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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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✓
O.A./T.A No. O.A. 171/2005

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SECTION OFFICER (Judl.)

Shahita
03.11.17

FORM No. 4
 (SEE RULE 42)
 CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH

ORDER SHEET

Original Application No. 171/05

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicants:- Premenwar Bordoloi

Respondents W. O. F. Gens

Advocates for the Applicant J. Purkayastha

Advocates of the Respondents Railway Counsel, J. L. Sarkar

Notes of the Registry Date Dr. M. C. Sarma Order of the Tribunal

The application is in form
 is in the form of Rs. 50/-
 deposited in P.O. No. 206/116090
 D. 21.6.05

[Signature]
 Dy. Registrar

AS
28/6/05

Steps not taken

Steps taken
on 4/7/05.

47
Notice & orders
sent to D/section
for issuing to
resp. No. 1 to 4
by regd. A/D post.

5/7/05.

D/No = 1068 to
1071

DT = 6/7/05.

Notice duly served
on resp. No-4.

6
227-

29.6.2005

present : Hon'ble Sri Justice G. Sivarajan, Vice-Chairman.

Heard Mr. J. purkayastha, learned counsel for the applicant and also Mr. J.L. Sarkar, learned counsel for the Railways.

Admit. Issue notice to the respondents. Returnable on ^{or before} 28.7.2005.
 post on 28.7.2005.

[Signature]
 Vice-Chairman

mb
 28.7.2005

Mr. J. Purkayastha, learned counsel for the applicant is present. Mr. M. Chanda, learned counsel on behalf of Mr. J.L. Sarkar, learned counsel for the respondents seeks adjournment. Post on 31.8.2005. Written statement, if any, in the meantime.

[Signature]
 Member

[Signature]
 Vice-Chairman

mb

① Notice duly served on R.No-4.

② other respondent are still awaited

30
27.8.05

31.8.2005

Mr. J.L. Sarkar, learned counsel for the respondents submits that service is not complete. Post on 29.9.2005.

Vice-Chairman

No written statement has been filed.

30
30.8.05

29.9.05

Post on 6.10.2005 for order.

No W/s has been filed.

30
28.9.05

06.10.2005

Mr. J. Purkayastha, learned counsel for the applicant is present. Dr. M.C. Sarma, learned counsel for the railways submits that he has received parawise comments and requires some time. Post on 23.11.2005.

By order

5-10-05

① No W/s has been filed.

30

Member

Vice-Chairman

mb

22-11-05

23.11.2005

Mr. J. Purkayastha, learned counsel for the applicant and Dr. M.C. Sharma, learned Railway counsel are present. The Railway counsel submits that some more time is required to file written statement.

Post on 10.1.2006.

9-1-06

① NO W/s has been filed.

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Vice-Chairman

bb

10.01.2006 Mr. J. Purkayastha, learned counsel for the applicant and Dr. M.C. Sarma, learned railway counsel for the respondents/^{are} present

10-2-06

① No written statement has been filed.

my

Dr. M.C. Sarma, learned railway counsel submits that he requires a short time to file written statement. Counsel for the applicant seeks for an order for hearing of the case. Post the ~~xxxx~~ matter on 13.2.2006 for hearing. written statement and reply, if any in the meantime.


22.2.06

W/S filed by the respondents.

Dis.

13.2.2006

Post on 6.3.2006 for hearing.


Vice-Chairman

W/S has been filed.

my
3.3.06.

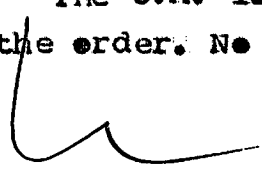
mb


Vice-Chairman

6.3.2006

Heard learned counsel for the parties. Order passed, kept in separate sheets.

The O.A. is disposed of in terms of the order. No costs.


Vice-Chairman(J)


Vice-Chairman(A)

bb

16.3.06

Copy of the order has been sent to the office for issuing the same to the applicant and a copy of the same has been handed over to the Rly. Study Counsel.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

171 of 2005

O.A. No.

06.03.2006

DATE OF DECISION

Sri P.Bordoloi

..... Applicant/s

Mr. J.Purkayastha

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

- Versus -

General Manager, N.F.Rly. & Others

..... Respondent/s

Dr.M.C.Sarma, Railway Counsel


..... Advocate for the
Respondents.

CORAM

THE HON'BLE SRI B.N. SOM, VICE CHAIRMAN (A).

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

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


Vice-Chairman(J)/Vice-Chairman (A)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 171 of 2005

Date of Order: This is the 6th March 2006.

THE HON'BLE SHRI B.N.SOM, VICE CHAIRMAN (A).

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

Sri Prameswar Bordoloi
S/o Sri Lohar Singh Bordoloi
Vill: Majgaon, P.O: Saraibari
Dist: Morigaon, (Assam).

.....Applicant.

By Advocate Shri J.Purkayastha

- Versus -

1. Union of India represented by
the General Manager
N.F.Railway, Maligaon.
2. The Chief Mechanical Engineer
N.F.Railway, Maligaon
(The Reviewing Authority).
3. The Additional Divisional Railway Manager
N.F.Railway, Lumding
(The Appellate Authority).
4. The Senior Divisional Mechanical Engineer (Diesel)
N.F.Railway, Lumding.

..... Respondents.

By Dr.M.C.Sarma, Railway Counsel.

O R D E R (ORAL)

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

The applicant, while functioning as DSL/Turner-II under Senior Section Engineer (Diesel), Lumding, N.F.Railway, has to leave to his native place to attend his ailing parents. He remained absent with effect from

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23.7.2001 to 28.8.2001 i.e. for 37 days. He submitted leave application on 29.8.2001 praying for joining duty but he was not allowed to resume duty. Charge memo was issued on 10.8.2001 on the alleged charge of unauthorized absence. He has also submitted his reply against the memorandum of charges but after the enquiry his services were terminated i.e. removal from service imposing a major penalty. Aggrieved by the said action the applicant has filed this application seeking for following reliefs:-

"8.1. To set aside and quash the impugned orders dated 13.11.04, 9.9.03, 13.12.02 and to reinstate the petitioner with full back wages and consequential service benefits.

8.2. Cost of the application.

8.2.1. Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper."

2. Respondents have filed a detailed reply statement contending that the procedure that has been adopted in the disciplinary and appellate proceedings was in conformity with the rules and it cannot be faulted. The applicant was given the opportunity to defend his case and the order of removal from service was issued in the best interest of the institution. He reported for duty on 29.8.2001 and was allowed to resume duty on 30.8.2001. The applicant has submitted his written defence in which the guilt was admitted. Sufficient opportunity was afforded to the applicant in defending his case while conducting the

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enquiry and finally after due application of mind the disciplinary/appellate authorities had issued the order of removal from service after considering his representation sympathetically, otherwise, harsh punishment of dismissal from service would have been meted out to him.

3. We have heard Mr.J.Purkayastha, learned counsel for the applicant and Dr.M.C.Sarma, learned Railway counsel for the respondents. Counsel for the applicant is stressing on the point that the punishment that has been given to the applicant is disproportionate to the gravity of his guilt considering his 14 years of unblemished service records. Dr.Sarma, on the other hand, submits that the Reviewing Authority has made it clear that he was absent many times before and it is not a single instance. Therefore, any concession towards the imposed punishment cannot be granted.

4. We have also perused the evidence on records. The statement of articles and imputation of charges framed against the applicant are quoted below:-

" ARTICLE-I

That the said Shri P. Bordoloi, while functioning as DSL/Turner-II during the period

(here enter definite and distinct articles of charge)

Absenting from duty wef:-23.07.2001 unauthorisedly without giving any information to SSE/DSL/LMG. This shows your gross neglect of duty which leads in turn violation of Sub-Rules No.3.1(ii) of Rly. Service Conduct Rules, 66.

ANNEXURE-II

Statement of imputations of mis-conduct or mis-behaviour in support of the articles of charge framed against Shri P.Bordoloi, DSL/Turner-II

That the said Sri P. Bordoloi, while functioning as DSL/Turner-II, unauthorisedly absenting from duty wef:- 23.07.2001, according to his own will without giving any prior information to SSE/DSL/LMG which shows his gross neglect of duty & did not bother for Railway Service. This type of activities tantamounts to violation of Sub-Rules. No.3.1 (ii) of Rly. Service Conduct Rules, 66."

It is quite clear from the above that the only charge framed against the applicant is unauthorized absence of 37 days. In the imputation of charge there is no mention about antecedent absence from any record or any separate charges were framed in the same charge sheet. The applicant in the appeal at Annexure-8 has submitted that he was absent but he had also submitted that the absence was due to his father's illness. For better appreciation relevant portion of the appeal is quoted below:-

" That Sir, it may be evident from the findings of enquiry officer that I was not absent willfully. My old aged father, wife and an unmarried sister are residing at my home in the village near Nagaon in the district of Morigaon (Assam). My father is an ailing patient. Since I have no Rly. Qrs at Lumding that is why they are to reside at my home in the village and of and on, when I receive information of my father's seriousness, I have to go to my father to see him at his last moment which caused my absence from duty several times. Some how I have arranged one relative to look after him now.

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That Sir, in the light of above fact, I assure that, I will not remain absent unauthorisedly from duty any more. Of course, I did not know the rules in this respect earlier. Now, I am aware of the rules. It will be a great help to me if your honour would be kind enough to allot me a Rly Qrs at Lumding so that, I can shift my family members along with my ailing father in the Qrs. at Lumding and my anxiety for them may be minimized and I can perform my duty smoothly. I am a poor man and removal from service will effect my remaining life miserably along with my family members too."

It is also borne out that the applicant has about 14 years of service and he has to attend his old parents and his family to support, therefore, it is to be considered whether the punishment of removal from service is justified or not. Counsel for the applicant has taken our attention to a decision reported in 1988 (Supp) SCC 436 in the case of 'M.A.Khalsa vs. U.O.I.& Ors.' wherein the Hon'ble Supreme Court of India has observed that punishment of removal from service will be harsh and a lesser punishment withholding the increments will be sufficient. Learned counsel has also drawn our attention to the decision reported in 1995(1) SLR 133 in the case of 'Deputy Inspector General, Central Industrial Security Force & Others vs. Shib Kumar Ray' wherein the Hon'ble Calcutta High Court has laid down that the punishment of removal from service for unauthorized absence for a short period is disproportionate to the gravity of the offence. It is also profitable to quote the case reported in 1996 SCC (L&S) 80 in 'B.C.Chaturvedi vs. Union of India & Ors.' wherein the

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Hon'ble Supreme Court has stated that if the punishment awarded shocks the consciousness of the Court, Court is justified to intervene.

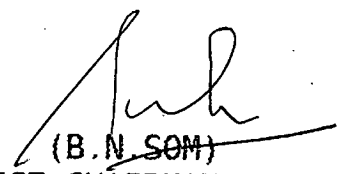
5. Considering the fact that the applicant has put in 14 years of service and he is only 34 years of age and he has to support the family and his ailing parents, we are of the view that employer's family should not suffer, which also has to be taken into account while imposing punishment. Therefore, we are of the considered view that the short period of absence of 37 days cannot be the reason for removing the applicant from service which is directly affecting the family of the employer and therefore, we are of the considered opinion that the punishment of removal from service is shockingly disproportionate and not justified. The punishment of removal from service is set aside and therefore, the respondents are directed to reinstate the applicant. The matter is remitted back to the appellate authority with a direction to the concerned respondent that a lesser punishment i.e. reinstatement in service without any back wages [✓] or allowances ^{OR. ✓} by withholding two increments with cumulative effect and with consequential loss of seniority may be imposed on the applicant as the authority deem fit in the circumstances of the case. There shall however be no break in service for the purpose of pensionary benefits. Necessary orders will be passed in this regard within a time frame of two months from the date of receipt of this order.

The Original Application is disposed of as above.

In the above circumstances, there is no order as to costs.

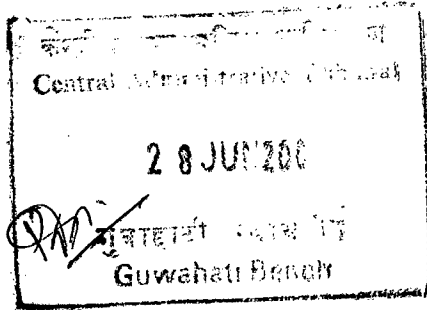


(K.V.SACHIDANANDAN)
VICE-CHAIRMAN (J)



(B.N.SOM)
VICE-CHAIRMAN (A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case : O.A. No. 171 of 2005

Between

Premeswar Bordoloi Applicant.

AND

Union of India & ors Respondents.

I N D E X

Sl.No.	Particulars	Page No.
1.	Application	1 to
2.	Verification	.....
3.	Annexure-1	.....
4.	Annexure-2	.....
5.	Annexure-3	.....
6.	Annexure-4	.....
7.	Annexure-5	.....
8.	Annexure-6	.....
9.	Annexure-7	.....
10.	Annexure-8	.....
11.	Annexure-9	.....
12.	Annexure-10	.....
13.	Annexure-11	.....

Filed by : *Jhurbhagorthe*
File : WS\premeswa

Regn.No. :
Date : *27/06/05*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 171 of 2005

Premeswar Bordoloi
..... Applicant.

AND

Union of India & ors.
..... Respondents.

SYNOPSIS

The applicant while functioning as Turner-II under Senior Section Engineer (Diesel), Luming, N.F.Railway on 22.7.01 got a telephonic message from his near relative informing regarding ailment of his parents. The applicant immediately rushed to his native place and remained there upto 28.8.01 (i.e. 36 days) and on the next day on 29.8.01 he submitted an application dated 29.8.01 praying for joining for duty but he was not allowed to resume his duty on 29.8.014.

During the aforesaid period the concern authority issued a memorandum of charge sheet dated 10.8.01 on the alleged charge of unauthorised absence. The only charge mentioned in the said charge-sheet is regarding the absence from duty w.e.f. 23.7.01. In the said memorandum of charges the applicant was asked to submit his reply within 10 days.

28/8/01 37 Jay

Since the applicant was in the midst of unavoidable family trouble, he could not submit the representation

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against the memorandum of charges and the respondents thereafter, hold the enquiry behind the back of the applicant and submitted its report, dated 16.8.02. The respondents/ i.e. the Disciplinary authority basing on the said report issued a communication dated 20.8.02 indicating imposing of major penalty of dismissal from service. Hence this application praying for setting aside of the dismissal order and reinstate the applicant in his original place of posting.

Filed by:-
The Applicant
through:-
Jaidul Karim
Advocate

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A. NO...171.../85

Between

Sri Premeswar Bordoloi
S/o Sri Lohar Singh Bordoloi
Vill- Majgaon, P.O.-Saraibari,
Dist.-Morigaon, (Assam).

.....Applicant

AND

1. Union of India represented by
The General Manager
N.F.Railway, Maligaon.
2. The Chief Mechanical Engineer
N.F.Railway, Maligaon.
(The Reviewing Authority).
3. The Additional Divisional Railway Manager
N.F.Railway, Lumding,
(The Appellate Authority).
4. The Senior Divisional Mechanical Engineer (Diesel)
N.F.Railway, Lumding.

.....Respondents

DETAILS OF THE APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION IS MADE:

This application is directed against the following orders:

- i. Order issued under memo No.M-10/LM/1/DSL/Major/51/2001/703 dated 30.11.04.

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ii. Order issued under memo No.M-10/LM/1/DSL/Major/51/2001/1377 dated 9.9.03.

iii. Order issued under memo No.M-10/LM/1/DSL/Major/51/2001/947 dated 30.1.03.

iv. Order issued under memo NO.M-10/LM/1/DSL/Major/51/2001/785 dated 13.12.02.

This application is also directed against the enquiry proceeding pursuant to which the above impugned orders have been issued.

2. LIMITATION:

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act.1985.

3. JURISDICTION:

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE:

4.1. That the applicant is a citizen of India and a permanent resident of Assam as such he is entitled to all the rights, privileges and protection guaranteed by the Constitution of India.

4.2. That the applicant while functioning as Turner-II under Senior Section Engineer (Diesel), Lunding, N.F.Railway on 22.7.01 got a telephonic message from his near relative informing regarding ailment of his parents. The applicant immediately rushed to his native place and remained there upto 28.8.01 (i.e. 36 days) and on the next day on 29.8.01 he submitted an application dated 29.8.01 praying for joining for duty but he was not allowed to resume his duty on 29.8.01. However, the applicant was to resume duty on the next day i.e. on 30.08.01.

✓ 4.3. That the applicant was on due rest on 22.7.01 and he got a message regarding ailment of his parent and he left his place of work but he could not inform his Superior Authority i.e. Supervisions at the relevant point of time. The applicant after availing the leave submitted his joining ✓ report on 29.8.01. It is noteworthy to mention here that the applicant in his joining report itself made it known to the authorities concerned regarding the factual aspect of the matter.

That during the aforesaid period the concern authority issued a memorandum of charge sheet dated 10.8.01 on the alleged charge of unauthorised absence. The only charge mentioned in the said charge-sheet is regarding the absence from duty w.e.f. 23.7.01. In the said memorandum of charges the applicant was asked to submit his reply within 10 days.

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A copy of the said charge-sheet dated 10.8.01 is annexed herewith and marked as Annexure-1.

✓ 4.4. That since the applicant was in the midst of unavoidable family trouble, he could not submit the representation against the memorandum of charges and the enquiry taking into consideration that aspect of the matter as an admitted fact proceeded in the enquiry and concluded the same behind the back of the applicant. The applicant was never informed regarding inspection of records of the proceeding basing on which the enquiry was proceeded. The applicant was not allowed to inspect the records of the case and same resulted serious prejudice to the defence of the applicant. The respondents knowing fully well about the precarious condition of the applicant, issued an order dated 26.09.01 allowing him another 10 days time to file written statement as a last chance. The applicant as stated above was in the midst of serious ailment of his parent and as such he could not respond to the said communication and finally the proceeding was held exparte...

A copy of the said communication is annexed herewith and marked as Annexure-2.

✓ 4.5. That the respondents thereafter, hold the enquiry behind the back of the applicant and submitted its report, dated 16.8.02. The respondents/ i.e. the Disciplinary authority basing on the said report issued a communication dated 20.8.02 indicating imposing of major penalty of

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dismissal and through this communication itself the applicant was asked to put forward his defence if any. Though there was an indication of supply of the enquiry report but in reality no enquiry report was submitted to him.

A copy of the said communication is annexed herewith and marked as Annexure-3.

4.6. That the circumstances as stated above were prevailing at that point of time against the applicant and he was not in a position to react to the said communication. It was under these peculiar fact situation of the case, the Disciplinary Authority issued the impugned order dated 13.12.02 removing the applicant from his service w.e.f. 13.12.02.

A copy of the said order of removal is annexed herewith and marked as Annexure-4.

4.7. That the applicant immediately on receipt of the aforesaid communication dated 13.12.02 removing him from the service, preferred as well as the circumstances that appeared at that relevant point of time which gave rise to the incident of his unauthorised absence. The applicant while highlighting the factual aspect of the matter made a request to the authority for allotment of a Rly Quarter at lunding so that he can look after his ailing parents.

A copy of the said appeal dated 03.01.03 is annexed herewith and marked as Annexure-5.

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4.8. That the applicant as stated above preferred the above noted appeal to the Appellate Authority i.e. the Divisional Railway Manager, N.F.Railway, Lunding. On receipt of the said appeal the respondents issued a communication dated 30.1.03 stating that the appellate authority had considered his case and found no merit and accordingly rejected. However, the said communication does not reflect anything regarding the manner and method of such consideration required under the relevant rules holding the field.

A copy of the said communication dated 30.1.03 is annexed herewith and marked as Annexure-6.

4.9. That the applicant begs to state that the appellate authority however did not communicate the original order by which his case was rejected. By the aforesaid communication dated 30.1.03. The Senior Divisional Mechanical Engineer, Lunding only communicated the operative part of the appellant order passed by the Asstt. Divisional Railway Manager, Lunding. It is stated that the Asstt. Divisional Railway Manager is not the appellate authority. The Divisional Railway Manager, Lunding is the appellate authority to decide the matter. Apart from that the applicant is entitled to know the full context of the appellant authorities order and it is therefore the applicant as on date doesnot know as to how his case has been considered and whether his appeal has been considered

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duly or not. It is under these circumstances the petitioner had to prefer an application with a prayer to review that order dated 30.1.03. In the aforesaid review application the applicant highlighted the fact that prior to the indication of proceeding he was given a sympathetic consideration having regard to the circumstances of the case.

A copy of the aforesaid review application dated 15.2.03 is annexed herewith and marked as Annexure-7.

4.10. That the applicant begs to state that on non-receipt of any communication from the respondents the petitioner re-iterating his earlier stand preferred yet another review application to the Chief Mechanical Engineer praying for review of the order of removal which was received by the said respondent on 20.3.03.

A copy of the aforesaid review petition dated 17.3.03 is annexed herewith and marked as Annexure-8.

4.11. That the Chief Mechanical Engineer, Maligaon on receipt of the aforesaid review application dated 17.3.03 passed an order rejecting his prayer for review the aforesaid decision of rejection however was not communicated to the applicant directly. The Senior Divisional Mechanical Engineer vide communication dated 9.9.03 communicated the operative part as well as the decision of the review appellate authority without furnishing the full context of the same.

A copy of the aforesaid order dated 9-10.09.03 is annexed herewith and marked as Annexure-9.

4.12. That the applicant being aggrieved by the aforesaid action on the part of the respondents one again agitated his grievances through his application dated 20.10.03 highlighting the factual aspect of the matter leading to which the authority issued the charge sheet. Aforesaid communication adhering to the General Manger, N.F.Railway was received by the said authority on 28.10.03.

A copy of the said application dated 20.10.03 is annexed herewith and marked as Annexure-10.

4.13. That the General Manager, N.F.Railway Maligaon on receipt of the review application preferred by the applicant dated 20.10.03 issued an order rejecting the prayer for review made by the applicant for exoneration of the charges leveled against him. Once again the respondents instead of communicating the full context of the order, communicated only the operative part of the said rejection order by a communication dated 30.11.04 issued by the Divisional Mechanical Engineer, Lumding.

A copy of the said order is annexed herewith and marked as Annexure-11.

4.14. That the applicant begs to state that the Respondents knowing fully well about the circumstances ought

to have allowed the petitioner to avail leave by crediting the period of so called unauthorised absence as casual leave or any other leave instead of drawing up of proceeding. Admittedly the so called unauthorised absence as alleged by the respondents could have been adjusted against any sort of leave instead of drawing up of proceeding. It is further stated that the leave period of the petitioner under any circumstances can not be treated as unauthorised absence as due intimation in this regard has been made by the applicant highlighting the circumstances prevailing at that point of time.

4.15. That the applicant begs to state that the respondents with a predetermined mind started the proceeding without following the prescribed procedure as laid down in the Railway Servant Discipline and Appeal Rules 1965 and as such the entire proceeding as well as the impugned orders are not sustainable and liable to be set aside and quashed.

4.16. That the applicant begs to state that he is the only earning member of his family and after the issuance of his family and after the issuance of the removal order, he along with his family members are facing tremendous financial hardship and at present it has become impossible to manage two square meal a day for his family. It is further stated even assuming but not admitting the charges to be correct, the penalty imposed is shockingly disproportionate and under the peculiar fact situation of the case the Hon'ble Tribunal may be pleased to interfere in

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the quantum of punishment reducing the same to be of any minor penalty as prescribed under the rules.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the action/inaction on the part of the respondents in issuing the impugned order and thereby removing him from the service are per-se illegal and liable to be set aside and quashed.

5.2. For that the respondents have acted illegally in holding the petitioner to be on unauthorise absence and as such the orders basing on such incorrect finding is not at all sustainable and liable to be set aside and quashed.

5.3. For that the proceeding initiated by the respondents on a wrong premise of the factual aspect of the mater as well as the resultant impugned order having been issued without following the rules as prescribed in the R.S.D. & A. R. 1965, same are not at all sustainable and liable to be set aside and quashed.

5.4. For that the respondents have acted contrary to the settled proposition of law in not providing adequate opportunity to the applicant in placing his defence in the case and as such entire proceeding as well as the impugned orders are liable to be set aside and quashed.

5.5. For that in any view of the matter the action/inaction of the respondents are not sustainable in the eye of law and liable to set aside and quashed.

[Handwritten initials]

The applicant craves leave of this Hon'ble Tribunal to advance more grounds both legal and factual at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant declares that he has exhausted all the remedies available to them and there is no alternative remedy available to him.

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

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

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

8.1. To set aside and quash the impugned orders dated 13.11.04j, 9.9.03, 30.1.03 and 13.12.02 and to reinstate the petitioner with full back wages and consequential service benefits.

8.2. Cost of the application.

8.3. Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

Taking into consideration facts and circumstances of the case the applicant does not pray for any interim order at this stage, however he prays for early disposal of the OA.

10.

11. PARTICULARS OF THE I.P.O.:

- 1. I.P.O. No. : 20a 116096
- 2. Date : 21-2-05
- 3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

FB

VERIFICATION

I Sri Premeswar Bordoloi, son of Sri Lohar Singh Bordoloi, aged about 34 years, resident of village- Majgaon, P.O. Saraibahi, P.S. Mikirbheta, Dist. Morigaon, Assam, do hereby solemnly affirm and verify that the statements made in paragraphs^{4.15, 4.16}..... are true to my knowledge and those made in paragraphs ^{4.2-4.14}..... are also matter of records and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

I am the applicant in the instant application and as such well convergent with the facts and circumstances of the case and also competent and authorised by the other applicant to sign the verification.

And I sign on this the Verification on this the ^{27th} day of ^{June} of 2005.

Sri - Premeswar Bordoloi

Signature.

FORM-10/LM/1/DSL/Major/51/2001/3850

Sr. DME/DSL's Office/LMG (Name of Railway Administration) N.E.Rly. Dated: 10.08.2001.

MEMORANDUM

The president/Railway Board/undersigned propose(s) to hold an inquiry against Shri P. Bordolai the Railway 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 articles of charge is enclosed (Annexure: II). A list of documents by which and a list of witnesses by whom, the articles of the charge are proposed to be sustained are also enclosed (Annexure: III & IV). * Further copies of documents mentioned in the list of documents as per Annexure: III are enclosed.

2. * Shri P. Bordolai is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure: III) at any time during Office hours within 10 (Ten) days of receipt of this Memorandum. For this purpose he should contact** Sr. DME/DSL's Office/LMG. immediately on receipt of this Memorandum.

3. Shri P. Bordolai is further informed that he may, if he so desired, take the assistance of any other Rly. servant an official or Rly. Trade Union (who satisfies the requirement of rule: 9(13) of the Railway servants (Discipline and Appeal) Rules: 1968 and Note: I and/or Note 2 there under as the case may be) for inspecting the documents & assisting him in presenting his case before the Inquiring Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Railway servant (s) of Railway Trade Union Official (s) Shri P. Bordolai should obtain an undertaking from the nominee(s) that he (they) is (are) willing to assist him during the disciplinary proceeding. The undertaking should also contain the particulars of other case(s) if any, in which the nominee(s) had already undertaken to assist & the undertaking should be furnished to the undersigned/General Manager & SSE/DSL/LMG Railway along with the nomination.

4. Shri P. Bordolai is hereby directed to submit to the undersigned (through General Manager, SSE/DSL/LMG Railway) & a written statement of his defence (which should reach the said General Manager) within 10 days of receipt of this Memorandum if he does not require to inspect any documents for the preparation of his defence, & within ten days after completion of inspection of documents if he desires to inspect documents, and also-

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

Contd... ? ...

Attested Jy K Advocate

5. Shri P. Bordolai is informed that an inquiry will be held only in respect of those articles of charge which are not admitted. He should, therefore, specifically admit or/each articles of charge.

6. Shri P. Bordolai 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 inquiry authority or other wise fails or refuses to comply with the provisions of rules 9 of the Railway servants, (Discipline & Appeal) Rules, 1968 or the order/direction issued in pursuance of the said Rule the inquiring authority may hold the inquiry, exparte.

7. The attention of Shri P. Bordolai is invited to Rule 20 of the Railway service (conduct) Rules 1968, under which no Rly servant shall bring or attempt to bring any political or other influence to bear upon any superior authority or to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceeding, it will be presumed that Shri P. Bordolai 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.
Encl: One Sheet.

By order and in the name of the President

Signature of the competent authority (Name & Designation)
(V. B. Singh)
Sr. DME/DSL/LMG.

To Shri Premeswar Bordolai,
DSL/Turner-II, Thro:- SSE/DGL/LMG.
Desig: and Place.

- @ Copy to Shri SSE/DSL/LMG. (Name & Desig: of the leading authority) information.
- / Strike out which ever 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 document or who would be arranging for inspection of the documents to enable this authority being mentioned in the draft memorandum.
- £ Where the President is the Disciplinary authority.
- X To be retained wherever President or the Rly. Board is the competent authority.
- @ To be used where ever applicable See Rule 16(1) of the Rly. (DA) Rules 1968. Not to be inserted in the copy sent to the Rly. servant.

Attached
[Signature]
Advocate

N.F. RAILWAY.
ANNEXURE TO STANDARD FORM NO. 5

Memorandum of charge sheet under Rule 9 of the RS(D&A) Rules, 1968.

Annexure(I)

Statement of articles of charge framed against Shri
P. Bordolai, DSL/Turner-II,

ARTICLES- I

That the said Shri P. Bordolai,
while functioning as DSL/Turner-II during the period

(here enter definite and distinct articles of charge.)
Absenting from duty wef:- 23.07.2001 un-authorisedly
without giving any information to SSE/DSL/LMG. This shows
your gross neglect of duty which leads in turn violation of
Sub-Rules No. 3.1 (ii) of Rly. Service Conduct Rules, 66.

স্বাক্ষরিত করিয়াছেন (স্বাক্ষর)
শ্রী. এ. বি. মাসুম
Dy. Secy. (D&A)
N.F. Railway, Lucknow

ANNEXURE-II

Statement of imputations of mis-conduct or mis-behaviour in
support of the articles of charge framed against Shri
P. Bordolai, DSL/Turner-II.

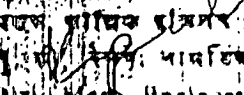
That the said Sri P. Bordolai, while functioning
as DSL/Turner-II, un-authorisedly absenting from duty wef:-
23.07.2001, according to his own will without giving any
prior information to SSE/DSL/LMG which shows his gross neglect
of duty & did not bother for Railway Service. This type of
activities tantamounts to violation of Sub-Rules. No. 3.1 (ii)
of Rly. Service Conduct Rules, 66.

স্বাক্ষরিত করিয়াছেন (স্বাক্ষর)
শ্রী. এ. বি. মাসুম
Dy. Secy. (D&A)
N.F. Railway, Lucknow

Attested
[Signature]
Advocate.

List of documents by which the articles of charge framed against Shri P. Bordoloi, DSL/Turner-II, are proposed to be sustained.

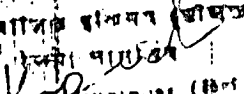
- 1. A Xerox copy of SSE/DSL/LMG L/No. E/West/LRS/88 Dt. 08.08.2001.


 Sr. Div. Mech. Engineer (Bt)
 E.C. Railway, Lardha


ANNEXURE-IV

List of witnesses by whom the articles of charge framed against Shri P. Bordoloi, DSL/Turner-II, are proposed to be sustained.

NIL


 Sr. Div. Mech. Engineer (Bt)
 E.C. Railway, Lardha

Chas...

Attested

 Advocate

N.P.R.

Office of the
Sr. DME/DSL/LMG
Dt. 26.09.2001.

No. M-10/IM/1/DSL/Major/51/2001/3999

To,

Shri P. Bordolai,
DSL/Turner-II, Thro:- SSG/DSL/LMG.

Sub:- Defence of SF-5 of even No. Dt. 11.08.2001.

The above mentioned SF-5 received by you on 18.08.2001, thro:- Regd. with A/D Post. But no defence submitted by you till date.

Hence, giving you a one more chances, you are advised, to submit defence within 10 days on received of this letter, otherwise exparte decision will be taken by the U/Sign.

Please note.

(Vipul Singh)
Sr. DME/DSL/LMG.

copy to; Sr. SE/DSL/LMG. He is advised to intimate this office on expiry of stipulated time for further course of action.

Sr. DME/DSL/LMG.

Attested
[Signature]
Advocate

N.F.R

Office of the
Sr. DME/DSL/LMG
Dt. 20.08.2002.
23

No. M-10/LM/1/DSL/Major/51/2001/301

To,
Shri Premeswar Bordolai, ✓
DSL/Turner-II,
Thro:- SE/DSL/LMG.

Sub:- Action on enquiry report " Show Cause
Notice ", DAC-461.

Ref:- This Office Major Memo. (SF-5) No.
M-10/LM/1/DSL/Major/51/2001/3850
Dt. 10/11.08.2001.

In connection with the above charge Memorandum and Inquiry Officer's Report Dt. 16.08.2002; the Disciplinary Authority based on the report will take suitable decision thereon after considering the report, as to why Major Penalty of dismissal from service should not be imposed upon you. If you wish to make any representation on submission, you may do so in writing to the Disciplinary Authority within 15 days on receipt of this letter.

DA/- One enquiry report
in three sheets.

delivered 24/08

(Ravish Kumar)

~~Signature of Sr. DME/DSL/LMG~~
Signature of ~~Officer~~ Disciplinary
Authority with Designation and
Seal. / ~~Signature~~

Attested
[Signature]
Advocate.

(Regd. With N.F.R. Part 1)

No. M-10/LM/1/DSL/Major/51/2001/785.

Office of the
Sr. DME/DSL/LMG
Dt. 13.12.2002.

To,

Shri Premeswar Bordolai,
DSL/Turner-II,
Vill:- Mazgaon,
P. O:- Charai bari,
P. S:- Mikirbeta, Dist:- Nagaon,
State:- Assam, Pin:-
Fathers Name:- Sri Lahar Singh Bordolai,
Designation:- Diesel Turner Gr-II,
Working under:- SSE/DSL/LMG,
P. I. No:- 04183861,
Dept:- Mechanical (Diesel),
Date of Appointment:- 03.08.1989,
Date of Birth :- 19.12.1970,
Station:- Diesel Shed, Lunding,
Scale of Pay:- Rs. 4000- 6000/-,
Present Pay :- Rs. 4000/- P. M.

Shri Premeswar Bordolai, Diesel Turner-II has failed to submit defence to the Memorandum of charges for Major Penalty issued by the undersigned Vide Even No. 10/11.08.2001. Shri Bordolai, attended DAR enquiry on 26.06.2002, the enquiry has been held when Shri Bordolai admitted the charges brought against him and the charges framed against Shri Bordolai Vide Major Memorandum (SF-5) No. M-10/LM/1/DSL/Major/51/2001/3850 Dt. 10/11.08.2001 have been proved.

Further Shri Premeswar Bordolai, Diesel Turner-II, was given a chance by serving " show cause notice " No. M-10/LM/1/DSL/Major/51/2001/801 Dt. 20/23.08.2002. But his representation is not accepted by the undersigned as he remained frequent habitual absent from duty unauthorisedly.

Shri Premeswar Bordolai, Diesel Turner Gr-II is hereby communicated that, in accordance with the orders passed by the undersigned as Disciplinary Authority, Shri Premeswar Bordolai, Diesel Turner-Gr-II is removed from service Wef:- 13.12.2002 (13th December 2002).

Receipt of the NIP may be acknowledged.

Note:- Please see instructions as enclosed.

Name:- (M. Srinivas)
Designation:- Sr. DME/DSL/LMG.
Signature of the Disciplinary
Authority with Design. & Seal

Copy to; SSE/DSL/LMG in dup., for information & N/action. He will please handover one copy of the NIP to the staff concerned if available in DSL/Shed, otherwise display the same in the N/Board in presence of two witnesses with an intimation to all concerned and struck off the name of staff concerned from the Master Roll Wef:- 13.12.2002.

" " Sr. DPO & DAO/LMG, for information & N/action pl.


Sr. DME/DSL/LMG.

Attested

[Signature]
Inspector

Instructions.

1. You ~~will be~~ have been relieved of your duties on 13.12. 2002 (13th December 2002).
2. Settlement of your dues will be made at DRM(P)/LMQ.
3. An appeal against this orders lies to DRM/Lunding (next immediate superior to the authority passing the orders).
4. The appeal may be withheld by an authority not lower than the authority from whose order it is preferred if;
 - (a) It is a case which no appeal lies under the rules.
 - (b) It is not preferred within 45 days of the date on which the appellant was informed of the order appealed against and no reasonable cause is shown for the delay.
 - (c) It is does not comply with the various provisions and limitations stipulated in the rules.


 P. D. P.
 १. १३. १२. २००२
 २. १३. १२. २००२ (१३. १२. २००२)
 ३. १३. १२. २००२

Attested

Advocate

To,
The Divisional Railway Manager,
N.F. Railway, Lumding.

(Through proper channel)

Sub: Mercy appeal against WIP No.
M-10/LM/I/DSL/Major/51/2001/785.Dt. 13.12.02.

Sir,

I have the honour to lay before you with the following few lines for your sympathetic consideration. please.

That sir, order of removal from service has been issued to me w.o.f, 13.12.02 due to the allegation that I was un-authorizedly absent from duty w.o.f, 23.07.01.

That sir, it may be evident from the findings of enquiry officer that I was not absent wilfully.

That sir, my old aged father, wife an unmarried sister are residing ay my home in the village of Nagaen in the District of Merigaen. My father is an ailing patient. Since I have no Rly. Qrs at Lumding that is why they are to reside ay my home in the village and of and on when I receive information of my father's seriousness, I have to go to my father to see him at his last moment which caused my absence from duty several times. So, how, I have arranged one relative to look after him. now.

That sir, in the light above fact, I assure that, I will not remain unauthorisedly absent from duty any more. Of course, I did not know the rules in this respect earlier. Now, I am aware of the rules.

That sir, it will be a great help to me if your honour would be kind enough to allot me a Rly. Qrs at Lumding so that, I can shift my family members along with my ailing father in the Qrs. at Lumding any my anxiety for them may be minimised and I can perform my duty smoothly.

That sir, after my unauthorised absence I have been allowed to join my duty on 17.6.02 as the administration has very sympathetically considered my difficulties.

That sir, I am a poor man and removal from service will affect my remaining life miserably alongwith my family members too.

Under the situation I fervently appeal your honour to kindly save me from the punishment. I assure you once again that such type of mistake will not re-occur on my part, for this act of your kindness, I along with my family members will remain grateful to you.

Dated, Lumding.

Yours faithfully

The 03/01/03.

Sir - Premeswar Bordoloi
(PREMESWAR BORDOLOI)
DSL / TORWAR-II / Lmb
under SSE / DSL / Lmb

03/01/03

Accepted
Jyoti
Address

No. M-10/LM/1/DSL/Major/51/2001/547

To,
Shri Premeswar Bordolai,
Ex. DSL/Turner-II,
Thro:- SSE/DSL/LMG.

Sub:- Representation against removal from
service wef:- 13.12.2002.

Ref:- Your appeal Dt. 03.01.2003.

ADRM/LMG, the appellate authority has gone through your appeal very carefully & he has passed the following orders.

" Shri P. Bordolai; is habitual of becoming unauthorised absent from his duties. I, therefore, consider that his case does not have any merit for consideration and the orders given by Disciplinary Authority holds good "

Please note.

(M. Srinivas)
Sr. DME/DSL/LMG.

Copy to; Sr. DPO/LMG, for information in ref. to this office
NIP of even No. Dt. 13.12.2002.

" " SSE/DSL/LMG, for information in ref. to his L/No.
DSL/2/Cs/22 Dt. 03.01.2003.

Sr. DME/DSL/LMG.

04/2/03

Attested

[Signature]
Advocate

To
The Divisional Railway Manager,
N. F. Railway, Lunding.

(Through Proper Channel)

Sub : Prayer for review of appeal against NIP No.
M-10/LM/1/DSL/Major/51/2001/785.Dt. 13.12.02.
& Sr.DME/DSL/LMG's No.M-10/LM/1/DSL/Major/51/2001/947
Dt. 30.1.2003.

Sir,

I have the honour to lay before you with the following few lines for your sympathetic consideration please.

That Sir, order of removal from service has been issued to me w.e.f. 13.12.02 due to the allegation that I was unauthorisingly absent from duty w.e.f. 23.07.01.ADRM/LMG has also hold good the penalty on my appeal.

That Sir, it may be evident from the findings of enquiry officer that I was not absent wilfully.

That Sir, my old aged father, wife an unmarried sister are residing ay my home in the village of Nagaon in the District of Morigaon. My father is an ailing patient. Since I have no Rly. Qrs. at Lunding that is why they are to reside ay my home in the village and of and on when I receive information of my father's seriousness, I have to go to my father to see him at his last moment, which caused my absence from duty several times. Sinc how, I have arranged one relative to look after him, now.

That Sir, in the light above fact, I assure that, I will not remain unauthorisedly absent from duty any more. Of course, I did not know the rules in this respect earlier. Now, I am aware of the rules.

That Sir, it will be a great help to me if your honour would be kind enough to allot me a Rly. Qrs. at Lunding so that, I can shift my family members along with my ailing father in the Qrs. at Lunding any my anxiety for them may be minimised and I can perform my duty smoothly.

That Sir, after my unauthorised absence I have been allowed to join my duty on 17.6.02 as the administration has very sympathetically considered my difficulties.

That Sir, I am a poor man and removal from service will effect my remaining life miserably alongwith my family members too

Under the situation I fervently appeal your honour to kindly save me from the punishment. I assure you once again that such type of mistake will not re-occur on my part, for this act of your kindness, I along with my family members will remain grateful to you as I am a poor man.

Yours faithfully,

Dated, Lunding.

The Dnt... 15/02/03.

Sri. Prameerwar Goddala

1072/2001
SSC/DSL/LMCA

Attested

[Signature]
Advocate

[Handwritten marks]
15/02/03

To

The Chief Mechanical Engineer,
NF RLY/Maligaon.

(Through Proper channel)

Sub:-Prayer for review of appeal against NIP No. M-10/LM/1/DSL/Major/51/2001/785 dt.
13-12-02 and Sr.DME/DSL/LMG's No.M-10/LM/1/DSL/Major/51/2001/947 dt. 30-01-03

Dear Sir,

I have the honour to lay before you with the following few lines for your sympathetic consideration please.

That sir, order of removal from service has been issued to me w. e. f 13-12-02 due to the allegation that I was unauthorisingly absent from duty w. e. f 23-07-01 to 29/8/2001. After my alleged unauthorized absence I have been allowed to join my duty on 30/8/2001 as the administration has very sympathetically considered my difficulties. But , ADRM/LMG has also hold good the penalty on my appeal as I have been intimated vide Sr.DME/DSL/LMG's No.M-10/LM/1/DSL/Major/51/2001/947 dt. 30-01-03 which I received on 04/02/2003.

That Sir, it may be evident from the findings of enquiry officer that I was not absent willfully. My old aged father, wife and an unmarried sister are residing at my home in the village near Nagaon in the district of Morigaon(Assam). My father is an ailing patient. Since I have no Rly. Qrs at Lumding that is why they are to reside at my home in the village and of and on, when I receive information of my father's seriousness, I have to go to my father to see him at his last moment which caused my absence from duty several times. Some how I have arranged one relative to look after him now.

That Sir, in the light of above fact, I assure that, I will not remain absent unauthorisedly from duty any more. Of course, I did not know the rules in this respect earlier. Now, I am aware of the rules. It will be a great help to me if your honour would be kind enough to allot me a Rly Qrs. at Lumding so that, I can shift my family members along with my ailing father in the Qrs. at Lumding and my anxiety for them may be minimized and I can perform my duty smoothly. I am a poor man and removal from service will effect my remaining life miserably along with my family members too.

Under the situation I fervently appeal to your honour to kindly save me from the punishment of removal from service. I assure you once again that such type of mistake will not re-occur on my part and for this act of your kindness, I, along with my family members will remain ever grateful to you as I am a poor man.

Dated—19/03/03
Lumding

Yours faithfully

Preneswar Bordoloi
(PRENESWAR BORDOLI)
Turner-II/DSL/LMG
Under SSE/DSL/LMG

P/C

Attested

Jyoti
Advocate

R
H

20/3/03

20/2/05/336
05 20/3/03

N.F.R

No. M-10/LM/1/DSL/Ma/51/2001/1377

Office of the
Sr. DME/DSL/EMG
Dt. 09.09.2003.
To

To,

Shri Premeswar Bordolai,
Ex. DSL/Turner-II,
Thro:- SSE/DSL/LMG.

Sub:- Review appeal against removal from
service Wef:- 13.12.2002.

Ref:- Your appeal Dt. 17.03.2003 to CME/MLG.

CME/MLG, the review appellate authority has gone through your appeal very carefully & he has passed the following orders.

" I have perused the Case & his review petition Dt. 17.03.2003. In his review petition he has only reiterated what he has told earlier during enquiry proceedings & subsequently in his appeal, that the reason for such absence was his aged & ailing father residing in the village. But this is hard to believe as he unauthorisedly absented on 13 occasions in 1-1/2 (one & half Yrs.) Yrs. during from 2001- 2002 for a total period of 255 days. An earlier punishment of 03 Years WIT for unauthorised absence did not prove to be any deterrent.

He has also mentioned about his lack of knowledge of Rules. This can also not be accepted after he has served the Rly's for 14 Yrs. For an employee it is fundamental to be at work & not remain unauthorisedly absent; times without number. Administration had given him a number of opportunities to mend but he did not do so.

Thus having considered all aspects, I am of the opinion that the punishment awarded was justified & no change is called for."

Please note.

(B. Lakra)
Sr. DME/DSL/LMG.

Copy to Sr. DPO/LMG, for information & N/action in ref. to this office letter of even No. Dt. 30. 01. 2003.

" " SSE/DSL/LMG, for information in ref. to his L/No. DSL/" /CS/336 Dt. 20.03.2003.

Sr. DME/DSL/LMG.

R
Dt 16/9/03

Jyoti

To
The General Manager,
NF RLY/Maligaon.

(Through Proper channel)

Sub:-Prayer for review of mercy appeal against NIP No. M-10/LM/1/DSL/Major/51/2001/785
dt. 13-12-02 (CME's order communicated under Sr.DME/DSL/LMG's
No.M-10/LM/1/DSL/Major/51/2001/1377 dt. 9/10-9-03)

Dear Sir,

I have the honour to lay before you with the following few lines for your sympathetic consideration please.

That sir, order of removal from service has been issued to me w. e. f 13-12-02 due to the allegation that I was unauthorisingly absent from duty w. e. f 23-07-01 to 29/8/2001. After my alleged unauthorized absence I have been allowed to join my duty on 30/8/2001 as the administration has very sympathetically considered my difficulties. But , ADRM/LMG has also hold good the penalty on my appeal as I have been intimated vide Sr.DME/DSL/LMG's No.M- 10/LM/1/DSL/Major/51/2001/947 dt. 30-01-03 which I received on 04/02/2003. I submitted my review appeal dt. 17/3/2003 to CME/Maligaon who also hold good the penalty on my appeal as communicated to me vide Sr.DME/DSL/LMG's No.M-10/LM/1/DSL/Major/51/2001/1377 dt. 9/10-9-03.

That Sir, it may be evident from the findings of enquiry officer that I was not absent willfully. My old aged father, wife and an unmarried sister are residing at my home in the village near Nagaon in the district of Morigaon(Assam). My father is an ailing patient. When I received information of my father's seriousness, I went to see my father at his last moment which caused my absence from duty several times . During my last absence period, I had to admit my wife for her delivery in the hospital. Her condition was also so critical that I could not leave my native place. Some how I have arranged one relative to look after them now.

That Sir, in the light of above fact, I assure that, I will not remain absent unauthorisedly from duty any more. Of course, I did not know the rules in this respect earlier. Now, I am aware of the rules.

That Sir, I am a poor man and removal from service will effect my remaining life miserably along with my family members too.

Under the situation I fervently appeal to your honour to kindly save me from the punishment of removal from service. I assure you once again that such type of mistake will not re-occur on my part and for this act of your kindness, I, along with my family members will remain ever grateful to you as I am a poor man.

Dated: 20/10/03
Lumding

Yours faithfully
Sri - Preme swar Bordola
(PREMESWAR BORDOLI)
Turner-II/DSL/LMG
Under SSE/DSL/LMG

Attested
[Signature]
Advocate

[Handwritten marks]
28/10/03
M

N.F.R

Office of the
Sr. DME/DSL/LMG
Dt. 30.11.2004.

No. M-10/LM/1/DSL/Major/51/2001/103

To,

Shri Premeswar Bordolai,
Ex. DSL/Turner-II,
Thre;- SSE/DSL/LMG.

Sub:- Your mercy appeal Dt. 20.10.2003
against removal from service Wef;-
13.12.2002.

As per orders of competent authority,
your above mentioned appeal was forwarded to
CME/MLG on 23.06.2004 for further revision
by GM/HQ/MLG along with full DAR Case.

The Case is returned with the following
observation of CPO/MLG.

" Revision can be done only once. GM
does not have the power to revise the case now "

Since the case once reviewed by CME/MLG
& his orders was relayed to Vide this office L/No.
M-10/LM/1/DSL/Major/51/2001/1377 Dt. 10.09.2003
so, further review by GM/MLG is not permissible.

Please note.

(M. P. Misra)
DME/DSL/LMG,

Copy to; DPO(IC)/LMG, SSE/DSL/LMG, for information
& N/action please.

DME/DSL/LMG.

REFERENCE.

Contd... 2 ...

Signature
Signature
DME/DSL/LMG

केन्द्रीय प्रशासनिक आयोग
 Central Administrative Tribunal
 22 FEB 2006
 गुवाहाटी बेंच
 GUWAHATI BENCH

Filed by
 22/2/06
 Dr. M. C. Sarma
 Rly. Advocate
 न. ए. री. आ. अफिसरी, आ. स. अफिसरी
 डी. ए. आ. अफिसरी, आ. स. अफिसरी
 Divisional Personnel Officer/IC
 N. E. Rly., Lumding

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

IN THE MATTER OF

O.A. 171/2005

Shri Premeshwar Bordoloi

Applicant

Versus

Union of India & Others

Respondents

AND

IN THE MATTER OF

Written Statement on behalf of Respondents .

The answering respondents respectfully SHEWETH :

1. That the answering respondents have gone through the copy of the application filed and have understood the contents thereof. Save and except the statements which have been specifically admitted hereinbelow or those which are borne on records all other averments/allegations as 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 meticulously denial of each and every allegation/statement made in the application has been avoided. However, the answering respondents have confined their replies to those points/allegations/averments of the applicants which are found relevant for enabling a proper decision on the matter.

3. That the application suffers from want of a valid cause of action, as will be clear from the submissions made in the relevant paragraphs below. Details of the lack of any cause of action will be clear from the parawise comments detailed below.

4. That the application suffers from wrong representation and lack of understanding of the basics of the Railway's Disciplinary and Appeals Rules which were meticulously followed at every stage of the disciplinary proceedings related to the applicant's case of unauthorised absence for a long period of time.

5. Facts of the case :

That before traversing the details of allegations/averments made in the application, the respondents beg to indicate the facts relating to the matter raised in the O.A.

Received
 Asha Das
 Advocate
 For J. Prakashantra
 Advocate
 22/2/06

... P. 2.....

(2)

5.1. That the applicant was unauthorisedly absent from his duty for 37 days from 23.07.2001. As per records the applicant had a bad record of remaining absent from duty frequently without intimation or permission from the authorities. For this reason the applicant's increment was stopped for three years on an earlier occasion. This is mentioned in Annexure 9 of the O.A.

5.2. That the applicant was issued a memorandum for major penalty vide annexure I of the O.A. Vide para 2 of the memorandum, the applicant was informed that if he so desired, he could inspect and take extract from the documents referred to in the enclosed list during office hours at his convenience. Further, vide para 3 of the charge memorandum the applicant was informed that if he so desired he may take assistance of a Defence Counsel for presenting his case and for inspection of documents.

5.3 That the memorandum of charges also advised the applicant to submit written statement of his defence within ten days from the date of receipt of the memorandum. Although the applicant received the memorandum of charges sent by registered post A/D, he did not submit any written statement of defence within the stipulated 10 days. However, he reported for duty on 29.08.2001 and was allowed to resume duty on 30.8.2001.

5.4. On 26.9.2001 the applicant was reminded to submit his written defence within 10x days (annexure 2 of O.A.) There was however no response from the applicant. Thereafter the Disciplinary authority decided to carry out a DAR enquiry and appointed an Enquiry Officer to enquire into the alleged offence/misconduct of unauthorised absence, vide letter No. M-10/LM/1/DSL/Major/51/2001/73 dated 18.01.2002. The Inquiry Officer issued a letter on 18.02.2002 to the applicant to submit the names of defence counsel to defend him. This letter was received by the applicant on 28.02.2002.

2002

A copy of the letter dated 18.02.2002 acknowledged on 28.02.2002 is annexed hereto and marked as Annexure A.

5.5. On 30.3.2002 the applicant received the Enquiry Officer's letter but remained silent. On 30.03.2002 applicant was reminded by the Enquiry officer to submit names of

... P.3.....

53
H. S. ...
Enquiry Officer/IC
Landing

35
P.M.
2004

6.6. That as regards para 4.9 the respondents state that as per rule ADRM/Lumding is the appellate authority (ADRM and DRM are of the same rank). ADRM/Lumding being the appellate authority considered the applicant's appeal and upheld the penalty imposed by the Disciplinary authority by the speaking order (Annexure 6 to the O.A.). This was done as per rule.

6.7. That as regards paras 4.10 and 4.11 the respondents state that the review petition filed by the applicant was disposed of by the Chief Mechanical Engineer, the Reviewing authority in this case and the full import of the speaking order was conveyed to the applicant through Annexure 9 of the O.A. This order of the reviewing authority was communicated by the Senior Divisional Mechanical Engineer as the applicant was working under the said authority and he is the disciplinary authority. It is stated that there was nothing objectionable in this communication.

6.8. That as regards paras 4.12 and 4.13 the respondents state that the second appeal for review by the General Manager is not permissible under the rules as has been made clear in Annexure 11 to the O.A. As the General Manager does not have the power to revise the case for the second time, the Chief Personnel Officer, the custodian of the rules, returned the case with the observations conveyed to the applicant by the Senior Divisional Mechanical Engineer vide his letter dated 30.11.2004 (Annexure 11 of the O.A.)

6.9. That as regards para 4.14 the respondents state that the Disciplinary Authority, the Appellate authority and the Reviewing authority considered the mercy appeals submitted to them on the merit of the case and respectively disposed of each of them by recording speaking orders considering the circumstances of the case. These disposals were based on a dispassionate view of the matter on hand.

6.10. That as regards para 4.15 the respondents state that all the prescribed procedures and rules under the Railway's D & A Rules, 1968 were followed carefully by the authorities. The allegations of the applicant are vague and are denied.

6.11. That as regards para 4.16 the respondents state that the O.A. has no merit and deserves to be dismissed with costs.

In the circumstances of the case as detailed above, the Hon'ble Tribunal is urged to dismiss the O.A. with costs.

And for this act of kindness the respondents ~~xxxxxx~~ as in duty bound shall ever pray.

(6)

VERIFICATION.

KHWAIRAKHAM PRATAP SINHA

I, Shri _____, aged about 33 years, son of KH. DINAMANT SINHA, at present working as APJIC, N.F. Railway, do hereby solemnly affirm that the statements made in paragraphs 1,2,3 and 4 are true to the best of my knowledge and those made in paras 5 and 6 are true to my information derived from records which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the _____ day of February, 2006.

Signature

Designation.

म. का. अधिकाारी, प्र. सी.

पू. स. देवदे, लुन्दिंग

Divisional Personnel Officer/IC

N. F. Ry., Lunding

CMS

(7)

To, Sri. Premeswar Bardoloi, Diesel/Turner-II

D-18-02-2002

Sub :- DAR Enquiry

Ref :- Sr. DME(D)/LMG's L/No:- M-10/LM/1/DSL/Major/51/2001/73 Dt 18-1-2002

CMS

With reference to above letter, DAR enquiry will be conducted by the undersigned.

As such, you are asked to state whether you desire to have the facility of a Defence Counsel at the enquiry. If so you should nominate a panel of three persons in order of preference along with the consent letters and that should be submitted to the disciplinary authority on or before 25-2-2002 for acceptance.

To undertake the assistance, the DC should not have more than two pending cases(Disciplinary) in which he has to act as Defence Counsel should be sent along with the nomination.

An information to this effect may be given by the Defence Counsel to his controlling Officer to enable him to consider feasibility of making timely release.

Enquiry Officer (CMS/I/DSL/LMG)

Copy to :-

- (1) Sr. DME(DSL)/LMG (P)/LMG
- (2) SSE(G)/DSL/ LMG, for information and necessary action.

Enquiry Officer (CMS/I/DSL/LMG)

16/02/2002

Premeswar Bardoloi

Dt - 28/2/02

Sent to his Permanent home address reg with A/O 812 dt. 18/2/02

Handwritten signature and date

Handwritten signature and date

सहायक महेल यांत्रिक इंजीनियर (डिजल) ASSIST. Mech. Engineer (Diesel) 89 सी. एलवे : लुमडिंग N. F. Railway : Lumding.

ANNEXURE-B.

6/19

(8)

~~To The Sr DAE/DSL/LMG
N.F. Railway~~

Sub: Postponement of date of DAR enquiry

Sir, with due respect I beg to state that I resumed duty on 17/6/02 after a period of absence

Date of DAR enquiry to be conducted against me has been fixed on 17/6/02 by enquiry officer.

But I am not prepared on date to appear before the enquiry without prior preparation.

I therefore request your goodness to kindly postpone the date of enquiry for a period of 10 days commencing from 17/6/02

Looking forward for a kind & sympathetic consideration from your side.

Thanking you

Your's faithfully

Prem Singh Bordon
DSL / Tamm of II

21
17/6/02

Inquiry officer to
decide.

Vipul
17-06-02

Pr. Singh
15/6/06

सहायक मंडल यांत्रिक इंजीनियर (डिजल)
Asst. Mech. Engineer (Diesel)
पू० सं० रेलवे : लामजि
N. F. Railway : Lumding.

10

8/22
ANNEXURE D.

To

The Inquiry Officer,

Sub:- Appear before DAR INQUIRY without defence
consel.

Sir,

This is for your kind information that I will
appear before the DAR INQUIRY fixed on 26/06/02 without
any defence consel and I will defend my case myself.

Thanking you,

Bhemeswar Bhardwaj
Yours faithfully,

Dated, Lunding
The 26/6/02-2002.

15/2/06
सहायक मंडल यांत्रिक इंजीनियर (डिजल)
Asst. IV. Mech. Engineer (Diesel)
पू. सो. रेलवे : लामंडिया
N. F. Railway : Lunding.

11

ANNEXURE-E 32
54

N.F.R

No. M-10/LM/1/DSL/Major/51/2001/801

Office of the
Sr. DME/DSL/LMG
Dt. 20.08.2002.

23

To,

Shri Premeswar Bordolai,
DSL/Turner-II,
Thro:- SSE/DSL/LMG. ✓

Sub:- Action on enquiry report " Show Cause Notice ", DAC-461.

Ref:- This Office Major Memo. (SP-5) No.
M-10/LM/1/DSL/Major/51/2001/3850
Dt. 10/11.08.2001.

In connection with the above charge Memorandum and Inquiry Officer's Report Dt. 16.08.2002, the Disciplinary Authority based on the report will take suitable decision thereon after considering the report, as to why Major Penalty of dismissal from service should not be imposed upon you. If you wish to make any representation on submission, you may do so in writing to the Disciplinary Authority within 15 days on receipt of this letter.

DA/- One enquiry report in three sheets.

Premeswar Bordolai
20/8/02
PK
PK received over to Shri P. Bordolai
[Signature]
23/8

20/8/02

(Ravish Kumar)
DME/DSL/LMG

Signature of the Disciplinary Authority with Designation and Seal.

Attested

[Signature]
Sr. DME/LMG
157

[Handwritten Signature]
15/12/06

सहायक मंडल यांत्रिक इंजीनियर (डिज़ल)
Asst. Mech. Engineer (Diesel)
पू० सं० रेलवे : लामडिंग
N. F. Railway : Lumding.