

5

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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✓ O.A/T.A No. 205/2007

R.A/C.P No.

E.P/M.A No.

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SECTION OFFICER (Judl.)

Malika
06/10/07

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

O. R. D. E. R. S. S. H. E. E. T.

- 1. Original Application No. 205/07
- 2. Misc Petition No. _____
- 3. Contempt Petition No. _____
- 4. Review Application No. _____

Applicant(s) N.C. Sinha Roy -VS- Union of India & Ors

Advocate for the Applicants:- K. Paul, D.K. Dey

Advocate for the Respondents:- J.L. Sarkar
Railway Advocate

Notes of the Registry	Date	Order of the Tribunal
	2.8.2007	In terms of the order issued in M.P. condoning the delay in filing the present O.A. the O.A. is taken on file.
		The contention of the Applicant is order of the Appellate Authority is not a speaking one and the copy of the enquiry report was not supplied to him.
		Mr.D.K.Dey, learned counsel for the Applicant and Dr.J.L.Sarkar, learned Railway Standing counsel for the Respondents are present. Dr.Sarkar prayed for time to take instruction in the matter.
		Issue notice to the Respondents, returnable by six weeks. Respondents are at liberty to file reply statement by that time.
		Post the matter on 17.09.2007.

2.8.2007

In terms of the order issued in M.P.

This application is in form
is filed/C.T. Rs. 50/-
depos
No. 346 6554/5
Dated 17.2.07

condoning the delay in filing the present O.A. the O.A. is taken on file.

The contention of the Applicant is order of the Appellate Authority is not a speaking one and the copy of the enquiry report was not supplied to him.

Registrar

Mr.D.K.Dey, learned counsel for the Applicant and Dr.J.L.Sarkar, learned Railway Standing counsel for the Respondents are present. Dr.Sarkar prayed for time to take instruction in the matter.

Issue notice to the Respondents, returnable by six weeks. Respondents are at liberty to file reply statement by that time.

Post the matter on 17.09.2007.

*Let rows be for issue
not as one received
with envelopes*

2.8.2007

Pl. issue Notices

Vice-Chairman

/bb/

2 - O.A. 205/07

17.9.07.

At the request of learned counsel for the respondents further two weeks time is granted to file written statement. Post the matter on 6.11.07.

[Handwritten signature]

Vice-Chairman

lm

17.9.07.

Heard Mr. K. Paul learned counsel for the applicant and Dr.J.L.Sarkar learned Railway counsel for the Respondents.

Application is admitted. Issue notice on the respondents. Post the matter on 6.11.07 for filing of written statement and further orders.

Vice-Chairman

Notice & order sent to D/section for issuance to R-1 to 5 by regd A/D post.

Cas D/No 22/926
1/10/07
Dt = 3/10/07

① Service report awaited

[Handwritten signature]

Heard Mr.B.P.Sahu learned counsel for the Applicant and Mr.M.U.Ahmed learned Addl.C.G.S.C. for the Respondents. The applicant was initially appointed as Postal Assistant vide order dated 08.08.2003. The Director of Postal Services (HQ), N.E. Circle, Shillong vide order dated 08.08.2007 asked the petitioner to show cause as to why her appointment should not be terminated on the ground that her appointment was irregular. The applicant submitted her explanation to the Show Cause Notice. The Director of Postal Services, Shillong without considering the said reply terminated the appointment of the applicant by invoking Central Civil Services (Temporary Service Rules, 1965 vide order dated 12.10.2007. The counsel for the applicant has prayed for interim relief. It was stated that the applicant was already been released. Copy of the applicant has already been served to the Respondents.

[Handwritten signature]

Issue notice on the Respondents. Counsel for the Respondents wants to take instructions for interim relief. Prayers allowed on 23.11.07.

06.11.2007

K.Paul, learned counsel for the applicant is present. Mr.S.Nath, learned counsel on behalf of Dr.J.L.Sarkar., learned Railway Standing Counsel has prayed for time to file written statement. Prayer is allowed.

Notice duly served on R-2,4,5.

12/11/07

Call this matter on 19.12.2007.

W/s not filed.

18.12.07

Member (A)

lm

19.12.2007

No written statement has been filed in this case by the Respondents. Dr.J.L.Sarkar, learned Railway Standing counsel, seeks six weeks more time to file written statement. Prayer is allowed.

W/s not filed.

6.2.08

Call this matter on 07.02.2008 awaiting written statement from the Respondents.

(M.R.Mohanty) Vice-Chairman

3.3.08

/bb/

W/s filed by the Rspdt. Nos. 3 & 4. undertaking given for service.

07.02.2008

No written statement has been filed in this case as yet by the Respondents.

Call this matter on 10.3.2008 awaiting written statement from the Respondents.

W/s filed.

7.3.08

(Khushiram) Member (A)

(M.R.Mohanty) Vice-Chairman

lm

O.A. 205/07 - 4 -

10.03.2008

In this case written statement

has already been filed by the Respondents.

Mr. Mr. D.K. Dey learned counsel appearing for

the Applicant seeks two weeks time to file

rejoinder. Prayer is allowed.

Call this matter on 25th March, 2008

awaiting rejoinder from the Applicant.

Rejoinder not
filed.

24.3.08

(M.R. Mohanty)
Vice-Chairman

lm

26.3.08

25.03.08

On the prayer of Dr J.L. Sarkar,

learned Standing counsel for the Railways,

Call this matter on 01.04.2008.

Rejoinder submitted
by Applicant to the
WPs or Rptt. No. 324.
Copy served.

(M.R. Mohanty)
Vice-Chairman

Pg

01.04.2008

Heard Mr K. Paul, learned
Counsel appearing for the Applicant,
and Dr J.L. Sarkar, learned Counsel
appearing for the Respondents/
Railways.

The case is ready
for hearing.

31.3.08

Hearing concluded. Orders
reserved.

(Khushiram)
Member (A)

(M.R. Mohanty)
Vice-Chairman

22.5.08

Judgment reserved
vide D/Nos 2066
to 2073 on 5.5.08
to the parties along with
L/Adv for the parties

nkm

11.04.2008

Judgment pronounced in open
Court, kept in separate sheets.

The Application is allowed in terms
of the order.

(Khushiram)
Member (A)

(M.R. Mohanty)
Vice-Chairman

pg

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

.....

Original Application No. 205/2007

DATE OF DECISION : 11-04-2008

Shri Nikhil Ch. Singha Roy

.....Applicant/s

By Advocate Shri K. Paul

.....Advocate for the
Applicant/s

-Versus -

Union of India & Ors.

.....Respondent/s

Dr J.L. Sarkar, Standing Counsel for Railways

.....Advocate for the
Respondent/s

CORAM

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN

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.


Vice-Chairman/Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.205 of 2007.

Date of Order : This the 11th Day of April, 2008.

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER

Shri Nikhil Ch. Singha Roy,
Son of Late Sachi Singha Roy,
Resident of Pradhan Nagar,
Ashapura Road,
P.O. Pradhan Nagar,
District Darjeeling (West Bengal)

.....Applicant

By Advocate Shri K.Paul

- Versus -

1. The Union of India,
represented by the Chairman,
Railway Board, Ministry of Railways,
New Delhi.
2. The Chief General Manager,
N.F.Railway, Maligaon,
Guwahati-11.
3. The Senior Divisional Mechanical Engineer,
N.F.Railway, Katihar, Bihar.
4. The Divisional Mechanical Engineer,
N.F.Railway, New Jalpaiguri,
West Bengal.
5. Shri P.K.Sarkar,
Senior Section Engineer/IC/C&W/SGUJ,
N.F.Railway, Siliguri Junction, Siliguri,
West Bengal.

.....Respondents

By Dr J.L.Sarkar, Standing counsel for Railways.



ORDERKHUSHIRAM, (MEMBER-A)

On the allegation that the Applicant (Shri Nikhil Chandra Singha Roy, MCM(APO)/SGUJ) remained unauthorisedly absent from 24.06.2004 to 14.09.2004, he was charge sheeted for having shown gross negligence of duty and unbecoming of a Government servant and contravened Rules 3.1 (ii) and (iii) of the Conduct Rules of 1968. On the basis of an enquiry, his services were terminated (vide order dated 26.05.2005) just 5 days before of his retirement (as per statement of the Applicant) without giving him adequate opportunity. Earlier he had approached this Tribunal by filing O.A 67/06; which was disposed of on 16.03.2006 with direction to the appellate authority to consider and dispose of the appeal dated 28.06.2005 (of the Applicant) within a period of three months by giving "personal hearing to the applicant, if so opted by the applicant, and pass a speaking order."

2. The Appellate Authority informed the Applicant (vide order dated 23.03.2006, (a copy of which was sent to the Applicant by registered post with A/D) conveying the following orders :

"The appeal has been seen and it is clear that party was not on the sick list yet he did not join. All the efforts made by the E.O to ensure natural justice are on record.

Having considered the appeal it is regretted on lack of merit the punishment holds good."

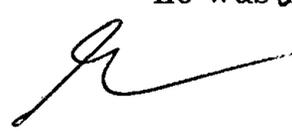
3. It is apparent that the appeal was decided on 23.03.2006 after the order of the Tribunal was passed on 16.03.2006.



4. Aggrieved by the above order the Applicant has filed this second round of Original Application under Section 19 of the Administrative Tribunals Act 1985 before the Tribunal.

5. As per materials available on record, the Applicant was a heart patient and on the verge of retirement when he was served with a charge sheet on 20.09.2004 for remaining absent unauthorizedly. The Applicant also attended CMC, Vellore for his treatment. As per advice of the Railway medical authority, the Applicant visited Perambur Railway Hospital for treatment. On 24.06.2004 the Applicant felt pain in his chest and tried to inform his officer-in-charge; for he was not in a position to move. He was compelled to seek help of a private medical practitioner and took treatment upto 25.08.2004 and reported back to duty to his officer-in-charge on 26.08.2004 by producing private medical certificate in support of his illness. He was asked to obtain Duty Fit Certificate; which was issued by Senior DMO/SGUI and only then the Applicant was allowed to resume duty on 15.09.2004. The absence, on account of illness from 24.06.2004 to 25.08.2004 supported by medical certificate from a Non Railway Doctor, was not accepted by authorities; for which he was charge sheeted for the unauthorized absence and that resulted in termination from service.

6. It is alleged by the Applicant that the enquiry officer Shri S.S.Bardhan appointed by the Respondents was a close friend of Shri P.K.Sarkar, SSE/IC/C&W/SGUI. The Applicant has alleged that the enquiry proceeding have become vitiated. The ex-parte enquiry, held in the applicant's case, became the basis for removal from service; while he was on the verge of superannuation but in order to deprive him of



the terminal benefits at the end of his service, he has been dismissed by the Respondents. The Applicant has also alleged that the cryptic and non speaking order disposing of his appeal was passed by the appellate authority after the Tribunal passed the order in O.A.67/06 on 16.06.2006.

7. The Respondents have filed written statement wherein they have stated that Applicant was advised to report to duty on 23.06.2004 but he refused to receive the letter and he absented himself from 24.06.2004 without any intimation. The Medical Certificate submitted by the Applicant in support of his sickness was issued by a private Medical Practitioner from Siliguri but his residence was only 200 meter from Railway Hospital; which, as per rules, he was required to attend and that, therefore, his unauthorized absence from duty from 24.06.2004 to 14.09.2004 is supported by the facts. It has also been stated that Applicant's name was struck off from the sick list from 07.03.2005 and that, on the basis of enquiry report submitted by Enquiry Officer, Disciplinary authority considered the case very carefully and passed the order for removal from service against the Applicant (However, the copy of the Enquiry Report has not been submitted by the Respondents with written statement nor placed on record at the hearing). It has been admitted by the Respondents that the Applicant was to retire on 31.05.2005 and by filing O.A. before the Tribunal, the Applicant was trying to adopt dilatory tactics for completion of the departmental proceedings.

8. We have heard Mr K.Paul, learned counsel appearing for the Applicant and Dr J.L.Sarkar, learned Standing Counsel for



Respondents/Railways. Learned counsel for the Applicant argued that the Applicant has served the Railways through^{out} his career and for remaining absent on account of his sickness and for treatment he was removed from service on 26.05.2005 just only a few days before his superannuation (which was due on 31.05.2005) and, as such, the punishment order was extremely harsh/highly disproportionate. He also cited the decision of the Hon'ble Aprx Court rendered in the case of Bhagwan Lal Arya vs. Commissioner of Police, Delhi and others, (reported in (2004) 4 SCC 560); wherein it was held that "absence of more than two months on medical grounds with sanction of leave - cannot be regarded as a grave misconduct or continued misconduct rendering him completely unfit for (police) service. Dismissal on ground of alleged misconduct of such absence from duty is excessive and disproportionate punishment and not permissible under relevant provisions of Service Rules." It is further held that "dismissal order found bad looking to the mitigating circumstances "the punishment/order of the disciplinary authority is to be set aside."

Rule 521(2) of Indian Railway Establishment Code Vol-I was also cited at the hearing; which is reproduced as under :

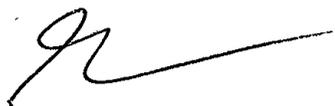
"The competent authority may, at its discretion accept the certificate or, in cases where it has reasons to suspect the bonafides, refer the case to the Divisional Medical Officer for advice or investigation. The medical certificate from registered private practitioners produced by Railway servant in support of their application for leave may be rejected by the competent authority only after a Railway Medical Officer has conducted the necessary verifications and on the basis of the advice tendered by him after such verifications."



Similarly Rule 634 provides the Railway employees to be attended by the authorized Medical Officer of the Railways.

9. That the Applicant is/was a heart patient was known to the Respondents. In the said premises, there were no reason for the Respondents/authorities (of the Applicant) not to exercise their discretion in favour of the Applicant to accept the certificate granted by a private registered medical practitioner as required under Rule 521(2) of IREC (supra). Before refusing to accept such a medical certificate a procedure was required to be followed under the said Rule 521 and Rule 634. In the case of the applicant no such procedure was adopted. Therefore, in our considered view, the Applicant could not have been considered to be a person under un-authorized absence. Thus, there were a mis-carriage of justice in the decision making process; for the authorities proceeded to consider the Applicant to be a person under un-authorized absence, without considering his case in terms of the requirement of the Rules (supra).

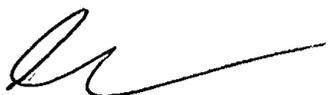
10. Dr J.L.Sarkar, learned Standing Counsel for Railways, although admitted that the Enquiry Report was not supplied to the Applicant (to have his say in the matter) before removing him from service, argued that no prejudice was caused to him for non-supply of the copy of the Enquiry Report; especially when the Applicant was due to go out of employment on retirement shortly. Such a stand of the Respondents is not sustainable in the eye of law. "Nothing was available to be answered by the Applicant," cannot be an answer to deny the supply of the enquiry report/giving an opportunity to the



Applicant to have his say in the matter before the fall of damocles sword/termination of service.

11. The Applicant was not given the copy of the enquiry report before terminating his services. Dr J.L.Sarkar, learned Standing counsel for Railways, who pointed out that Applicant was absent without prior sanction of leave, argued that the points raised by the Applicant in the O.A were never raised by him before the Respondents nor in the enquiry proceeding. His said objection is simply over ruled; because point of law (arising out of the bundle of facts already available on records) can be raised at any stage of the proceeding, if not raised at the initial stages. In the present case, the authorities proceeded against the Applicant without even looking to the requirements of the Rules. When a Railway servant (a known heart patient) remained absent, for his sickness; it was for the authorities to send a Doctor to his place to take care of him or to bring him the required treatment. That is what is the beneficial provision in Rule 634 (supra). Without following the human approach to the matter, the Railways (in the given circumstances) ought not to have taken a harsh decision

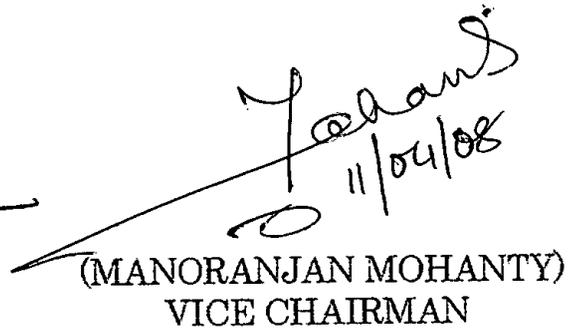
12. On the basis of the relevant provision of Railway Establishment Code, the citation submitted by the learned counsel for the Applicant and discussions made in foregoing paragraphs, we have taken note (a) that Respondents, though aware of the fact that the Applicant was a heart patient and considering his serious illness/the health condition, did not depute any Railway doctor to the residence of the Applicant; (b) they did not exercise the discretion properly/in a lawful manner as required under the Rule 521 (supra); (c) in the



written statement also the Respondents have not claimed that the copy of the enquiry report was made available to the applicant to give him an opportunity to have his say in the matter and (d) the cryptic/non speaking order was passed by the appellate authority, on the appeal of the Applicant even after the orders of this Tribunal "to pass speaking order and to give a personal hearing to the Applicant, if so opted by the Applicant" in O.A.67/2006. The applicant was un-disputedly due to superannuate on 31.05.2005. We are of the considered view that the punishment (awarded by Disciplinary Authority and upheld by Appellate Authority) appears disproportionate in terms of the decision cited above (2004) 4 SCC 560). We are also of considered view that the punishment is not sustainable because of non supply of Enquiry Report. We could have remanded the case back to the disciplinary authority (at least to the stage of supply of enquiry report) for passing appropriate order like imposing punishment of compulsory retirement; but as the Applicant has already retired within seven days of imposition of the punishment, it is deemed proper to let him superannuate when it was due to him in normal course. The order of removal is accordingly set aside and the period of absence of the Applicant is directed to be regularized by granting any kind of leave due to him. Thus, this Original application is allowed; but without awarding any cost.



(KHUSHIRAM)
ADMINISTRATIVE MEMBER



(MANORANJAN MOHANTY)
VICE CHAIRMAN

OA (in 2 sets) is filed today w/c 190 & envelopes + MB for condonation of delay by Shri K. Paul, Advocate on 2.8.07.

Central Administrative Tribunal
- 1 AUG 2007
গুৱাহাটী ন্যায়ালয়
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH::GUWAHATI

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

ORIGINAL APPLICATION NO. 205 OF 2007.

Shri Nikhil Ch. Singha Roy APPLICANT.
-VERSUS-
The Union of India & Ors RESPONDENTS.

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4.	Reply dated 10.11.04 by the applicant	B	
5.	Inquiry officer appointed on 18.11.04.	C	
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8.	Intimation dt. 13.5.05 fixing date of enquiry on 16.5.05	G	
9.	Order dated 26.5.05 removing applicant from service.	H	
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11.	Order dt.16.3.06 passed by the Hon'ble Tribunal in OA 67/06.	L	
12.	Letter dt.23.3.06 informing applicant about rejection of his appeal.	M	

Signature of the applicant.

For use in the Tribunal's office

Date of filing:-

Registration No.

Nikhil Ch. Singha Roy 20

Nikhil Ch Singha Roy 21

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH::GUWAHATI.

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

ORIGINAL APPLICATION NO. 205 OF 2007.

Shri Nikhil Ch. Singha Roy APPLICANT.
-VERSUS-
The Union of India & Ors RESPONDENTS.

LIST OF DATES.

<u>Date</u>	<u>Particulars.</u>
20.9.04(recd. on 1.11.04)	Memorandum of Chargesheet for unauthorised absence w.e.f. 24.6.04 – 14.9.04 (Annexure A Page <i>25/08/04</i>)
10.11.04	Applicant's reply praying for exoneration because he was ill and since then he has joined duty by submitting medical certificate. (Annexure B Page (Railway Board's instruction regarding admissibility of private medical certificate.) (Para 4.5 Page 5)
18.11.04	Shri SS Bardhan, a close friend of R-5, appointed as enquiry officer to conduct the enquiry. (Annexure C Page
23.12.04	Applicant sought for certain documents which are the annexures to the charge sheet and requested for an officer from personal branch to be included in the board of enquiry. (Annexure D Page
17.2.05	Applicant informed about the date of DAR enquiry fixed on 28.2.05. (Annexure E Page
18.2.05	Applicant requested the respondent authority to furnish the documents as sought for vide his letter dated 23.12.04. (Annexure F Page

13.5.05 Applicant asked to attend the DAR enquiry on 16.5.05. which he could not attend because of his illness. (Annexure G Page

17/05/05. Enquiry Report

26.5.05 Applicant removed from service on the basis of the enquiry report which was not furnished to him. (Annexure H Page

Railway Board circular which envisage furnishing of enquiry report by the disciplinary authority before taking final decision.

(Para 4.11 Page 8).

31.05.2005 - Return at Page 4 / Para - 5 - 9 w/s

28.6.05 Applicant preferred an appeal to the Sr. DME/Katihar, followed by reminders dt. 5.11.05 & 7.1.06. (Annexures I, J & K Pages

~~31.05.2005~~

16.3.06 Order passed by this Hon'ble Tribunal in OA No.67/06 for disposing of the appeal within 3 months by a reasoned order and giving personal hearing to the applicant. (Annexure L Page 38) - 39 - 40

23.3.06 Appeal rejected by the appellate authority by a one-line order and without hearing the applicant. (Annexure M Page

31.05.05

SIGNATURE OF THE APPLICANT.

Nehal Ch Singh Ref 22

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI.

(APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNALS ACT, 1985.)

ORIGINAL APPLICATION NO. 205 OF 2007.

Shri Nikhil Ch. Singha Roy
Son of Late Sachi Singha Roy
Resident of Pradhan Nagar
Ashapura Road
P.O. Pradhan Nagar
District : Darjeeling (West Bengal)

.....APPLICANT.....

-VERSUS-

1. The Union of India, represented by the Chairman,
Railway Board, Ministry of Railways,
New Delhi.
2. The Chief General Manager,
N.F. Railway, Maligaon, Guwahati-11.
3. The Senior Divisional Mechanical Engineer,
N.F. Railway, Katihar.

Filed by:-

Nikhil Ch Singha Roy
through - K. Paul
Advocate.

23

4. The Divisional Mechanical Engineer,
N.F. Railway, New Jalpaiguri.

5. Shri P.K. Sarkar
Senior Section Engineer/IC/C&W/SGUJ,
N.F. Railway, Siliguri Junction, Siliguri.

Nektal Ch Sanyal Rost

.....RESPONDENTS.

DETAILS OF APPLICATION:

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

The applicant is aggrieved by the impugned order bearing No.M/BG/EA/NJP/2004(NCSR) dated 26-05-2005 passed by the Divisional Mechanical Engineer, N.F. Railway, New Jalpaiguri, whereby the applicant was removed from service w.e.f. 27-05-2005, as well as the order passed by the Senior Divisional Mechanical Engineer/IC/Katihar and issued from the office of the Divisional Mechanical Engineer, N.F. Railway, New Jalpaiguri, vide communication No.M/BG/EA/NJP/2004 (NCSR) dated 23-03-2006, whereby the appeal preferred by the applicant against imposition of penalty of "Removal from Service", has been rejected.

2. Jurisdiction of the Tribunal:

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

3. Limitation:

The applicant further declares that the application is beyond the limitation period prescribed in Section 21 of the Administrative Tribunals

Act, 1985, and a separate application showing the cause for the delay is filed before this Hon'ble Tribunal, with a prayer for condoning the delay and considering the OA on merits.

4. Facts of the case:

4.1 That the applicant is a citizen of India and a permanent resident of the above mentioned locality and as such is entitled to all the rights and privileges guaranteed by the Constitution of India and the laws framed thereunder.

4.2 That the applicant entered the service under N.F. Railway in the year 1963 as Grade IV Staff (Khalasi). The applicant has been discharging his duties satisfactorily right from the date of his initial appointment. The respondents promoted him a number of times.

4.3 That, after rendering more than 40 years of service, while the applicant was serving in the post of MCM (APO)/SGUJ (Master Scrap) and was on the verge of his retirement, he was served with a memorandum of charge sheet dated 20-09-2004, bearing No.M/BG/EA/NJP/2004 (NCR), issued by the Divisional Mechanical Engineer, N.F. Railway, New Jalpaiguri under Rule 9 of the Railway Servant (Discipline and Appeal) Rules, 1968, whereby he was informed that an enquiry would be held on the charge that he was found unauthorised absent from duty w.e.f. 24-06-2004 to 14-09-2004. The applicant was asked to submit his written statement of his defence. It may be pertinent to mention here the aforesaid memorandum dated 20-09-2004 was infact received by the applicant on 01-11-2004.

A copy of the aforesaid memorandum dated 20-09-2004 is annexed hereto and marked as **ANNEXURE – A**.

Netul ch S. Raja Red
25

4.4 That the applicant vide his letter addressed to the DME, N.F. Railway, NJP, dated 10-11-2004, replied that he was a heart patient. The applicant has been suffering for long. At times, it so happens that there is hardly time left to call a doctor, let alone to inform the local officer in-charge. The applicant attended CMC, Vellore for his treatment. As per advice of the Railway medical authority, the applicant visited Perambur Railway Hospital for better treatment. On 24-06-2004, the applicant felt pain in his chest and he promptly tried to inform his officer-in-charge through a messenger, as he himself was not in a position to move. However, it was not accepted by the local office. The applicant was compelled to get help of a private medical practitioner. The treatment continued unto 25-08-2004 and thereafter he reported to his officer-in-charge on 26-08-2004 by producing private medical certificate in support of his illness. The applicant requested for allowing him to join duty. Thereafter, on 26-08-2004, the PMC (private medical certificate) was sent to the DME/NJP by Senior Section Engineer/I/C/Carriage & Workshop/SGUJ vide his letter of even no. dated 26-08-2004. On 10-09-2004, DME/NJP advised SSE/I/C/C&W/SGUJ to direct the applicant to obtain DFC (Duty Fit Certificate). Accordingly, DFC was issued by Sr. DMO/SGUJ and the applicant was allowed to resume duty on 15-09-2004.

The applicant in his reply explained that he was sick from 24-06-2004 to 25-08-2004 and in support of the fact, the applicant submitted the medical certificates. The applicant denied the charge of unauthorised absence and stated that he was not absent from duty wilfully.

With regard to the period from 26-08-2004 to 14-09-2004, the applicant requested the respondents to treat the same as on duty, because he

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had reported for duty on 26-08-2004 in the office of C&W/SGUJ producing necessary medical certificate.

Finally, the applicant prayed that he may be exonerated from the charge of unauthorised absence moreso, in view of the fact that he was on the verge of retirement.

A copy of the aforesaid reply dated 10-11-2004 is annexed hereto and marked as **ANNEXURE – B**.

4.5 That, it may be pertinent to mention here that a number of instructions have been issued by the Railway Board from time to time to the effect that private medical certificates (PMC) can be accepted to regularise the period of absence but in such cases no salary is admissible for the period of absence.

The applicant craves leave of the Hon'ble Tribunal to produce such Railway Board instructions and rely upon the same at the time of hearing of the case or in the alternative the respondents may be directed to produce the relevant instruction for perusal by the Hon'ble Tribunal.

4.6 That, one Shri S.S. Bardhan, SLI/NJP was appointed as Inquiry Officer, vide order dated 18-11-2004, to enquiry into the charges framed against the applicant. By the same order, the applicant was asked to give the name of his defence counsel for assisting him in the enquiry.

A copy of the order dated 18-11-2004 is annexed hereto and marked as **ANNEXURE – C**.

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4.7 That the applicant vide his communication dated 23-12-2004, replied that he has not fully understood the charges brought against him as stated in paragraph-II of the memorandum of charges as the specific charges were not mentioned there nor is there any past reference. The applicant also stated that the charge/order which he allegedly violated was never brought to his notice in terms of GM(P)/MLGS letter No.E/172/1 dated 05-03-1963. The applicant stated that the representation may not be construed as his reply to the alleged unknown charges, as without knowing the basis on which the charges have been levelled, the applicant shall not be able to understand as to how far he is responsible. Finally, the applicant requested that he may be given the assistance of a railway employee to help him in the enquiry. Furthermore, an officer from personal branch may be included in the board of enquiry as the applicant had some reservation regarding the appointment of Shri S.S. Bardhan, the Inquiry Officer, who happened to be a close friend of Shri P.K. Sarkar, SSE/IC/C&W/SGUJ (respondent no.5), who was biased against the applicant due to some internal family matters and the applicant was victimised.

A copy of the said representation dated 23-12-2004 is annexed hereto and marked as **ANNEXURE – D**.

4.8 That the inquiry officer vide communication dated 17-02-2005 informed the applicant that the date of DAR enquiry has been fixed on 28-02-2005 and the applicant was asked to nominate his defence counsel.

A copy of the aforesaid communication dated 17-02-2005 is annexed hereto and marked as **ANNEXURE – E**.

Nikhil Ch Singh Roy

4.9 That the applicant vide his letter dated 18-02-2005 requested the respondent authority to furnish the information as sought for vide his representation dated 23-12-2004.

A copy of the said communication dated 18-02-2005 is annexed hereto and marked as **ANNEXURE – F**.

4.10 That the enquiry officer vide his communication dated 13-05-2005 asked the applicant to attend the DAR enquiry on 16-05-2005 in the office of the DME/NJP without fail as the DAR enquiry was getting delayed. It was further stated in the said communication that in case the applicant failed to attend the enquiry, ex-parte action would be taken against him.

In this connection, the applicant likes to clarify that he again fell ill because of which he could not attend the enquiry, and this fact was well known to the respondents. The applicant was under medical treatment from 22-02-2005 till 30-05-2005. Besides, the enquiry officer proceeded with the enquiry without meeting the requirements pointed out by the applicant in his representation dated 23-12-2004.

A copy of the said communication dated 13-05-2005 is annexed hereto and marked as **ANNEXURE – G**.

4.10 That, the applicant was under medical treatment from 22-02-2005 till 30-05-2005. Initially, the applicant was under the treatment of Sr.DMO/NFR/SGUJ. But after a few days, the said official expressed his inability to put the applicant in the sick list and advised him to attend NJP Hospital for treatment as an indoor patient. However, due to personal difficulties of his family members, they could not admit him into NJP Hospital and he had to undergo treatment under a private medical practitioner at Siliguri till 30-05-2005. On 31-05-2005, the applicant went to

join duty but on the same date he received a registered letter from the DME/NJP which the applicant thought to be something favourable. However, he was shocked and surprised to find upon opening the said letter that he has been removed from service with effect from 27-05-2005, just four days prior to his date of retirement.

A copy of the impugned order dated 26-05-2005 is annexed hereto and marked as **ANNEXURE - H**.

4.11 That the impugned order of removal dated 26-05-2005 was issued by the DME/NJP purportedly on the basis of the final report from the Enquiry Officer dated 17-05-2005. It may be pertinent to mention here that the said enquiry report dated 17-05-2005 was not furnished to the applicant. The respondents, in all fairness, ought to have furnished a copy of the enquiry report to the applicant so as to give him a reasonable opportunity to prove his innocence. The failure in this regard has caused serious prejudice to the applicant. The respondents have violated the principles of natural justice.

Be it stated here that in terms of Railway Board letter No. E (DOA)/87/RG-6/151 dated 10-11-1989 it has been laid down that the disciplinary authority shall, before taking a final decision after the receipt of enquiry report, will forward a copy of the enquiry report to the charged Railway servant concerned with following endorsement:-

“The report of the enquiry officer is enclosed. The disciplinary authority will take suitable decision after considering the report. If you wish to make any representation or submission, you may do so in writing to the disciplinary authority within 15 days of receipt of this letter.”

The Railway Board (vide circular R.B. No. E(D & A) 87 RG 6-151 dated 04-04-1996. RBE 33/96) has further decided that where an Inquiry has been

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held in accordance with the provisions of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, the Disciplinary Authority before making a final order in the case, shall forward a copy of the report of the Inquiry held by the Disciplinary Authority or where the Disciplinary Authority is not an Inquiring Authority, a copy of the report of the Inquiring Authority to the charged officer, who shall be required to submit, if he so desires, written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the charged officer. Thus, a copy of the Inquiry Report is to be sent to the charged official irrespective of whether the inquiry is conducted by the Disciplinary Authority himself or by a nominated Inquiring Authority.

The applicant craves leave of the Hon'ble Tribunal to produce and rely upon the aforementioned Railway Board circulars at the time of hearing of the case.

4.12 That, highlighting the aforesaid illegalities, the applicant preferred an appeal before the appellate authority, Senior Divisional Mechanical Engineer/ Katihar, on 28-06-2005. However, as ill luck would have it the respondents failed to consider the appeal. The applicant subsequently filed reminders on 05-11-2005 as well as on 07-01-2006, without any result. The applicant did not receive any retirement benefit due to termination of his service just four days prior to the date of his retirement. The applicant in his appeal as well as the reminders prayed for setting aside the order of removal dated 26-05-2005 and reinstate him in service. The applicant prayed for arrangement of sick period salary by regularising into commuted leave considering normal retirement. The applicant also enclosed the doctors certificate as well as the duty fit certificate.

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Copies of the aforesaid appeal dated 28-06-2005 as well as the applications dated 05-11-2005 and 07-01-2006 are annexed hereto and marked as **ANNEXURE – I, J & K**, respectively.

*Notul ChS 1/11/2005
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4.13 That, finding no response from the respondents and having no other alternative, the applicant approached this Hon'ble Tribunal by way of filing an original application, i.e., O.A. No.67/2006. The said OA was disposed of by this Hon'ble Tribunal on 10-03-2006, with a direction to the appellate authority, Senior DME, N.F. Railway, Katihar, to consider and dispose of the said appeal dated 28-06-2005 within a period of three months from the date of receipt of the order. The Hon'ble Tribunal also directed the respondents to give personal hearing to the applicant, if so opted by the applicant and pass a reasoned order.

A copy of the order dated 10-03-2006 passed by this Hon'ble Tribunal in O.A. No.67/2006 is annexed hereto and marked as **ANNEXURE – L**.

4.14 That, the Senior DME, N.F. Railway, Katihar, (respondent No.3), who is the appellate authority, after receiving the Hon'ble Tribunal's order, rejected the appeal in a one-line order stating that party (meaing the applicant) was not on the sick list yet he did not join.

It may be pertinent to mention here that no specialised treatment for heart disease is available under the Sr. DMO/SGUJ and the said official adviced the applicant to get himself admitted into NJP Hospital, after striking him off from the sick list. The applicant continued treatment for his heart ailment under a specialist and thereafter upon recovery reported for duty on 31-05-2005 alongwith medical certificate. Under the Railway

Board's instructions, private medical certificate is admissible and in that view of the matter the appellate authority was grossly in error in refusing to accept the medical certificate submitted by the applicant and holding that since the applicant was not in the sick list he ought to have joined duty.

The aforesaid order passed by the Senior DME was communicated to the applicant from the office of the DME, N.F. Railway, New Jalpaiguri (respondent no.4) vide communication No.M/BG/EA/NJP/2004 (NCSR) dated 23-03-2006.

The aforesaid order does not bear any reference to the Hon'ble Tribunal's order dated 16-03-2006 in OA No.67/2006. It does not reveal that the appeal has been considered and disposed as directed by this Hon'ble Tribunal. Moreover, the applicant was not given personal hearing by the appellate authority and the impugned order cannot be termed as a speaking order, as was directed to be done by the Hon'ble Tribunal.

A copy of the impugned order conveyed vide communication dated 23-03-2006 is annexed hereto and marked as **ANNEXURE – M**.

5. Grounds for relief with legal provisions:-

5.1 That the impugned order of removal from service imposed upon the applicant as well as the appellate order confirming the penalty of removal, were issued by the respondents by taking into consideration extraneous matter which is outside the scope of charge sheet and which is not on the record. Such consideration of extraneous matter and passing the punishment orders on such matter vitiates the orders and the same are therefore liable to set aside and quashed by this Hon'ble Tribunal.

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5.2 That the enquiry report based on which penalty was imposed was not furnished to the applicant. The penalty imposed on the applicant does not indicate the specific charge that stood substantiated and on the basis of which the penalty was imposed. Neither the charge has been discussed in the impugned order imposing penalty nor any indication has been given by the disciplinary authority as to the manner how it was proved.

5.3 That the appellate order communicated on 23-03-2006 has been passed without affording personal hearing to the applicant and is not a speaking one, as was required to be done in terms of this Hon'ble Tribunal's order dated 16-03-2006 passed in OA No.67/2006.

5.4 That the enquiry officer was duty bound as per DAR 1968 to advise the applicant appear before him within a period of 10 days from the date of appointment of enquiry officer. The enquiry officer is also required to allow the applicant, the copies of the documents and submission of defence counsel within a period of 30 days and thereafter on making documents available to the applicant fixed the date for the enquiry proceeding. The enquiry officer has failed to act in accordance with the rule. Thus the entire proceeding has been vitiated.

5.5 That there can not be an ex-parte decision when the applicant has co-operated with the enquiry and thereby submitted his defence statement to the memorandum of charge as well as sought for documents (the annexures referred to in the charge sheet and sought to be relied upon by the enquiry officer during the course of enquiry). In the instant case neither the enquiry officer supplied the documents (the aforesaid annexures) nor he could suggest name for defence counsel as a result the applicant was not in a

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position to defend his case before the enquiry officer. The enquiry officer having regard to the facts has conducted enquiry ex-parte which has caused serious prejudice to the applicant and thus violating the provision contained in Article 311(2) of the Constitution of India and the principles of natural justice. The disciplinary authority ought to have applied its mind before passing the impugned order due to the fact that the applicant duly co-operated with the enquiry proceeding by submitting his defence statement requesting for the appointment of defence counsel, etc. That being the position the disciplinary authority ought to have realised that the applicant was ready to co-operate with enquiry proceeding and the ex-parte decision of enquiry officer is uncalled for and thus he ought to have rejected the same in limine. Even the copy of the enquiry report dated 17-0-2005 was not furnished to the applicant causing serious prejudice to him.

5.6 That the disciplinary authority ought to have dropped the charge of unauthorised absence w.e.f. 24-06-2004 to 14-09-2004 against the applicant because the applicant intentionally did not absent himself from duty. He was suffering from serious heart ailment and was under medical treatment from 24-06-2004 till 25-08-2004. The applicant reported for duty on 26-08-2004 on the basis of the medical certificate submitted by him and he was allowed to join duty. Therefore, the charge of unauthorised absence is not sustainable and more particularly the period from 26-08-2004 to 14-09-2004 because he reported for duty on 26-08-2004 and was allowed to join. Hence, the charge against the applicant is false, vague and baseless and on the basis of such false and baseless charge the applicant has been removed from service after rendering 42 years of service, just four days prior to the date of retirement. The appellate authority committed gross illegality in upholding the penalty on an altogether different ground that is the applicant did not join duty

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although he was not in the sick list. This was not the charge mentioned in the chargesheet dated 20-09-2004. Therefore, it is clear that the respondent authority relied upon extraneous matter in imposing penalty upon the applicant.

5.7 That the penalty of removal from service imposed on the applicant on the charge that he was unauthorisedly absent from 24-06-2004 till 14-09-2004, i.e., a period of two and half months. The applicant who has rendered 42 years of service under the respondents has been removed from service just four days prior to his retirement simply on the charge that he was absent from duty for two and half months. Even assuming but never admitting, that the charge is true, can a reasonable person arrive at a conclusion that a person can be removed from service just on the eve of his superannuation based on such a charge. Therefore, the penalty imposed on the applicant is excessive and is shockingly disproportionate to the charge. It is also a settled position in law, that in case of unauthorised absence if one has already resumed his duty, the order of dismissal from service is unjustified.

5.8 That removal from service on the ground that a person has been absent for two and a half months and that too just on the eve of his retirement after rendering 42 years of service, is quite unheard of in service jurisprudence. The actual reason for the applicant's removal from service is not far to seek. His immediate superior, Shri P.K. Sarkar, SSE/IC/C&W/SGUJ, the respondent no.5, had enmity against the applicant due to some internal family matter. The enquiry officer Shri S.S. Bardhan is a friend of the said respondent no.5 and it was at his behest the enquiry was held ex-parte and on the basis of such ex-parte enquiry report, the applicant was removed by the disciplinary authority. The appellate authority

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perpetuated the illegality by upholding the penalty imposed by the disciplinary authority, without proper application of mind.

5.9 That the enquiry officer ought to have furnished the documents as requested by the applicant to defend himself properly. Moreover, the respondents in the instant case have not followed the model time schedule prepared by the Railway Board for finalising departmental proceedings in cases of imposition of major penalties. Although the charge sheet is dated 20-09-2004, it was actually served on the applicant on 01-11-2004. Thereafter, enquiry officer was appointed on 18-11-2004. The applicant vide his representation dated 23-12-2004 sought for certain clarification in respect of the charge but the same was not furnished to him. Thereafter, to complete the proceedings by any means they committed all kinds of illegalities. The respondents acted in a hasty manner. It was within their knowledge that the applicant is a terminally ill patient and is undergoing treatment under a specialist, which facility is not available at the Health Unit/SGUJ and in spite of such knowledge they proceeded with the enquiry ex-parte. In their hurry, they forgot even to furnish a copy of the enquiry report to the applicant and just four days prior to his date of superannuation, the respondents removed the applicant from service, to deprive him from pension and retiral benefits. The impugned action of the respondents is actuated by malafides and is affected by bias and is not free from arbitrariness. The penalty imposed upon the applicant as well as the appellate order confirming it, cannot be legally justified and are therefore, liable to be set aside and quashed.

5.10 The respondents have been most unfair towards the poor applicant who has been left to die in the evening of his life without any terminal

Noted Ch. Singh R.P.
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benefit. Such a course of action is hardly conceivable in a civilized society governed by rule of law. The conduct of the respondents can very well be gauged from the fact that the appeal dated 28-06-2005 against the penalty was simply ignored by the respondents well for over nine months. It was only after the Hon'ble Tribunal's order dated 16-03-2006 in OA No.67/2006, did they proceed to dispose of the said appeal. But that too turned out to be an exercise in futility because the appellate order dated 23-03-2006 is not a speaking order and it was passed without hearing the applicant as provided for by the Hon'ble Tribunal and on an altogether different charge which does find place in the original chargesheet dated 20-09-2004.

5.11. That the disciplinary authority ought not to have passed such harsh penalty of removal from service just four days ahead of the applicant's normal date of retirement. The appellate authority did not apply its mind and simply approved the punishment imposed by the disciplinary authority causing grave injustice to the applicant. This clearly indicates the malafide intention and arbitrariness on the part of the respondent authorities to deny the applicant of his pension and other terminal benefit and as such the impugned orders are liable to be set aside and quashed.

5.12 That in any view of the matter, the impugned orders dated 26-05-2005 and 23-03-2006, are legally not sustainable and are therefore liable to be set aside and quashed. The Hon'ble Tribunal may further be pleased to direct the respondents to reinstate the applicant back in service for the purpose of granting him pension and other consequential relief.

6. Details of the remedies exhausted :-

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The applicant declares that he has availed of all the remedies available to him under the relevant service rules.

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

The applicant earlier approached this Hon'ble Tribunal by filing O.A. No.67/2006 for non-consideration of the appeal filed by him against the penalty of removal from service imposed upon him by the disciplinary authority. The said OA was disposed of on 16-03-2006, directing the appellate authority to consider and dispose of the applicant's appeal within a period of three months. Thereafter, the appellate authority rejected the appeal. Hence, this original application has been filed by the applicant challenging the entire departmental proceeding as well as the order imposing penalty and the appellate order.

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

8. Reliefs sought:

In the premises aforesaid, it is most respectfully prayed that Your Lordships may be graciously pleased to admit this application, issue necessary notices, call for the records of the case and after hearing the cause/causes being shown and upon perusal of the records, Your Lordships may set aside and quash-

(i) The impugned order bearing No.M/BG/EA/NJP/2004(NCSR) dated 26-05-2005 passed by the Divisional Mechanical Engineer, N.F. Railway, New

Nikhil Ch. Singh
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Jalpaiguri, whereby the applicant was removed from service w.e.f. 27-05-2005, (Annexure-H; Page-), as well as -

(ii) The order passed by the Senior Divisional Mechanical Engineer/IC/Katihar and issued from the office of the Divisional Mechanical Engineer, N.F. Railway, New Jalpaiguri, vide communication No.M/BG/EA/NJP/2004 (NCSR) dated 23-03-2006, whereby the appeal preferred by the applicant against imposition of penalty of "Removal from Service", has been rejected, (Annexure-M; Page-), and -

(iii) To direct the respondents to reinstate the applicant in service for the purpose of granting him pension, gratuity and other consequential relief, after setting aside and quashing the order of removal from service and the appellate order confirming it -

(iv) Any other relief or reliefs to which the applicant is entitled under the facts and circumstances of the case.

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

9. Interim order, if any prayed for:

Nil.

10. Particulars of Bank Draft/Postal Order filed in respect of the application fee.

I.P.O. No. 349 655367 Dated: 17-07-07

Payable at: Guwahati

11. List of enclosures:

As stated in the index.

✓ Noted Ch. Singh Ref

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VERIFICATION.

I, Shri Nikhil Ch. Singha Roy, son of Late Sachi Singha Roy, aged about years, resident of Pradhan Nagar, Ashapura Road, P.O. Pradhan Nagar, in the district of Darjeeling (West Bengal), do hereby verify that the contents of paragraphs 4.1 to 4.14 are true to my knowledge and paragraphs 5.1 to 5.12 are believed to be true on legal advice and that I have not suppressed any material fact.

Date :- 31/07/07

Place :- Guwahati.

✓ Nikhil Ch Singha Roy

Signature of the Applicant.

Identified by -
A. M. S. S. S.
Advocate



Standard Form No: 5

Northeast Frontier Railway

ANNEXURE - A
4/2

Standard Form of Charge Sheet
Rule 9 of the Railway Servant.
(Discipline and Appeal Rules, 1968)

No: M/BG/EA/NJP/2004 (NCR)
Divisional Mechanical Engineer (Name of the Railway Administration)
Place of Issue: New Jalpaiguri

Dated: 20/09/2004.
Dated: 20/09/2004.

MEMORANDUM

The President / Railway Board / Undersigned propose (s) to held an enquiry against Shri Nikhil Chandra Singha Roy, MCM (APO)/SGUJ under Rule 9 of the imputations of misconduct or misbehavior in respect of which the enquiry is proposed to be held is set out in the enclosed a statement or articles of charges (Annexure - II). A statement of the imputations of misconducts or misbehavior in support of each article of charges is enclosed (Annexure - II). A list of documents by which and a list of witnesses by whom, the articles of charges are proposed to be sustained are also enclosed (Annexure - III & IV). Further copies of the documents mentioned in the list of documents as per Annexure - III are enclosed.

2. Shri Nikhil Chandra Singha Roy, MCM (APO)/SGUJ is hereby informed that 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 the office hrs. within 10 (Ten) days receipt of this Memorandum.

3. Shri Nikhil Chandra Singha Roy, MCM (APO)/SGUJ is further informed that he may, if he so desires, take assistance of another Railway Servant and of Railway Trade Union (Who) satisfies the requirement of Rule 9 (13) of the Railway Servant (Discipline and Appeal) Rules, 1968 and Note - 1 and or 2 there under as the case may be for inspecting the documents and assisting him in representing enquiry his case before the Inquiry Authority in the event of an oral inquiry being held. For this purpose he should nominate one or more person order of preference. Before nominating the assisting Railway Servant(s) or Railway Trade Union Official(s) Shri Nikhil Chandra Singha Roy, MCM (APO)/SGUJ should obtain an understanding from the nominee(s) that he/they/is/are willing to assist him during the Disciplinary proceedings. The undertaking should also contain particular cases(s) if any, in which the nominee(s) had already undertaken to assist and the undertaking, were furnished to the undersigned along with the nomination.

4. Shri Nikhil Chandra Singha Roy, MCM (APO)/SGUJ is hereby directed to submit to the undersigned a written statement of his defense within 10 (Ten) days of receipt of this Memorandum, if he dose not require to inspect any documents for the preparation of his defense and within 10 (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 name and address of the witnesses if any whom he wishes to call in support of his defense.

5. Shri Nikhil Chandra Singha Roy, MCM (APO)/SGUJ is informed that an enquiry will be held only in respect of those articles of charges as are not admitted. He should, therefore, specially admit or deny each article of charges.

Certified to be true Copy

D.K. Dey
Advocate

ved on 01-11-04
MCSA/RG



6. Shri Nikhil Chandra Singha Roy, MCM (APO)/SGUJ is further informed that if he does not submit his written statement of defense within the period specified in Para - 2 or does not appearing person before the Enquiry Authority or otherwise fails or refused to comply with the provision of Rule 9 of the Railway Servant (Discipline and Appeal) Rule, 1968 or the order / directions issued in pursuance of the said Rule, the Enquiry Authority may hold the inquiry ex-perty.

7. The attention of Shri Nikhil Chandra Singha Roy, MCM (APO)/SGUJ is invited to Rule 20 of the Railway Service (Conduct) Rules, 1968, under which no Railway Servant shall bring or attempt to bring Political or other influence to bear upon any superior Authority to further his interest 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 proceedings, it will be presumed that Shri Nikhil Chandra Singha Roy, MCM (APO)/SGUJ is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the Railway Service (Conduct) Rules, 1968.

8. The receipt of this Memorandum may be acknowledged.

Enclosures:

1. SSE (IC)/C&W/SGUJ's letter No: Leave/C&W/SGUJ/2004.
Dated: 26/08/2004.
2. SSE (IC)/C&W/SGUJ's letter No: Leave/C&W/SGUJ/2004.
Dated: 13/09/2004.

(Signature)
Bimal Topno (DME/NJP)
Name and Designation of the
Competent Authority

Copy to:

1. Shri Nikhil Chandra Singha Roy, MCM (APO)/SGUJ under SSE (IC)/C&W/SGUJ.
 2. DRM (M)/KIR
 3. DRM (P)/KIR
 4. APO/NJP
 5. SSE (IC)/C&W/SGUJ
- for kind information please.
for information please.
for information please.

DME/NJP

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Annexure to Statement Form No: 5 Memorandum of Charge Sheet under Rule 9
of the RS (D&A) Rules, 1968.

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ANNEXURE - I

Statement of article of charges framed against **Shri Nikhil Chandra Singha Roy** while functioning as **MCM (APO)/SGUJ** (Name and Designation of the Railway Servant).

Article - I

That the said **Shri Nikhil Chandra Singha Roy** while functioning as **MCM (APO)/SGUJ** during the period _____ (here enter definite and distinct article of charges).

Shri Nikhil Chandra Singha Roy, MCM (APO)/SGUJ was found unauthorized absent from duty w.e.f 24/06/2004 to 14/09/2004.

By this act, in remaining unauthorized absent from duty has shown gross negligence of duty which is unbecoming of a Government servant and tantamount misconduct of contravened of **Service Conduct Rules, 3.1 (ii) and (iii) of 1968**.


DME/NJP

Article - II

That during the aforesaid period and while functioning in the aforesaid office the said **Shri Nikhil Chandra Singha Roy** (here enter definite and distinct article of charges).

- Nil -


DME/NJP

Article - III

That during the aforesaid period and while functioning in the aforesaid office the said **Shri Nikhil Chandra Singha Roy** (here enter definite and distinct article of charges).

- Nil -


DME/NJP

Certified to be true Copy


Advocate

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ANNEXURE - II

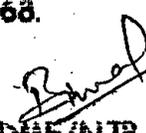
Statement of imputation of misconduct or misbehavior in support of the Article of charges framed against **Shri Nikhil Chandra Singha Roy, MCM (APO)/SGUJ** (Name and Designation of the Railway Servant).

Article - I

That the said **Shri Nikhil Chandra Singha Roy** while functioning as **MCM (APO)/SGUJ** during the period _____ (here enter definite and distinct article of charges).

Shri Nikhil Chandra Singha Roy, MCM (APO)/SGUJ was found unauthorized absent from duty w.e.f 24/06/2004 to 14/09/2004.

By this act, in remaining unauthorized absent from duty has shown gross negligence of duty which is unbecoming of a Government servant and tantamount misconduct of contravened of **Service Conduct Rules, 3.1 (ii) and (iii) of 1968**.


DME/NJP

Article - II

That during the aforesaid period and while functioning in the aforesaid office the said **Shri Nikhil Chandra Singha Roy** (here enter definite and distinct article of charges).

- Nil -


DME/NJP

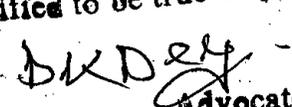
Article - III

That during the aforesaid period and while functioning in the aforesaid office the said **Shri Nikhil Chandra Singha Roy** (here enter definite and distinct article of charges).

- Nil -


DME/NJP

Certified to be true Copy


Advocate



ANNEXURE - III

List of documents by which the Article of Charges framed against **Shri Nikhil Chandra Singha Roy, MCM (APO)/SGUJ** (Name and Designation of the Railway Servant) are proposed to be sustained.

Enclosures:

- 1. SSE (IC)/C&W/SGUJ's letter No: Leave/C&W/SGUJ/2004.
Dated: 26/08/2004.
- 2. SSE (IC)/C&W/SGUJ's letter No: Leave/C&W/SGUJ/2004.
Dated: 13/09/2004.

[Signature]
DME/NJP

ANNEXURE - IV

List of the witnesses by whom the Article of charges framed against **Shri Nikhil Chandra Singha Roy, MCM (APO)/SGUJ** (Name and Designation of the Railway Servant) are proposed to be sustained.

- SSE (IC)/C&W/SGUJ -

[Signature]
DME/NJP

Certified to be true Copy

[Signature]
Advocate

0110817

To,
The DME/N.F.Rly./NJP

Sir,

Sub : Memorandum
Ref : Your No. M/BG/EA/NJP/2004 (NCR), Dated 20.9.2004.

In reply to your memorandum, I beg most respectfully to state the followings for your favourable consideration please.
That the above memorandum is here by acknowledged by me on 1-11-2004

That Sir I am a heart patient and suffering from a long time, at times it comes to me in such a position that I could not get time to call a doctor even what to speak of giving information to the honorable local officer in-charge. I attended velore, Perambur Rly Hospital, for my better treatment and Rly medical authority also adviced me to go to perambur Rly Hospital for my better treatment. Here on 24.06.2004 while I feel pain in chest I promptly tried to give information to my officer in-charge thro a messenger, but it was not accepted by the local office and I have been compelled to get help of a private medical practioner and it was continued upto 25.08.2004 and I reported to my officer in-charge on 26.08.2004 by producing private medical certificate supporting the fact and prayed for my joining on duty.

That Sir, on 26.08.2004, the PMC was sent to the DME/NJP by SSE/I/C/C&W/SGUJ vide his letter of even no. dated 26.08.2004. There after on 10.09.2004 DME/NJP adviced SSE/I/C/C&W/SGUJ to direct me for obtain DFC. Accordingly DFC was issued by Sr. DMO/SGUJ and I was allowed to resume duty on 15.09.2004.

That Sir, I was sick from 24.06.2004 to 25.08.2004 and in support of the fact the sick and fit certificate have already been submitted and therefore I was not will fully absenting from my duty and I deny the charge of unauthorised absent.

That Sir, from 26.08.2004 to 14.09.2004 to be treated as on duty, because I reported to the officer of C&W/SGUJ producing sick and fit certificate from private Doctor on 26.08.2004. So, the period from 26.08.2004 to 14.09.2004 dose not arise as unauthorised absent.

That Sir under the above circumstances, I pray to your honour to exonerate me from the charges and for which act of your kindness I shall remain grateful to you, More over I am at the verge of retirement and the date of retirement is knocking at the door.

With highest of regard.

Yours faithfully,
MCM/ APO
Under SSE/C&W

Dated : Siliguri
10-11-2004

Certified to be true Copy
BK Dey
Advocate

Standard Form No: 7

Standard form of order relating to appointment of
Inquiry Officer / Board of Inquiry
[Rule 9 (2) of RS (D&A) Rules, 1968]

No: M/BG/EA/NJP/2004 (NCSR) Dated: 18/11/2004
Divisional Mechanical Engineer (Name of the Railway Administration)
Place of Issue: New Jalpaiguri Dated: 18/11/2004

ORDER

Whereas inquiry under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 is being held against Shri Nikhil Chandra Singh Roy, MCM (APO)/SGUJ (Name and Designation of the Railway Servant).

AND WHEREAS the Railway Board / the undersigned consider (s) that a Board of Inquiry / an inquiry officer should be appointed to inquiry into the charges framed against him. *? what is the charge?*

NOW, THEREFORE, the Railway Board / the undersigned, in exercise of the powers conferred by Sub - Rule (2) of the said Rules, hereby appoint (s) -

- A Board of Inquiry consisting of
1.)
 2.) Here enter Names and Designation
 3.) of Members of the Board of Inquiry.

OR

Shri S.S.Bardhan, SLI/NJP (Name and Designation of the Inquiry Officer) as Inquiry Officer to enquire into the charges framed against Shri Nikhil Chandra Singh Roy, MCM (APO)/SGUJ.

Signature *[Signature]*
Bibek Tapno
DME/NJP
Secretary, Railway Board
OR

Designation of the Disciplinary Authority

Copy to (Name and Designation of the Railway Servant) Shri Nikhil Chandra Singh Roy, MCM (APO)/SGUJ, under SSE (IC)/C&W/SGUJ - For giving his Defense Council for assisting him in enquiry within 07 (Seven) days with consent of the D.C. in writing.

Copy to (Name and Designation of the Members of the Board of Inquiry / Inquiry Officer) - Shri S.S.Bardhan, SLI/NJP - Complete Case File is enclosed from SN No: 1 to 19 and PP - I to II.

He is advised for early submission of the Enquiry report for finalization of Case.

Copy to (Name and Designation of the lending Authority) for information - SSE (IC)/C&W/SGUJ

Note: To be used whenever applicable - Not to be inserted in the copy sent to the Railway Servant.

Certified to be true Copy

[Signature]
Advocate

2
13/11

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ANNEXURE D

TO
The Divisional Mechanical Engineer,
N.F.Rly. New-Jaipaiguri.

(Through proper channel)

sir,

Sub: - Appointment of Enquiry Officer/Board of Enquiry.

Ref: - Your No. M/DG/BA/NJP/2004 (NCSR) dt. 18.11.2004.

In reply to your memorandum no quoted above, I beg most respectfully to state the followings :-

That it is not fully understood, what is the charges framed against me as stated in para-II of your aforesaid memorandum and that the specific charges are not mentioned there nor any past references.

That the charges/order which I am alleged to have violated were never brought to my notice in terms of GM(P)/MLGS letter No. E/172/1 dt. 5-3-1963.

That this representation may not kindly be construed as my reply to the alleged unknown charges, as without knowing the basis on which the charges have been levelled, I shall not be able to understand as to how far I am responsible.

That on hearing from you on the points raised above, the name of the defence council and his consent shall be furnished accordingly on priority basis and also the names of prosecution witness, who shall have to be present in the enquiry for cross examinations on demand.

That I may please be given assistance of a Rly. employee to help me in examining/question documents viz the details of report based on which the charges have been framed or levelled against me. More over an officer from personal branch to be arranged and include in the board of enquiry, unless at will be deemed that the natural justice will be ignored in my case.

With highest of regards,

Dated Jaipur

The 23rd Dec, /04.

Yours faithfully,

M. K. Ch. Singh

Certified to be true Copy

D. K. Dey
Advocate

N.F.Ry - 28

ANNEXURE - E

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From:-
S.S. Barchan,
Sr. LI/NJP.
The Inquiry officer.

Dated, the 17th
February, 2005.

To
Sri Nikhil Chandra Singha Roy,
MCM (APO)/SGUJ.
Through: SSE (IC)/C & W/SGUJ.

Sub:- DAR Enquiry.

In terms of DME/NJP's letter No.M/BG/EA/NJP/2004 (NCSR) dated 18.11.2004, you were advised to nominate your defence counsel to assist you in the enquiry. Although a considerable period of time has already been passed, you have not nominated any staff to act as your defence counsel.

The date of DAR enquiry has been fixed to be held on 28-2-2005 in the office of DME/NJP to be commenced from 10.00 hrs.

In the mean time, if you desire, you may nominate your defence counsel and the letter of nomination accompanied with written consent of the D.C. may be sent to the undersigned, any day, prior to the date of enquiry. Otherwise, you will have to defend your case by yourself.

S. S. Barchan
Sr. LI/NJP 17/2/05
Inquiry officer.

Copy forwarded to:-

- 1) SSE (IC)/C & W/SGUJ to spare and direct Sri Nikhil Chandra Singha Roy, MCM (APO)/SGUJ to attend the enquiry on the specified date, time and the venue.

Inquiry Officer.

Certified to be true
DK Roy
Advocate

R
17.2.05

My reply in ref. to DAR letter not received

not possible unless reply is received

To
The DME/N.F. Rly/NJP

Through proper Channel

Sir,

Sub: Appointment of Enquiry Officer/Board of Enquiry

Ref: My petition dt. 23/12/04 in ^{reply} respect to your letter no. M/BG/EA/NJP/2004 (NCSR) dt. 18.11/2004 acknowledged by your SSE/1/C/C&W/SGUJ on 24/12/04.

Kindly refer to my letter mentioned above and let me know the position of the matter (a true copy of the letter is enclosed) and unless your reply is received it will not be possible for me to furnish the name of defence councilor and that the date of enquiry, as fixed ^{by} the enquiry officer vide his letter dt. 17.2.2005 may kindly be deferred and I shall furnish the name of defence councilor only on hearing from you.

Thanking you.

Dt 18-2-2005

Yours faithfully,

N.C. Singha Roy

N.C. Singha Roy

MCM/APO/SGUJ

Encl: 1

Copy to:

1. Shri S.S. Bardhan SLI/NJP, The Enquiry Officer for information and necessary action please. He is to inform that unless the DME/NJP's reply is received, it will not be possible for me to furnish the name of D.C. and as such the date of enquiry may please be ~~attend~~ ^{altered}.
2. The Secretary, N.F. Rly. Masdoor Union/Siliguri Branch and N.F. Rly Mazdoor Union NJP/Branch for information. They are requested to look into the matter and take proper action, so that the natural justice is come to light.

*Recd
Secretary
28/2/05
Encl: 1+1*

Dt 18/2/2005

*Received
18/02/05*

N.C. Singha Roy

Sri Nikhil Chandra Singha Roy

MCM/APO/SGUJ

copy

Certified to be true Copy

*D.K. Dey
Advocate*

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ANNEXURE- 6

N.E. Riy

No.EO/DAR/NC SR/05

Dt. 13-5-2005

From: Shri S.S. Bardhan
Sr. L.I. / NJP
The Enquiry Officer

To: Shri Nikhil

Chandra Singha Roy
MCM (AFO) / SGO
Ashapura Sarani,
Behind Aabhahani
Chakra Club
PO Pradhan Nagar /
Siliguri
Dist. Darjeeling
PIN: 734403.

Sub: DAR enquiry.

In terms of DME/NJP's L/No. m/B6/EA/MP/2004 (No SR) dt. 16-11-2004 the date of DAR enquiry had been fixed on 28-7-05 in the office of DME/NJP. But you have failed to attend the enquiry on the specified date, though the letter received by you on 17-2-05 with your clear signature.

As per SSE/IC/C&W/sguj's dated 14-3-05 it was understood that you could not be spared due to your self sickness w.e.f. 22-2-05 but as per sick list by Sr. DME/Sguj on 07-3-05 your name was discharged from sick list w.e.f. 07-03-05 and still now you have not informed or joined in your competent authority for further proceedings.

Therefore, you are advised to attend the DAR enquiry on 16-5-2005 in the office of the DME/NJP at 1000 hrs without fail as the DAR enquiry already been delayed, otherwise X-Party action will be taken against you.

Sd/ S.S. Bardhan
Sr. LI / NJP as
Enquiry Officer

Copy to :
DME / NJP
DME (P/Khtr)
For information.

Certified to be true Copy

D.K. Dey
Advocate



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ANNEXURE H
N.F.S - 174 M

Northeast Frontier Railway

Imposition of penalties under items (i), (ii) & (iii) of Rule 1707 (1) and items (i) and (ii) of Rule 1707 (2) - RI.

Ref: SR - 9 Under Rule 1716 - RI)

No: M/BG/EA/NJP/2004(NCSR).

Dated: 26/05/2005.

To
Shri Nikhil Chandra Singha Roy, MCM (APO)/SGUJ.
Under SSE (IC)/C&W/SGUJ

Res No 4247/05
dt. 28/5/05
Recd on 31/5/2005

With reference to the Major Memorandum No: M/BG/EA/NJP/2004 (NCSR) dated: 18/11/2004, the undersigned have gone through the DAR enquiry report against Shri N.C.Singha Roy, MCM (APO)/SGUJ under SSE (IC)/C&W/SGUJ, submitted by Shri S.S.Bardhan, Sr. LI/NJP (Enquiry Officer) of the case, carefully and the following facts have been surfaced:

The date of enquiry was fixed on 28/02/2005 by EO: Notice of enquiry was received by the delinquent staff on 17/02/2005 under his clear signature.

But Sri N.C. Singha Roy (delinquent) reported sick on 22/02/2005 and subsequently his name was stuck off from sick list by Sr. DMO/SGUJ for his non - attendance, though his residence was only 200 mtrs. away from the Health Unit/SGUJ. This clearly indicates that Sri Roy is evading the DAR enquiry deliberately and still continuing unauthorized absence from duty.

Further it is added that Enquiry Officer had fixed next date of DAR enquiry on 16/05/2005 and Notice for the same was sent through special messenger Shri ^{Rajendra} Prasad Tech. Gr.I/SGUJ under SSE (IC)/C&W/SGUJ, in the residence of Shri Singha Roy and also through postal Dak. But he refused to receive the notice as such.

The Enquiry Officer has left no stone unturned to get appearance of Shri Singha Roy (Delinquent) before enquiry.

However, to complete the DAR enquiry process before retirement of Shri Singha Roy i.e. on 31/05/2005, there was no option left except conducting the DAR enquiry EX - PARTE and accordingly EO was advised to proceed with EX - PARTE DAR enquiry, which was completed on 16/05/2005.

The final report was received from Enquiry Officer on 17/05/2005. Wherein the charge leveled against Shri N.C. Singha Roy, MCM (APO)/SGUJ under SSE (IC)/C&W/SGUJ vide Major Memorandum No: M/BG/EA/2004 (NCSR) dated: 18/11/2004 for his unauthorized absence from duty w.e.f 24/06/2004 to 14/09/2004 has been proved all together.

In view of the above, to meet of the end of justice, the undersigned impose a penalty upon Shri N.C.Singha Roy, MCM (APO)/SGUJ under SSE (IC)/C&W/SGUJ' as under:

"Shri Nikhil Chandra Singha Roy, MCM (APO)/SGUJ under SSE (IC)/C&W/SGUJ is hereby removed from service w.e.f 27/05/2005".

Signature : [Signature]
Name : A.B.Nandi, (DME/NJP)
Signature & Designation of the
Disciplinary Authority

Copy forwarded for kind information and necessary action to:

DRM (P)/KIR, DRM (M)/KIR, APO/NJP & SSE (IC)/C&W/SGUJ

Instruction

An appeal against those orders lies to Sr.DME/KIR next immediate superior to the authority passing the orders.

Certified to be true Copy

[Signature]
Advocate

To
The Senior Divisional Mechanical Engineer, ✓
N.F.Railway, Katihar.

Through : DME/NJP (Disciplinary Authority)

Subject : Appeal against imposition of penalty by the Disciplinary authority vide No. M/BG/EA/NJP/2004(NCSR) Dated 26.05.2005 in connection with Major Memorandum (SF/5) No. M/BG/EA/NJP/2004(NCSR) Dated 20.09.2004 for revocation of removal order.

Respected Sir,

Respectfully I Sri Nikhil Chandra Sinha Roy, ex MCM(APO)/C&W/SGUJ under SSE(IC)/C&W beg to draw your kind attention and sympathetically consideration please on the above mentioned reference.

That the reply of the memorandum given on 10.11.2004 stating that I was sick and was not absent unauthorisedly and the period was covered by the Railway Duty Fit certificate issued by the DMO/SGUJ vide his DFC No.47 and self RMC dated 25.08.2004. In this connection I beg to invite your attention to the letter from SSE/IC/C&W/SGUJ vide his No. Leave/C&W/SGUJ/04 dated 13.09.2004 addressed to DME/NJP and according to the order of DME/NJP I was allowed to resume my duty. Naturally I was sick and could not attend duty which was intimated to my incharge by sending my son along with PMC due to severe heart troubles but my incharge denied to accept the said PMC. The said absence was not willfully or unauthorisedly and from 24.06.2004 to 25.08.2004 I was under private Doctor's treatment and also from 26.08.2004 to 14.09.2004. I was under the care of SSE/IC/C&W/SGUJ as such 24.06.2004 to 14.09.2004 to treat unauthorised absent is irregular/illegal.

That Sir, the following irregularities have been noticed :

1. That Sir DME/NJP appointed EO vide No. M/BG/EA/NJP/2004(NCSR) dated 18.11.2004 just after 50 days and on other hand Sri S.S. Bardhan, EO of my charged memorandum had fixed inquiry date on 28.02.2005 after 70 days knowing fully that my retirement was due on 31.05.2005, from this it is proved, there was some ill motive and EO was biased upon me as per advice of SSE/IC/C&W/SGUJ.
2. Standard form/printed as prescribed in the DAR are not used instead of above one computerised form issued in which no signature of DA in original copy, when chargesheet was issued against me. Only DA signed in the place of copy enclosed to me, as such the said chargesheet was not in order, defective and wrong as per DAR 1968. Moreover documents are not enclosed along with the said defective chargesheet as per extant DAR rule 1968.
3. It is a matter of astonishing that without giving reasonable opportunities and justice (NIP) penalty imposed upon me on defective chargesheet. Further chargesheet issuing authority (DA) DME/NJP Sri Bimal Topno transferred from there before taking final decision in this case and the present DME/NJP Sri A.B. Nandy has decided the case and imposed NIP. This actness is also violation of the DAR 1968.

Contd.....2

Certified to be true (C.O.F.)
DKDey
Advocate

On receipt of the letter from EO dated 17.02.2005 I preferred an appeal to DA (DME)/NJP on 18.02.2005 is a self-explanatory may kindly be seen from my SR. I had no confidence upon Sri S.S. Bardhan, Sr. LI/NJP as because Sri Bardhan is a friend of Sri P.K. Sarkar, SSE/IC/C7W/SGUJ. As such I preferred one appeal on 23.12.2004 claiming one personal branch officer to include in the board of enquiry for the natural justice on the case. It is denial of reasonable opportunity of defence which is required to the charged employee under the extant rule and instructions and it is also a gross violation of the rights provided to such employee under article 311(2) of the constitution of India. Further Sri P.K. Sarkar, SSE/IC/C&W/SGUJ was biased upon me due to some internal family matters as such I am victimised on some conspiracy.

4. That Sir, as per DAR, 1968 : EO will advise charged railway employee to meet him within 10 working days after appointment as EO. ✓
 5. EO will allow the charged railway employee 30 days time to collect document and to submit his defence and his Defence Counsel. Than EO will fix for the date for enquiry and advise the charged employee.
 6. Exparte enquiry has to be conducted if the charged employee does not submit the statement of defence on time or does not attend the enquiry willfully/deliberately.
 7. Request for document will be forward to DA by EO if reasonable, if not reasonable must be informed to charged employee in writing as per DAR-9(15).
 8. More chance had not given me to satisfied and to defence myself as such authority denied the reasonable opportunity and thus natural justice is ignored.
 9. Charged employee must be informed by DA for appointment of EO enquiry has to conduct exparte enquiry without charged employee (reference rule 9 (9) (b) Rule 9(23).
 10. Denial the opportunity of making representation on the penalty proposed to be imposed before any order is made.
 11. Tagging the previous absent period 24.06.2004 to 24.09.2004 as mentioned in the defective chargesheet base on production evidential document by the charged employee allowed to join duty at present it has no relevancy with the present charges as mentioned in the third para of NIP. In this respect Railway Board's guideline communicated by GM/P/NFR vide no. DAC-587/E/74/01/Pt XVI© dated 08.08.2001 are not followed.
- The punishment (NIP) removal from service just before 5 days of normal retirement is adversely affected upon the family and family members in regards to FS payment and Pension etc. after 40 years service in the railway.
12. Sri P.K. Sarkar, SSE/IC/C&W/SGUJ direct me NJP/ROH on 27.09.2004 as temporarily vide his No. E/C&W/SGUJ dated 27.09.2004 due to his personal grudge which was not within his purview without obtaining any order from competent authority. He can't did so. I carried the said

Contd.....3

Certified to be true Copy

DK Dey
Advocate

order and joined at NJP. I preferred an appeal on 28.09.2004 and lastly I came back again C&W/SGUJ since then due to constant marking me absent and explanation by the SSE/IC/C&W/SGUJ. I was mentally disturbed and the blood pressure increased and I have been compelled to submit sick report on 22.02.2005 and under the treatment of Sr. DMO/NFR/SGUJ. After a few days Sr. DMO expressed his inability to put me in sick list for more days. Reasons unknown to me and also Sr. DMO advised me to NJP Hospital for indoor admission. But due to communication trouble for my family members I could not accept the said advise and I have tentatively gone under treatment of private practitioner at Siliguri and I was sick till 30.05.2005 and my joining was on the date of my normal retirement. Lret

13. That during my sickness from 22.02.2005 to till 30.05.2005(A/N) my joining was 31.05.2005 but on the same date a postal registered cover came from DME/NJP which I received with the hope that something favourable order and decision will be there, but alas! It is nothing but a removal order w.e.f. 27.05.2005 on the basis of exparte decision of EO, as such I did not find the opportunity to join my duty.

Therefore, under the above circumstances, I pleaded not guilty and pray humbly to your honour for the following relief :

- i) Revocation of the removal order and to arrange re-instatement in service and payment of all dues including pension etc. etc.
- ii) Arrangement of sick period salary by regularising into commuted leave considering normal retirement.

With regards,

DA : One Doctor's certificate, Duty fit certificate on 30.05.2005(A/N)

Yours faithfully,

Dated, Siliguri
28th June, 2005.

Nikhil Ch. Sinha Roy
(NIKHIL CHANDRA SINHA ROY)
Ex MCM/APO(C&W)/SGUJ

Certified to be true

DKDey
Advocate

35

Regd with A/D

ANNEXURE- J

52

From :
Sri Nikhil Ch. Singh Roy
Asha Purna Sarani by lane
P.O. – Pradhan Nagar
Siliguri – 734003.

To
The Sr. DME / N.F. Rly / Katihar

Sir,

Sub : Appeal against imposition of Penalty by the D.A. vide no.
M/BG/EA/NJP/2004 (NCSR) Dt. 26/5/2005 etc., etc.

Ref : My appeal dated 28th June 2005 addressed to
Sr. DME/N.F. Rly/KIR

Most respectfully, I beg to invite your kind attention to my appeal mentioned above and request your honour to let me know the present position of the case; since a considerable period has been rolled by after submission of my appeal; neither any reply nor my own contribution have been paid as yet.

The appeal was sent to you by registered post from Pradhan Nagar Post Office, which has been acknowledged by your office on 13/7/2005.

With best regards.

Dated Siliguri
the 5th November 2005

Yours faithfully

Nikhil Ch. Singha Roy
Ex MCM (APO)/C&W/N.F.Rly
Siliguri Junction.

Copy :

1. Forwarded to the General Manager N.F. Rly, Maligaon, Guwahati – 11 along with a copy of appeal submitted to the Sr. DME/N.F. Rly/ KIR, For his information and necessary action please. The appeal is self explanatory.
2. DME/N.F. Rly/ New Jalpaiguri for information and necessary action please.

Nikhil Ch. Singha Roy
Ex MCM/APO/under SSE/C&W
Siliguri Junction.

Certified to be true

DK Dey
Advocate

- 35 -

ANNEXURE- K

To
The DRM / N.F. Rly / KIR

Sir.

Sub : Appeal against imposition of penalty given by DME / NJP vide his no. M/BG/EA/NJP/2004 (NCSR) dated 26/5/2005 removal from service (on ex parte decision).

Ref. : Appeal made to the next Appealate Authority i.e. Sr. DME / KIR on 28/6/2005 which was acknowledged on 13/7/2005 and subsequent reminder dated 5/11/2005, acknowledged on 9/11/2005.

In addition to my appeal mentioned above I beg to inform you that neither any reply was given to me nor my dues are being paid on account of final settlement though a considerable period has been rolled by since my appeal is submitted.

That Sir, my date of retirement was on 31/5/2005 and I was removed from Rly. service on 27/5/2005 when I was on sick.

That I was fit to resume on 30/5/2005 and received the said order on 30/5/2005, day before my retirement.

On being received the removal order I made an appeal to the next higher authority on 28/6/2005, (copy enclosed) but to no reply even after reminders submitted to the Sr. DME / KIR and finding no other way I have been compelled to submit my prayer to your honour for taking proper action on the matter and brief case is mentioned below :-

That I was sick from 24/6/2004 to 25/8/2004 and reported to SSE/C&W/SGUJ on 26/8/2004 for duty. SSE/C&W/SGUJ sent me to DME/NJP and DME/NJP directed me to DMO/SGUJ for DFC and after having DFC I joined my duty. This is the case.

DME/NJP issued a memorandum for unauthorized absent from duty on 20/9/2004 that I was unauthorized absent from 24/6/2005 to 14/9/2005. I replied that I was sick from 24/6/2005 to 25/8/2005 and from 26/8/2005 to 14/9/2005, I was on duty.

Later-on, a Board of enquiry was appointed by DME/NJP with Shri S.S. Bardhan Sr. LI/NJP as inquiry officer.

Due to my sickness I could not attend the enquiry, and E.O. submitted an ex-parte decision to DME/NJP and on that basis I was removed from service on and from 27/5/2005 (i.e. four days before my retirement). Thereby I was denied natural justice.

That Sir, I am a heart patient and I was sent to South Central Railway Hospital at Parambur - Madras by MS/NJP with the approval of CMO/Maligaon vide their letter no.

Certified to be true Co.

BK Dey
Advocate

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H/31/1/MCCM Dt. 9/1/1997 and that is known to the DME/NJP and SSE/C&W/SGUJ. In spite of that at the verge of my retirement, I was put to trouble some job and I became sick. It is not out of place to mention that during my long period of service, I earned the heart disease and at the last stage of my service, instead of giving sympathetic and affectionate attitude, I was put into troubles and this ex-parte decision is proved that some ill motive is there to remove me from the Railway service. A copy of such expertise decision of E.O. was also not served to me to represent my case to Disciplinary Authority.

I have been made victimized most illegally only to meet personal grudge against me and that too by taking my service prior to 4 days of my due retirement, violating all service rules prescribed for such dismissal. The allegation of un-authorized absent is not tenable at all since all those days I was under private treatment at my choice which would be proved from my medical papers which the Disciplinary Authority failed to consider. Disciplinary Authority did not consider my 42 years of un-blemished service career with no sick on those days. The unauthorized absent for which I have been charged though not sustainable to me, yet if it so, the punishment inflicted upon me is too high and disproportion to the offence.

The care and caution to be taken to a staff which he is on the verge of his retirement as prescribed by service rules has been totally ignored by the Disciplinary Authority while dealing my case as well as denial of natural justice to me in taking such a stringent action against me by taking my service denying all retirement benefits.

Your honour is fervently prayed to reconsider my case calling all records of the case and to allow me a personal hearing to represent my case for the ends of Justice and fair play.

Under the circumstances, stated above, I pray natural Justice and arrange to pay all of my dues including pensional benefit and oblige.

Thanking you.

Yours faithfully

Nikhil Ch. Singha Roy
(Nikhil Ch. Singha Roy)

Date 7.1.2006.

Encl: Copy of

- 1. Original appeal.
- 2. Removal order.

Copy forwarded to 1) The Sr DME/NF, Rly/KIR } for information
2) The DME/NF, Rly/NJA } + necessary action

Certified to be true cc

D.K. Dey
Advocate

38

ANNEXURE- [60

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 67 of 2006.

Date of Order: This the 16th day of March 2006.

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

Sri Nikhil Ch. Singha Roy,
S/o Lt. Sachi Singha Roy,
Resident of : Pradhan Nagar,
Ashapura Road,
P.O. Pradhan Nagar
District - Darjeeling (West Bengal).

... Applicant.

By Advocates Mr. S.C. Biswas, Mr. A. Sayed, Mr. R. Dhar and Ms.
M. Das.

- Versus -

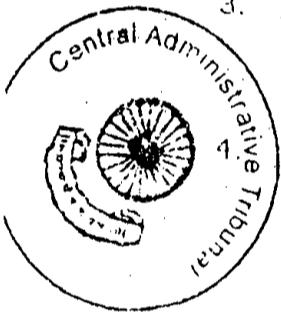
1. The Union of India,
Ministry of Railway, represented by its Chairman,
Railway Board, Rail Bhawan, New Delhi.
2. The Chief General Manager,
N.F. Railway, Maligaon,
Guwahati - 11.
3. The Senior Divisional Mechanical Engineer,
N.F. Railway,
Katihar.
4. The Divisional Mechanical Engineer,
N.F. Railway,
New Jalpaiguri.

... Respondents.

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

.....
Certified to be true


Advocate



ORDER (ORAL)

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

The applicant entered the service under the N.F. Railway in the year 1963 and while the applicant was working as MCM(APO), his services were removed vide Order No. M/BG/EA/NJP/2004 (NCSR) dated 26.05.2005, which according to him was without giving reasonable opportunity just before 5 days of retirement. The applicant has filed an appeal dated 28.06.2005 (Annexure - IX) before the Competent Authority, which is yet to be replied or considered. Aggrieved by the said inaction, the applicant has filed this application seeking the following reliefs: -



"In the premises aforesaid it is therefore respectfully prayed. Your Lordships may be pleased to admit this application, call for the records, issue Rule calling upon the Respondents to show cause as to why the impugned order No. M/BG/EA/NJP/2004 (NCSR) dated 26.05.2005 should not be set aside and quashed and as to why direction shall not be, directing the Respondent till regularise the period of absent from 24.6.04 to 14.9.04 for the purpose of pension and other retirement benefit and also direct the Respondent to release the gratuity, provisional pension, GPF and other service benefit and upon cause or causes being shown make the Rule absolute and/or pass such other order or orders as your Lordships may deem fit and proper

- AND -

Pending disposal of the application Your Lordships may be pleased to direct the respondent to pay G.P.F./G.I.S. amount to the applicant which has been deducted from his salary."

2. I have heard Ms. M. Das, learned counsel for the applicant and Dr. J.L. Sarkar, learned standing counsel for the Railways.

Certified to be true
AK Dey
 Advocate

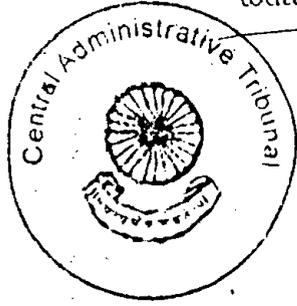
3. Counsel for the applicant submits that the applicant will be satisfied if a direction is given to the Appellate Authority to consider and dispose of the appeal dated 28.06.2005 within a time frame. Counsel for the respondents also submits that it will meet ends of justice.

4. Recording the said submissions of the learned counsel for the parties, I am of the view that such recourse will grant some relief to the applicant. Therefore, this Tribunal directs the Appellate Authority, the Respondent No. 3 to consider and dispose of the said appeal dated 28.06.2005 within a period of three months from the date of receipt of this order. I also direct the respondents to give personal hearing to the applicant, if so opted by the applicant and pass a speaking order.

The O.A. is disposed of at the admission stage itself. In the circumstances, no order as to costs.

Counsel for the applicant will produce copy of the O.A., copy of this order and any other documents ^{✓ available} within ten days from today.

Sd/ VICE CHAIRMAN



TRUE COPY
प्रतिलिपि
NS 20/3/06
अनुभाग अधिकारी
Section Officer (Judl)
Central Administrative Tribunal
सुपरीम कोर्ट इलाहाबाद

ii-5

Certified to be true Copy

DK Dey
Advocate

NS 20/3/06

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ANNEXURE - M

Northeast Frontier Railway

Office of the
Divisional Mechanical Engineer
N.F. Railway / New Jalpaiguri

No: M/BG/EA/NJP/2004 (NCSR)

Dated: 23/03/2006.

To
Shri Nikhil Chandra Singh Roy
Ashapurna Sarani, By Lane
Post: Prodhan Nagar
Distt: Darjeeling - 734003
West Bengal

Through: Registered Post with A/D.

Sub: Representation against imposition of penalty of
"Removal from Service w.e.f 27/05/2005" vide
this office NIP of even No. dated: 26/05/2005.
Ref: Your Representation dated: 5th November 2005
=====

In reference to the above you are hereby informed that the
appellate authority (Sr. DME/IC/KIR) has passed the following
orders:

*"The appeal has been seen and it is clear that party
was not on the sick list yet he did not join. All the efforts
made by the E.O. to ensure natural justice are on record.*

*Having considered the appeal it is regretted on lack of
merit the punishment holds good".*

(Utpal Sarma)

ADME/NJP
Asst. Dival. Mech. Engineer
New Jalpaiguri

- Copy forwarded for information and necessary action to
1. DRM(P)/KIR
 2. DRM(M)/KIR
 3. APO/NJP
 4. SSE (IC)/C&W/SGUJ

Certified to be true Copy

D.K. Roy
Advocate

ADME/NJP

GUWAHATI.

O.A. No. 205/2007

Sri N.C. Singha Roy

- Vs -

Union of India & Ors.

Written statements on behalf of the respondent
Nos. 3 and 4.

The respondent Nos. 3 and 4 most respectfully beg
to state as under :

1. That they have gone through the original application and understood the contents thereof.
2. That the O.A. is not maintainable for non-joinder of necessary parties and misjoinder of parties. It is stated that there is no Chief General Manager, N.F. Railway shown as respondent No. 3. The applicant deserves to be dismissed on this ~~count~~ count alone.
3. That in reply to statements in paragraphs 4.3, 4.4, 4.5, 4.6, 4.7, 4.8 and 4.9 it is stated as under :

The applicant was unauthorisedly absent from duty and not present at his working place. The Charge sheet was handed over to him on 1.11.04. The applicant was advised to report to Sr. DME/IC/KIR on 23.6.04 but he refused to

I undertake to serve
copy on the advocate
of the opposite party.

Contd....2/-

Abdul Bijendra Nam
✓ (MTR)
N. F. Railway, Kotihar
S. N. Tamuli (Advocate)
Filed by Rly
S.C. Through
N.F. Railway, Kotihar

Abdullah Biji
Nandi

receive the letter and pass and from next date i.e. from 24.6.04 he was absent from duty without any intimation. He did not bother to inform any competent authority regarding his absence during the period. On 26.8.2004 he appeared in his office with a PMC issued by a Private Doctor/Siliguri, but his residence was only 200 meter from Rly. Hospital Being a Railway Employee he was required to attend Railway Hospital. The above action shows that he was deliberately absented from duty.

During the absence period applicant did not inform any competent authority that he was under treatment of a Private Doctor, which is also a violation of Service Conduct Rule.

As per procedure of DAR, DA appointed Enquiry Officer. Applicant failed to give the name of his DC despite receiving the letter.

In Article-I of Annexure-I and Annexure-II it is clearly mentioned that applicant was unauthorisedly absent from duty w.e.f. 24.6.2004 to 14.9.2004.

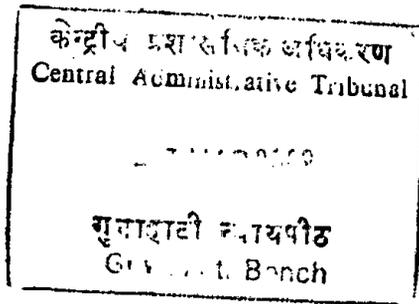
It is the responsibility of C.O. to choose Defence Counsel who ^{would} defend his case during DAR enquiry and he was also advised to do so but he failed. It is the sole responsibility of DA to appoint E.O. into the case, if any objection during enquiry, C.O. may submit his appeal to revisory

Abdullah
P. J. Das
Sr. Divl. Misch. Engineer (I.C.)
श्री. सी. रोय, कटिहार
N.F.P.

authority regarding biasness of E.O. But C.O. has not attended the enquiry deliberately. The allegation of the applicant about bias of E.O. is denied. Date fixed for DAR enquiry was informed by E.O. to C.O. and letter was received by him on 17.2.05. But he neither submitted the name of his DC nor attended the enquiry. As regards statements in Para 9 it is stated that the applicant was to attend enquiry first and thereafter on the basis of the conducting enquiry he could submit his representation before the E.O.

4. That in reply to statements in para 4.10 of the O.A. it is stated that applicant was under RMC sick w.e.f. 22.2.2005 but due to his non attendance to Rly Hospital his name was struck off from sick list from 7.3.05. But he did not report to his office which is also a serious violation of service conduct rule.

Last date of enquiry was fixed by E.O. on 16.5.2005 and accordingly intimation was given to C.O. by Registered post as well as through a special messenger. He was informed that if he failed to attend the enquiry, ex-parte enquiry will be held. Shri Singha Roy refused to receive the letter from messenger which is also a serious violation of service conduct rule. Giving him more than sufficient and reasonable opportunities an ex-parte enquiry was conducted by E.O. and charges ^{were} established beyond doubt by E.O. On enquiry report submitted by E.O., DA considered the case very carefully and imposed the penalty of "removal from service".



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Abdul Big-endar
Sr. Div. Mech. Engineer (I)
G.O. No. 207/2005

5. That in reply to the statements made in para 4.11 of the O.A. it is stated that the applicant was althrough ^{trying} to delay/drag the departmental proceeding with the intention to delay it beyond his date of retirement i.e. 31.5.2005. The respondents examined the Enquiry Report and found that the facts are clear, and transperant, and in the nature of the case no prejudice would be caused to the applicant if a decision is taken on the basis of the materials on record. On the other hand supply of copy, which in the instant case would be a mere formality, would cause delay, and long exercise by higher authorities only as a procedural technicality. As no prejudice would be caused to the applicant by the non-supply of the Enquary Report, the penalty was imposed.

6. That in reply to statements in para 4.12 and 4.13 it is stated that appeal of C.O. was considered by the appellate authority and order was passed and that personal hearing was not given as he did not opt for personal hearing.

After careful consideration of appeal appellate authority passed the order. Due to non attendance at Rly. Hospital his name was struck off from sick list, ^(such non-attendance) is also a violation of rule. His appeal was considered before receiving order dated 16.3.2006 of the Hon'ble Tribunal in O.A. No. 67/2006.

7. That in the facts and circumstances of the case the O.A. deserves to be dismissed with cost.

केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal

गुवाहाटी न्यायपीठ
Guwahati Bench

VERIFICATION.

I, *A. B. Nandi*, son of
Lali Rajnikanta Nandi, aged about *58 yrs.*
years, working as *Sr. Divisional Mechanical Engineer*
do hereby
say that I am conversant with the facts of the case,
and have been authorised by respondent No.
to verify and sign this verification. Accordingly I
verify that the statements in paragraphs 1 to
are true to my knowledge and that I have not suppressed
any material facts.

I sign this verification this day of
, 2007 at

Abdul Bijendra Nandi

✓ Signature.

ज्वर मंडल यांत्रिक इंजीनियर (प्रभार)
Sr. Divl. Mech. Engineer (I. C.)
पू० सी० रेलवे, कटिहार
N. F. Railway, Katihar

File in Court on.....
Court Officer

केन्द्रीय प्रशासनिक अपिलेशन
Central Administrative Tribunal
2 MAR
गुवाहाटी न्यायपीठ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH::GUWAHATI.

O.A. No. 205/2007.

Shri Nikhil Ch. Singha Roy ... Applicant.

-Vs-

The Union of India & Ors. ... Respondents.

Filed by:-

Nikhil Ch. Singha Roy

Through: Dipak Kr Dey
Advocate

25/3/08

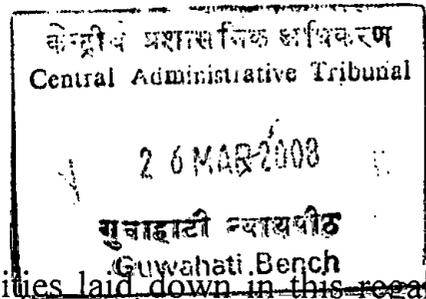
REJOINDER BY THE APPLICANT TO THE WRITTEN STATEMENT
OF THE RESPONDENT NOS. 3 & 4.

1. That, the applicant has received a copy of the written statement filed on behalf of the respondent nos. 3 and 4 in the above noted original application. After going through the written statement the applicant begs to file his rejoinder as follows.

2. That, the charge sheet dated 20-09-2004 is defective in as much as the period of absence has been shown to be with effect from 24-06-2004 to 14-09-2004 whereas it is admitted position that the applicant joined on 26-08-2004. This has not been controverted in the written statement. The charge sheet is invalid in the eyes of law if considered from another angle that is the respondents have nowhere denied that the applicant was not ill for the period mentioned in the charge sheet but at the same time they have asked him to show cause why he was absent for the said period, which is self contradictory.

Under the relevant rules, the respondents have the liberty to reject the medical certificate produced by the applicant from registered medical

R COPY
For ALP S.C.



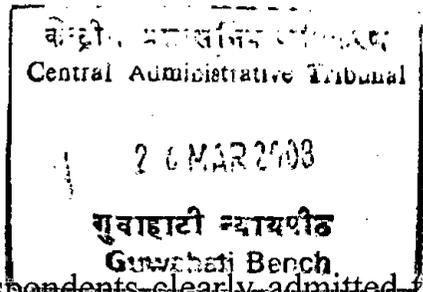
practitioner, after complying with the formalities laid down in this regard, that is, only after a Railway Medical Officer has conducted the necessary verifications and on the basis of the advice tendered by him after such verifications. The respondents never doubted the veracity of the medial certificate submitted by the applicant. The applicant was allowed to resume duty on 14-09-2004 after complying with the procedure prescribed under the rules. Having had allowed the applicant to resume duty, the respondents ought not to have initiated departmental proceedings against the applicant on the charge that he was unauthorisedly absent, which is misconceived and contrary to the provisions of law. The order of removal from service purportedly based on such departmental proceeding, is clearly unjustified and illegal in the facts and circumstances of the case.

In reply to the averment made in the written statement, the applicant states that he attended Railway Hospital but as no specialized treatment for heart disease is available at the local Railway Hospital, so he was compelled to avail better treatment outside.

3. That, the respondents in the written statement have repeatedly stated that he failed to attend the enquiry. The applicant fails to understand the meaning of such statements because how can a person participate in an enquiry when he is suffering from serious heart ailment and he is undergoing treatment, which is even not denied by the respondents. The applicant has from time to time informed the respondents about his illness supported by medical certificate but it is the respondents themselves who have refused to accept and acknowledge the same. The applicant has highlighted this aspect of the matter in the appeal submitted by him to the appellate authority against the order of removal from service.

Noted Ch Sivaji Red

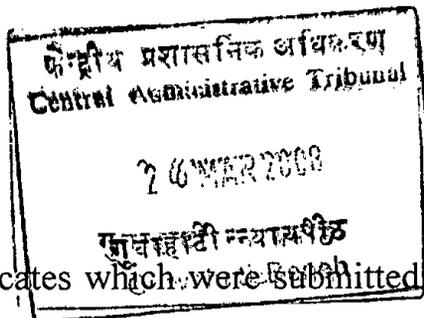
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4. That, in the written statement the respondents ~~clearly admitted~~ that copy of the enquiry report was not submitted to the applicant on the purported ground that no prejudice would be caused to him if decision is taken on the basis of the enquiry report. This is in clear conflict with the relevant provisions of the Railway Servants (Discipline & Appeal) Rules, 1968 as well as the circulars dated 10-11-1989 and 04-04-1996, which provide that copy of the report should be forwarded to the charged officer, who shall be required to submit, if he so desires, written representation or submission to the Disciplinary Authority, within fifteen days, irrespective of whether the report is favourable or not to the charged officer. Therefore, the respondents cannot be heard to say that non-furnishing of the enquiry report would cause no prejudice to the applicant. It only proves that the respondents themselves are prejudiced against the applicant. Even in the order of removal dated 26-05-2005, it has been stated that the applicant was ill and reported sick with effect from 22-02-2005. Thereafter, the applicant was under medical treatment till 30-05-2005, as explained in paragraph 4.10 of the original application. Though his name was struck off from the sick list from 07-03-2005, but he continued to be under medical treatment, as evident from the medical certificate. Under the relevant Railway Board circular, the competent authority is empowered to reject the certificate issued by RMP after a Railway Medical Officer has conducted the necessary verification and on the basis of the advice tendered by him after such verification. The respondents allowed the applicant to resume duty on 14-09-2004 only after complying with the procedure prescribed under the rules. Hence, the holding of enquiry against the applicant is totally unjustified on the facts and circumstances of the case. Had the applicant been furnished with a copy of the enquiry report, he would have proved to the disciplinary authority that he was not unauthorisedly absent and the reason for his absence was due to his

Nikhil Ch. Sarma P.S.



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illness. Copies of the relevant medical certificates which were submitted to the respondents are annexed hereto and marked as ANNEXURE - I (SERIES)

In this connection, the applicant states that not to speak of the enquiry report, even the enquiry itself has caused serious prejudice to him. The respondents expected the applicant to participate in the enquiry knowing fully well that he was not in a position to do so on account of his serious heart ailment.

Noted by Sd/- R/S

5. That the applicant fails to understand the necessity to conduct the ex-parte enquiry knowing fully well that the applicant is seriously ill. Therefore, apart from the illegality committed by the respondents in not forwarding copy of the enquiry report to the applicant, the applicant boldly asserts that the very nature and basis of the enquiry is unjustified and unreasonable not to speak of being oppressive. The enquiry against the applicant is ex-facie illegal and clearly misconceived because the applicant was already allowed to resume duty on 14-09-2004 when the respondents could have refused him to do so by rejecting the medical certificate submitted by him in support of his illness.

Another interesting feature of the case is that the respondents even after receiving the Hon'ble Tribunal's dated 16-03-2006 passed in O.A. No.67/2006, which was a direction towards the respondents to give personal hearing to the applicant before disposing of the statutory appeal, did not provide any such opportunity of hearing. The flimsy reason offered, as evident from their written statement, is that the Hon'ble Tribunal's order was received after rejection of the appeal. This is nothing but travesty of truth inasmuch as the Hon'ble Tribunal passed the order on 16-03-2006 in presence of the learned Counsel for the Railways and the rejection of the

Central Administrative Tribunal

23 MARCH 2006

Guwahati Bench

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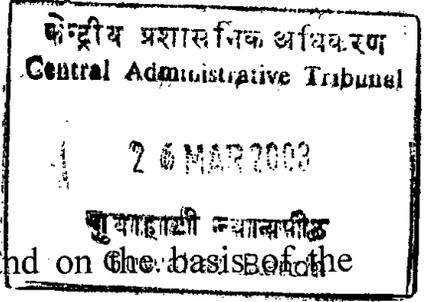
appeal was much later that is on 23-03-2006 to be precise. So how can the respondents claim that they could know about the Hon'ble Tribunal's order after rejection of the appeal. The respondents, being a model employer, could have considered afresh the appeal in the light of the order passed by this Hon'ble Tribunal by giving reasonable opportunity of being heard to the applicant, as directed by the Hon'ble Tribunal.

6. That, the applicant reiterates that removal from service only on the ground that he was absent for about two and a half months and that too after rendering more than 40 years of service, is quite unheard of in service jurisprudence and the penalty so imposed is excessive and harsh and it shocks the judicial conscience as well.

Nellob Ch. Singh Roy

The actual reason for his removal is that his immediate superior Shri P.K. Sarkar, the respondent no.5, bore ill feelings towards the applicant due to some internal family matter and personal grudge. The enquiry officer is a close friend of the respondent no.5 and it was at his behest the enquiry was held ex-parte and the applicant was removed from his service. This aspect of the matter has been highlighted in paragraph 5.8 of the original application which has not been controverted and/or denied by the respondents in their written statement. Moreover, the said respondent no.5, who has received notice in the present case, chose not to contest the case. Therefore the allegation levelled against him by the applicant in the O.A., may be deemed to be correct.

7. That the applicant states that the under the relevant rules, the respondents were at liberty to reject the medical certificate submitted by the applicant from a registered medical practitioner, after complying with the necessary formalities in this regard, that is, only after a Railway Medical

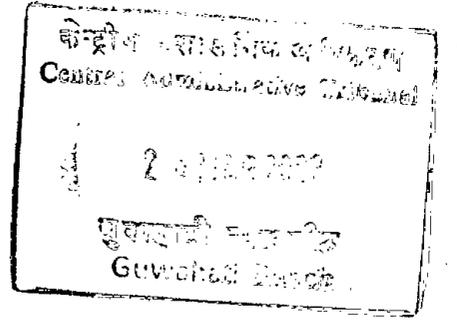


Officer has conducted the necessary verifications and on the basis of the advice tendered by him after such verification.

In the instant case, after the applicant joined in his duties on 25-08-2004 alongwith medical certificate from a registered medical practitioner, the respondents conducted necessary verification and thereafter the applicant was allowed to join on 14-09-2004. The respondents, having allowed the applicant to resume duty, are estopped from initiating disciplinary proceedings on the charge that he was unauthorisedly absent for the said period and passing order of removal based on such departmental proceedings. The order of removal is therefore, unjustified. The respondents having not rejected the medical certificate as in the manner prescribed under the rules cannot turn around and start a departmental proceeding which is not permissible under the rules. The respondents are trying to achieve indirectly what they cannot accomplish directly and in the process they have infringed upon the fundamental and other legal rights of the applicant.

Neelab Ch. Singh, P.S.

8. That the applicant, most respectfully submits that the respondents have been most unfair to the poor applicant who will not be able to receive anything to sustain himself in the evening of his life if the order of removal is carried out. There is no earning member in his family. His wife twice fractured her bones within a span of 8 months, due to adversity which has fallen on the family. The applicant has been left with no other alternative but to approach the protective hands of Your Lordships. He humbly prays that the order of removal from service may kindly be set aside and quashed and the respondents be directed to reinstate him in service for the purpose of granting him pension, gratuity and other retiral benefits.



VERIFICATION.

I, Shri Nikhil Ch. Singha Roy, son of Late Sachi Singha Roy, aged about 62 years, resident of Pradhan Nagar, Ashapura Road, P.O. Pradhan Nagar, in the district of Darjeeling (West Bengal), do hereby verify that the contents of paragraphs 1 to 7 are true to my knowledge and the rest of my humble submission before the Hon'ble Tribunal and I have not suppressed any material facts.

And I sign this verification on this the 24th day of March, 2008.

Date:- Guwahat

Place:- 24/03/08

Nikhil Ch. Singha Roy
Signature.

छोटा परिवार सुखी परिवार/SMALL FAMILY HAPPY FAMILY
पू० सी० रेलवे/N. F. Railway. आर० पी० वि० IR B. MED/D 6
पू० सी० एम०/N. F. M. 6

चिकित्सा विभाग/Medical Department

नुस्खा पर्ची/Prescription Memo

अस्पता #/Hospital
दवाखाना/Dispensary

क्रम सं०/ Sl. No. 16932
कर्मचारी का नाम और विभाग/Name of employees of department N. R. Singha Roy

उम्र/Age 57 1/2 लिंग/Sex m

बाधित का कर्मचारी से सम्बन्ध/Relationship to employee of dependent

बाधित का पेशा यदि हो/Occupation, if any of dependent

कर्मचारी का पदनाम और विभाग/Designation of employee and department

MCM / mech / CWO / Supt

पता निवास स्थान/Address (Res.)

वेतन/Pay तारीख/Date दाखिल/Admission

निदान/Diagnosis

07-3-05

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
26 MAR 2008
गुवाहाटी न्यायपीठ
Guwahati Bench

तारीख/Date टिप्पणी और उपचार/Notes and Treatment भावक्षार/Initial

<p>PT</p> <p>Adv.</p> <p>for</p>	<p><u>DM + HTN</u></p> <p><u>clo - Resp. distress</u></p> <p><u>Admission in MMW</u></p> <p><u>thorough check-up</u></p>	<p><u>[Signature]</u></p>
----------------------------------	--	---------------------------

डॉ. ए. ए. ए. ए. ए.
9/3/05

Certified to be true Copy
D. K. Dey
Advocate

Rx

6507
22-2-05

Mr. N. C. Singhal
MCA/ews 1507

Dt: 22/2/05

No faunus
& salp. etc
Staphylococcus
no more sweating
P.H.H. HPT & D.M.

ADPT & D.M.

O/E
H. anxious
P = 90/60
BP = 170/90

Adm
Admission
Capitate Band
Salt free diet
T. Envars (5)

Chl
Other
BP - 130/80

D. (Zam 30)
T. Dacril - 1000 mg
T. Quasprin (150) - 1/2 tab
T. Alzolam - 1 at 11.5
Blood to Singha (1) Bureau
Etc. etc.
T. Serbitale - 1/2 tab
& 1/2 to under tongue

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
26 MAR 2008
गुवाहाटी न्यायपीठ
Guwahati Bench

Asu
22/2/05

Certified to be true Copy

D. K. Bey
Advocate

26/2
130
05
all
cont...

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
26 MAR 2002
गुवाहाटी न्यायपीठ
Guwahati Bench

15/3
~~Report to court~~
~~about...~~
Pt. not... to be Gt.
Refer to N.P. for admission
MMN h. through check up.
15/3/02
DR

Dr. Anand S. Sharma

MBBS, MD, FCSEPI, MRSH (LOND)
EX. ARMY MEDICAL CORPS
SPECIALIST PHYSICIAN
Trained in General Surgery

Chamber : ANAND MEDICO CLINIC
A-2, CO-OP. SUPER MARKET
PRADHAN NAGAR, SILIGURI

VISITING HOURS :

Morning : 8-00 A.M. TO 12-30 P.M.
Evening : 3-00 P.M. TO 6-30 P.M.
(Sunday by Appointment)
Phone : Resl. 2516536

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
26 MAR 2008
गुवाहाटी न्यायपीठ
Guwahati Bench

Regd. No. 83002 M.C.I.

C/o Siddhanta, 1st Flr. An
H/o occasionally,
Do Core 12.

Date 7-3-2008
N.C. Sanyal
M-59+

Hypertension, Diabetes
mellitus & at present
Depression

Adhr

- Tab ASA - 150. 125 daily
- Tab. Amlodac - A7. 1ml daily
- 75 Nuroid. 5mg. 1ml daily
- 75 Sonbital. 5mg. 1ml daily or 10mg
- Tab Zolam. 0.5mg. 1ml daily at evening
- Complete bed rest
- Salt, meat, Eggs
fried food restrict
in diet
+ Sugar

C/F

BP - 170/90 mmHg
Pulse 90 per min.
Heart - no murmurs

AS, J
7-3-2008

Certified to be true Copy

D. K. Dey

Advocate

Dr. Anand S. Sharma
MBBS, MD, FCSEPI, MRSH (LOND)
EX. ARMY MEDICAL CORPS
SPECIALIST PHYSICIAN
Trained in General Surgery

Chamber - ANAND MEDICO CLINIC
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
26 MAR 2005
गुवाहाटी न्यायपीठ
Guwahati Bench

ANAND MEDICO CLINIC
A-2, CO-OP. SUPER MARKET
PRADHAN NAGAR, SILIGURI
VISITING HOURS:
Morning : 8-00 A.M. TO 12-30 P.M.
Evening : 3-00 P.M. TO 6-30 P.M.
(Sunday by Appointment)
Phone : Resl. 2516536

Regd. No. B.3006 M.C.I.

Date 30.5.2005

Medical Certificate
(To Whom It may concern)

I Dr. A.S. Sharma, after carefully examination to the case hereby certify that Mr. N.C. Singha Roy of Rly, whose signature is given below, was suffering from Ch. Hypertension & Angina Pectoris, Diabetes mellitus and at present is Depression and w.e.b. 7.3.2005 was under my treatment.

He was advised complete bed rest w.e.b. 7.3.2005 to 30.5.2005 (Am). Now he is fit to perform his duties from 31.5.2005.

Signature attested by
AS16

Nikhil Ch. Singha Roy
(Mr. N.C. Singha Roy)
30.5.2005

AS16
Dr. Anand S. Sharma
MBBS MD, FCSEPI, MRSH (Lond)
Ex Army Medical Corps
Regd No...B.3.006...MCI

30/5/2005

Certified to be true Copy
D.K. Dey
Advocate

13-

Anand S. Sharma
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EX. ARMY MEDICAL CORPS
SPECIALIST PHYSICIAN
Trained in General Surgery

Chamber : **ANAND MEDICO CLINIC**
A-2, CO-OP. SUPER MARKET
PRADHAN NAGAR, SILIGURI
VISITING HOURS :
Morning : 8-00 A.M. TO 12-30 P.M.
Evening : 3-00 P.M. TO 6-30 P.M.
(Sunday by Appointment)
Phone : Resi. 2516526

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
26 MAR 2005
गुवाहाटी न्यायपीठ
Guwahati Bench

Regd. No. 83005 M.C.I.

Date 7.3.2005

Sickken Certificate
(To whom it may concern)

I Dr A.S. Sharma, after carefully examination to the case hereby certify that Mr N.C. Singha Roy of my whose signature is given below is suffering from Ch. Hypertension & Angina Pectoris, Diabetes Mellitus and present in Depression and was 7-3-2005 under my treatment.

He is advised complete bed rest until the recovery from his illness.

Signature attested
By AS 10/-

Nishikant Singh
(Mr. N.C. Singha Roy)

AS 10/-
Dr. Anand S. Sharma
MBBS, MD, FCSEPI, MRSH (Lond)
Ex. Army Medical Corps
Regd No. 83005 MCI
713/05

Certified to be true Copy
D.K. Dey
Advocate

- 14 -

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Dr. Anand S. Sharma
MBBS MD, FCSEPI ,MRSH(LOND)
Ex- ARMY MEDICAL CORPS
SPECIALIST PHYSICIAN
Trained in General Surgery

Chamber : Anand Medico Clinic
A-2 Co-op Super market
PRADHAN NAGAR SILIGURI
Visiting Hours
Morning 8.00AM to 12.30PM
Evening 3.00 PM to 6.30 PM
(Sunday by appointment)
Phone : Resi.2516536

Regd No.83006

M.C.I

Date 30.5.2005

Medical Certificate

(TO WHOM IT MAY CONCERN)

I Dr. A.S.Anand after carefully examination to the case hereby certify that Mr. N.C. Singha Roy of Rly whose signature is given below was suffering from Ch. Hypertension I Angina Pectoris ,Diabetes mellitus and at present in depression and w.e.f. 7.3.2005 was under my treatment.

He was advised complete bed rest w.e.f. 7.3.2005 to 30.5.2005(AN). Now he is fit to perform his duties from 31.5.2005.

Sd/- Dr. Anand S Sharma
MBBS MD FCSEPI MRSH (Lond)
Ex- Army Medical Corps
Regd No. 83006 MCI 30.5.2005

Sd/- Nikhil Ch. Singha Roy
30.5.2005

केन्द्रीय प्रशासनिक अधिकरण
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Regd No.83006

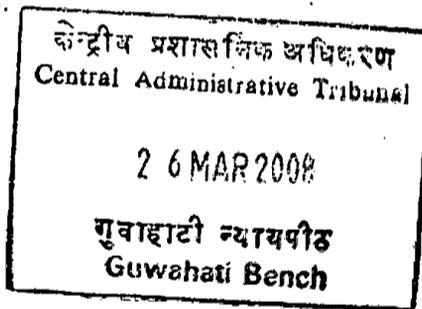
M.C.I

Date 7.3.2005

Medical Certificate
(TO WHOM IT MAY CONCERN)

I Dr. A.S.Anand after carefully examination to the case hereby certify that Mr. N.C. Singha Roy of Rly whose signature is given below was suffering from Ch. Hypertension in Angina Pectoris ,Diabetes mellitus and at present in depression and w.e.f. 7.3.2005 was under my treatment.

He was advised complete bed rest until the recovery from his illness.



Sd/- Dr. Anand S Sharma
MBBS MD FCSEPI MRSH (Lond)
Ex- Army Medical Corps
Regd No. 83006 MCI
7.3.2005

Sd/- Nikhil Ch. Singha Roy

Certified to be true Copy

D.K. Dey

Advocate