

Biswanath Banerjee
(Applicant)

(42)

(Annexure-A)

Together with enclosures. Your honour is requested kindly to forward the ~~above~~ above quoted application to the General Manager, N.F. Railway for communicating me sanction of the Government to have recourse to the Court of Law at an early date.

With regards;

Yours faithfully.

Enclosed:

Application dt. 28/12/93 to G.M./N.F. Railway alongwith enclosures (Total 15 sheets) each in duplicate

Dated: 28th December/1993.

Sd/-
(Biswanath Banerjee)
Confid. Steno to D.M.E.,
N.F. Railway/Tinsukia.
at Makum Jn.

C/o. Shri Sudhir Ch.
Banerjee,
Makum Jn.; Digboi Road,
(Near Assam Sahitya Bhawan)
P.O. Makum Jn;
Dist:-Tinsukia (Assam).
PIN- 786170.

---oOo---

Certified to be true copy
Jayati Purkayastha
Advocate

Certified to be true copy
Attested;
Biswanath Banerjee
(Applicant)

ANNEXURE-R

To,

The Divisional Mech. Engineer (C & W)
N.F. Rly, Tinsukia.

Sir,

Sub: Resumption to duty.

Ref. Your letter No. ES-B/334 dt. 29.8.91

With profound respect and humble submission, I beg to inform you that I have received your above letter on 6.9.91 wherein your honour have mentioned that I have not joined duty in spite of your letter of even no. Dt. 30.6.88. The reasons which led me to the absence have been explained in my defence to the chargesheet no. ES/B-334 dt. 6.10.89 you have appointed Enquiry Officer vide your order No. ES/B-334, dt. 29.8.91 to enquire into the charge of unauthorised absence against me.

2. Homeopathy is a recognized system of treatment practiced all over India. There is no provision available of Homeopathy treatment in Rly. Hospital of DBRT/TSK, MJN by the duty qualified Homeopathist who can issue sick certificate had there been such provision, I could have produced sick certificate much earlier.

3. Vide your letter under reference, you have ordered me to join duty within Sept. /91. I am also interested to join my duty as for non-attending duty I have lost monetarily from Sept/88 to sept/91 @ 1958.00 p.m. x 37 months = Rs.73446/- excluding annual increments, PLBs, subsequent ADAS. But some discomfort disturbing me.

Certified to be true copy
Jayati Purkayastha
Advocate

4. In view of above, I would request you cordially to inspect me in our house alongwith a Doctor who will examine me in your presence, and you will bear him and myself and thereafter form an independent opinion. Your presence is solicited because as a disciplinary authority you will decide the matter,, for which your satisfaction is necessary and moreover on two occasions Rly. Doctors annoyed with me for my arguments.

With regards.

Dated Makum Jn.

The 9/9/1991

Yours faithfully,

Sd/-

Biswanath Banerjee

Confdt. Sten to

DME/TSK

N.F. Railway

(COPY)

(ANNEXURE-1) S

To:
DME(C&W)/N.F.Rly.,
Tinsukia.

Sir,

Reg:- Your chargesheet No.ES-B/334, dt.6.10.89
and your DAR enquiry Order No.ES-B/334,
dt.29/8/91.
Enquiry Officer's letter No.ES-B/334,
dt.4.9.93 fixing date of DAR Enquiry
on 28/9/92.

In reference to above, with profound respect and
humble submission, I beg to report hereby to you along-
with a certificate dt.17/9/92 from Homoeopathist Dr. U.N.
Singh, Makum Jn. wherein the Doctor advised for patholo-
gical investigation. You are, therefore, requested to
direct me to Rly.Hospital/DBRT or MLG for duty fit certi-
ficate after pathological investigation. As I am without
pay, so, I will be unable to do pathological investigation.
You are requested to advise me as you deem fit and proper
in this circumstance.

With regards;

Yours faithfully;

Enclo: One Homoeopathic
certificate.

Sd/-
(Biswanath Banerjee)
Confdl.Steno to DME/TSK.
now at Office.

Dated: 18/9/1992.

Copy to:-

Sri P.G.Keshavan,
Enquiry Officer, ~~AP~~/I/N.F.Rly./TSK - for
information and necessary action please in
reference to his letter No.ES-B/334,
dt.4/9/93 to me and my letter dt.8/9/1992
to him. Homoeopathic certificate may please
be seen from DME/C&W/TSK.

Dated: 18/9/1992.

Certified to be true copy

Jayati Purkayastha
Advocate

Sd/-
(Biswanath Banerjee)
Confdl.Steno to DME/TSK,
now at office.

Certified to be true copy.

Attested;

Biswanath Banerjee
(Applicant)

—o—

Regd. No. 88873 (B.S.C.H.)

Partner

This is to certify that Mr. Biswanath Banerjee of Makum Jns. Dist. Tinsukia was under my treatment from 10th Oct.91 to 14th January 92

His Chief complaint was vertiga with nausea and tendency top faint, worse on rising from lying position and on motion.

I advised him to take few Homeopathic Medicine for months.

On dated 10.10.91

- (1) Nimuv 2 Nos. 1 doss daily (for 10 days)
- (2) Stry. Phos 3 x 2 tab. Three times daily (for 3 days)
- (3) Naxvom 2 nos. 1 doss daily at bed times (10 day)

On dated 28.10.91

- (1) Sul 200 1 doss daily (for 10 days)
- (2) Stry. Phos 3 x 2 tab. Twice daily (for continued till 3 months)

However, on his request he was under my treatment from 7th Sep 92 advised him for pathological investigation for my treatment.

Sd/-

17.9.92

Certified to be true copy

Jayati Purkayastha
Advocate

केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal

- 5 JUL 2007

गुवाहाटी न्यायपीठ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI

Filed by
M.L. Boro
23.07.07
Advocate

O. A. NO. 33 OF 2006

Sri. Biswanath Bannerjee Applicant

-VS-

Union of India & Ors. Respondents

Divisional Personnel Officer
श.सी. रेखे, तिनसुकिया
D.P., Rly. TINSUKIA

IN THE MATTER OF:

OBJECTION PETITION

By the Respondents against
the Re-Joinder filed by the Applicant
in the above O.A.

The Respondents above named most respectfully sheweth.

1. That the Respondents have gone through the contents of the Rejoinder filed by the Applicant and beg to state as under:
 - 1.1. That albeit the Respondents have elaborately and most candidly submitted the details in their written statement in respect of the above O.A, never-the-less a seriatim reply raising objection to the above Rejoinder is submitted herewith.
 - 1.2. That the statements made by the Applicant under paras 1, 2 & 3 of the O.A. ⁱⁿ the Rejoinder are the echos of the Written Statement submitted by the Respondents and hence it is futile to make any comment on it.

Contd.....P/2....that.....

Office of
 Transport
 ATKUNTI
 10/10/2006
 502

1.3. That with regard to the statement of the Applicant made under para 4 it is submitted that the statement of the applicant in the para is not acceptable at all. The applicant was given various scopes and opportunities to resume his duty from the very beginning of his unauthorised absent period vide DRM (P)/TSK's L/Nos. ES-B/334 dtd. 30-06-1988, 18-11-88/20-12-88 & 29-08-91 advising him to resume his duty immediately. It is not true that the Respondents had put pre-condition but follows the extant rules of IREC and IREM regarding unauthorised absence of an employee.

It is further stated the Applicant was reluctant for joining duty. During his sickness as stated by himself, he was not willing to take treatment of Railway Doctor and Allopathic Medicines as reported by the then Divisional Medical Officer/Makum vide his letter No. PAT/7/89 dtd. 28-01-89. Detailed facts were already produced with necessary relied upon documents previously in reference to the OA No. 33 of 2006 before the Hon'ble/CAT/Guwahati vide this office L/No.E/Court Case/TSK (W) dated 11-05-06. If the applicant claims that the administration created any hurdle for him for joining his duty, the onus lies with the applicant to prove the same.

Photo copies of above are Annexed as ANNEXURES 1,2,3,4.

1.4. That with regard to the statement of the Applicant made under para 4.1. it is stated that he had not produced any supporting documents regarding his illness inspite of repeated request for long period of more than 15 years, the references of which have been mentioned in the foregoing para.

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 TINSUKIA
 DIVISION
 Railway
 Section
 Tinsukia
 Office

It is further stated that the Railway Service Conduct Rule (1966) is meant for individual Railway servants to follow. As a duty-bound and disciplined staff it is the Applicant's duty to show absolute integrity and devotion to duty on his working as per Rule 3(1) (i)(ii)(iii) of Railway Service Conduct Rule -1966. Instead he had been behaving in such way ^{it was} ~~as if~~ the Administration's duty to make him duty-bound for his own interest and integrity.

It is pertinent to mention here that DMO/MUM had attended him in his house for treatment but the applicant had not co-operated with the doctor. He had refused to take his treatment and also wanted to be referred to higher medical authority for his better medical treatment. Doctors' report regarding the same is enclosed as Annexure-4.

It is pertinent to mention here that in Tinsukia Division there is no Homoeopathic system of treatment till date and ~~no~~ modus operandi regarding treatment and giving sick-memo through such system. If any body does not want to take the recognized treatment of medicine (Allopathic) then it is his decision to take outside treatment, it is considered as treatment under PPMC (Private Practitioners Medical Certificate) as per Railway rules. Thus the applicant trying had been to hide his indiscipline by throwing the responsibility on the ADMO/MJN and the grievances for non-existing system of Homeopathic system of treatment in TSK division.

In this connection it is mentioned that it is not the fact that the Applicant is not in the habit of taking Allopathic Medicine and treatment by Railway Doctors. His Service Records show that according to his volition

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N.E. Rly. Tinsukia
Regional Personal
Office
Tinsukia

duty, but he never responded positively to join his duty. In this regard his own statement dtd. 09-09-91 is enclosed as Annexure-8. (copy enclosed as ANNEXURES-5, 6, 7 & 8)

1.5. That with regard to the statement of the Applicant made under para-4.2. it is stated that the demand of medical certificate from DMO/MJN by the Applicant is totally contradictory and falls representation in respect of the following.

- (i) that the Railway doctor Certified his sickness.
- (ii) that the Railway doctor communicated adverse report.
- (iii) that the Railway doctor's report to be treated as medical certificate.

The Doctor who attended him clearly mentioned that the applicant was not in his sick-list at all, as he had not taken the Railway treatment. Mention has been made in this regard in the ANNEXURE-4.

It is clearly evidentially proved that the applicant neither followed the rules regarding Private Medical treatment nor accepted the existing system of treatment and rules thereof. The administration had given all possible opportunities to provide treatment to the applicant with its existing facilities but it was the Applicant who refused to co-operate and not followed any of the extant rules and system available in the Railways.

Comtd.....P/6...that is.....

Divisional Personnel Officer
 DME/TINSUKIA
 P.O. Rly. TINSUKIA
 P.F. 3/2

Applicant all through. His motive was to invite troubles, he is a trouble-shooter.

A photo copy of the above Judgement is annexed as ANNEXURE-20.

1.7. That with regard to the statement of the Applicant made under para-4.3. it is stated that the allegations in this para are totally denied. When the Applicant ^{was} violating all existing rules bound on him, the administration had given all opportunities either join in duty or remain in official sick-list as per extant rules. Bur the Applicant quarreled with the Railway doctor (as accepted by himself and threw the blame on Administration by taking the plea of non-existing system (i.e. Homeopathic) of Railways. When the Administration found all efforts were gone in vain, then it had no other alternative for the Administration but to take Disciplinary action as per Rules.

(Photo copy of Applicant's statement above is annexed as Annexure-8)

1.8. (i) That with regard to the statement of the Applicant made under para-4.4. it is stated that DAR proceedings were held against the major Charge-sheet No. ES-B/334 dtd. 06-10-1989 issued to the applicant but follow-up-action was kept in abeyance because the matter was under Sub-judice of OA No. 99 of 1994 field by the Applicant in the CAT/Guwahati.

(ii) It is the duty of the Railway servant to obtain sick-memo from his working office (DME/Tinsukia's Office); but neither he nor his any representative appeared in DME/TSK's office for obtaining

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 B.P. Regd. Tinsukia
 District Office
 Tinsukia

sick-memo. He was also advised to report to ADMO/Makum or DMO/Tinsukia for his medical treatment vide DRM(P)/Tinsukia's L/No. ES-B/334 dtd. 18-11-88/20-12-88 (by Regd. Post). Hence the blame as alleged in the OA No. 33/06 under para-4.4. in line No. 15 is not acceptable.

(iii) Also the blame as alleged by the Applicant in the 2nd para (page No. 7) of the OA-33/06 is totally not acceptable. Because he was asked to submit Medical Certificate from any Medical Authority in support of his illness vide DRM(P)/TSK's L/No. ES-B/334 dtd. 16-11-95 based on which sick and fit certificates could ^{have} ~~be~~ issued by Railway Medical Authority.

The blame of the applicant in the Para-4.4 is also baseless because he could not be able to produce any such documents issued by Railway Authority for his medical treatment in Railway Hospitals. Photo Copies of above ^{are} annexed as ANNEXURE-5 & 8.

1.9. That with regard to this statement made by the applicant in para 4.5 of the O.A. it is stated that the DAR proceedings was kept in abeyance due to his filling of cases such as (i) OA No. 99 of 1994 in CAT/GHY (ii) OA No. 60 of 1997 in CAT/GHY (iii) Writ petition (C) No. 1166 of 2000 in Gauhati High Court one after another to evade his resumption of duty and put the Administration in harassment.

Contd....P/9..... in the.....

Divisi
Tinsukia
Rly.
Tinsukia
V/S

In the removal order the Applicant was given opportunity for submission of appeal to the Appellate Authority (DRM/TSK) within 45 days from the date of receipt of the NIP (Notice of Imposition for Penalty)

Accordingly the Applicant had submitted his appeal dtd. 01-08-2000 to the Appellate Authority (i.e. Divisional Rly. Manager, the highest Authority of Tinsukia Division, N.F. Railway). On getting his appeal he was called for personal interview by the Appellate Authority vide DRM(P)/TSK's L/No. ES-B/334 dtd. 31-10-2000. After hearing of the Applicant the Appellate Authority had reduced the punishment of Removal from service of the Applicant on ground of mercy and imposed the punishment of reduction to the lowest stage in his present pay scale i.e. on Rs. 5000/- in pay scale of Rs. 5000-8000/- vide DRM(P)/TSK's L/No.ES-B/334 dtd. 22-01-2001. In the order he was directed for reporting to DRM(P)/TSK's office within 15 days of the above order with proper Medical Certificate for resumption of his duty.

But instated of joining duty the Applicant had filed another case to CAT/Guwahati under OA No. 290 of 2002. Final order of the Hon'ble CAT/Guwahati was passed on 27-02-2004 in which it was directed that- "The applicant to produce all his relevant Medical Certificates from 1988 to till filing of the OA-99/1994. The same shall be considered by the Respondents and decision would be taken by them within one month from the filing of the certificates. There after the applicant would be allowed to resume duties".

Contd...P/10..... In response.....

Divisional Personnel Officer
 S. Pt. 201, TINSUKIA
 N.F. Rly. 3/6

In response to the above the Applicant had submitted his application on 18-03-04 with Medical Certificates for resumption of his duty. Accordingly he was directed to the Chief Medical Superintendent/Dibrugarh vide DRM(P)/TSK's L/No. ES-B/334 dtd. 01-04-04 to obtain his Duty Fit Certificate for resumption of his duties. Since he was absent & stated to be under private sickness for more than 15 (fifteen) years, his case was referred to the Chief Medical Director/Maligaon/N.F. Railway vide Chief Medical Supdt/Dibrugarh's L/No. M/291/1(DFC) dtd. 15-04-04 as per extant rule. After getting approval from the Chief Medical Director/N.F. Railway, Duty Fit Certificate was issued by the Chief Medical Superintendent/Dibrugarh vide his L/No. H/219/1 dtd. 24-05-04 and resumption order was issued to the Applicant Shri Biswanath Banerjee vide DRM(P)/TSK's L/No. ES-B/334 dtd. 25-05-04 and the applicant resumed his duty only on 27-05-04.

He joined duty on 27-05-04 and suffered monetary loss due to his own reasons. Rule 9(21) of DAR as quoted by the Applicant in this para is totally irrelevant to this context. Disciplinary proceedings have been conducted as per DAR rules and all reasonable opportunities were given to him.

Photo copies of above are annexed as ANNEXURES 9 to 19.

1.10. That the statement made by the applicant in para 4.6 of the O.A. is totally false. He was never dragged by Rly. Administration in any Court or Tribunal. All orders/instructions/memorandums etc. were issued to him as per establishment rules of Railway service conditions as contained in Indian Railway Establishment Manuals and Indian Railway

Office
 12/05/04
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duty on 27-05-04. He violated the order of the Appellate Authority (DRM/TSK) by not joining his duty within 15 days of receipt of the order of the Appellate authority. He was not eligible for allowing to resume duty after completion of 15 (fifteen) days time. But Railway administration had honored the decision given by the CAT/GHY in the order dated 27-02-04 (OA No. 290 of 2002). Hence there was no merit in revision petition as submitted by the applicant on 08-03-2001 since the case was under subjudice.

1.12. That with regard to the statement made by the applicant in para 4.7 of the O.A. it is stated that the allegation is not acceptable for the reasons mentioned in the foregoing paras. The Administration had given him the lot of opportunities, as mentioned in earlier paras, to be either in Railway official sick-list or to follow the extant rules for private sickness. But he had not followed either. DAR proceedings had been conducted as per extant rules and the applicant had been examined by the Inquiry Officer as per procedures. The applicant had been given sufficient opportunities for his defence in the DAR inquiry. But the applicant was questioning and criticizing the authority of Inquiry Officer to take his decision on outcome of the enquiry. Also the applicant was claiming that the Inquiry Officer and the Disciplinary Authority should direct the medical authority to issue sick-memo to the applicant which was totally none of the Inquiry officer and Disciplinary Authority's business. The DAR case was delayed due to filing of case in CAT/GHY by the applicant vide OA No. 99 of 1994 and 60 of 1997.

Contd.... P/14..... in spite.....

N. E. Rly. Tinsukia
 Railway Medical Authority
 General Office
 320

In spite of several attempts made by the Respondents, the applicant neither came forward nor co-operated with the administration to mitigate his grievances. Rather he himself had been inviting troubles for himself by this way or the other and every time blaming the Administration.

2. That with regard to this statement made by the applicant in para -6 of the O.A. it is stated that the statement made by the applicant in the para is not correct. A Railway employee should get first sick-memo from the office where he is working but the applicant did not take such sick-memo, so his attendance was treated as unauthorized absence. Railway Medical Authority has important role for issue of Duty Fit Certificate to the Railway employees who are under treatment of private doctor as per provision of IRMM (Indian Railway Medical Manual) under rule-542. The Railway doctor who had attended at the residence of the applicant had never denied for treatment of the applicant but the applicant himself was not interested for Allopathic treatment of medicine. In this regard details are mentioned in para 1/4 above.

3. That with regard to this statement made by the applicant in para 8 of the O.A. it is stated that the DAR inquiry of the applicant was started due to his unauthorised absence from 18-06-88. As per Railway rules, treatment under private doctor without recommendation of the concerning Rly. Doctor ^{and intimation to the Controlling Officer} is to be treated as unauthorised absence. Under provision of Rule-3 (i) (ii) & (iii) of Railway Service Conduct Rule - 66 such unauthorised absentee should be taken up under Discipline & Appeal Rules- 1968 as per Railway system for grave MISCONDUCT.

Contd... P/15..... that

8. That it is stated that in the light of the above facts it is proved that the applicant was given ample scopes and opportunities for joining his duty and evade all hazards. But instead he himself had shooted all the troubles during his long unauthenticated absence by his own imitation, effort, attitude and conduct which rather would give reverse senses & meanings and thereby put the barrier for his getting the grievances fulfilled as per law Rules & system for the 'back wages' for the period in which he deliberately remained absent and did not do his duty to be crowned with the maxim of "NO WORK NO PAY".

9. That the Respondents re-iterate their earlier submissions in the written statement and pray that the Applicant does not warrant any consideration for his further relief and the instant O.A. is, therefore, liable to be dismissed with costs to be Respondents.


Divisional Personnel Officer
पू.सी. रेडवे, तिनसुकिया
N.F. Rly. TINSUKIA

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VERIFICATION

I, Shri A. Narayanan, aged about 36 years, working in the capacity of Divisional Personnel Officer, N. F. Railway, Tinsukia Division do here by solemnly affirm and verify that the contents of paragraphs 1-3 to 7 are derived from the records and I believe them to be true to my knowledge & information and that I have not suppressed any material facts and the paragraphs 8 to 9 are my humble and respectful submission before this Hon'ble Tribunal.

And I sign this VERIFICATION on this 4th day of July 2007.

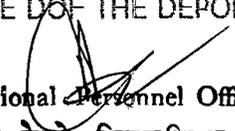
Place : Guwahati.

Date : 04-07-07

SIGNATURE OF THE DEPONENT.

To,

The Register,
Central Administrative Tribunal,
Guwahati Bench, Guwahati.


Divisional Personnel Officer
श्री. ए. नारायण, तिनसुकिया
N.F. Rly. TINSUKIA.

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Answer-1

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N. F. RAILWAY

RAILWAY ACT, 1925

OFFICE OF THE
DIVISIONAL RAILWAY MANAGER (P) TINAKULA

No. BV/1/554,

Tinakula, dated: 20th June, 66.

To: Sri Diswanath Banerjee,
C/o. Sri Sudhir Ch. Banerjee,
Near Old Railway Health Unit,
Highol Road, P.O. Makra Junction,
Distt. Dibrugarh - 786 125.

Sub: Unauthorized absence.

It is observed that you applied for 5 days' LAF from 21.6.66 to 2.6.66 from your residence and thereafter absconding without any intimation or any intimation to that effect.

You are hereby advised to report for duty immediately otherwise disciplinary action will be initiated against you.

Shukla
17/6/66
Divl. Mech. Engineer (Genl),
N. F. Railway, Tinakula

*Submitted
K.P. Das
03-07-07
Advocate*

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Moyd. with 1/10

N. F. Railway

No. ES/B/334

Office of the
Divl. Rly. Manager (P)/TSK
Dated. 20-12-88.

To

Shri Biswanath Banerjee,
C/O Shri Sudhir Ch. Banerjee,
Near Old Railway Health Unit,
Digboi Road, P. O. Makum Jn.,
Dist. Dibrugarh, 786125.

Sub: Unauthorized absence.

It is seen that you have been absenting w.o.f. 13.6.88 on grounds of illness without authority or without producing any medical certificate.

So, you are advised to report to ADMO/PHU or DMO/TSK for medical examination.

for Divl. Railway Manager (P),
N.F. Railway, Tinsukia.

Copy to: 1) ADMO/PHU, M/JN
2) DMO/TSK.

for Divl. Railway Manager (P),
N.F. Railway, Tinsukia.



o/c
14/12/88
20/12/88

all set &
New forms
- 3/7/07
Advocate

21

Answer - 3

327

(REGISTERED WITH A/D.)

N.F. Railway.

DMR(F)/TRK's Office
Dt: 29-8-1991.

~~DMR(F)/TRK's Office~~
No. ES-B/334.

To
Shri- Biswanath Banerjee,
Confdt. Stone to DMR/TRK.
C/o Shri- Sudhir Ch. Banerjee
Near old Rly. Health Unit, Digbel Road.
P.O. - Makua Janotien
Dist.- Tinsukia, (Assam).

Subj:- Resumption for duty.

You are absenting from duty unauthorisely w.o.f 3-6-88 and you were requested earlier also to report for duty vide this office letter No. ES-B/334 dt. 30-6-88, but you have not joined.

You are hereby given another chance to resume duty within one month from the date of issue this letter, otherwise action as per rules will be taken against you.

Please acknowledge receipt.

WGS
29/8

Divnl. Mechanical Engineer(CAW)
N.F. Railway/ Tinsukia.

e/c 25/8/91

21/11
21
21

Advocate
3/7/07

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TRUE COPY

No. PAT/7/89

Date- 28-01-89

From DMO/MJN

To DRM (P)/TSK

Sub: Sri Biswanath Bannerjee.

Ref: Your Office L. No-ES/B/334 dated 21-11-88.

I have attended the above named staff at his residence at Makum on 28-12-88. I have examined him & found him to be suffering from Hypertension. He is not willing to take any allopathic medicine from Rly Health Unit to be referred to Hosp, DBRT. He is not in my sick list. This is for your information please.

Sd. Illegible

**28-01-89
DMO/MJN/NFR**

*This is the typed copy
of the answer - 4
page - 22.
New Delhi
3/7/07
Advocate*

22

Annexure 1a

.. 95 ..

No. PPT/7/89

Date 28/1/89

From D.M.A. / 34

To DRN(P) / 10

Sub: Dr. Biswanath Banerjee

Ref: Your office D. No. ES/3/334 dated 2/1/88

I have submitted the above case to the
 President at Lucknow on 28/1/88. He has advised
 & requested him to be subject to Hypertension. He is not
 willing to take any allopathic medicine (including) and
 to be referred to NMRD Corp, DRN. He is not in any
 kind of. This is for your information please.



28/1/89

DRN	DRN	DRN
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attested
 W.K. Banerjee
 3/7/07
 Advocate

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Amerawee-5

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NORTHEAST FRONTIER RAILWAY

OFFICE OF THE
DIVL. RAILWAY MANAGER (F),
TINSUKIA.

No. FS-B/334

date, 16.11.95

To

Shri Biswanath Banerjee,
Confidential Steno to DME/TSK
C/o Shri Sudhir Chandra Banerjee
Near old Rly. Health Unit
Digbel Road.

P.O. Makum Junction
Dist: Tinsukia (Assam)
Pin: - 786 170.

Subj: - P.P.M.C.

Since the ground of your unauthorised absence from Rly. service arose on account of Medical reasons, you are hereby advised to obtain a duty fit certificate from a competent Railway Medical Officer in order to resume duty.

For this you may collect forwarding memo from this office and proceed to MS/IC/DBRT along with necessary Medical Certificate/Documents from your side.

for Divl. Railway Manager (F),
N. F. Railway, Tinsukia.

- Copy to:- 1. DME/TSK
2. MS/IC/DBRT

for Divl. Railway Manager (F),
N. F. Railway, Tinsukia.

Substantive 16/11

*10.05
7/11/95
12/11/95*

*attested
Advocate
3/11/97*

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Answered-6

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To

The Divisional Railway Manager, (P)
N.F. Railway,
TINSUKIA:

Sub: P.P.M.C.

Ref: Your letter No. ES-B/334, dt. 16/11/95
addressed to me undersaing copy to
DME/TSK, M.S./I.C./DBRT.

Sir,

With profound respect and humble submission, I beg to state that I reported for resumption to duty on 30/10/95 vide my application dt. 30/10/95 enclosing therewith Central Admn. Tribunal/Guwahati Bench's order on Original Application No. 99 of 1994 of the Hon'ble Tribunal, date of filing of the O.A. was 20/5/94; O.A. admitted on 23/5/94 by the above Tribunal; date of decision on 8/8/95, which has been communicated to my Legal Counsel vide Despatch No. 4520, dt. 19/10/95 of Section Officer (J) of the aforesaid Tribunal. (Photocopy of the order already submitted to DRM(M)/TSK alongwith my above application). As the matter was under subjudice, therefore, I was not under P.P.M.C. The respondents of the above O.A. are Union of India through the G.M./N.F.Rly. DRM (Mechanical)/TSK, Sr. DME/TSK. The respondents did not submit any written statement before the Hon'ble Tribunal. In your letter under reference, there is no mention of Tribunal's order and reference of my application dt. 30/10/95. It is only by virtue of Hon'ble Tribunal's order, I am able to know that my service is not terminated and hence reported for resumption to duty on 30/10/95 and as such question of P.P.M.C., does not arise now.

In this connection, I beg to state that you have already sent me to Sr. DMO/TSKG vide your letter No. ES-B/334, dt. 8/11/95 for medical examination for Duty Fit Certificate. I reported to Sr. DMO/TSKG on 9/11/95, who directed me to M.S. (Incharge)/DBRT on 9/11/95 with his remarks on the body of your above letter. I reported to M.S. (In-charge)/DBRT on 9/11/95. M.S. (I.C)/DBRT in absence of P.P.M.C. returned me without medical examination and communicated the same to you vide his letter No. H/219/1, dt. 9/11/95. I told dealing office Supdt. of M.S. (I.C)/DBRT's Office on 9/11/95 that I reported for resumption to duty by virtue of Tribunal's order and as such I was not under P.P.M.C. He consulted with M.S. (I.C.) and he told me that there is no mention of Court's order in your letter dt. 8/11/95 and hence my case cannot be sent to Chief Medical Director/N.F.Rly., He told me that if your office write to M.S/I.C./DBRT with facts and copy of Tribunal's order for doing special medical examination, then M.S./I.C./DBRT will forward my case to Chief Medical Director/N.F.Rly. for special Medical examination for obtaining D.F.C. I told the above

RECEIVED
17/11/95
S. P. M. C.

XX

under

Sri P. Raman
22/11

M.S. (I.C.)
3/11/97
Advocate

contd.... P/2

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matters to APO/I/TSK on 10/11/95. However, I met Dr. D.K. Datta, M.S. (I.C)/DBRP on 15/11/95 in ref. to his letter No. H/219/1 dt. 9/11/95 mentioned above and told him that I reported for resumption to duty by virtue of Tribunal's order and as such question of P.P.M.C. does not arise now. He advised me if your office write to him enclosing Tribunal's order for special Medical Examination, then he will forward me to Chief Medical Director/N.F.Rly. for special Medical examination for obtaining D.F.O.

3. In view of circumstances mentioned above I would request you kindly to issue a letter for special medical examination, as I reported for resumption to duty by virtue of Hon'ble Tribunal's Order. An early action in the matter is highly solicited.

With regards,

Yours faithfully,

Dated: 20/11/95.

Banerjee
20/11/95

(BISWANATH BANERJEE)
Confdl. Steno
DRM(M)'s Office/TINSUKIA
N.F.Rly.

Copy to:-

DME/TSK
N.F.Rly. for in kind information please
in reference to DRM(P)/TSK's L/No. ES-B/334
dt. 16/11/95 mentioned under reference.

Banerjee
20/11/95

Dated: 20/11/95.

(BISWANATH BANERJEE)
Confdl. Steno
DRM(M)'s Office/TINSUKIA
N.F.Railway.

all set
MR Datta
3/7/07
Advocate

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21/11 186

SM/11 Annexure - 7 333

To
The Divisional Railway Manager (Personnel),
N.F. Rly, Tinsukia.

Reg: Expunging /withdrawing the word 'Unauthorized' in the phrase
'unauthorised absence'.

Ref :- Your letter No ES-B/334, dtd. 16.11.95 addressed to me,
endorsing copy to DME/TSK and MS/18charge /DRTN, the
subject P.F.M.O.

Sir,

With profound respect and humble submission I beg to
state that I have submitted Hon'ble Tribunal's order to D.R.M.
(M) /Tinsukia on 30/10/95 and reported for resumption to duty
on 30/10/95 vide my application dt. 30/10/95. It is only by
virtue of Hon'ble Tribunal's order, I am able to know that my
service is not terminated and hence reported for resumption to
duty. Original Application No 99 of 1994 was filed before the
Central Administrative Tribunal /Guwahati Bench on 20-5-94,
admitted on 23-5-94 by the Hon'ble tribunal, date of decision
of the tribunal on 8-8-95, order of the tribunal communicated
to my legal counsel at Guwahati vide Despatch No 14520, dt. 10.10.95
of Section officer (J) of the above tribunal. The respondents of
the above O.A. are Union of India through the General Manager /
N.F. Rly., D.R.M.(M) /Tinsukia, Sr. DME/Tinsukia. The respondents
did not submit any written statement before the Hon'ble tribunal
against tribunal against the above O.A. In your letter under
reference, there is no mention of my application dtd. 30-10-95
as well as tribunal's order.

2. In your letter under reference, it has been mentioned the
word 'Unauthorized' in the first paragraph of your said letter,
which reads as under :-

"Since the ground of your unauthorised absence from Rly.
service arose on account of medical reasons, you are
hereby advised to obtain a duty fit certificate from a
competent Railway Medical Officer in order to resume
duty."

I hereby express my objection to the mentioning of word "Un-
authorised" in the phrase "Unauthorised absence" in your letter
under reference. The reasons for expunging/withdrawing the word
"Unauthorised" from your letter are furnished below in Paragraph
-3.

3. DME(CAW) /TSK issued major penalty chargesheet No ES-B/334,
dtd. 6-10-89 against me for alleged ~~unauthorised~~ unauthorised absence
w.e.f. 18-6-88. In the chargesheet, at Annexure-II, Article -(1),
there was no statement of imputation of misconduct in support of
the article of charge framed against me. A.P.O. /I/N.F. Rly /TSK
held DAR enquiry against me on 28.9.92 vide his letter No ES-B/334,
dtd. 4.9.92 in reference to the chargesheet. I have not been
communicated the result of DAR, enquiry as per DAR rules within
scheduled time since 28.9.92 to 20/5/94 (date of filing O.A.99
of 1994 in the tribunal). O.A.99 of 1994 was admitted by the
Hon'ble tribunal on 23/5/94. The respondents did not submit any
written statement in the tribunal to contest the O.A. and in such
circumstance the Hon'ble tribunal has been convinced to believe
that DAR enquiry did not result any order adverse to me.

OS/EM
Pict-up in

22/11
22/11

allotted
MS/11
3/7/07
Advocate

Contd....

Please see tribunal's order at page -5 , line No 13/14 of the order which reads as under :-

"The disciplinary enquiry did not result in any order adverse to him".
Hence the chargesheet for alleged unauthorised absence from 18-6-88 is null and void from by virtue of tribunal's above order .

4. In view of above, I would request your honour kindly to expunge/withdraw the word "unauthorised" in the phrase "Unauthorised absence" from your letter, and confirm me by a letter of having done so. Unless the word "Unauthorised" is expunged/withdrawn from your letter, rather kept on record, even after receipt of tribunal's order, then confusion will arise in future.

With regards,

Yours faithfully,

Dated 20-11-95

(BISWANATH BANERJEE)
Confdl. Steno.
DRM(M)'S Office/Tinsukia
N.F. Rly.

Copy to be made
in 5 copies
DME/TSK

N.F. Rly. for kind information please.
in reference to DRM(P)/TSK's L/No. ES-B/334
dt. 16.11.95 mentioned under reference.

Dated 20-11-95.

(BISWANATH BANERJEE)
Confdl. Steno.
DRM(M)'S Office/Tinsukia
N.F. Railway.

authd
3/7/07
Advocate

305

TRUE COPY

To,
The Divisional Mechanical Engineer (C&W)
N.F. Railway, Tinsukia.

Sir,

Sub: - Resumption to duty.

Ref: - Your letter No. ES-B/334, dt. 29-08-91.

With profound respect and humble submission, I beg to inform you that I have received your above letter on 06/09/91 wherein your honour have mentioned that I have not joined duty in spite of your letter of even No. dt. 30/06/88. The reasons which had me to the absence have been explained in my defence to the charge sheet No. ES/B-334 dt. 06-10-89. You have appointed Enquiry Officer vide your order No. ES/B-334 dt. 29/08/91 to enquire into the charge of unauthorised absence against me.

2. Homeopathy is a recognized system of treatment practised all over India. There is no provision available of Homeopathy treatment in Rly. Hospitals of DBRT/TSK/MJN by the duly qualified Homoeopathist who can issue sick certificate. Had there been such provision, I could have produced sick certificate much earlier.

3. Vide your letter under reference, you have ordered me to join duty within Sept/91. I am also interested to join my duty, as for non-attending duty I have lost monetarily from Sept/88 to Sept/91 @ 1958.00 pm x 37 months = Rs. 72,446/- excluding annual increments, subsequent ADAS. But some discomfort disturbing me.

4. In view of above, I would request you cordially to inspect me in our house along with a Doctor who will examine me in your presence, and you will hear him and myself and thereafter form an independent opinion. Your presence is solicited because as a disciplinary authority you will decide the matter, for which your satisfaction is necessary and moreover on two occasions Rly. Doctors annoyed with me for my arguments.

With regards,

Dated, Makum Jn.
On 09/09/91

Yours faithfully

Sd/-
Biswanath Bannerjee
Comfedl. Steno/DME/TSK
N.F. Railway

*This is the typed copy
sent to the
at Page - 28.
Advocate
3/9/91*

Subj: - Resumption to duty.
Ref: - Your letter No. ES-B/334,
dt. 29/8/91.

With profound respect and humble submission, I beg to inform you that I have received your above letter on 6/9/91 wherein your honour have mentioned that I have not joined duty in spite of your letter of even No. dt. 30/6/88. The reasons which I give to the absence have been explained in my defence to the charge sheet No. ES/B-334 dt. 6.10.89. You have appointed Enquiry officer vide your order No. ES/B-334 dt. 29/8/91 to enquire into the charge of unauthorised absence against me.

2. Homoeopathy is a recognised system of treatment practised all over India. There is no provision available of Homoeopathy treatment in Rly. hospitals of DBRT/TSK/MSN by the duly qualified Homoeopathist who can issue sick certificate. Had there been such provision, I could have produced sick certificate much earlier.

3. Vide your letter under reference, you have ordered me to join duty within Sept. 91. I am also interested to join my duty, as for non-attendance duty I have lost monetarily from Sept. 88 to Sept. 91 @ 1958.00 p.m. x 37 months = Rs. 72,146/- excluding annual increments.

4. In view of above, I would request you cordially to inspect me in my house along with a Doctor who will examine me in your presence, and you will hear him and myself and thereafter form an independent opinion. Your presence is solicited because as a disciplinary authority you will decide the matter, for which your satisfaction is necessary and moreover on two occasions Rly. Doctors annoyed with me for my arguments.

With regards,
Yours faithfully,
Biswanath Banerjee,
Comp. No. 2222/12K;
N.F.Rly.

Dated, Mathura Jm. [9/9/91

Handwritten signature and date: 12/9/91

Handwritten signature and date: 3/9/97 Advocate

29

337

No. 710/354.

Office of the
Divl. Railway Manager (MP),
Tinsukia, Dated. 12.6.2000

To,
Shri Mananath Banerjee,
(Confidential Steno to D.M./TSK)
C/O. Late S. C. Banerjee,
Makum Jn. High Road,
Near Assam Sahitya Sabha Bhawan,
P.O. Makum Junction, Dist. Tinsukia
(Assam) Pin - 786170.

Annexure-9

Sub: DAR, Major Memorandum No. ES-B/354 dt. 6.10.89.

Ref: Your representation dated 17.4.2000.

-000000-

On going through your appeal date 17.4.2000, as proffered by you in terms of CAI/Guwahati's Order date 16.2.2000 and High Court/Guwahati's Order date 21.5.2000 the undersigned being the Disciplinary Authority has passed the following orders:-

"I have pursued the DAR case of Shri Biswa Nath Banerjee, Confidential steno arising due to his unauthorised absence v.o.f. 09.07.88.

I have gone through the reports and findings of the Enquiry Officer and my observation was communicated to you vide DIM(P)/TSK's L/No. ES-B/354 dated 1/7.7.97 with the advice to submit representation if any within 15 (fifteen) days as a matter of natural justice and good conscience on the part of the Disciplinary Authority but you did not respond to it.

I) Shri Banerjee was advised to report ADMO/MJN for medical examination vide DIM(P)/TSK's letter No. ES/B/354 dated 20.12.88 but he did not respond.

II) Shri Banerjee was advised to resume duty vide DIM(P)/TSK's L/No. ES/B/354 dated 30.6.88 and 20.8.91, but he did not respond.

III) After long gap of more than 4 (four) years he reported to Sr. DMO/IC/TSK on 24.2.95. Sr. DMO/TSK asked him bring a fresh letter from DIM(P)/TSK. A fresh letter No. ES/B/354 dated 8.11.95 was issued directing him to obtain DFC from Sr. DMO/TSK. Sr. DMO/TSK immediately vide his letter No. N/219/1 dated 8.11.95 advised him to bring a HEC in support of his sickness, but he did not respond.

IV) Again vide DIM(1)/TSK's letter No. ES/B/354 dated 15.11.95 he was advised to medical authority to obtain DFC for his resumption, but he did not respond.

From the above it is established that Shri Banerjee was not at all willing to abide by Railway Rules and lawful instruction of the Authority and violated the Railway Service Conduct Rule 3 (I) (ii) - (iii) of 1966.

Handwritten signature and date:
3/7/07
Advocate

The charge levelled against him regarding deliberate and intentional absence from duty w.o.f. 9.7.8 was thus proved beyond doubt.

I therefore come into conclusion in terms of Rule 301 (6) RI and 5(c) RI and pass speaking order that Shri B. N. Banerjee, Conf. steno can not be allowed to resume duty as he was absenting from duty unauthorisably w.o.f. 9.7.88 which is beyond 5 (five) years and order for removal from service with effect from 12.8.2000 (A.N.).

Appeal if any, lies with the higher Authority (Appellate Authority) within 45 days.

(N.K. DAS)
Divisional Mechanical Engineer,
N. F. Railway, Tinsukia.

Copy forwarded for information and necc. action to:-

1. COS(O) to DM/TSK.
2. COS(P) FM Oadro and COS(P) bill/EM.

MS
12/6/00
Divisional Mechanical Engineer,
N. F. Railway, Tinsukia.

allst
new
3/7/07
Advocate

31

Annexure 10²²⁹

H.F. Railway.

DRM/PS OFFICE,
Tinsukia.

No. DR-10-884.
Dated: 31.10.2000.

323

To
Shri Biswanath Banerjee,
Ex-Confidential Steno to IMF/TSK,
S/O: Late Sudhir Ch. Banerjee,
P.O. Makun Junction, Digboi Road,
Near Assin Sahitya Bhavan.
Dist. Tinsukia, Assam.
P.I.N-786170.

Sub:- Interview with DRM/TSK.

Ref:- Your appeal addressed to
DRM/TSK against this office
H.F.P. of even no: dt. 19.6.2000.

In reference to the above, you are hereby
advised to attend this office on 02.11.2000 at
11.00 hrs. for an interview with DRM/TSK in connection
with your appeal.

Please attend accordingly.

For: Divl. Dy. Engineer (P),
H.F. Railway/Tinsukia.

DC

Asst

31 10.2000

DRM/PS OFFICE
Tinsukia

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allst
All know as
3/7/07
Advocate

32

Annexure - 11

340

H.E.S-B-334

To:

Shri Biswanath Banerjee,
 P.O. Late Sudhir Ch.
 P.O. HADRI JUNCTION,
 DIST: TINSUKIA (ASSAM) PIN-781170.

Suo:- Your appeal dated: 16.01.2001.

Ref:- Your Previous appeal dated: 12.6.2000 addressed to DRM/TSK against this Office NIP No. ES-B/334 dated: 12.6.2000./

Having been personal hearing on 02.11.2000, the Appellate Authority, i.e., DRM/TSK has passed the following Orders:

" I have gone through the appeal submitted by Shri Banerjee against the punishment of re-moval from service imposed by the Disciplinary Authority for continous unauthorised absence from 09.7.88 and observe that:

1. The procedure prescribed in the relevant D& A Rules applicable to Railway servants, have been correctly followed.
2. The findings of the Disciplinary Authority are warranted by the evidence of records.

A perusal of the DAR case including the available documents report of the E.O. the p representation of Shri Banerjee against the enquiry report indicate that ample time and opportunity (in Writing) was provided to him to either report for duty or seek treatment of railway doctor shri Banerjee idid neither and wanted to resume duty after a long gap of nearly 5 years that too without complying with relevant rules regarding treatment elsewhere, he should have by non-railway doctors. If he was not satisfied with the treatment of railway doctors and wanted to take treatment elsewhere, he should have got his leave sanctioned by the Competent authority, which he failed to comply with. Hence I am satisfied that the charge of long unauthorised absence is substantiated. The various points raised by him about the role and responsibility of the Supervisor/Officer alleged discrepancies between the Article of Charges and in the Wordings of the DA's orders, are trivial in nature and do not alter the basic facts of the case namely, long absence without following the prescribed procedure/approved of the competent authority, as required under extant rules.

However, on ground of mercy I modify the punishment as reduction to the lowest stage in his present pay scale, with adverse future effect. His resumption of duty is subject to his being found fit by the Medical Authorities of the appropriate level and also the employee furnishing relevent records/certificates about his alleged illness/outside treatment to the satisfaction of the appropriate railway medical authority. After this requirement is complied with, the regularisation of the entire period of absence (from 1988 to till date of resumption of duty) as leave due, can be considered."

As such, you are hereby advised to report to this Office within 15 (fifteen) days from the date of receipt of this letter with proper medical Certificates covering the period so as to consider you to direct to the Railway Medical authority for obtaining D.F.C. for resumption to duty, failing which it will be presumed that you are not willing to report for duty and order of Penalty as passed by the Disciplinary Authority will hold good.

for Divisional Rly. Manager (C),
E.S. Railway, Tinsukia/

Attestd
3/7/07
Advocate

57

Date of Order: This, the 27th Day of February, 2004.

THE HON'BLE SHRI SHANKER RAJU, JUDICIAL MEMBER.

THE HON'BLE SHRI K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

Shri Biswanath Benerjee
S/o Late Sudhir Chandra Banerjee
Makum Junction, Digboi Road
(Near Assam Sahitya Sabha Bhawan)
P.O.: Makum Junction
Dist: Tinsukia, (Assam)
Pin - 786170.

Applicant.

By Advocates Mr. G.P. Bhowmick, Alok Verma & Sanjay Roy

- Versus -

1. Union of India
Represented by the General Manager
N.F. Railway, Maligaon
Guwahati-781 011

2. The Divisional Railway Manager
N.F. Railway, Tinsukia
P.O. Tinsukia, 786125.

3. The Divisional Mechanical Engineer
N.F. Railway, Tinsukia
P.O. Tinsukia, Pin - 786 125.

4. The Divisional Railway Manager (Personal) Respondents
N.F. Railway, Tinsukia, P.O. Tinsukia.

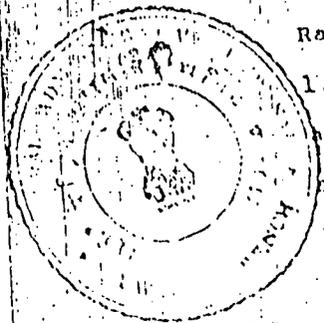
By Advocates Mr. S. Sarma, Mr. U.K. Nair & Ms. U. Das

ORDER (ORAL)SHANKER RAJU, MEMBER (J):

We have heard Mr. G.P. Bhowmick, learned counsel for the applicant and also Mr. U.K. Nair, learned counsel for the Railways.

1. Against the removal order dated 12.6.2000, the applicant preferred an appeal. On appeal the appellate authority modified the punishment reducing him to the lowest stage. His resumption of duty has been subject to his being found fit by the Medical Authorities.
2. Earlier the applicant, in O.A. 99/1994 approached this Tribunal where his plea of direction to the respondents to provide his adequate and effective

Contd./2



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rmlb
Assam-12
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homeopathy treatment was cancelled. It is not disputed and admitted that the applicant was sick from 1988 till the filing of O.A.99/1994. But his sickness from 1988 till the filing of O.A.99/1994 is to be authenticated by relevant medical certificates. Applicant has already completed 18 years of qualifying service. A compassionate view as to his right to terminal benefits is required to be taken in a view to his qualifying service is required to be taken in a view to his right to terminal benefits.

3. The respondents have already taken a compassionate view in the matter and modified the punishment reducing his pay scale to the lowest stage.

4. Having regard to the rival contentions, in the circumstances, the O.A. is disposed of with a direction to the applicant to produce all his relevant medical certificates from 1988 to till the filing of O.A.99/1994. The same shall be considered by the respondents and a decision would be taken by them within one month from the filing of the certificates. Thereafter the applicant would be allowed to resume duties and the intervening period would be decided as per our observations made above. No costs.

Sd/MEMBER (J)

Sd/MEMBER (Adm)



FILED
MILK

W.S. / 3104

GOVERNMENT OF KARNATAKA
MILK
MILK
MILK
MILK

2/7/64

35

Answer-13343

N.E. Railway

Office of the
Divl. Railway Manager
Tinsukia.
Date : 01.04.2004

No.ES-B/334

To

Sri Biswanath Banerjee
(C/Steno to DME/TSK)
C/O S/O Late S. C. Banerjee,
Makum Jn. Digboi Road,
Near Assam Sahitya Sabha Bhawan,
PO-Makum Jn., Dist.-Tinsukia (Assam)
Pin - 786 170.

Sub :- Resumption of Duty.

You are hereby advised to report CMS/DBRT for obtaining DFC for resumption of duty within one week with all original medical certificates, failing which it will be presumed that you are not willing to report for duty and the order of penalty passed by the Disciplinary Authority will hold good.

(Handwritten signature)
01/04/04

(A. K. Chhapolia)
Divl. Personnel Officer
NE Railway, Tinsukia.

Copy to :-

1. CMS/DBRT for information and necessary action please in reference this office letter of even No. dt.01.04.2004.
2. GM(P)/MLG in reference to his L.No.E/170/LC/NS/239/2002 dt.23.03.2004 for kind information please. (For personal attention of APO/Legal Cell/MLG).

(Handwritten signature)
01/04/04

(A. K. Chhapolia)
Divl. Personnel Officer
NE Railway, Tinsukia.

o/c

(Handwritten notes and stamps)
01/04/04

(Handwritten notes and stamps)
01/04/04

(Handwritten signature)
Advocate

36

Ashwini-14

344

No.ES-14334

DRM/TSK
BF Railway

OFFICE OF
DRM/TSK
BF Railway

Sub: Resumption of Sri Brajwanan Banerjee, Confidential Steno to DRM/TSK

The above named staff was removed from service w.e.f. 12.06.2000 vide NIP No ES-14334 dt.12.06.2000. In this connection he had personally interviewed with his appeal to DRM/TSK on 02.11.2000 in which DRM/TSK had reduced the punishment as "Reduction to lowest stage in his present pay scale with adverse future effect. His resumption of duty is subject to his being found fit by the Medical authority of the appropriate level and also the employee furnishing relevant records / certificate about his alleged illness / outside treatment to the satisfaction of the appropriate railway medical authority". In this order he was advised to report to this office within 15 (fifteen) days from the date of receipt of the letter with proper Medical certificate covering the period so as to consider him to direct to the Rly. Medical authority for obtaining DFC for resumption of duty failing which it will be presumed that he is not willing to report for duty and order of penalty as passed by the DA will hold good.

But inspite of the above order he did not join duty and file case to CAT/GHY under O.A No 299 of 2002. In this regard CAT's order received on 24.03.04 by this office under GM(P)/MLG's letter No.B/170/LC/NS/239/2002 dt.23.03.04 which are enclosed for your ready reference please. In the order the honorable CAT/GHY has directed that "the applicant to produce all his relevant Medical certificates from 1988 to till the filing of O.A. 99/1994. The same shall be considered by the respondent and a decision would be taken by them within one month from the filing of the certificate. There after the applicant would be allowed to resume duties".

Accordingly Xerox copies of medical certificate (31 nos.) are enclosed here with for your verification and further disposal please.

Hence Sri Banerjee is directed to report at yours to obtain his DFC for his resumption of duty please.

Encl :-

1. CAT/GHY's order dt 27.02.04.
2. DRM's order dt 22.01.04
3. GM(P)/MLG's letter dt.23.03.04
4. Private Doctor's Medical Certificates all Xerox copies 31 nos.

A. K. Chhapola
01/01/04
(A. K. Chhapola)
Divl. Personnel Officer
BF Railway, Tirunelveli

Copy to :-

1. Sri B. K. Banerjee, C Steno to DRM/TSK, S/O Late Sudhir Ch. Banerjee, PO-Malum, Dighwa Road, Near Assam Sahitya Sadha Bhawan, Dist Tirunelveli, Assam) Pin 786170. He is advised to report at CMS/DBRF for obtaining DFC for resumption of his duty within one week with all original medical certificates, failing which it will be presumed that he is not willing to report for duty and the order of NIP passed by the Disciplinary Authority will hold good.
2. GM(P)/MLG in reference to his L/No.E 170/LC/NS/239/2002 dt.23.03.04 for kind information please (For personal attention of APO/Legal Cell/MLG).

R
MLG
मिनांक 02/01/04 को भेजा गया
Despatch 02/01/04
म.रे.स. के लिए भेजा गया

A. K. Chhapola
01/01/04
(A. K. Chhapola)
Divl. Personnel Officer
BF Railway, Tirunelveli

Advocate
3/2/04
Advocate

37

Answer 15

345

N.F. RAILWAY

Office of the
Chief Medical Supdt (IC)
N.F. Railway, Dibrugarh

NO: M/219/1 (UFC)

Dtd : 15-04-2004

To
CMO/MLG
N.F. RLY

Sub : B.F.C. in favour of Shri. Biswanath
Bannerjee, confidential stone under
OME/TSK, who is absent wof. 9.7.00.

The above named staff has remained absent w.o.f.
9-7-00 and he was examined at BART Hospital on 12-4-04. On
being found fit for duty, UFC is issued and sent to you for
getting counter signature from the competent authority. A
detailed case note is enclosed along with records of his
treatment.

enclosures : 40 copies.

Chief Medical Supdt (IC)
N.F. Railway, Dibrugarh

Copy to :- DM(P)/TSK for information please.

15/4/04
Chief Medical Supdt (IC)
N.F. Railway, Dibrugarh

CMO(P)/MLG

Draft a letter for
information to CMO(P)/MLG.

Smt
Secretary
(A.P./S)

APD/S
message to court card.
to APD/S also communication
at +88 level.

Smt
21/04/04
DPO

Advocate
3/7/07
Advocate

Control of contagious diseases, Govt. of India, 1947-57-1983

for full details

Form No. N.F. 40/41-43 and M. 41

and for full details

पुणे रेली स्टेशन/N. F. RAILWAY (Vigilance)

चिकित्सा विभाग/Medical Department

दुर्गती प्रमाण पत्र/Duty Fit Certificate

आयता/ Hospital DORT

दवाखाना/ Dispensary

No. No.

02
25187 Medical Officer
P. S. B. S. 1

मी पतद्वारा प्रमाणित करता हूँ कि मैंने I hereby certify that I have examined

नाम/ Name: श्री. बिस्वा नाथ बनर्जी

पदनाम/ Designation: C/Store/DME/TSK

चिह्न/ Mark of identification: One black mole on the back

शाखा या विभाग/ Branch or Department: Med.

दुर्गती की जगह/ Site, where employed: Tinsukia

की ओर मैंने देखा और समझा कि दुर्गती पर दो पर लक्षण / Remarks: Fit for duty

दुर्गती करने योग्य है/ and consider him fit to resume duty pending production of fit certificate from:

आवेदक का हस्ताक्षर/and आवेदक का विभाग/

Sig/L.T.I. of the applicant: Biswanath Banerjee

कार्यालय की मुद्रा/Seal and Initial of Rly. Doctor

DORT
20/11/83
Member

DRS
20/11/83

attested
M. S. Joshi
3/7/87
Advocate

39

Advocate-17 373

1/16

Use both sides of paper
 No/To H/219/11 Date 21.5.2007
 No/From CMS/DORT's To DPO/TSK
 Office N.F. Aly

For/Subject Duty list certificate in
 For/Role favour of Mr Biswanath
 Benjer, Confidential Staff
 Under DME/TSK.

The above named staff duty
 list certificate is sent herewith
 duly countersigned by CMD/Mahigoon
 for your disposal please.

Encl - One D.F.c.
 (Original)

215
 24/5/07
 CMS / DORT
 of P.O. - DPO

Advocate
 3/7/07
 Advocate

348

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Annexure - 18

N.F. Railway

Office of the
Divl. Railway Manager (F)
Tinsukia, Dated: 25-5-04

No. ES-B/334

To
Shri Biwanath Banarjee
(Assistant to DME/TSK)
C/o Late S.C. Banarjee
Makum Ina Dighoi Road
Near Assam Sahitya Sabha Bhavana
P.O. Makum Ina Dighoi Tinsukia (Assam)

Sub: Resumption of Duty

In reference to this office letter of even No dated 30-4-04 on receipt of duty certificate from
vide Certificate No. 2 dt. 23-4-04 you are hereby allowed to resume duty with immediate effect.
Hence you are hereby directed to report to Sr. DME/TSK for your further duty please.

This has the order of Sr. DME/TSK.

[Signature]
For Divl. Railway Manager (F)
N.F. Railway, Tinsukia

Copy forwarded for information and necessary action to:-

- 1) Sr. DME/TSK
- 2) AS(P) EM/III
- 3) DME/TSK
- 4) COS(C) DRM (Minutes) office/TSK
- 5) CMS/DBRT in ref. to his L/No. 11/2191 dt. 24.5.04.
- 6) GM/MLCO for personal attention of Smt B. Sharma APO/ Legal cell/MLG in ref. to L/No. 11/10/TCNS/239/2002 dt. 23.3.04

[Signature]
For Divl. Railway Manager (F)
N.F. Railway, Tinsukia

[Signature]
o/c
25/5/04

[Signature]
25/5/04

[Signature]
Advocate
13/7/07



41

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Annexure - 19

N.F. Railway

Office of the
Divl. Rly. Manager (Mech)
Tinsuka.

No. M-E/1-G (Staff)

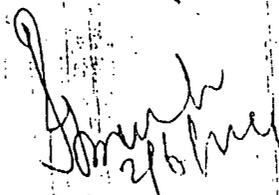
Di. 3 /06/04.

To,
DRM (P)TSK
N.F. Railway.

Sub:- Resumption of duty.
Ref.- Your letter No.ES-B/334 dtd. 25.05.04.

As per your letter referred above Shri Biswmath Banarjee,
C/Steno to Sr.DME/TSK has resumed this office on 27.05.2004.

This is for your information please.



For DRM(M)/TSK

Copy to:- OS(P)/EM/BIll for your information.

For DRM(M)/TSK

all set
me
3/7/07
Advocate

Original Application No.99 of 1994

Date of decision: This the 04th day of August 1995

The Hon'ble Justice Shri M.G. Chaudhri, Vice-Chairman

The Hon'ble Shri G.L. Sanglyine, Member (Administrative)

Shri Biswanath Banerjee
Bakum Junction, Digboi Road,
Tinsukia, Assam.

.....Applicant

By Advocate Shri G.P. Bhowmik

-VERSUS-

1. Union of India,
Through the General Manager,
N.F. Railway, Maligaon,
Guwahati;
2. Divisional Railway Manager (Mechanical)
N.F. Railway,
Tinsukia, Assam.
3. Senior Divisional Mechanical Engineer,
Office of the DRM, N.F. Railway,
Tinsukia, Assam.

.....Respondents

By Advocate Shri B.K. Sharma, Railway Counsel.

.....
ORDER

CHAUDHARI J. V.C.

Mr G.P. Bhowmik for the applicant.

Although the respondents have not chosen to file any written statement, we are unable to grant any relief to the applicant as the original application is barred by limitation and there is no substance in the grievance of the applicant.

2. The applicant is an employee of N.F. Railway. He was appointed in 1972 as Stenographer and posted

under the Works Manager, Railway Locomotive and Carriage and Wagon Workshop, Dibrugarh. He was promoted as confidential stenographer and transferred to Tinsukia on 7.8.1990. It is his case that owing to heavy work load he developed serious ailments and as allopathic treatment given by the doctors did not show any improvement he took homeopathic treatment and had applied for leave on half average pay for the period from 23.6.1988 to 17.6.1988 and again from 18.6.1988 to 24.6.1988 and from 25.6.1988. However, according to him the leave applications were not sanctioned. The DRM(P), Tinsukia, by his letter dated 18.11.1988 asked the applicant to report to ADMO/MJN or DMO/TSK for medical examination and the ADMO although gave a description of the disease for treatment, the administration did not take any further steps for his appropriate treatment. Instead he was issued a chargesheet for unauthorised absence from 18.6.1988 to which he had filed his reply in defence and although an enquiry officer was appointed nothing further was done in that enquiry to his knowledge and no order against him was passed. No action has been taken against him on the basis of the enquiry report if one was made. On 24.2.1993 he approached the Senior Divisional Medical Officer (Incharge), Tinsukia, and requested him to carry out his medical examination, but the said doctor instead of examining him directed him to obtain a fresh examination ^{memo} report from the authorities. Thereafter he met the Senior DME(Power) on the same day and requested for issuance of a sick memo or fresh memo for medical examination, but nothing was communicated to him. The applicant has summarised his grievance.....

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grievances in para 22 of the O.A. He states that he has been suffering from various ailments since May 1988 and getting no result in allopathic treatment he resorted to homeopathic treatment which gave some good result, but the Railway authority did not sanction medical leave on the plea that homeopathic treatment was not recognised under the Railway Rules and Circulars and thus the matter became complicated and although the DAR enquiry was held the whole matter was kept in abeyance as a result of which he has been without any work, without proper treatment and without any salary since long time and has been passing the days in a very distressful condition. The reliefs sought by him are as follows:

- i) To provide adequate and effective medical treatment and for that matter to arrange and allow the applicant to take homeopathy treatment as the nature of his ailment require.
- ii) To regularise the period of absence from 3.6.1988 and onwards till his resumption to duty treating the period on leave.
- iii) Any other relief.

3. The applicant has not pointed out any rule entitling him to compel the respondents to give him homeopathic treatment even after having stated in the application that the respondents did not sanction medical leave on the plea that homeopathic treatment was not recognised under the Railway Rules and Circulars. The relief sought is thus without any legal basis and cannot be granted. In so far as the relief for regularisation ^{of absence} for the period after 3.6.1988 is concerned.....

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concerned to give the fact that he had been removed from
from 18.6.1988 to 18.11.1988 on the same day as
dated 18.11.1988, that he had been removed
with effect from 18.6.1988 on the ground of ill
without producing any medical certificate and so he
obtained the report of the doctor on 18.11.1988
examination. The applicant says that he was examined
his home by the doctor and given him a prescription
for treatment. However, does not amount to
fitness certificate. The ADPO who was required to examine
the applicant for the purpose of certifying his fitness
was not expected to give any treatment to the applicant.
The so called prescription, Annexure-5, does not indicate
as to how long that treatment was to continue.
In response to the said letter the applicant did not ask the
authorities concerned to permit him to get examined and
to produce the medical certificate at any time thereafter
till 1993. He has admitted in the application that the
Fit Certificate (in short FIC) was required enabling him
to resume duty without irregularity and/or hindrance.
According to him he gave such an application for such a
certificate by application dated 18.9.1992 annexing
homeopathic Doctor's certificate. No such letter was,
however, issued by the authorities and at no time the
applicant had expressed his desire to resume the duty,
but on his own he appears to have approached the
DMO(Incharge) Tinokhia on 24.2.1993 for medical
examination on the strength of the letter dated
18.11.1988, but the said officer refused to carry out the
medical examination without a fresh letter from the
authorities.....

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concerned despite the fact that a charge memo was issued to the applicant for unauthorised absence with effect from 18.6.1988 the respondents on the same day by letter dated 18.11.1988 informed him that he had been absenting with effect from 18.6.1988 on the ground of illness without producing any medical certificate and so he was advised to report to ADMO/MJN or DMO/TSK for medical examination. The applicant says that he was examined at his house by the ADMO who had given him a prescription for treatment. That, however, does not amount to a fitness certificate. The ADMO who was required to examine the applicant for the purpose of certifying his fitness was not expected to give any treatment to the applicant. The so called prescription, Annexure-5, does not indicate as to for how long that treatment was to continue. In response to the said letter the applicant did not ask the authorities concerned to permit him to get examined and to produce the medical certificate at any time thereafter till 1993. He has admitted in the application that Duty Fit Certificate (in short DFC) was required enabling him to resume duty without irregularity and/or hindrance. According to him he gave such an application for such a certificate by application dated 18.9.1992 annexing homeopathic Doctor's certificate. No such letter was, however, issued by the authorities and at no time the applicant had expressed his desire to resume the duty, but on his own he appears to have approached the DMO(Incharge) Tinsukia on 24.2.1993 for medical examination on the strength of the letter dated 18.11.1988, but the said officer refused to carry out the medical examination without a fresh letter from the authorities.....

authorities. The refusal by the DMO to carry out the medical examination for the reason mentioned in Annexure-13 cannot afford any cause of action to the applicant. The relief claimed otherwise since relates to 1988 the application being filed on 20.5.1994 is clearly barred by limitation provided under Section 21 of the Administrative Tribunals Act. It is stated by the applicant that he had met the senior DME on 24.2.1993 in connection with the aforesaid letter and was assured that if rules permitted a fresh letter will be issued, but nothing was communicated to him. Thus, the service of the applicant was not terminated at any point of time. The disciplinary enquiry did not result in any order adverse to him. The applicant did not make any written application expressing his desire to resume duty leaving the question of back wages and leave to be decided thereafter. He did not file any application seeking a fresh letter for medical examination to enable him to resume duty. There thus no cause of action disclosed and if the averments are treated as the basis for the grievance made that is barred by limitation. The applicant has avoided to adopt the proper course to apply to the concerned authority expressing his unreserved desire to resume duty and requesting the authorities for that purpose to issue him a letter to get himself medically examined by the Railway Medical Officer and obtain fitness certificate if he was found fit to resume duty. This he was expected to do in a straightforward manner without reiterating his grievances in the manner he did in his reply to the chargesheet. He should have thereafter sought resolution of the question of wages for the period of absence in

the.....

the light of his application for various accounts of leave as may have been made by him. The letter of the respondents dated 18.11.1988 stated that he had not produced any medical certificate. He had, therefore, to take steps with the respondents to enable him to do so. The applicant has, however, believed in abandoning his job and if he has been placed in distressing circumstances as stated by him he has to thank himself for that situation.

4. We, therefore, hold that neither in limitation nor on merits any relief can be granted on the frame of this application which does not disclose any cause of action or a grievance which can be redressed under the law. In the peculiar situation where he is neither on duty nor his services terminated what the respondents should do or the applicant should do is a matter for those parties to consider.

5. In the result the original application is dismissed. No order as to costs.

Sd/- VICE CHAIRMAN
Sd/- MEMBER (ADMN)

12/10

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Answer T-21

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NO. 23-B/334

DIVISIONAL ^{OFFICE} ^{OF THE} ^{GENERAL} ^{MANAGER (P),}
TINSUKIA : DT : 16.5.2001.

TO :

Shri Biswanath Banerjee,
EX- Con. Steno to DME/TSK
S/C Late Siddhir Ch. Banerjee,
P.O. Makim Junction, DAgboi Road Near Assam Jahitya Bhawan,
Dist : Tinsukia (ASSAM) Pin code - 786170.

Sub :- Clarification

Ref :- Your appeal dt: 29.01.2001.

-----00000-----

In reference to the above, this is to inform you that the punishment imposed upon you is very much clear under rule 6(vi) of D. & Appeal Rules, 1968, 1, a, your pay will be fixed at the minimum/initial in the present scale of pay which you were enjoying, with future effect permanent.

L. G. Pat
for Divnl. ^(P) Mgr (P),
N.F. Railway, Tinsukia.

S/c

allied
Advocate
3/7/07

358

Mr. K. Biswas,
Advocate,
Central Administration Tribunal,
Guwahati.

To:
Sri G. P. Bharamick,
Advocate,
CAT/Guwahati.

Dear Sir,

Sub: O.A. No. 33 of 2006
Sri Biswanath Banerjee Applicant/Ptitioner
VS.

Union of India and Ors. -----
Respondents/Opposite Parties.

Kindly acknowledge receipt of the enclosed "Service Copy" for the
Advocate of the ~~Respondents/Opposite Parties~~ Applicant.

With thanks,

Yours faithfully,
K.K. Biswas
(K.K. Biswas)
Advocate,
CAT/Guwahati.

Dated 03.07 2007

*I undertake
the responsibility for
handing over the copy
of the OP to the
Applicant's Counsel.
K.K. Biswas
03/07/07
Advocate.*

IN THE COURT OF CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
AT GUWAHATI

O.A. No.33/06

Sri B.N. Banarjee.....
- Vrs -
U. O.I & Others

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal
Applicant
20 FEB 2006
Respondents
गुवाहाटी न्यायाधीश Guwahati Bench

IN THE MATTER OF

ADDITIONAL WRITTEN ARGUMENT
ON BEHALF OF THE RESPONDENTS.

354
Filed by:
NULP
20/2/06
Advocate

वरिष्ठ कर्मचारी अधिकारी
Sr. Divisional Personnel Officer
श.सो. रेलवे, ति. गुवाहाटी
N.F. Rly. TINSUKIA

MOST RESPECTFULLY SHEWETH:

That the salient of the Argument for contesting the case by the Respondents are as follows:

1. The order passed by the Hon'ble CAT/GHY on 27.02.04 in O.A.No.290/2002, the Applicant Sri B.N. Banarjee was informed vide the office letter No.ES-B/334 dated.01.04.04 to report to CMS/DBRT for obtaining DFC for resumption to duty within one week with all original Medical certificates failing which it will be presumed that he is not willing to report duty and the order of penalty passed by disciplinary authority will hold good, endorsing copy to CMS/DBRT for his information and necessary action (A photo copy of said letter enclosed herewith) as Annexure - R/1).
2. That, in response to the letter, it was informed to this office by the chief Medical superintendent/DBRT vide letter No.H/219/1 dated.05.04.04 seeking the particulars of Mr.B.N. Banarjee. Reply was sent vide L/No.ES-B/334 dated.08.04.04 to the CMS/DBRT for his necessary action. Again DRM (P)/TSK wrote to CMS/DBRT for Medical Examination of Sri B.N.Banarjee vide office letter No.E/Court Case/BNB/2004 dtd.11.04.04 (A photo copy of said letter enclosed herewith) as Annexures - R/2 & R/3)
3. That, a letter, in connection with D.F.C, in favour of Sri B.N.Banarjee, was issued to Chief Medical Superintendent/MLG/N.F.Railway by CMS(IC)/DBRT vide his office letter No.H/219/1 (DFC) dtd.15.4.04 for necessary action (A photo copy of said letter enclosed herewith) as Annexure - R/4).
4. That duty fit certificate of Sri B.N. Banarjee was issued by the CMS/DBRT vide his office letter No. H/219/1 dtd.24.05.04 duly counter signed by CMD/MLG (A photo copy of said letter enclosed herewith) as Annexure - R/5).
5. That, after getting the DFC, Mr.B.N. Banarjee was allowed to join duty on 27.05.04 vide L/No. ES- B/334 dtd.25.05.04. A photo copy of the said letter is enclosed as Annexure - R/6). Contd...p/2 as per

The verdict passed by Hon'ble CAT on 27.02.2004 in OA No. 290/2002 was implemented by allowing him to join duty vide DRM (P)/TSK letter No.ES-B/334 dated.25.05.04. But the Applicant did not co-operate with the Administration and did not produce necessary medical certificate for the year 1988. He produced the doctor's prescription of 01.01.89 to 1994 but no medical certificate in respect of his treatment under any doctor for a specified period & for the particular disease had been produced. Under the said OA No.290/2002, the Applicant was directed by the Hon'ble Court to produce the medical certificate from the year 1988 to till filling of OA No.99/1994. As such the period of absence form 31.05.88 to 26.05.04 could not be regularised.

Apart from this, as per extant rule, leave is credited in favour of a staff @ 20 days LHAP (leave on half average pay) and 30 days LAP (Leave average pay) per year subject to full attendance. If a staff remains in sick-list, the sick period is regularised based on the availability of leave at credit of the concerned staff, if no leave is available at his credit, the period of sick or any kind of leave is regularised as LWP (Leave without pay) on the principle of "No work no pay".

In terms of Para 510 IREC, Vol - I, 1985, maximum amount of leave which can be considered- "unless the president in view of the exceptional circumstances of the case other wise determined. No Railway servant shall be granted leave of kind for a continuous period exceeding 5 years". Beyond that, the power of regularisation lies with Railway Board.

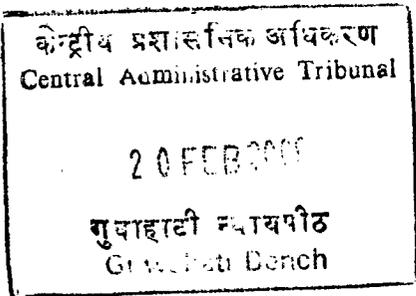
From the above facts, it is crystal clear that the Administration had implemented/complied with the orders of the Hon'ble CAT/GHY in letters. It is the applicant who failed to produce the medical certificate for the year 1988 for which the period could not be regularized or could be referred to Railway Board.

In view of the above facts, the Respondents respectfully pray that the Hon'ble Court be pleased to consider the written arguments and passed the order to dismiss the prayer of the Applicant which has no merit at all to consider for payment of "Back -wages" for the period of remaining unauthorised absent and pass such order or orders for ends of justice.

VERIFICATION

I, Shri A. Narayanan, aged 38 years at present working as Sr. Divisional Personnel Officer, N.F.Railway, Tinsukia do hereby declare that the statement made in the Additional written Arguments are all true to the best of my knowledge, believe and records.

And I sign this verification on my official capacity today on ..18.....th day of Feb/08 at Guwahati.



A. Narayanan
 Signature of the deponent

परिष्कृत कर्मिक अधिकारी
 Sr. Divisional Personnel Officer
 पू.सी. रेलवे, तिनसुकिया
 N.F. Rly. TINSUKIA

N. F. Railway

Office of the
Divl. Railway Manager(P)
Tinsukia.

Date : 01.04.2004

No.ES-B/334

To

Sri Biswanath Banerjee
(C/Steno to DME/TSK)
C/O S/O Late S. C. Banerjee,
Makum Jn. Digboi Road,
Near Assam Sahitya Sabha Bhawan,
PO-Makum Jn., Dist.-Tinsukia (Assam)
Pin - 786 170.

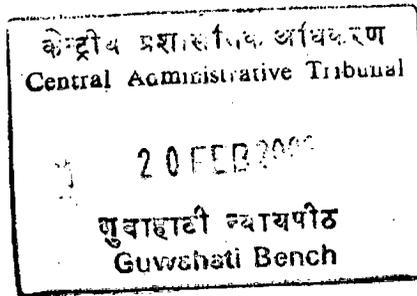
Sub :- Resumption of Duty.

You are hereby advised to report CMS/DBRT for obtaining DFC for resumption of duty within one week with all original medical certificates, failing which it will be presumed that you are not willing to report for duty and the order of penalty passed by the Disciplinary Authority will hold good.

(A. K. Chhapolia)
Divl. Personnel Officer
NF Railway, Tinsukia.

Copy to :-

1. CMS/DBRT for information and necessary action please in reference this office letter of even No. dt.01.04.2004.
2. GM(P)/MLG in reference to his L/No.E/170/LC/NS/239/2002 dt.23.03.2004 for kind information please. (For personal attention of APO/Legal Cell/MLG).



2 जिन ए. ओ.
01/04/04
(A. K. Chhapolia)
Divl. Personnel Officer
NF Railway, Tinsukia.

R
B. Banerjee
5/4/04

N. F. RAILWAY.

Office of the
Divl. Railway Manager (F),
Tinsukia, Dated, 8.4.2004.

No. ES-B/334.

To,

EMS/DBRT.

Sub: Service particulars of Shri Biswanath Banerjee,
c/Stone of DME/TSK.

Ref: Your letter No. H/219/1 dt. 5.4.04.

-ccccc-

In reference to your above letter the service particulars of Shri Biswanath Banerjee, c/Stone of DME/TSK is furnished below :-

- 1) Name : SHRI BISWANATH BANERJEE.
- 2) Designation : Confidential Stone under DME/TSK.
- 3) Date of birth : 16.01.1950.
- 4) Date of Apptt. : 22.7.1972.
- 5) Date of Retirement : 31.1.2010.
- 6) Medical category at the time of Apptt. : c/I (Steno graphor).
- 7) Basic pay/scale of pay : Rs.1680/- in scale Rs.1400-2300/- as per
473 CP
- 8) Bill preparing office : DFM(F)/TSK.
- 9) Place of working/working under : Under DME/TSK.
- 10) Period of absent. : 9.7.88 to till date.
- 11) Identification Marks 2 Nos. : 1) A black mole on the left cheek.

স্বাক্ষরিত কেন্দ্র পরিচালক ২০ ফেব্রু২০০৪ কেন্দ্র পরিচালক কেন্দ্র পরিচালক
--

B. Sat
8/4/04
for Divl. Railway Manager (F),
N. F. Railway, Tinsukia.

ok



5

Annexure - R/3

363

N.F. Railway.

Office of the
Divl.Rly.Manager (P)
N.F.Railway, Tinsukia
Date:- 11/04/2004.

No.E/Court case/BNB/2004

To
CMS/DBRT
N.F.Railway

Sub:- Medical examination of Shri B.N.Banerjee, ex./Steno to DME/TSK

Shri B.N.Banerjee, Ex.C/Steno to DME/TSK is directed at yours for his medical examination as desired vide your telephonic conversation with APO/I and DPO/TSK. It is in reference to GM (P)/MLG's letter No.E/170/LC/NS/239/2002 dt. 23/03/2004.

For Divl.Railway Manager (P)
N.F.Railway, Tinsukia

Copy to : Shri B.N.Banerjee, ex./Steno to DME/TSK. He is advised to attend CMS/DBRT's office on 12.4.2004 for his medical examination as desired by CMS/DBRT for his resumption of duty.

For Divl.Railway Manager (P)
N.F.Railway, Tinsukia

ofc

Central Administrative Tribunal
20 FEB 2004
Bhubaneswar Bench

6

Annexure - 2/4

409
364

दिनांक को प्राप्त किया
 Received on 20-4-04
 डॉ. रे. प्र. (आयुष) का कार्यालय
 DRM (P)'s Office
 86
 N.F. Ry. / TSK

N.F. RAILWAY

Office of the
 Chief Medical Supdtt (IC)
N.F. Railway, Dibrugarh

NO: M/219/1 (DFC)

Dtd : 15-04-2004

To
 CMB/MLG
N.F. RLY

Sub : B.F.C. in favour of Shri. Biswanath
 Bannarjee, confidential status under
OME/TSK, who is absent w.e.f. 9.7.88

The above named staff has remained absent w.e.f. 9-7-88 and he was examined at DBRT Hospital on 12-4-04. On being found fit for duty, DFC is issued and sent to you for getting counter signature from the competent authority. A detailed case note is enclosed along with records of his treatment.

enclosures : 40 copies.

Chief Medical Supdtt (IC)
N.F. Railway, Dibrugarh

Copy to :- DRM(P)/TSK for information please.

केन्द्रीय प्रशासनिक अधिकरण
 Central Administrative Tribunal
 20 FEB 2008
 गुवाहाटी न्यायपीठ
 Guwahati Bench

Shri 15/4/04
 Chief Medical Supdtt (IC)
N.F. Railway, Dibrugarh

CO S(P)/mech.
 Draft a letter for
 information to Gmcp/MLG.

Bent
 21/4/04
 (A-0/1)

AP of I
 1) Concerned to Court call.
 2) Please also communicate
 to AP of legal / mech for
 at HR level.

2/11/04
 21/04/04
 DPO

7

Annexure - R/5

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Confidential

जखरत पर दोनो तरफ लिखें
Use both sides if required

पू. मी. रेलवे
N. F. Railway

आर. बी. एम. एम./R. B. (I. L. 13)
दू. सी. बी./N. F. G-40

सं./No. H/219/1

तारीख/Date 24.5.2004

पक/From CMS/DART'S

सेवा में/To DPO/TSK.

Office

N.F. Rly.

विषय/Subject

Duty list certificate in
favour of Sri Biswanath
Benajer, Confidential Staff
under DME/TSK.

संदर्भ/Ref:

The above named staff duty
list certificate is sent herewith
duly countersigned by CMD/Maligaon
for your disposal please.

Encl - One D.F.e.
(Original)

24/5/04
CMS, DART
DPO/TSK

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
20 FEB 2004
गुवाहाटी न्यायपीठ
Guwahati Bench

cos(2)/mech.

Pl. find going letter
to the staff concern.

beat
29/5/04
(Apoli)

8

Annexure - R/B

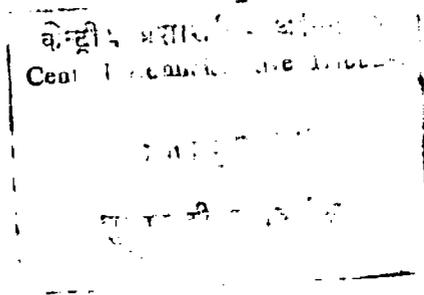
360

N.F.Railway

Office of the
Divl,Railway Manager(P)
Tinsukia, Dated:-25-5-04

No. ES-B/334

To,
Shri Biswanath Banarjee
(C/stano to DME/TSK)
C/o s/o Late S.C.Banarjee
Makum Jn. Digboi Road
Near Assam sahitya sabha Bhawan.
P.O.Makum jn. Dist Tinsukia (Assam)



Sub:- Resumption of Duty

In reference to this office letter of even No dated 30-4-04 , on receipt of duty fit certificate CMS/DBRT vide Certificate No 2.dt 23-4-04 you are hereby allowed to resume duty with immediate effect. Hence you are here by directed to report to Sr. DME /TSK for your further duty please.

This has the order of Sr. DME/TSK.

For Divl, Railway Manager (P)
N.F. Railway ,Tinsukia

Copy forwarded for information and necy.action to:-

- 1) Sr DME/TSK
- 2) OS(P) EM/Bill
- 3) DFM/TSK
- 4) COS(G)DRM(Minutes)office/TSK
- 5) CMS/DBRT in ref .to his L/No.H/219/I dt.24.5.04.
- 6) GM(P)/MLG(For personal attention of Shri B.Sharma APO/Legal cell/MLG) in ref .to his L/No.E/170/LC/NS/239/2002 dt23.3.04

For Divl, Railway Manager (P)
N.F. Railway , Tinsukia



To
Sri C.P. Bhoomick,
Advocate,
CAT / Guwahati,
Dear Sir,

Sub: - OA No 33/06 in CAT / Guwahati.
Sri Biswanati Banerjee - Applicant
- vs -
Union of India & ors - Respondents

Kindly acknowledge the "Service copy"
of the additional written argument for the
Applicant.
Thanks,

Yours faithfully,
Mr. ~~S...~~
20/2/08
Advocate for the
Respondents.

I undertake the
responsibility for handing
over the "Service copy"
of the answer of General
Applicant.
Mr. ~~S...~~
20/2/08
Advocate for the
Respondents.