

7

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 3.09/2007

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet..... OAPg. 1to 5
2. Judgment/Order dtd. 27.3.2009Pg. 271to 38th
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A..... 3.09/2007Pg. 1to 60
5. E.P/M.P.....Pg.....to.....
6. R.A/C.P.....Pg.....to.....
7. W.S.....Pg. 1to 16
Add. W.S.Pg. 1to 80
8. Rejoinder.....Pg. 1to 17
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Sahit
11.10.17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

1. Original Application NO. 309/07

2. Miscellaneous Petition No.

3. Contempt Petition No.

4. Review Application No.

Applicant(S).... A. K. Sarma VS Union of India & Ors

Advocate for the Applicants... H. Sarma, B. Devi

..... H. K. Das

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

Notes of the Registry

Date

Order of the Tribunal

18.12.2007

Original application is in form
is filed C.F. for Rs 30/-
deposited vide IP-200
No. 346/65/15
Dated 17.12.07

By Registrar

Asst.

Petitioner's brief for
issue notices are
received with envelopes.
Copy served.

Asst.
17/12/07

21.12.07

Pl. issue notices to Resp
order to 18/12/07

Notice & order sent to
D/Section for issuing
to resp. nos. 1 to 4

/bb/

By regd. A/D post

20/12/07 D/No-1891 to
1894
Dt = 24/12/07

Heard Mr.H.Sarma, learned counsel
appearing for the Applicant and Dr.J.L.Sarkar,
learned standing counsel for the Railways on
whom a copy of this Original Application has
already been served.

The Applicant, in a disciplinary
proceeding, faced dismissal from service. On
appeal, the penalty has been reduced to
that of compulsory retirement. The Revisional
Authority, however, did not interfere with the
order of the Appellate Authority and in the
said premises the Applicant has approached
this Tribunal by filing this Original Application
under Section 19 of the Administrative
Tribunals Act, 1985.

Admit. Issue notice to the Respondents
requiring them to file reply by 08.02.2008.

(M.R.Mohanty)
Vice-Chairman

Notice duly served
on R- 1,3. 08.02.2008

17/11/08

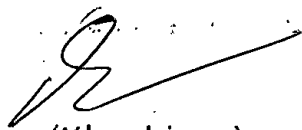
No written statement has been filed in this case as yet by the Respondents. Mr.K.K.Biswas, learned counsel appearing for the Respondents/ Railways undertakes to file written statement by 13th March, 2008.

① Notice duly Served on R.No. 1 & 3.

② W/s not filed.

7.2.08.

Call this matter on 13.3.2008 awaiting written statement from the Respondents/ Railways.



(Khushiram)
Member(A)



(M.R. Mohanty)
Vice-Chairman

W/s not filed.

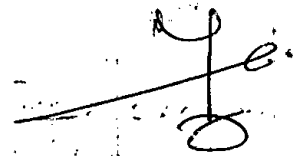
12.3.08

13.03.2008 No written statement has been filed as yet in this case by the Respondents.

Notice duly Served
on R- 4.

2/4/08

Call this matter on 24th April, 2008 awaiting written statement from the Respondents.



(M.R. Mohanty)
Vice-Chairman

W/s not filed.

23.4.08.

24.04.2008 No written statement has yet been filed in this case.

Call this matter on 12.05.2008 awaiting written statement from the Respondents/Railways.

W/s not filed.

9.05.08.



(M. R. Mohanty)
Vice-Chairman

0A-309/07

-3-

3

12.05.08

Written statement (without index)

has been filed in Court today, after serving copy thereof on the learned counsel for the Applicant.

Call this matter on 05.06.2008 awaiting rejoinder from the Applicant.

The Respondents should keep the disciplinary proceeding records ready with their counsel to be produced at the time of hearing. Send Copies to the Respondents.

(Khushiram)
Member (A)

(M.R. Mohanty)
Vice-Chairman

pg

Dt. 12.5.08

Pl. send copies to the
Respondents

order dt. 12/5/08
send to D/Section
for issuing to the
respondents by post.

14/5/08. D/No-2301 to 2304
Dt. 16/5/08

05.06.2008

None appears for the Applicant nor the Applicant is present.

In this case the Respondents/Railways have filed written statement and the Applicant has not yet filed any rejoinder.

Mr. H.K. Das, learned counsel for the Applicant has filed a letter of absence till 13.06.2008.

Call this matter on 27.6.2008 awaiting rejoinder from the Applicant

Send copies of this order to the Applicant, in the address given in the O.A.

(Khushiram)
Member(A)

(M.R. Mohanty)
Vice-Chairman

27.06.08

None appears for Applicant nor the Applicant is present. However, Mr K.K. Biswas, learned counsel for the Railways is present.

Call this matter on 07.07.2008.

(M.R. Mohanty)
Vice-Chairman

pg

14.5.08

W/s filed by
the Respondents. Copy
served.

Rejoinder not
filed.

4.6.08

Dt. 5.6.08

lm

Pl. send copies of this
order to the Applicant

Sh
66

order dt. 5/6/08 send
to D/Section for issuing
to applicant by post.

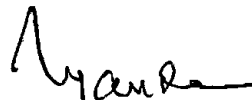
12/6/08. D/No-2780
Dt. 13/6/08.


-4- OA 309/07

07.07.08

Mr H.Sarma, learned counsel for the Applicant is on accommodation. Mr K.K.Biswas, learned counsel for the Respondents is present.

Call this matter on 27.08.2008.



(R.C.Panda)
Member(A)


(M.R.Mohanty)
Vice-Chairman

pg

Mr.H.K.Das, learned counsel appearing for the Applicant is present. Mr.K.K.Biswas, learned counsel appearing for the Railways seeks an adjournment.

Call this matter on 01.10.2008 for hearing; when M.K.K.Biswas shall cause production of the departmental proceeding records.


(Khushiram)
Member (A)


(M.R.Mohanty)
Vice-Chairman

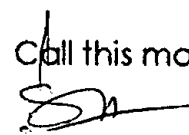
/bb/

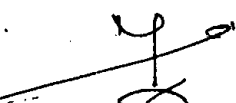
01.10.2008

On the prayer of learned counsel appearing for both the parties, call this matter on 11.11.2008 for hearing.

Mr.K.K.Biswas, learned counsel for the Railways intends to file a reply to the rejoinder; which he should do by 31st October 2008.


Call this matter on 11.11.2008 for hearing.


S.N. SHUKLA
(Khushiram)
Member (A)



(M.R.Mohanty)
Vice-Chairman

/bb/


Rejoinder not
filed.


26.6.08.

Rejoinder not
filed.

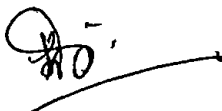

4.07.08.

Rejoinder not filed. 27.08.2008



26.08.2008

26.8.08

Rejoinder Submitted
by the Applicant.
Copy secured.



The case is ready
for hearing.


10.11.08.

11.11.2008

None appears for the Applicant. Mr. K.K. Biswas, learned counsel for the Railways seeks an adjournment.

Call this matter on 17.12.2008.

(S.N.Shukla)
Member(A)

(M.R.Mohanty)
Vice-Chairman

18.11.08
Additional W/e
submitted by the
Respondents. copy
served.

lm

17.12.2008

On the prayer made on behalf of Mr. K.K. Biswas, learned counsel for the Railways call this matter on 09.02.2009 for hearing.

(M.R.Mohanty)
Vice-Chairman

(S.N.Shukla)
Member(A)

The case is ready
for hearing.

16.12.08

pg

The case is ready
for hearing.

09.02.2009

Call this matter on 27.03.2009 for hearing.

(M.R. Mohanty)
Vice-Chairman

6.2.09.

nkm

The case is ready
for hearing.

27.03.2009

For the reasons recorded separately this O.A. stands disposed of.

(Khushiram)
Member (A)

(A.K.Gaur)
Member (J)

26.3.09.

/bb/

Recd: copy of
order dt. 27-3-09
for disposal. 10/2/1
2 one copy of SCN.
M.R.Mohanty
31-3-09
Adv. Advocate

2.4.09

V

Cop of MS
under sent to
to Office for
some time
the Reg No
to 4 and 5
99 to the Apphr
Port
is

0.0.0.0.0.0

0.0.0.0.0.0

0.0.0.0.0.0
0.0.0.0.0.0
0.0.0.0.0.0
0.0.0.0.0.0

0.0.0.0.0.0
0.0.0.0.0.0

0.0.0.0.0.0

0.0.0.0.0.0

0.0.0.0.0.0

0.0.0.0.0.0

0.0.0.0.0.0
0.0.0.0.0.0

0.0.0.0.0.0
0.0.0.0.0.0

0.0.0.0.0.0

0.0.0.0.0.0

8

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A No. 309 of 2007

DATE OF DECISION: 27.03.2009

Sri L.K.Sarma

.....Applicant/s.

Mr.H.Sarma & Mr.H.K.Das

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

- Versus -

U.O.I. & Ors

.....Respondent/s

Mr. K.K.Biswas, Railway Counsel

.....Advocate for the
Respondents

CORAM

THE HON'BLE MR.A.K.GAUR, JUDICIAL MEMBER

THE HON'BLE MR.KHUSHIRAM, ADMINISTRATIVE MEMBER

- | | | |
|----|---|--------|
| 4. | Whether Reporters of local newspapers may be allowed to see the Judgment? | Yes/No |
| 5. | Whether to be referred to the Reporter or not? | Yes/No |
| 6. | Whether their Lordships wish to see the fair copy of the Judgment? | Yes/No |

Judgment delivered by


Judicial Member

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.309 of 2007.

Date of Order : This, the 27th day of March, 2009.

THE HON'BLE MR. A.K.GAUR, JUDICIAL MEMBER

THE HON'BLE MR. KHUSHIRAM, ADMINISTRATIVE MEMBER

Sri L.K.Sarma
S/o Late Abani Sarma
R/o New Market, Rangiya
P.O: Rangiya, Ward No.-9
District: Kamrup (Assam).

...Applicant.

By Advocates: Mr.H.Sarma, Mrs.B.Devi & Mr.H.K.Das

- Versus -

1. The Union of India represented by the
General Manager, N.F.Railway
Maligaon, Guwahati-781 011.
2. The Chief Commercial Manager
N.F.Railway, Maligaon
Guwahati-11.
3. The Divisional Manager (Commercial)
N.F.Railway, Rangiya-781 354.
4. The Station Superintendent
Tangla Railway Station
N.F.Railway.

... Respondents.

By Mr. K.K.Biswas, counsel for the Railways.

ORDER (ORAL)

A.K.GAUR, MEMBER (J) :

We have heard Mr.H.Sarma, learned counsel for the Applicant
assisted by Mr.H.K.Das and Mr. K.K.Biswas, learned counsel for the
Respondents.

✓

2. Learned counsel for the Applicant argued that the Applicant is facing acute financial crisis being only earning member of his family. He also submitted that the punishment awarded to him is shockingly disproportionate. It is alleged by the Applicant that in revision petition this plea was canvassed but the same has not been taken into consideration by the revisional authority in its order dated 15.11.2007 (Annexure-9). The revisional authority has passed the order in a most casual and perfunctory manner without application of mind. He has placed reliance on the following Supreme Court decisions in order to buttress the contention that it is the bounden duty of the revisional authority to consider each and every ground raised in the memorandum of revision petition:-

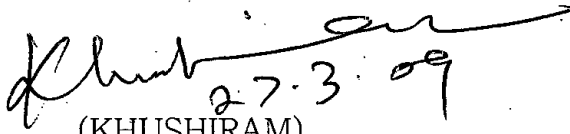
- (i) 2006 SCC L&S 840 (Narinder Mohan Arya. vs. United India Insurance Co. Ltd & Others);
- (ii) AIR 1986 SC 1173 (Ram Chander vs. Union of India & Others)
- (iii) (2005) 7 SCC 597 (National Fertilizers Ltd. and Another vs. P.K.Khanna; and lastly
- (iv) 2006 (11) SCC 147 (Director of Indian Oil Corporation vs. Santosh Kumar)

3. We have considered the contentions advanced by the learned counsel for the parties and perused the materials placed on record. In view of the aforesaid decisions, we are of the considered view that the revisional authority has not at all considered the grounds taken in the memo of revision and the proportionality of the punishment. The revisional order dated 15.11.2007 (Annexure-9) is a non-speaking order and has not been passed in accordance with the provisions of rules, and therefore, the same deserves to be quashed and set aside. Accordingly, we quash and set aside the

✓

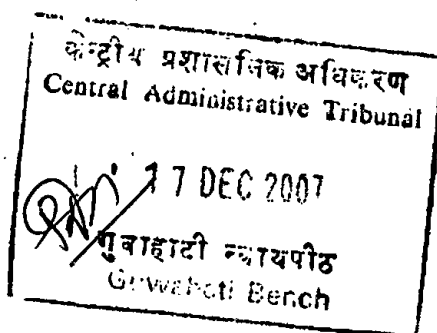
revisional order dated 15.11.2007 (Annexure-9) and remit back the matter to the revisional authority to reconsider the revision petition of the Applicant by passing a reasoned and speaking order in accordance with the provisions of rules, within a period of three months from the date of receipt of a copy of this order.

4. With the above observations and direction, the O.A. is disposed of as above.


(KHUSHIRAM)
ADMINISTRATIVE MEMBER


(A.K. GAUR)
JUDICIAL MEMBER

/BB/



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case : O.A. No. 309 of 2007

Between

Lakhi Kanta Sarma Applicant.

AND

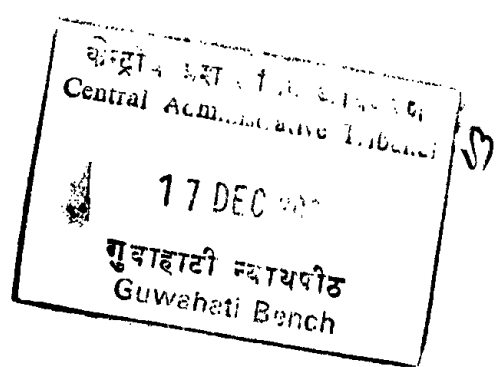
Union of India & ors Respondents.

SYNOPSIS

The applicant entered into the Railway service in the year 1981 as Gangman. In the year 2005 he has been issued with a charge-sheet under memo No.C/421/RNY/VIG/STAFF-4 dated 17.6.05 bearing two article of charges. Immediately on receipt of the charge-sheet he has submitted his reply. In the aforesaid reply the applicant has categorically denied all the charges leveled against him. The applicant has been served with an order issued under memo No.C/409/RNY/SPL-CELL/06-2 dated 3.4.07 by which the applicant was removed from service. Immediately on receipt of the aforesaid order of removal dated 3.4.07 he preferred an appeal before the Divisional Railway Manager, N.F.Rly, Rangia. The Appellate authority after careful examination of the appeal was pleased to reduce the penalty of removal from service to compulsory retirement with full pensionary benefits and passed the impugned order dated 24.7.07. Being aggrieved and dissatisfied with the order dated 24.7.07 he immediately preferred on revision petition before the Chief Commercial

Reviewed
by
for Dr J.L. Sankar
17/12/07

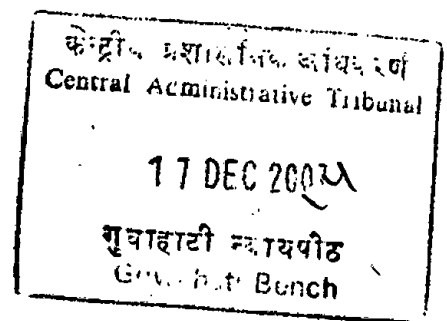
dm



Manager, N.F.Rly, Maligaon i.e. Respondent No.2 on 27.7.07.

But the respondent No.2 without going into detail of the facts and circumstances of the has passed the impugned order dated 15.11.07 upholding the Appellate order dated 24.7.07.

Hence the applicant as a last resort has come under the protective hands of this Hon'ble Tribunal seeking redressal of his grievances. Hence this application.



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case : O.A. No. 309 of 2007

Between

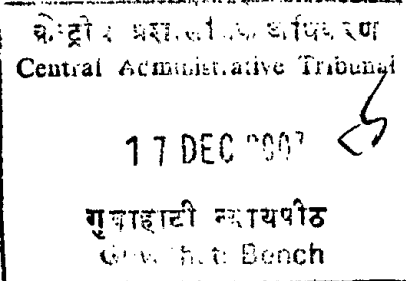
Lakhi Kanta Sarma Applicant.

AND

Union of India & ors Respondents.

LIST OF DATES

1. 1981Initial appointment as Gangman.
2. 1994Promoted to the post of C.C.
3. 1999Promoted to the post of Sr. C.C.
4. Annexure-1...Charge sheet dated 17.6.05.
5. Annexure-2...Reply to the charge sheet.
6. Annexure-3...Enquiry report dated 30.11.05.
7. Annexure-4...written statement of defence dated 8.11.05.
8. Annexure-5...Order of removal dated 3.4.07.
9. Annexure-6...Appeal against the order of removal.
10. Annexure-7...Appellate order dated 24.7.07.
11. Annexure-8...Revision petition dated 27.7.07 against the
appellate order.
12. Annexure-9...Impugned order dated 15.11.07 upholding the
appellate order.
13. Annexure-10...Statement of respondent No.4.



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Title of the case : O.A. No. 309 of 2007

Between

Lakhi Kanta Sarma Applicant.

AND

Union of India & ors Respondents.

I N D E X

Sl.No.	Particulars	Page No.
1.	Application	1 to 12
2.	Verification	..... 13
3.	Annexure-1	..... 14 - 27
4.	Annexure-2	..... 28 - 29
5.	Annexure-3	..... 30 - 43
6.	Annexure-4	..... 44 - 46
7.	Annexure-5	..... 46
8.	Annexure-6	..... 47 - 53
9.	Annexure-7	..... 54 - 55
10.	Annexure-8	..... 56 - 57
11.	Annexure-9	..... 58 - 59
12.	Annexure-10	..... 60

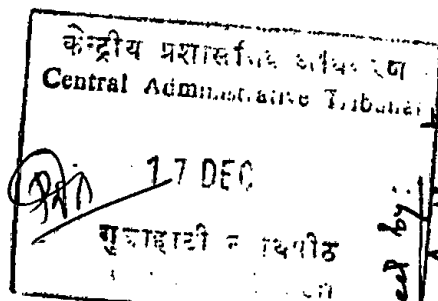
Filed by : H.N.

Regn.No.:

File :D\private\LKSARMA

Date : 17.12.07

- 1 -



BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A. NO. 309/07

Between

Sri L.K. Sarma
S/o Late Abani Sarma
R/o New market, Rangia
P.O. Rangia, Ward No-9
District Kamrup (Assam)

.....Applicant

AND

1. Union of India represented by
The General Manager
N.F. Railway, Maligaon, Ghy-9.
2. The Chief Commercial Manager
N.F. Rly, Maligaon, Ghy-9.
3. The Divisional Manager (Commercial)
N.F. Railway, Rangia.- 781354
4. The Station Superintendent
Tangla, Railway Station, N.F. Railway.

.....Respondents

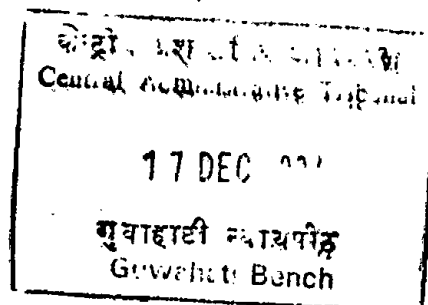
DETAILS OF THE APPLICATION

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

This application is directed against the following orders:

- i. Order issued under memo No. C/409/RNY/SPL-CELL/06-2 dated 3.4.2007

dm
(Laxmi Kanta Jarmah)



- ii. Order issued under memo No.C/421/RNY/Vig/Staff dated 24.07.2007.
- iii. Order issued under memo No.C/421/RNY/VIG/Staff-4 dated 15.11.2007.

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

2. LIMITATION:

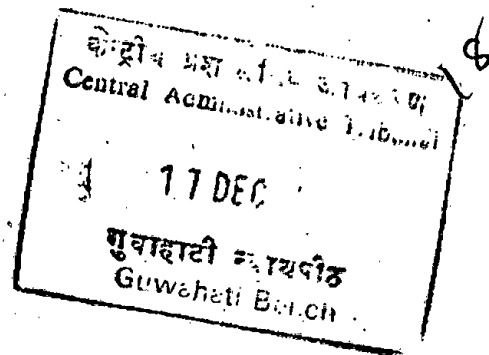
The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act.1985.

3. JURISDICTION:

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

4. FACTS OF THE CASE:

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

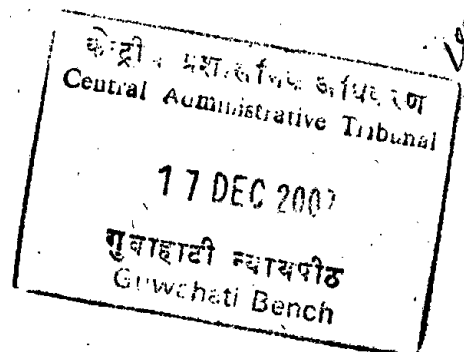


4.2. That the applicant entered into the Railway service in the year 1981 as Gangman. In the 1994 he was promoted to the post of Commercial clerk. Thereafter he was promoted to the post of Sr. Commercial Clerk (in short Sr.C.C.) in the year 1999. Since the date of his joining he has been working under the respondents to the satisfaction of all concern.

4.3. That the applicant begs to state that in the year 2005 he has been issued with a charge-sheet under memo No.C/421/RNY/VIG/STAFF-4 dated 17.6.05 bearing two article of charges. The allegation leveled against the applicant vide article-I is that on 14.11.04 he demanded and accepted Rs.20/- (twenty) in excess than that of actual fare while allotting a reservation from Road side quota of TNL station by 4055 DN of 23.11.04 Ex-TNL to DLI. Again the allegation under Article-II is that the applicant on 14.11.04 committed an act of gross misconduct in as much as he produced his Govt. cash of Rs.8957/- against Rs.8878/- i.e. Rs.79/- excess than that of his actual Govt. cash. It is pertinent to mention here that the respondents directed the applicant to submit his written statement of defence within ten days of receipt of the charge-sheet.

A copy of the charge-sheet dated 17.6.05 is annexed herewith and marked as Annexure-1.

4.4. That the applicant begs to state that he has received the aforesaid charge sheet on 19.6.05. Immediately on receipt of the charge-sheet he has submitted his reply.



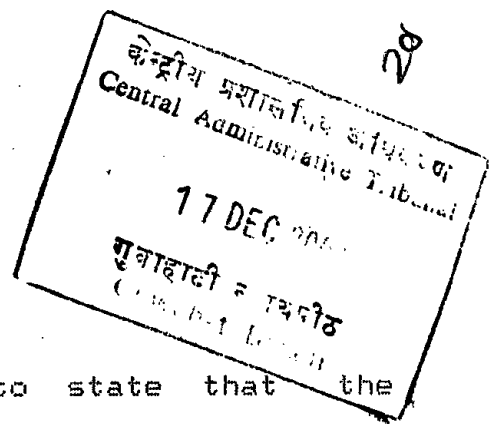
In the aforesaid reply the applicant has categorically denied all the charges leveled against him while placing the circumstances leading to issuance of such charge sheet.

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

4.5. That the applicant begs to state that respondent appointed one Sri Sisir Sen Gupta as Enquiry Officer and one Sri Ranjit Das as Presenting Officer to conduct the departmental enquiry against the applicant. Accordingly enquiry proceeding started and preliminary hearing took place on 11.8.05. Thereafter regular hearing took place on 29.8.05, 6.10.05, 27.10.05 and last regular hearing took place on 28.10.05.

On 8.11.05 the defence council has submitted his written brief. Thereafter on 30.11.05 the enquiry officer submitted his report holding Article-I to be partially proved and Article-II to be proved. It is noteworthy to mention here that the enquiry report was communicated to the applicant on 18.3.06.

Copies of the enquiry report dated 30.11.05 and the written statement of defence dated 8.11.05 are annexed herewith and marked as Annexure-3 and 4 respectively.



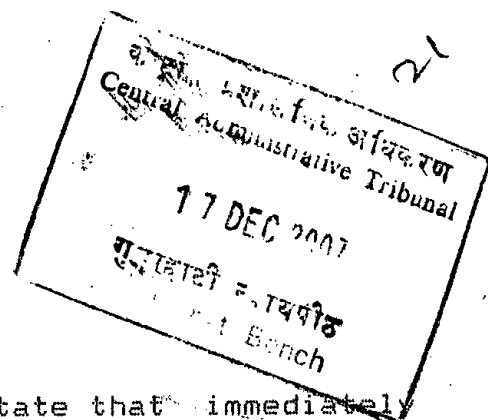
4.6. That the applicant begs to state that the aforesaid enquiry report dated 30.11.05 was communicated to him by the respondents after about 4 months i.e. on 18.3.06 only. Immediately after receipt of the enquiry report the applicant has been served with an order issued under memo No.C/409/RNY/SPL-CELL/06-2 dated 3.4.07 by which the applicant was removed from service. In the said order of removal dated 3.4.07 it was mentioned that earlier there were two DAR cases against the applicant. It was further stated in the removal order that in the first case he was punished with the withholding of increment for a period of 4 years and in the second case he was reverted from the post of SR.C.C. to Jr.C.C. and his pay was fixed at Rs.3200/-. It is noteworthy to mention here that the penalty as mentioned in the removal order regarding withholding increment and reversion are totally false, no such penalty has been imposed upon the applicant till date. This would be evident from the pay slip of the applicant during that period and thereafter. At the same time he was never been reverted to the post of Jr.C.C. as contemplated by the respondents. In the removal order itself the respondents have addressed the applicant as Sr.C.C./TNL. Had the applicant been reverted to the post of Jr.C.C., the respondent should have addressed him as Jr.C.C. instead of Sr.C.C.

The applicant craves leave of the Hon'ble Tribunal to produce the pay slips at the time of hearing of the case.

A copy of the order dated 3.4.07 is annexed herewith and marked as Annexure-5.

dm
(Laxmi Kanta Sarma)

- 6 -



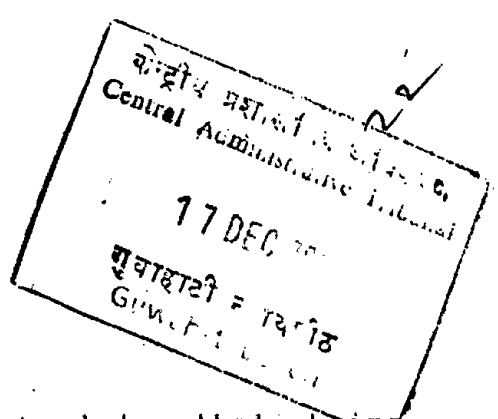
4.7. That the applicant begs to state that immediately on receipt of the aforesaid order of removal dated 3.4.07 he preferred an appeal before the Divisional Railway Manager, N.F.Rly, Rangia (i.e. Respondent No.3) on 3.5.07. In the said appeal the applicant has categorically stated that the statement regarding imposition of penalty in earlier two cases is totally false and baseless. It is further stated in the appeal that the appointing authority of the applicant is DRM not the DCM. But the order of removal was passed by the DCM which is in clear violation of Article 311(I) of the Constitution of India.

A copy of the said appeal dated 3.5.07 is annexed herewith and marked as Annexure-6.

4.8. That the applicant begs to state that the Appellate authority after careful examination of the appeal was pleased to reduce the penalty of removal from service to compulsory retirement with full pensionary benefits and passed the impugned order dated 24.7.07. It is noteworthy to mention here that the appellate order is silent about the pay slip of the applicant which clearly show that there was no stoppage of increment. This indicates total non-application of mind on the part of the respondents.

A copy of the order dated 24.7.07 is annexed herewith and marked as Annexure-7.

dm
(Laxmi Kanta Sarmak)

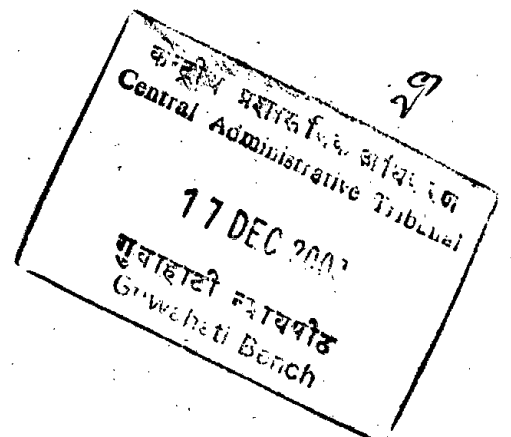


4.9. That the applicant begs to state that being aggrieved and dissatisfied with the order dated 24.7.07 he immediately preferred on revision petition before the Chief Commercial Manager, N.F.Rly, Maligaon i.e. Respondent No.2 on 27.7.07. In the revision petition the applicant has stated regarding power of the DCM who has passed the order of removal. But the respondent No.2 without going into detail of the facts and circumstances of the has passed the impugned order dated 15.11.07 upholding the Appellate order dated 24.7.07.

Copies of the revision petition dated 27.7.07 and order dated 15.11.07 are annexed herewith and marked as Annexure-8 and 9 respectively.

4.10. That the applicant begs to state that neither the Disciplinary Authority nor the Appellate authority has taken into consideration the statement of the respondent No.4 i.e. the Station Superintendent, Tangla Rly. Station. In the statement of Respondent NO.4 he has clearly stated that the applicant immediately on the day of occurrence informed him regarding the incident. But none of the investigating authority has taken into consideration his such statement.

A copy of the statement of Respondent NO.4 is annexed herewith and marked as Annexure-10.



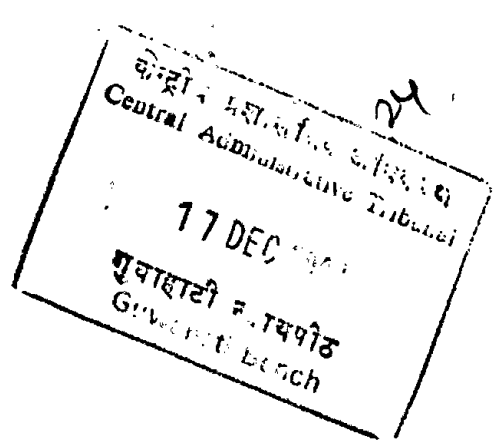
4.11. That the applicant begs to state that the respondents have acted illegally and passed the impugned orders. It is further state that since the Enquiry Officer has found one article of charge to be partially proved only, therefore the punishment imposed is very unreasonable and disproportionate and same is not permissible in the eye of law and liable to be set aside and quashed.

4.12. That the applicant begs to state that from the very beginning of the proceeding he has repeatedly stated that the very order of removal was passed by the respondents without any jurisdiction and authority. But his such contention was never replied to by the respondents and have passed the impugned orders one after another without going to the root of the matter and hence the impugned orders are liable to be set aside and quashed.

4.13. That the applicant begs to state that he has exhausted all the remedies available to him but none of those came out fruitful and hence as a last resort the applicant has come under the protective hands of this Hon'ble Tribunal seeking redressal of his grievances.

4.14. That the applicant begs to state that the respondents with a predetermined mind started the proceeding without following the prescribed procedure as laid down in the Railway Servant Discipline and Appeal Rules 1968 and as such the entire proceeding as well as the impugned orders are not sustainable and liable to be set aside and quashed.

dm
(Laxmi Kanta Sarmah)



4.15. That the applicant begs to state that he is the only earning member of his family and after the issuance of the impugned orders, he along with his family members are facing tremendous financial hardship. It is further stated even assuming but not admitting the charges to be correct, the penalty imposed is shockingly disproportionate and under the peculiar fact situation of the case the Hon'ble Tribunal may be pleased to interfere in the quantum of punishment reducing the same to be of any minor penalty as prescribed under the rules.

4.16. That this application has been filed bonafide and to secure ends of justice.

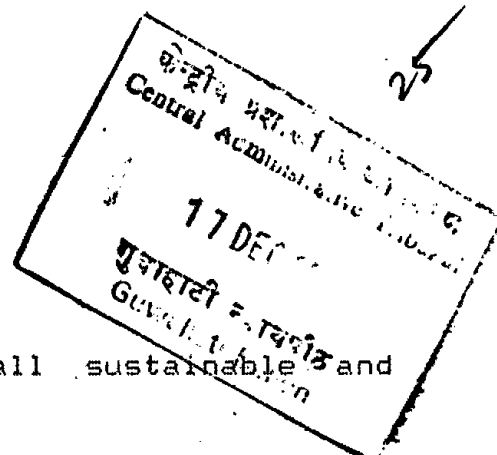
5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the action/inaction on the part of the respondents for not considering his case towards exonerating him from the charges leveled against him is per-se illegal, arbitrary, discriminatory.

5.2. For that the respondents have acted illegally in issuing the impugned order and thereby removing him from the service is per-se illegal and liable to be set aside and quashed.

5.3. For that the proceeding initiated by the respondents on a wrong premise of the factual aspect of the matter as well as the resultant impugned orders having been issued without following the rules as prescribed in the

dm
(Laxmi Kanta Sarmah)



R.S.D. & A. R. 1968, same are not at all sustainable and liable to be set aside and quashed.

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

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

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

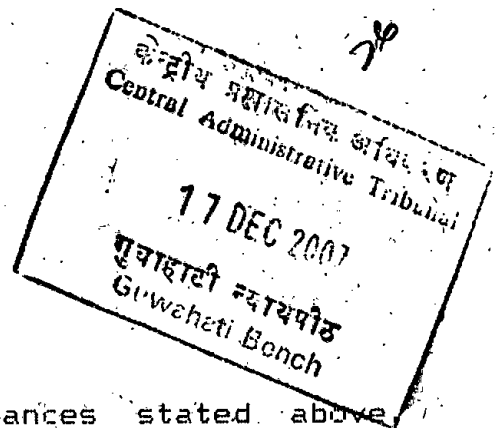
6. DETAILS OF REMEDIES EXHAUSTED:

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

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER

COURT:

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



8. RELIEF SOUGHT FOR:

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

8.1. To set aside and quash the impugned orders dated 3.4.07, 24.7.07 & 15.11.07 and to reinstate the petitioner with full back wages and consequential service benefits.

8.2. Cost of the application.

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

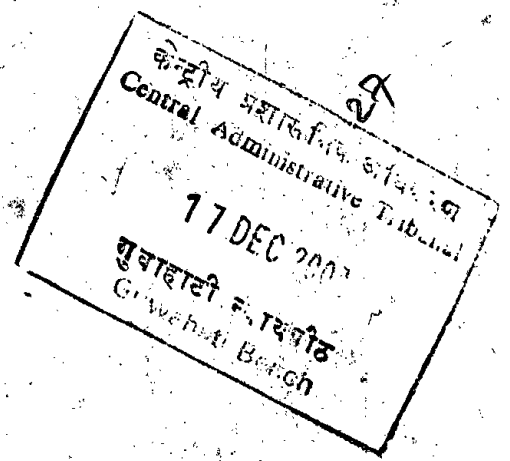
9. INTERIM ORDER PRAYED FOR:

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

10.

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

dm
(Laxmi Kanta Sarma)



- 12 -

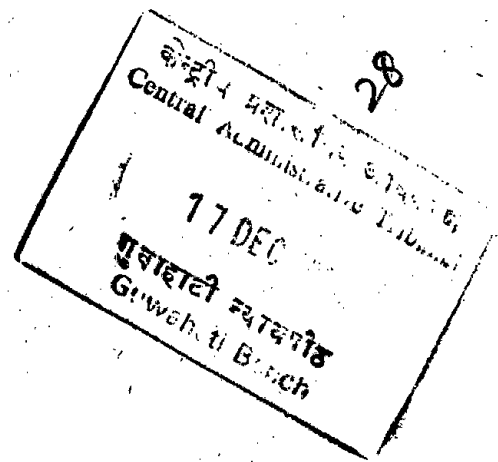
1. I.P.O. No. : 346 154815
2. Date : 17.12.07
3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

dm.
(Laxmi Kant Sarmah)

-13-



VERIFICATION

I Sri Lakhi Kanta Sarma, son of Late Abani Sarma, aged about 55 years, resident of New Market, P.O. & P.S. Rangia, Dist. Kamrup, Assam, do hereby solemnly affirm and verify that the statements made in paragraphs 4.1, 4.2, 4.11, 4.12, 4.13, 4.14, 4.15..... are true to my knowledge and those made in paragraphs 4.3, 4.4, 4.5, 4.6-4.10,..... are also matter of records and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

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

And I sign on this the Verification on this the 16th day of December of 2007.

Lakhi Kanta Sarma

Signature.

THE RAILWAY SERVANTS (DISCIPLINE & APPEAL) RULES, 1968

STANDARD FORM NO. 5

Standard Form of Charge-sheet

[Rule 9 of Railway Servants (Discipline and appeal) Rules, 1968]

No. C/421/RNY/VIG/STAFF-4
(Name of Railway administration)N.F. RAILWAY(place of issue) RANGIYA Dated 17.6.05MEMORANDUM

1. The President/Railway Board/undersigned propos(e)s to hold an inquiry against Shri Laxmi Kanta Sharma, Sr. CC/TNL under Rule 9 of Railway Servants (Discipline and Appeal) Rules, 1968. The substance of the imputations of misconduct and misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles (Annexure-I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure-III & IV). *Further, copies of documents mentioned in the list of documents, are per annexure-III are enclosed.
2. Shri Laxmi Kanta Sharma, Sr. CC/TNL is hereby informed and if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure-III) at any time during office hours within ten days of receipt of this memorandum. For this purpose he should contact immediately on receipt of this memorandum.
3. Shri Laxmi Kanta Sharma, Sr. CC/TNL is further informed that he may, if he so desires, take the assistance of another Railway servant/an official of Railway Trade Union (who satisfies the requirements of Rule 9(13) of the Railway Servants (Discipline and Appeal) Rules, 1968, and Note 1 and/or Note 2 thereunder as the case may be) for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Railway servant(s) or Railway Trade Union Official (s), Shri Laxmi Kanta Sharma, Sr. CC/TNL should obtain an undertaking from the nominee(s) that the (they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case(s) if any, in which the nominee(s) had already undertaken to assist and the undertaking should be furnished to the undersigned/General Manager Railway alongwith the nomination.
4. Shri Laxmi Kanta Sharma, Sr. CC/TNL is hereby directed to submit to the undersigned (through General Manager Railway) a written statement of his defence (which should reach the said General Manager) within ten days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of his defence, and within ten days after completion of inspection of documents if he desires to inspect documents, and also

(a) to state whether he wishes to be heard in person; and

Attested

[Signature]

Attested

- 15 -

(b) to furnish the names and addresses of the witnesses if any, whom he wishes to call in support of his defence.

5. Shri Laxmi Kanta Sharma, Sr CC/TNL is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or/deny each article of charge.

6. Shri Laxmi Kanta Sharma, Sr CC/TNL is further informed that if he does not submit his written statement of defence within the period specified in para 2 or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968, or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry ex parte.

7. The attention of Shri Laxmi Kanta Sharma, Sr CC/TNL is invited to Rule 20 of the Railway Servant (Conduct) Rules, 1966 under which to Railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matter 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 Laxmi Kanta Sharma, Sr CC/TNL 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 Servants (Conduct) Rules, 1966.

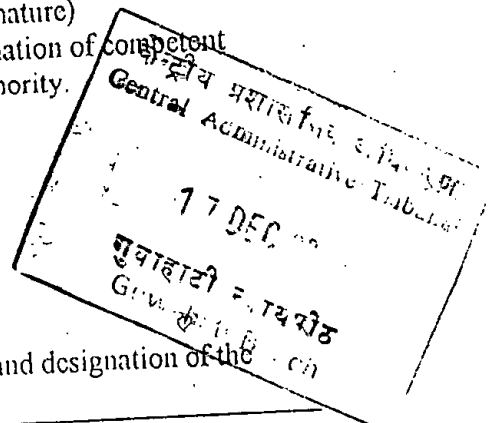
8. The receipt of this Memorandum may be acknowledged.

ackd 17.6.05
(A. K. SINHA)
DIVL. COMML. MANAGER
[By order and in the name of the President]
(Signature)
Name and designation of competent authority.

Encls: 12 (Twelve)

To Laxmi Kanta Sharma, Sr CC/TNL (Designation)
(1) Shri Laxmi Kanta Sharma, Sr CC/TNL (Place) 5
(2) F.O./MLG (11) DY.OVO/T/MLG

Copy to Shri (name and designation of the lending authority) for information.



Strike out whichever not applicable.

* To be deleted if copies are given/not given with the Memorandum as the case may be.

** Name of the authority. (This would imply that whenever a case is referred to the disciplinary authority by the Investigation Authority or any authority who are in the custody of the listed documents or who would be arranging for inspection of the document or to enable that authority being mentioned in the draft memorandum).

Where the President is the Disciplinary Authority.

To be retained wherever applicable President or the Railway Board is the competent authority.

To be used wherever applicable - Note to be inserted in the copy sent to the Railway servant.

Annexure to Standard Form No-5

Memorandum of Charge sheet under Rule-7 of R.S.
(D 2 A) Rules - 1966ANNEXURE-1Statement of Articles of the charges framed
against Sri Laxmi Kanta Sharma, Sr CC/TNL
(Name and designation of the Rly servant)ARTICLE-I

Sri Laxmi Kanta Sharma while performing his duty as CC/TNL on 11.11.04 committed an act of gross misconduct in as much as he demanded and accepted a sum of Rs. 20/- (Twenty) excess, while allotting a reservation from Road side quota of TNL station by 1055DN of 23.11.04 Ex-TNL to DLI. The cost of the fare and reservation from TNL to DLI was Rs. 52/- but Sri Sharma demanded and accepted Rs. 52/- Sri Sharma demanded and accepted Rs. 20/- excess than that of actual fare (including reservation fee) for his own consideration which tantamounts a serious misconduct and dereliction to duty.

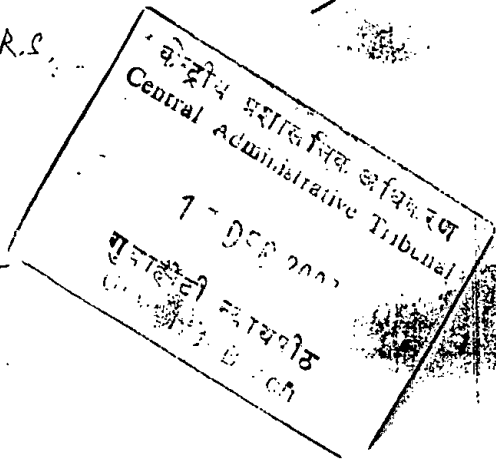
ARTICLE-II

Sri Laxmi Kanta Sharma, Sr CC/TNL while performing his duty as CC/TNL on 11.11.04 committed an act of gross misconduct in as much as he produced his Govt. Cash Rs. 8957/- against Rs. 8878/- (Excluding vouchers) i.e. Rs. 79/- (Seventy nine) excess in Govt. Cash than that of his actual Govt. Cash as per DTC.

Thus by the above act Sri Laxmi Kanta Sharma, Sr CC/TNL exhibited lack of integrity and devotion to duty and acted in a manner which is unbecoming of a Railway servant and thereby contravened the rule 3/1 (i), (ii) and (iii) of Railway Service (Conduct) Rules 1966.

CNDT-A2

DIV. COMM. MANAGER



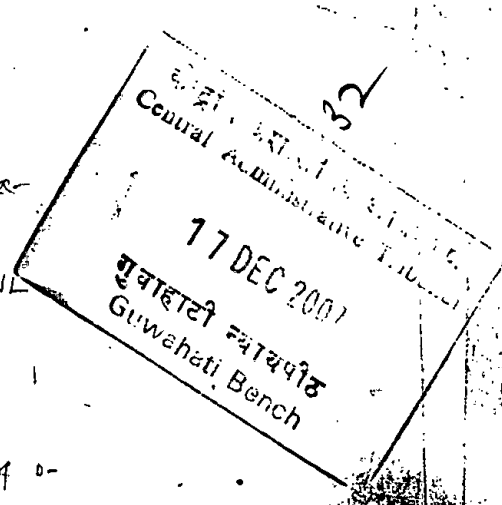
Statement of Impartation of misconduct/misbehaviour in support of the Article of charges framed against Sri Laxmi Kanta Sharma, SCCC/TNL

ARTICLE-I

Sri Laxmi Kanta Sharma, SCCC/TNL while performing his duty as CC/TNL on 14.11.04 committed an act of gross misconduct in as much as he demanded and accepted a sum of Rs. 20/- (Twenty) excess for granting reservation by 1055 DN RX=TNL-DLI on 23.11.04 for one passenger. He issued one SL class Pct no-00813 RX=TNL to DLI with R.T. NO-26406 and granted the berth no-41 by 1055 DN in S/G for 23.11.04. The actual cost of the ticket with RT was Rs. 505/- (Rs. 485/- + Rs. 20/-) but Sri Sharma demanded and accepted Rs. 525/- from Mr. T. Mongba, Contb/RPF/ERCOY/MLG who acted as decoy in presence of Sri L.C. Bajan, Hd.CA/RPF/ERCOY/MLG who was an independent witness. Before conducting the check a pre-check memorandum was drawn depicting there in the G.C. Notes numbers which will be used in the check and obtain their signature. The mentioned G.C. Notes then handed over to Mr. T. Mongba (Decoy). Accordingly Mr. Mongba went to the booking cum Reservation office of the TNL station and place requisition to obtain a reservation by 1055 DN in SL class RX=TNL-DLI on 23.11.04 in presence of independent witness Sri Bajan. On duty booking clerk Sri L.K. Sharma granted a berth by 1055 DN RX=TNL to DLI and issued one SL class Pct no-00813 and RT-26406 on 23.11.04 and demanded and accepted Rs. 525/-. The transaction was witnessed by Sri Bajan and immediately informed the vigilance team.

Then vigilance team entered, introduced themselves and asked Sri Sharma to close the

CNDT-A-3



A3

DTC and to prepare cash declaration. Accordingly he did the same. Then SS/TNL Sri Rameenar Singh was asked to tally the numbers of G.C. Notes of his Govt. Cash with the numbers of Pr check memorandum and following G.C. Notes numbers were tallied exactly.

- i) 5 (five) One hundred rupee G.C. Notes bearing no- GRK 261857, SCV 991165, AGG 309006, BBT 400268 and FGD 029034
- ii) 2 (Two) Ten rupee G.C. Note bearing numbers 56C 863581, 11H 861095
- iii) 1 (One) five rupee G.C. Note bearing no- 16G 175610

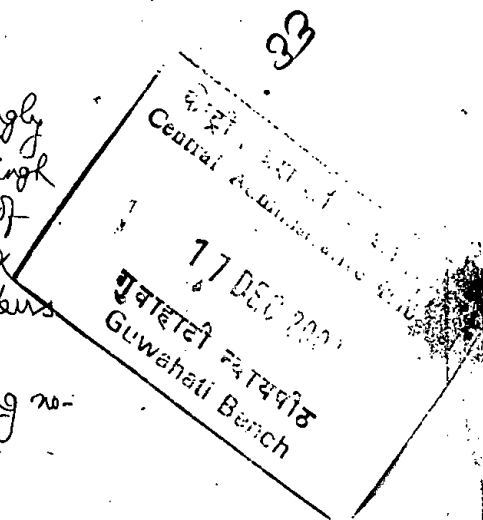
The mentioned recovered G.C. Notes amounting to Rs. 525/- along with the SLP class Pct 00813 and RT 26106. The used requisition for reservation slip (By decoy) were taken over by the vigilance team and kept in a cover duly sealed and signed as evidence.

ARTICLE - II

Sri Laxmi Kanta Sharma, Srcc/TNL while performing his duty as cc/TNL on 14.11.04 committed an act of gross misconduct in as much as he produced Rs. 79/- (seventy nine) excess than that of his actual Govt. Cash as per DTC. Sri Sharma prepared his cash declaration where in he produced his govt. cash excluding voucher Rs. 8957/- against Rs. 8878/- i.e., Rs. 79/- in excess in his Govt. Cash.

Thus by the above act- Sri Laxmi Kanta Sharma Srcc/TNL exhibited lack of integrity and devotion to duty and acted in a manner which is unbecoming of a Railway servant and

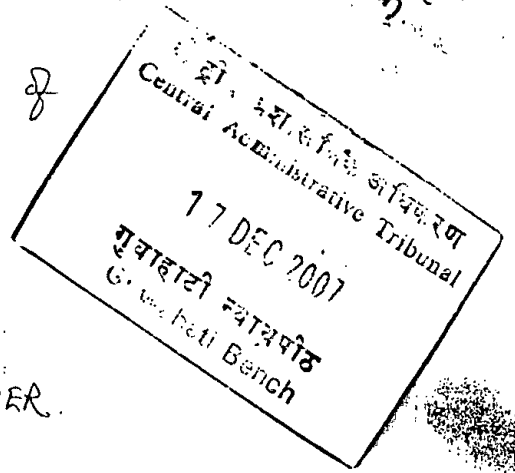
CACNT- P.1



A1.

Thereby continued the Rule 3.1 (i), (ii) & (iii) of Railway Service (Conduct) Rules 1966.

cc: 17.6.05
(A.K. SINHA)
DIVL. COMM. MANAGER.



ANNEXURE-III

List of documents by which the articles of the charge framed against Sri Laxmi Kant Sharma, Sr. CC/TNL

- 1) Pre-check memorandum prepared on 14.11.01
- 2) Post-check memorandum prepared on 14.11.01
- 3) Cash declaration prepared by Sri Laxmi Kant Sharma, Sr CC/TNL on 14.11.01
- 4) Statement of Sri T. Mongha, Comdt/RPF/EROX/MLG decoy recorded on 16.11.01
- 5) Statement of Sri L.C. Bagan, HdCR/RPF/EROX/MLG independent witness recorded on 16.11.01
- 6) One sealed cover containing 5 (five) numbers of one hundred G.C. Note, 2 (two) numbers of Ten Rupee G.C. Notes, 1 (one) fine rupee G.C. Note along with the SLP class P/NB-08B13, RTM-26106 and the reservation requisition slip used for the purpose by decoy, now with Dy. CWO/T/MLG.

cc: 17.6.05
(A.K. SINHA)
DIVL. COMM. MANAGER
CMDT-P-5

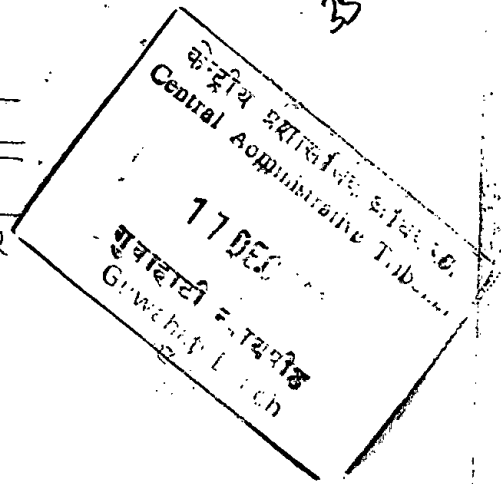
P-5

ANNEXURE-IV

List of witnesses by whom the articles of the charge framed against Sri Laxmi Kanta Sharma, Sr CC/TNL

1. Sri T. Mongba, CB/RPF/ERCOX/MLG
2. Sri L. C. Bajan, HdCB/RPF/ERCOX/MLG
3. Sri Rameswar Singh, SS/TNL

17.6.05
(A. K. SINHA)
DIVL. COMM. MANAGER



Pre Check Memorandum

14.11.04

The following GC Notes have been taken over to conduct a decoy check at Tangla Booking was Reservation office on 14.11.04 and handed over to T Mangba CD/Enquiry/RPF/MLG who will act as decoy in presence of Sri U.C. Bayan HDCB/Encoy/RPF/MLG who will act as independent witness. The decoy was strictly instructed not to handover any excess amount if not demanded and the i/witness was instructed to inform the Vigilance teams about the transaction immediately.

The G.C.notes numbers are as given below:-

- 1) 5 (five) Hundred Rupee G.C. Note bearing number 8BT 400268, 6RK 261887, 5CV 994465, 4GG 309006 and 7GD029034
- 2) 1 (one) fifty Rupees G.C.Note bearing No.6NN 413675
- 3) 1 (one) Twenty Rupee G.C.Note bearing No.24B 889329
- 4) 3 (three) Ten Rupee G.C.Note bearing No.41H 864095 56C 863581 and 05D 280511
- 5) 1 (one) five Rupee G.C.Note bearing No.16G 175610

Sd/-

T.Mangba

B.C.Mushahary

Decoy

Sd/-

L.C.Bayan

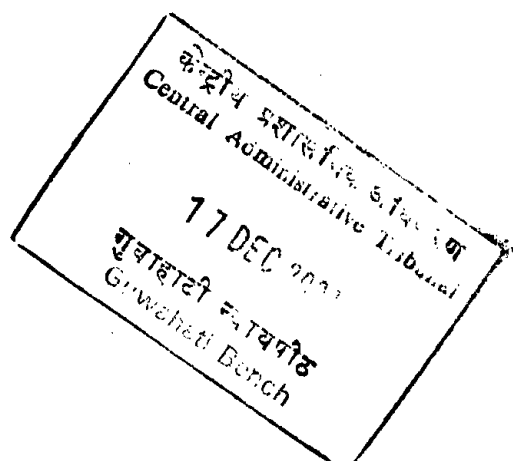
I/witness

Sd/-

A.K.Debnath

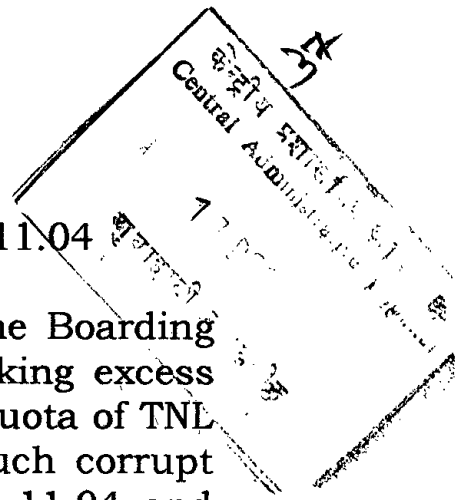
Sd/-

Cv



POST CHECK MEMORANDUM

14.11.04



On receipt of source information that the Boarding staff of Tangla station are in the habit of taking excess money while allowing reservation from Road Quota of TNL station. To apprehend the Sr.H indulge in such corrupt practice a decoy check was conducted on 14.11.04 and during check one Sri Laxmi Kanta Sarma Sr.CC/TNL was apprehend while allowing reservation from TNL to Delhi whose actual fare was Rs.505/- but demanded and accepted Rs.525/- i.e. excess of Rs.20/-.

Before conducting the check a pre check memo was prepared depicting some G.C.Note number thereon and obtained signed from both decoy and independent witness. These notes were handed over to decoy T.Mangba to use in the decoy check.

At about 12.20 hours decoy T.Mangba approached the counter of TNL reservation where Sri L.K.Sarma was performing duty. Independent witness Sri L.C.bayan was also there nearby. Decoy approached L.K.Sarma for a reservation to Delhi from TNL on 23.11.04 by 4055 DN in Sleeper class. And then he filled up the Requisition from as given by Sri Sarma. Decoy T.Mangba filled up the requisition and forwarded to Sri Sarma. Sri Sarma then demanded Rs.525/- (five hundred twenty five) and Decoy handed over then Rs.525/- from the money which he was given through the pre check.... Thus Sri Sarma demanded and after transaction over independent witness Sri L.C.Bayan informed the Vigilance team who were already there near to the Station. The vigilance team then rushed to the Booking office/TN where Sri L.K.Sarma was found working. The SS/TNL Sri Rameswar Singh was called to assist check and vigilance team then started check. Sri L.K.Sarma was asked to close his DTC calculating all booking done by him during his duty hours.

There after the Private cash and Govt. cash of Sri L.K.Sarma Sr.CC/TNL was checked. He declared his P/Cash Rs.52/- and produced Rs.52/-. His Govt. cash

was Rs.9528/- including voucher Rs.650/-. After excluding the voucher value Rs.650/- he produced Rs.8957/- as cash. His Govt. cash should be Rs.8878/- excluding the voucher Rs.650/- But he produced Rs.8957/- i.e. Rs.79/- was excess in Govt. cash. He was asked to prepare the cash declaration and he prepared the same in the proforma given to him by vigilance team.

Thereafter the Pre check memo was shown to SS/TNL Sri R.Singh and Sri L.K.Sarma and obtained signature from them SS/TNL Sri R.Singh was requested to tally the G.C.Notes of Govt. Cash of Sri Sarma in presence of him (Sarma). Sri Singh tallied the G.C.Notes of Govt. cash and during tally the G.C.Notes number –

(1) 5 (five) one hundred Rupee found as 6RK 261857, 5CV 994465, 4GG 309006, 8BT 400268 and 7GD 029034

(2) 2 (two) Ten Rupee G.C.Note found as 56 C 863581 and 41 H 864095

(3) 1 (one) five Rupee G.C.Note found as 16G 175610 which were exactly tallied with the G.C.Notes recorded in the Pre check memorandum.

The total value of Reservation ex TNL to DLI is Rs.485 + 20 = Rs.505/- But here we recovered decoy money Rs.525/- (five hundred twenty five) from the Govt. cash of Sri L.K.Sarma, Sr.CC/TNL.

The recovered amount Rs.525/- and the one sleeper class PCT No.00813 ex TNL to DLI with RT No.26406 and the reservation requisition slip which was used by the decoy were kept in a sealed cover in presence of SS/TNL Sri R.Singh and Sri L.K.Sarma Sr.CC/TNL and obtained signature in the cover. The actual value of the reservation from TNL to DLI Rs.505/- was given to Sri L.K.Sarma Sr.CC/TNL to made good his Govt. cash and advised him to deposit the excess amount as excess in booking.

The signature of Sri R.Singh SS/TNL and Sri L.K.Sarma Sr.CC/TNL recorded in the Post Check

memorandum including the Vigilance team Sri
A.K.Debnath Sr.VI/T/MLG and B.C. Musahary
CVI/T/MLG.

Sd/-
Sri Rameswar Singh
A.K.Debnath

SS/TNL
Sr.VL/T/MLG
14.11.04

Sd/-
B.C.Masahary
CVI/T/MLG
14.11.04

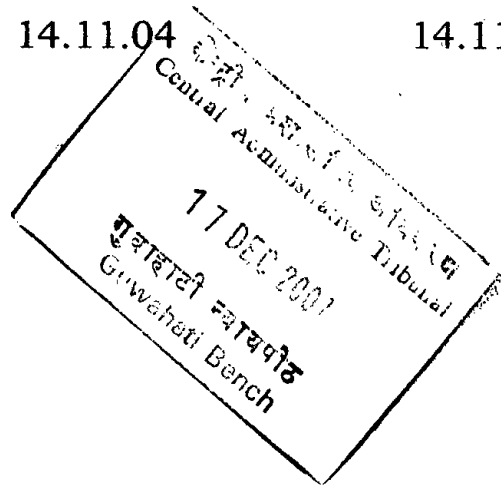
Sd/-
L.K.Sarma

Sr.CC/TNL

14.11.04

Sd/-

14.11.04



Cash Declaration

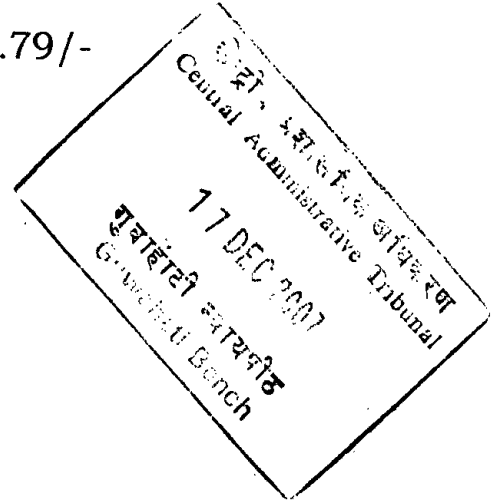
14.11.04

40

- 1) Name:- Laxmi Kanta Sarmah
- 2) Designation:- Sr.CC/TNL
- 3) Working Station:- Tangla
- 4) Duty hours: Continued from 18 hrs of 13.11.04
- 5) Pay scale:- 4500/- (4000/- to 6000/-
- 6) Date of birth:- 4.5.52
- 7) Date of appointment:- 01.01.81
- 8) Private cash declared: - 52/-
- 9) Private cash produced:- 52/-
- 10) Govt. cash appr DTC:- (C - V = 8878 + 6508 = 9528)
- 11) Govt. cash produced: 8957/-
- 12) Remarks:- Govt. cash excess Rs.79/-

Denomination		
1000 x 1	=	1000
500 x 3	=	1500
100 x 39	=	3900
50 x 42	=	2100
20 x 3	=	60
10 x 29	=	290
5 x 11	=	55
Coins	=	52

Total	=	8957
-------	---	------



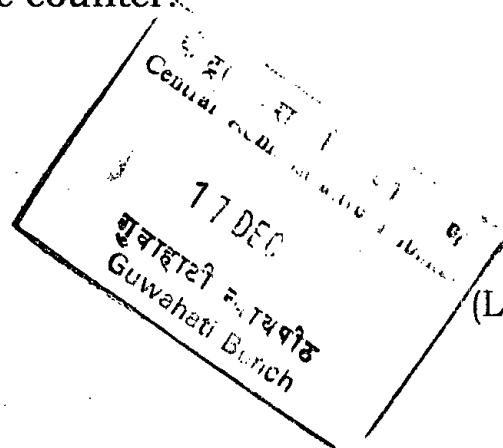
Rupees eight thousand nine hundred fifty seven only

Sd/-
Lakhi Kanta Sarma
Sr.CC/TNL
14.11.04

Statement of Sri L.C.Bayan HDCB/RPF/ERCOY/MLG who acted as independent witness in the decoy check conducted at TNL Booking office on 14.11.04 recorded at CVO/MLGs office on 16.11.04

I along with Sri Lohit Ch. Roy's HDCB/ERCY/RPF/MLG 14.11.04 N.F.Rly/ vigilance Team went for Decoy Check. I was accompanied by my colleague T.Mangba DB/RPF/ERCY MLG. Before going for the check the vigilance officer noted down some number of currency notes in a pre-check memo and shown as and took our signature. After he delivered those currency notes to my colleague Sri T.Mangba and instructed us what we have to do during the checking.

We went to the station as general public by bus. T Mangba approached the counter of Tangla Station at around 12.30 p.m for making a reservation and I was standing at a distant place from there. I heard that the officer in the counter asked for Rs. 525/- for the ticket and accordingly T. Mangba delivered Rs. 525/- to him. Immediately, after that I informed the vigilance officers standing in other side of the station regarding the happening of the transaction and saw them forwarding towards the counter.



Sd/-

(Lohit Ch. Bayan)

The Statement of Sri T. Mangba CB/RPF/ERCOY/MLG who acted as decoy in the decoy check conducted at TNL Booking office on 14.11.04 recorded at CVO/MLGs office on 16.11.04

I T. Mangba CB/RPF/ERCOY/MLG gone for decoy check with the vigilance team on 14.11.04 along with my colleague Sri L.C. Bayan HDCB/RPF/ERCOY/MLG. Before going to check a pre check memorandum was prepared by the vigilance team depicting some numbers of G C Note and shown to us and took signature in it. Thereafter the money handed over to me to use in the check.

We gone to Tangla Station in plain dress by bus. At about 12.20 hrs. I gone to the reservation counter of Tangla Station. Sri L.C. Bayan was behind me. I asked for reservation ticket by 4055 DN EX TNL to DLI. I filled up the requisition form as given by the counter clerk. The counter clerk after preparing the ticket told me to give total Rs. 525/-. I handed over the money of Rs. 525/- from the money which were given to me through pre check memorandum and left the counter.

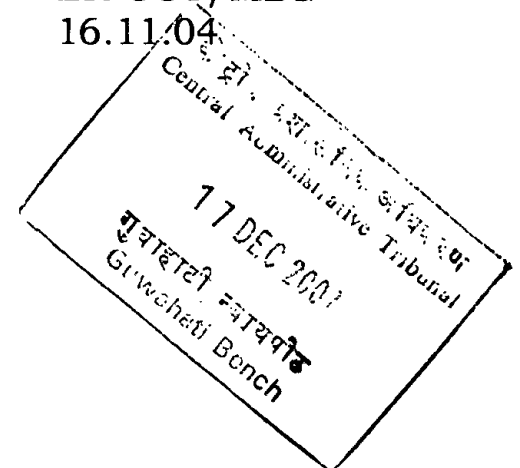
Sd/-

Temsu Mongba, Contable
ER-COY/MLG

16.11.04

Seal

(Divisional Commercial Manager)
N.F. Rly/ Rangia



To:
The Divisional Commercial Manager,
N.F. Railway/ Rangiya.

Through: Proper Channel.

Sir,

Sub:- Defence to SF- 5.

Ref:- Your No. C/421/RNI/VIG/Staff-4 dated 17.6.05.

.....

In obedience to the above, I beg to place the following to your grace for favour of kind and sympathetic consideration.

That the alleged charges framed against me vide Annexure-I of the Memorandum - Article-I and Article-II respectively are denied.

That the objective grounds and circumstances for such denial are placed here under :-

In respect to Article-I.

On 14.11.04- round about 12.30 hours one person approached me for reservation of one berth in 3 tier sleeper against TNL Quota by 4055 Dn Ex. TNL to DLI of 22-11-04. On checking the Reservation Register, I found that the berth as asked for was available and the said person was handed over a requisition slip for such purpose.

The person concerned after filling up the requisition form handed over the same to me and I issued the journey and reservation tickets.

The amount charged for journey ticket was Rs. 485.00 and for Reservation Ticket Rs. 20.00 totalling an amount of Rs. 505.00.

That the tickets handed over to the party who gave me a rolled bundle of G.C. Notes. Before I could count all the currency notes, the said person ran away from the Booking Window.

That on counting I found that there was Rs. 525.00 i.e., Rs. 20.00 more than the charges payable. I immediately came out from the station to locate the person so that I could refund the money. But he was not seen. I straight way went to the residence of the Station Master in-charge and reported the matter to him. He was just to start his meal and he told me that after lunch he would come to the station and arrange to adjust the said Rs. 20.00 paid excess by the person as per Rules.

That this scenario took just a couple of minutes and on my return at station within a minute or so, some persons came to me and identified themselves to be Vigilance Officials and wanted to check the counter cash, my personal cash etc. The vigilance Party also called the SG on duty and proceeded with the raid.

They showed a document called the Pre-check Memorandum and got it signed by me and the SR/TNL.

(Contd ... 2)

Attested

[Signature]

Advocate.

They traced some G.C. Notes in the counter cash which alleged to have been tallied with the number noted in the pre-check memorandum. According to them the total amount of such G.C. Notes came to Rs. 505.00.

That I wanted to explain that all the G.C. Notes having their numerical nos. tallied with the pre-check memorandum were given by one person and the matter of excess payment of Rs. 20.00 was also brought to the notice of the SM/TNL prior the Vigilance Team apprehended me. But the Vigilance official refused to accept it and told me that whatever I wanted to say would be recorded during my statement to be taken by them at Maligaon on subsequent date.

The Vigilance Team then prepared a memorandum and obtained my signature. At this stage also when I wanted to get the core point recorded in the memorandum that the person who got reservation was never asked/requested to pay any extra money, the Vigilance Team told me that those points could be clarified by me while they examine me at Maligaon on the issue.

That a statement was recorded in the vigilance office at Maligaon and I was examined by putting questions on this issue but to my utter surprise I find that the said statement has not been relied upon as documentary evidence.

I never had asked the person who gave Rs. 20.00 excess to to the Rly. charges for my personal gain. The said person framed me in this case for reasons best known to him.

In regard to Article-II.

For issuing tickets to the passengers some coins are necessary for refunding the balance to them since it is hardly in practice that the passengers pay the exact amount for the running ticket.

That to overcome such situation, a Pan-shop located adjacent to the station, as and when necessary, the coins are taken from him.

On this particular occasion, I collected coins from the said shop worth to Rs. 80.00 just at about 7 A.M. so that I could meet the demand of the passengers. But the said Rs. 80.00 was not refunded to him due to my engagements in other matters.

However, coins to the effect of Rs. 52.00 were also available in the counter while the Vigilance Team conducted that check. The Pan-shop preferred to get the coins back if unused and not the G.C. Notes. This was a normal practice to run the Rly. services smoothly. It may not be strictly as per Rules but such actions are being taken without any motive behind it. It was an honest by-pass of Rules just to carry on the work smoothly and also for satisfaction to the users.

In view of such circumstances as stated above, your good self may kindly withdraw the Memorandum under reference and thus close.

Thanking you,

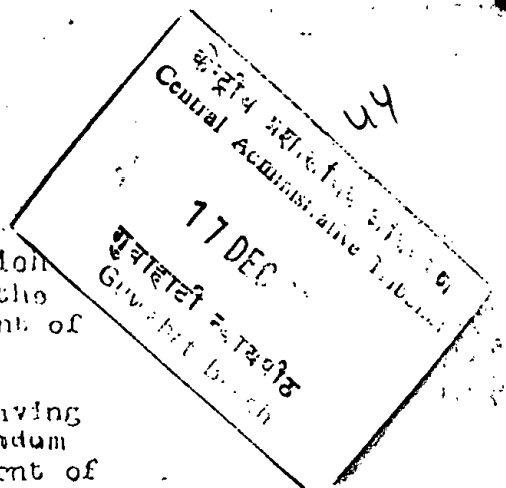
Yours Faithfully,

(Signature of the undersigned)

(Name of the undersigned)

CC/ TADA.

E.F. Railway.



N.F. Railway

Office of the
Divisional Comml. Manager
Rangiya
Dtd. 18/12/2006

No. C/121/RNY/VIA/STAFF-1

To, Sri/Smt. Laxmi Kanta Sharma

Designation Sv. CC/TNL

Through: SS/TNL

Subj: - DAR action for major penalty charge sheet

Ref: - Major penalty Memorandum No- C/121/RNY/
VIA/STAFF-1 dtd 17.6.05

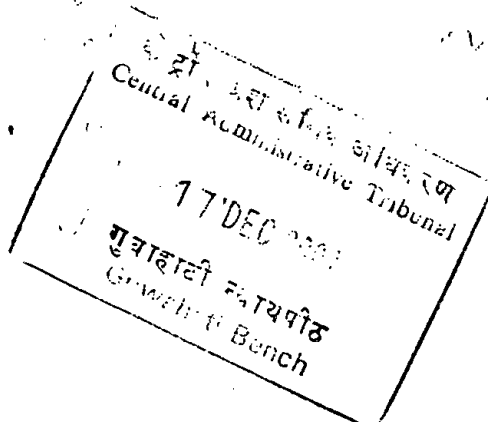
In connection with the subject issue enclosed please find a copy of the enquiry report submitted by E.O/MLG for furnishing your remarks/ final brief against each article of charges labeled vide memorandum cited above

Your reply should reach this Office within 10 (Ten) days time failing which it will be presumed that you have nothing more to say and the case will be decided as per records available

DA 13 (Thirteen)

(Signature)
18/12/06
(A.K. Sinha)

Divisional Comml. Manager
Rangiya



Attested

(Signature)

(Signature)



— 31 —

NORTHEAST FRONTIER RAILWAY

2.1.46

ENQUIRY REPORT

ON

The Departmental Enquiry Held Against

SHRI LAXMI KANTA SHARMA

SENIOR COMMERCIAL CLERK/TANGLA

Submitted by

Shri Sisir Sen Gupta

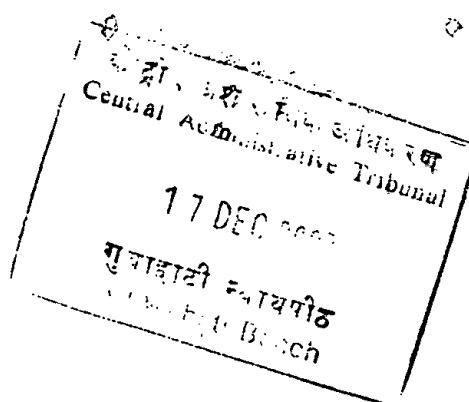
Enquiry Officer

To

DCM / RNY

N.F/Railway

(Disciplinary Authority)



F.2.
47**Enquiry Report****On****The Departmental DAR Enquiry against Shri Laxmi
Kanta Sharma, Senior Commercial
Clerk/Tangla/Northeast Frontier Railway****1.0 SEQUENCE OF DAR CASE RECORDS AND AUTHORITY FOR ENQUIRY**

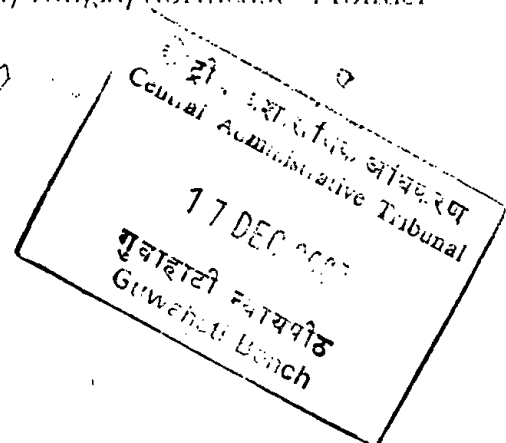
1.1 Under Rule 9 (2) of Railway Servants (Disciplinary and Appeal) Rules 1968, the Divisional Commercial Manager/Rangiya/Northeast Frontier Railway issued Memorandum bearing No. C/421/RNY/VIG/STAFF - 4, dated 17/06/05 to Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway proposing to hold an enquiry against him for Imposition of Major Penalty for the Article of Charges framed therein.

1.2 **Record Of Delivery Of Charge Sheet To The Charged Official** - The above mentioned Memorandum was received by the Charged Official along with all the Annexure.

1.3 **Order Of The Disciplinary Authority Appointing Of Enquiry Officer and the Presenting Officer** - The Divisional Commercial Manager/Rangiya/Northeast Frontier Railway vide his Order No. C/421/RNY/VIG/STAFF - 4, dated 14/07/2005 appointed Shri Sisir Sen Gupta, Chief Enquiry Inspector/Maligaon/Head Quarter/Northeast Frontier Railway as Enquiry Officer and Shri Ranjit Das, Chief Vigilance Inspector (Traffic)/Maligaon/Head Quarter/Northeast Frontier Railway as Presenting Officer.

2.0 THE CASE ON BEHALF OF THE DISCIPLINARY AUTHORITY

2.1 The Article of Charges framed against the Charged Official Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway, which are re - produced below: -





Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway while performing his duty as Commercial Clerk/Tangla/Northeast Frontier Railway on 14/11/2004 committed an act of gross misconduct in as much as he demanded and accepted a sum of Rs. 20/- (Rupees Twenty) excess while allotting Reservation from Road Side Quota of Tangla Railway Station by 4055 Dn. of 23/11/2004 Ex. Tangla to Delhi. The cost of the fare and reservation Ex. Tangla to Delhi was Rs. 505/- (Rupees Five Hundred and Five) but Shri Sharma demanded and accepted Rs. 525/- (Rupees Five Hundred and Twenty Five). Shri Sharma demanded and accepted Rs. 20/- (Rupees Twenty) excess then that of actual fare (including reservation) for his own consideration which tantamount a serious misconduct and derelicts to duty.

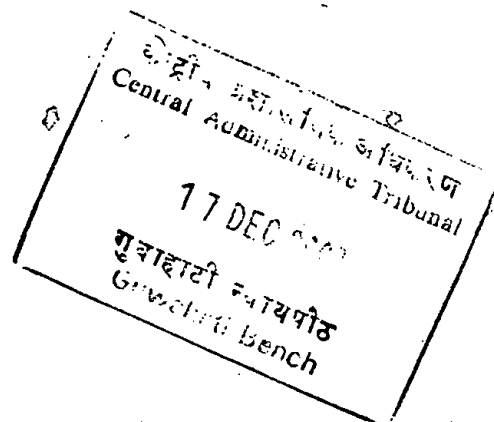
ARTICLE - II

Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway while performing his duty as Commercial Clerk/Tangla/Northeast Frontier Railway on 14/11/2004 committed an act of gross misconduct in as much as he produced his Govt. Cash Rs. 8957/- (Rupees Eight Thousand and Nine Hundred Fifty Seven) against Rs. 8878/- (Rupees Eight Thousand and Eight Hundred Seventy Eight) (excluding voucher) i.e. Rs 79/- (Seventy Nine) excess in his Govt. cash as per DTC.

Thus, by the above act Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway exhibited lack of integrity and devotion to duty and acted in a manner which is unbecoming of a Railway Servant and thereby Contravened the Provision of Rule No. 3.1 (i), (ii) & (iii) of Railway Service (Conduct) Rule's 1966.

2.2 The Statement Of Imputation Of Misconduct And Misbehavior

2.3 The Article of Charge - I framed against the Charged Official Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway is that Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway while performing his duty, as Commercial Clerk/Tangla/Northeast Frontier Railway on 14/11/2004 committed an act of gross misconduct in as much as he demanded and accepted a sum of Rs. 20/- (Rupees Twenty) excess while allotting Reservation from Road Side Quota of Tangla Railway Station by 4055 Dn. of 23/11/2004 Ex. Tangla to Delhi. He issued One Sleeper Class Ticket bearing No. 00813 Ex. Tangla to Delhi with Reservation Ticket bearing No. 26406 and granted the Berth No. 44.





conducting the Check, a Pre - Check - Memorandum was prepared depicting the Govt. Currency Note numbers which would be in the said Check and handed over to Shri T. Mongba, Constable/Railway Protection Force/Northeast Frontier Railway who acted as Decoy in the Check in presence of Shri L. C. Bayan, Head Constable/Railway Protection Force who acted as Independent Witness in the Check.

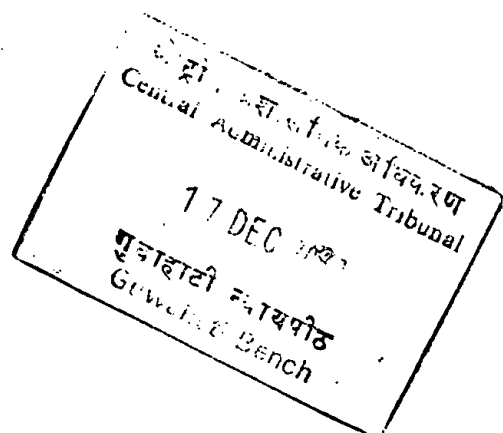
Accordingly, Shri Mongba (Decoy) went to the Booking Office and placed the Requisition in presence of the Independent Witness Shri Bayan. The on duty Booking Clerk Shri Sharma granted a Berth by 4055 Dn. Ex. Tangla to Delhi and issued One Sleeper Class Printed Card Ticket bearing No. 00813 and Reservation Ticket bearing No. 26406 and demanded and accepted a sum of Rs. 525/- (Rupees Five Hundred and Twenty Five). The transaction was witnessed by Shri Bayan (Independent Witness) and when the transaction was over, he immediately informed the matter to the Vigilance Team.

Then the Vigilance Team entered and introduced themselves and asked Shri Sharma to close the DTC and to prepare the cash declaration. Accordingly, he did the same. Then Station Superintendent/Tangla/Northeast Frontier Railway Shri R. Singh was asked to tally the numbers the Govt. Currency Notes of his Govt. cash with the numbers of Pre - Check - Memorandum and the following Govt. Currency Note numbers were tallied exactly.

- 1) Five numbers of One Hundred Rupee Govt. Currency Note bearing Nos. 6RK 261857, 5CV 994465, 4GG 309006, 8BT 400268, and 7GD 029034.
- 2) Two numbers of Ten Rupee Govt. Currency Note bearing Nos. 56C 863581 and 41H 864095.
- 3) One number of Five Rupee Govt. Currency Note bearing No. 16G 175610.

The above mentioned recovered Govt. Currency Notes amounting to Rs. 525/- (Rupees Five Hundred and Twenty Five) along with Printed Card Ticket, Reservation Ticket and the Requisition Slip used for Reservation (by the Decoy) were taken over and kept in a Cover duly Sealed and Signed as evidence.

- 2.4 The Article of Charge - II framed against the Charged Official Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway while performing his duty as Commercial Clerk/Tangla/Northeast Frontier Railway on 14/11/04 committed an act of gross misconduct in as much as he produced Rs. 79/- (Rupees Seventy Nine) excess then that of his actual Govt. Cash as per DTC. Shri





prepared his cash declaration wherein he produced his Govt. cash including vouchers is Rs. 8957/- (Rupees Eight Thousand and Nine Hundred and Fifty Seven) against Rs. 8878/- (Rupees Eight Thousand and Eight Hundred Seventy Eight) i.e. Rs. 79/- (Seventy Nine) excess in his Govt. cash.

2.5 **LIST OF DOCUMENT** - The Disciplinary Authority produced 06 (Six) numbers of documents on to which Relied Upon, vide Annexure - III of the Charge Sheet.

2.6 **LIST OF WITNESS** - The Disciplinary Authority cited 03 (Three) numbers of Prosecution Witnesses vide Annexure - IV of the Charge Sheet and all were attended in the enquiry.

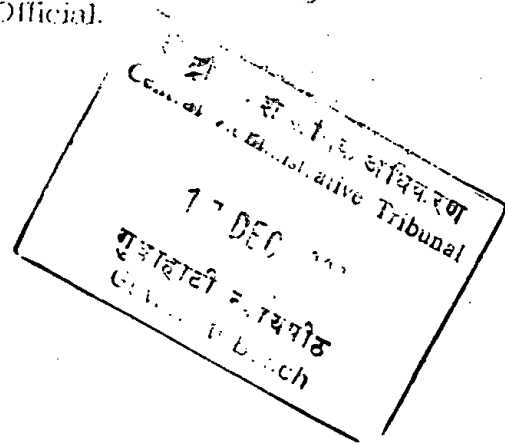
3.0 **PROCEEDINGS OF THE ENQUIRY**

3.1 **PRELIMINARY HEARING** - The Preliminary Hearing of the above case was held on 11/08/2005 in the Chamber of the Chief Enquiry Inspector/ Head Quarter/ Maligaon/ Northeast Frontier Railway in presence of both the Presenting Officer and the Charge Official.

3.2 **PROSECUTION DOCUMENTS** - Before starting the Regular Hearing, all the Relied Upon Document's cited by the Disciplinary Authority vide Annexure - III were produced in original and were marked as follows: -

SL. NO.	DESCRIPTION	MARKED AS
1	Pre - Check - Memorandum, dated 14/11/2004	PD/1
2	Post - Check - Memorandum, dated 14/11/2004.	PD/2
3	Cash Declaration, dated 14/11/2004.	PD/3
4	Statement of Shri T. Mongba.	PD/4
5	Statement of Shri L. C. Bayan.	PD/5
6	Scaled Cover containing Rs. 20/-.	PD/6

3.3 **PROSECUTION WITNESSES** - All the Prosecution Witnesses were attended in the enquiry and they were examined by the Presenting Officer and then Cross - Examined by the Charged Official.





No.	Name	Evidence As	Deposition Date	Pages
2	T. Mongba	PW - 1	29/08/2005	3
3	L. C. Bayan	PW - 2	27/10/2005	2
3	R. Singh	PW - 3	06/10/2005	2
4	A. K. Debnath	CW	27/10/2005	1

3.4 **DEFENCE DOCUMENTS** - The Charged Official was asked for any Documents he wants to produce but demanded nothing.

3.5 **DEFENCE WITNESS** - NIL.

3.6 **REGULAR HEARING** - The Regular Hearing was held on 29/08/2005, 06/10/2005, 27/10/2005 and 28/10/2005. The Regular Hearing of the above case was completed on 28/10/2005.

3.7 **GENERAL EXAMINATION OF THE CHARGED OFFICIAL** - On 28/10/2005, before the close of the Regular Hearing, the Enquiry Officer put mandatory Questions to the Charged Official to clarify his position in general. Reply to the mandatory Questions by the Charged Official was recorded.

3.8 **TIME FRAME** - The last Regular Hearing was held on 28/10/2005 and the Presenting Officer's Prosecution Brief was submitted on 08/11/2005 and the Defence Brief was submitted on 08/11/2005.

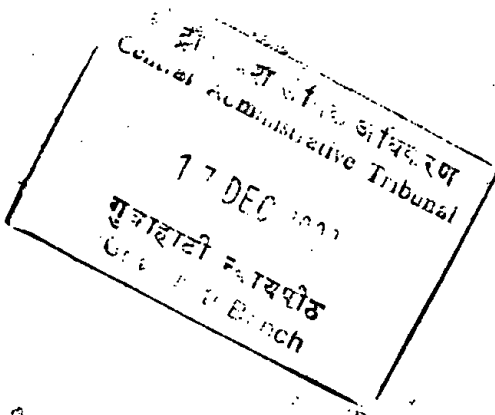
4.0 **GROUND'S TAKEN BY THE PRESENTING OFFICER IN HIS PROSECUTION BRIEF**

4.1 The Presenting Officer in his Prosecution Brief had commented Article wise as below-

4.2 The case is a Decoy case and all the Witnesses produced during the course of enquiry, examined and cross examined by the Presenting Officer and the Charged Official.

4.3 **ARTICLE - I** PW - 1 (Decoy) Shri T. Mongba vide Q* No. 2 answered that the Relied Upon Document marked as PD - 1 bears his signature and the content is correct and vide Q* No. 7, he clearly stated that the on duty Booking Clerk demanded Rs. 525/- (Rupees Five Hundred and Twenty Five) for the Ticket and the Reservation.

4.4 PW - 2 (Independent Witness) Shri L. C. Bayan, Head Constable/Railway Protection Force/Northeast Frontier Railway vide Q* No. 6 stated that he was about 10 feet away from the Booking Counter and he boldly stated





P. 10

had heard the conversation of both the Decoy and the Booking Clerk in reply to Q* No. 7 and vide Q* No. 11, Shri Bayan also stated that the Decoy paid the money to the Booking Clerk as asked by the Booking Clerk in raised voice.

4.5 PW - 3, the Station Superintendent/Tangla/Northeast Frontier Railway clearly stated that the Vigilance Team counted the cash and after counting they showed him 08 (Eight) numbers of Govt. Currency Notes valued worth Rs. 525/- (Rupees Five Hundred and Twenty Five). The Govt. Currency Notes numbers were exactly tallied with the numbers recorded in the Pre - Check - Memorandum (PD - 1) where he signed. They also after counting the cash showed him the excess amount of Rs. 79/- (Rupees Seventy Nine).

4.6 The Court Witness Shri A. K. Debnath, Senior Vigilance Inspector (Traffic)/Maligaon/Head Quarter/Northeast Frontier Railway deposed as Court Witness, stated that both PD - 1 & 2 bears signature and content of both the Memorandum are correct.

4.7 **ARTICLE - II** Cash Particulars marked as PD - 3 which was prepared by the Charged Official Shri Laxmi Kanta Sharma by his own handwriting clearly proved that he (CO) possessed Rs. 79/- (Rupees Seventy Nine) excess in his Govt. cash. The same was also admitted by the Station Superintendent/Tangla/Northeast Frontier Railway in reply to Q* No. 1.

5.0 GROUND TAKEN BY THE CHARGED OFFICIAL IN HIS DEFENCE BRIEF

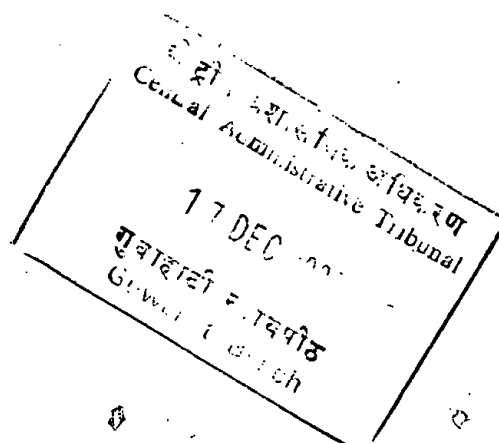
5.1 In the Defence Brief, the Charged Official mentioned that

5.2 a.) "The Decoy Shri Mongha was asked to pay Rs. 505/- (Rupees Five Hundred and Five) for the ticket including Reservation but he paid Rs. 525/- (Rupees Five Hundred and Twenty Five) instead of Rs. 505/- (Rupees Five Hundred and Five).

b.) The Decoy handed over a bundle of Govt. Currency Notes to him through the Counter Window and took the Ticket from the stand.

c.) The Charged Official on counting the Govt. Currency Notes found Rs. 20/- (Rupees Twenty) excess and he called the Decoy but he hurriedly left the Booking Counter.

d.) The Charged Official tried to find out the Decoy for refunding the excess money but could not locate him.



0318726



Charged Official immediately informed the Station Superintendent/Tangla/Northeast Frontier Railway who was in his presence the matter prior to Vigilance Team arrived and confronted him in the Booking Office.

5.3. The Charged Official also mentioned in his Brief that -

5.4. PW - 1 (Decoy) stated during deposition vide his answer to Q* No. 4 put by Defence that he did not know the fare from Tangla to Delhi but the Court Witness in his deposition stated in his answer to Q* No. 2 that the Decoy informed him of paying Rs. 20/- (Rupees Twenty) excess to the Booking Clerk on demand. The Decoy further confirmed that vide his answer to Q* No. 8 that he had no idea of the fare from Tangla to Delhi.

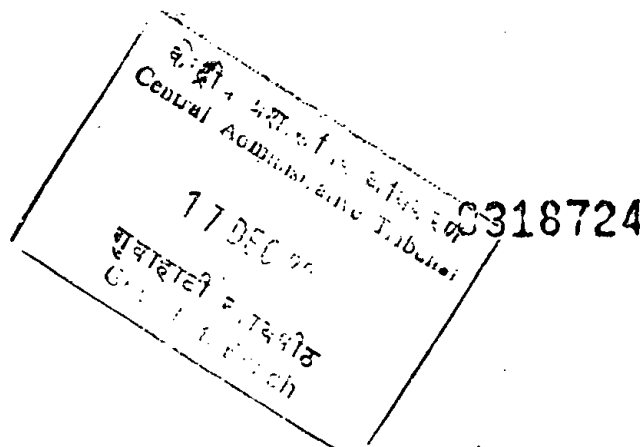
5.5. If the Decoy had no knowledge of the fare from Tangla to Delhi then how he could inform the Vigilance Team that an amount of Rs. 20/- (Rupees Twenty) was paid in excess to the Railway dues. This payment of excess demanded and accepted by the Charged Official therefore, suffers from the test of reliability and acceptability. The Charged Official stated that he had informed the Station Superintendent/Tangla/Northeast Frontier Railway (PW - 3) of payment of Rs. 20/- (Rupees Twenty) excess by a Passenger immediately after the deal and before the Vigilance Team confronted him. This Statement of the Charged Official has been confirmed by PW - 3 during his examination when the Defence Cross examined him.

5.6. The Decoy in course of his examination stated that the Independent Witness located himself about 50 feet away from the Counter, answer to Q* No. 12. But, the Independent Witness stated in his answer to Q* No. 6 that he located himself about 10 feet off from the Decoy. Again in his answer to Q* No. 9 stated that he located himself within 15 feet from the Decoy.

5.7. The Independent Witness accepted that he was short of hearing and heard the conversation of the Charged Official and the Decoy since they were talking in raised voice. When the Reservation and or Tickets are sold to the users, there would not be any occasion to raise voice either by Booking Clerk or by the Passenger.

5.8. The Independent Witness further stated in his answer to Q* No. 11 that the Booking Clerk refused to issue the Ticket immediately and the Booking Clerk asked the money in a raised voice.

5.9. It is therefore, established that the Independent Witness was suffering from short of hearing.



54
P-9.



The evidences of the Independent Witness suffered from the test of reliability and acceptability and reasonability.

5.11 In the proceedings, it has been established that:-

a. The Decoy to frame the Charged Official paid Rs. 20/- (Rupees Twenty) excess over and above the Railway dues.

The Independent Witness being a Person of short hearing his evidences are not reliable and also he could not be really an Independent Witness as both the Decoy and the Independent Witness belong to Railway Protection Force unit having close working understanding.

c. The Decoy in his Statement never stated that he had any occasion to raise his voice while booking the Ticket and also the Charged Official never had raised his voice.

5.12 The prosecution failed to establish this Article of Charge against the Charged Official Shri Laxmi Kanta Sharma.

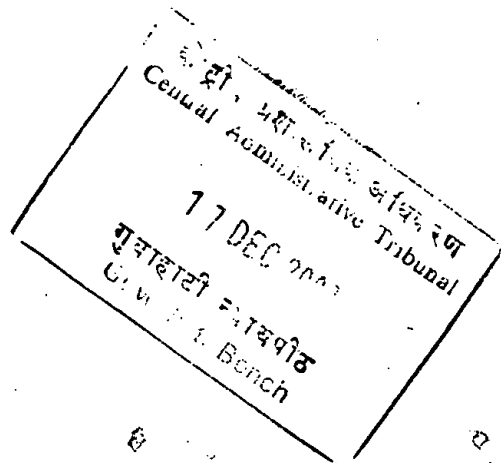
5.13 **ARTICLE - II** The Charged Official in his Defence Brief admitted the fact that there is no dispute that an amount of Rs. 79/- (Rupees Seventy Nine) was found excess in the Counter.

5.14 The Charged Official defended himself while explaining the cause of such excess of cash by stating that the Passengers were required to the balance in small Coins for which they adopted a practice of taking small worth Govt. Currency Note/Coins from the nearby Pan Shop located in the Railway Station since imprest cash provided to the Booking Cell was Rs. 5/- (Rupees Five) only. These aspects have had the approval of the Station Superintendent/Tangla/Northeast Frontier Railway. The Station Superintendent/Tangla/Northeast Frontier Railway also confirmed the Statement of the Charged Official and accepted that such arrangement was within his knowledge during his deposition.

6.0 DISCUSSION, ASSESSMENT OF EVIDENCES AND REASON FOR FINDINGS IN RESPECT OF ARTICLE OF CHARGES

6.1 **ARTICLE - I** The Charge stated that the Charged Official demanded and accepted a sum of Rs. 20/- (Rupees Twenty) excess from a Passenger who was the Decoy, for granting Reservation by 4055 Dn. of 23/11/2004.

6.2 The Presenting Officer in his Prosecution Brief had commented the Article wise as below:-



55
P-16-11111



was a Decoy case and all the Witnesses produced during the enquiry and were examined and cross examined by the Presenting Officer and the Charged Official.

- 6.4 PW - 1 (Decoy) Shri T. Mongba vide Q* No. 2 answered that the Relied Upon Document marked as PD - 1 bears his signature and the content is correct and vide Q* No. 7, he clearly stated that the on duty Booking Clerk demanded Rs. 525/- (Rupees Five Hundred and Twenty Five) for the Ticket and the Reservation.
- 6.5 PW - 2 (Independent Witness) Shri L. C. Bayan, Head Constable/Railway Protection Force/Northeast Frontier Railway vide Q* No. 6 stated that he was about 10 feet away from the Booking Counter and he boldly stated that he heard the conversation of both the Decoy and the Booking Clerk in reply to Q* No. 7 and vide Q* No. 11 Shri Bayan also stated that the Decoy paid the money to the Booking Clerk as asked by the Booking Clerk in raised voice.
- 6.6 PW - 3, the Station Superintendent/Tangla/Northeast Frontier Railway clearly stated that the Vigilance Team counted the cash and after counting they showed him 08 (Eight) numbers of Govt. Currency Notes valued worth Rs. 525/- (Rupees Five Hundred and Twenty Five). The Govt. Currency Notes numbers were exactly tallied with the numbers recorded in the Pre - Check - Memorandum (PD - 1) where he signed. They also after counting the cash showed him the excess amount of Rs. 79/- (Rupees Seventy Nine).
- 6.7 The Charged Official in his Defence Brief stated Article wise as:-
- 6.8 Shri T. Mongba, PW - 1 (Decoy) stated during deposition vide his answer to Q* No. 4 put by the Defence that he did not know the fare from Tangla to Delhi but the Court Witness in his deposition stated in his answer to Q* No. 2 that the Decoy informed him of paying Rs. 20/- (Rupees Twenty) excess to the Booking Clerk on demand. The Decoy further confirmed that vide his answer to Q* No. 8 that he had no idea of the fare from Tangla to Delhi.
- 6.9 If the Decoy had no knowledge of the fare from Tangla to Delhi then how he could inform the Vigilance Team that an amount of Rs. 20/- (Rupees Twenty) was paid in excess to the Railway dues. This payment of excess demanded and accepted by the Charged Official therefore, suffers from the test of reliability and acceptability. The Charged Official stated that he had informed the Station Superintendent/Tangla/Northeast Frontier Railway (PW - 3) of payment of Rs. 20/- (Rupees Twenty) excess by a Passenger immediately after the deal and before the Vigilance Team confronted him. This Statement of the Charged Official has been

को-डी-४ प्रशासक, टांगला
 General Administrative Officer
 17 DEC
 गुवाहाटी - टांगला
 Guwahati - Tangla

0318720



admitted by PW - 3 during his examination when the Defence cross-examined him.

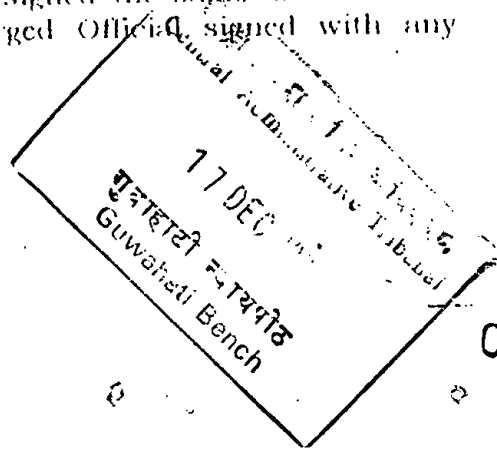
6.10 **ARTICLE - II** The Cash Particulars marked as PD - 3 which is prepared by the Charged Official Shri Laxmi Kanta Sharma by his own handwriting clearly proved that the he (CO) possessed Rs. 79/- (Rupees Seventy Nine) excess in his Govt. cash. The same also admitted by the Station Superintendent/Tangla/Northeast Frontier Railway in reply to Q* No. 1.

6.11 The Charged Official defended himself while explaining the cause of such excess of cash by stating that the Passengers were required to the balance in small Coins for which they adopted a practice of taking small worth Govt. Currency Note/Coins from the nearby Pan Shop located in the Railway Station since imprest cash provided to the Booking Cell was Rs. 5/- (Rupees Five) only. These aspects have had the approval of the Station Superintendent/Tangla/Northeast Frontier Railway. The Station Superintendent/Tangla/Northeast Frontier Railway also confirmed the Statement of the Charged Official and accepted that such arrangement was within his knowledge during his deposition.

6.12 ANALYSIS OF CHARGE -

6.13 **ARTICLE - I** From the above discussion, it is very much clear that an amount of Rs. 525/- (Rupees Five Hundred and Twenty Five) was recovered from the custody of the Charged Official instead of due fare of Rs. 505/- (Rupees Five Hundred and Five) and the numbers of all the 08 (Eight) numbers of Govt. Currency Notes were exactly tallied with the numbers mentioned in the Pre - Check - Memorandum which was prepared well in advance of the Check and tallying of Govt. Currency Note numbers were done in presence of the Station Superintendent/Tangla/Northeast Frontier Railway (PW - 3). Therefore, the Charged Official's plan is not acceptable on the ground as the Charged Official should collect the fare first and then will count after satisfying himself about the realization of correct fare will hand over the Ticket along with the return money, if any. Therefore, question of searching the Passenger coming out of the Counter and went to the residence of the Station Superintendent/Tangla/Northeast Frontier Railway are all after thought.

6.14 The Post - Check - Memorandum (PD - 2) was prepared at the spot and after the check and the Charged Official signed the same and nowhere the same was mentioned nor the Charged Official signed with any remarks.



0318718



107

P. 12

15. The Independent Witness who is supposed to be a vital Witness stated that he was stationed him about 15 feet away from the Counter and it is not possible/difficult to heard the conversation of the Booking Clerk who was inside the Counter.

6.16 From the above, it is clear that the demand of Rs. 20/- (Rupees Twenty) excess by the Charged Official is not established but, the acceptance of Rs. 20/- (Rupees Twenty) excess by the Charged Official is established as the fare and the excess money amounting to Rs. 525/- (Rupees Five Hundred and Twenty Five) was recovered from the custody of the Charged Official i.e. from the Govt. cash possessed by the Charged Official.

6.17 Therefore, I consider that the Article of Charge - I framed against the Charged Official is partially established.

6.18 **ARTICLE - II** The Charged Official's plea regarding Article - II of the Charge that, "Practice of taking small worth Govt. Currency Notes/Coins from the nearby Pan Shop" is neither acceptable nor encourageable. There is no doubt that the possibilities of collecting of Coins before commencement of duty by the Booking Clerk cannot be overruled.

6.19 But, in the instant case, the amount of ~~Rs. 79/- (Rupees Seventy Nine)~~ collected from the Pan Shop as claimed by the Charged Official was not mentioned in the Private Cash Register, DTC even the matter is not mentioned in the cash particulars prepared by the Charged Official with his own handwriting and finally, not even mentioned in the Post - Check Memorandum. So, this plea of the Charged Official is not at all acceptable. Moreover, the Charged Official failed to inform the exact amount he brought on that particular day. The Charged Official clarified as "Some Coins" during General - Examination of the Charged Official by the Enquiry Officer vide **P - 2, Line - 16**, which clearly indicate that the plea of the Charged Official is after thought.

6.20 Therefore, I consider that the Article of Charge - II framed against the Charged Official is established.

17 DEC 1971
Central Administrative Tribunal
Gwalior Bench



-43-

58
P-13.

7.0 FINDINGS OF THE ARTICLE OF CHARGES

7.1 From the above discussion, documentary and oral evidence available during the course of the enquiry, it is concluded that Rs. 20/- (Rupees Twenty) (the Decoy money) was recovered from the custody of the Charged Official (in the form of Govt. cash) is proved but the demand of the Charged Official about the money from the Decoy is not proved and the Charged Official possessed of Rs. 79/- (Rupees Seventy Nine) excess in his Govt. cash is proved.

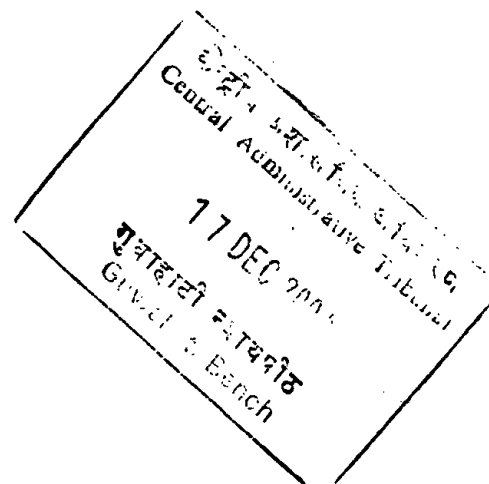
7.2 Hence, the Article of Charges framed against the Charged Official Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway vide Memorandum of Charge Sheet No. C/421/RNY/VIG/STAFF - 4, dated 17/06/2005 issued by the Divisional Commercial Manager/Rangiya/Northeast Frontier Railway are as under:

ARTICLE - I : PARTIALLY PROVED
ARTICLE - II : PROVED

30/11/05

(SISIR SEN GUPTA)
Enquiry Officer/HQ/Maligaon

Dated: - 30/11/2005



0318714

Brief submitted by Defence in the DAR proceeding drawn against Shri M.K. Sharma, Sr. CC/TNL in reference to the SF-5 No. C/421/RNY/VIG/Staff-4 dated 17.6.05.

The P.O. was asked to submit his brief if any within 10 days from 28.10.05 to the I.O. with a copy to the C.O.

The Defence was asked to submit the brief within 10 days from the receipt of the P.O.'s brief.

The P.O.'s brief was due to reach the C.O. within 6.11.05. But the defence since has not received the brief from P.O., the brief of the defence is hereby submitted to I.O.
(Ref: Daily Order Sheet dt. 28.10.05).

The Article of charges framed against the Charged Employee were as under :-

Article-I = On 14.11.04, the C.O. demanded and accepted Rs. 20.00 excess from the Decoy over and above the RLY dues for allotting one berth by 4055 Dn Ex. TNL to DLI to be availed on 23.11.04. (The Rly. dues were Fare Rs. 485.00 + Reservation Charges Rs. 20.00 = total Rs. 505 but he accepted Rs. 525.00).

Article-II = While the cash in the Booking Counter was tallied with the sale proceeds it was detected that a sum of Rs. 79.00 excess (Govt. cash as per sale proceeds = Rs. 8878.00 but cash found Rs. 8957.000 - hence excess money located was Rs. 79.00).

The C.O. denied both the Article of charges framed against him.

The C.O. stated in his clarification being asked by the Hon'ble I.O. as under:-

- Article-I - (i) The Decoy was asked to pay Rs. 505.00 for the ticket including reservation but he paid Rs. 525.00 instead of Rs. 505.00,
(ii) The Decoy handed over a bundle of G.C. Notes to him through Counter Window and took the ticket from the stand,
(iii) The C.O. on counting the G.C. Notes found Rs. 20.00 excess and then called the Decoy but he hurriedly left the Booking Counter,
(iv) The C.O. tried to find out the Decoy for refunding the excess money but could not locate him,
(v) The C.O. immediately informed the SS/TNL who was in his residence the matter prior to Vigilance Team arrived and confronted him in the Booking Office.

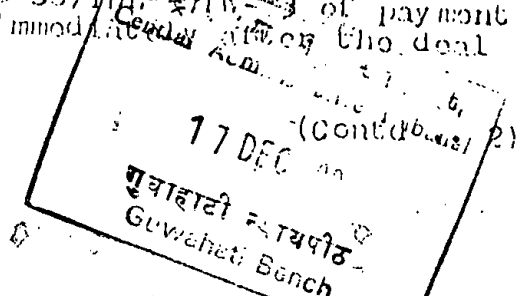
The prosecution assembled three PWs for establishing the charge against the C.O.

P.W.-1 : (the Decoy) stated during deposition vide his answer to Q. No. 4 put by defence that he did not know the fare from TNL to DLI but the court officer in his deposition stated in his answer to Q. No. 2 that the Decoy informed him of paying Rs. 20.00 excess to the Booking Clerk on demand. The Decoy further confirmed that vide his answer to Q.No. 8 that he had no idea of the fare from TNL - DLI. If the Decoy had no knowledge of the fare from TNL to DLI, then how he could inform the Vigilance Team that an amount of Rs. 20.00 was paid in excess to the Rly. dues. This payment of excess demanded and accepted by the C.O. therefore suffers from the test of reliability and acceptability. The C.O. stated that he had informed the SS/TNL of payment of Rs. 20.00 excess by a passenger immediately after the deal and before the V.T. confronted him.

Attested

[Signature]

Advocate.



(confronted him)-

This statement of the C.O. has been confirmed by PW-3 during his examination when the defence cross examined him.

The Decoy in course of his examination stated that the independent witness located himself about 50 ft. away from the counter- Answer to Q.No. 12. But the independent witness stated in his answer to Q.No.6 that he located himself about 10 ft. off from the Decoy. Again in his answer to Q.No. 9 stated that he located himself within 15 ft. from the Decoy.

The independent witness accepted that he was short of hearing and heard the conversation of the C.O. and Decoy since they were talking in raised voice. When the reservations and or tickets are sold to the users there would not be any occasion to raise voice either by the Booking Clerk or by the passenger.

The independent witness further stated in his answer to Q.No. 11 that the Booking Clerk refused to issue ticket immediately and the Booking Clerk asked the money in a raised voice.

It is therefore established that the independent witness was suffering from 'short of hearing'.

The entire evidence of the independent witness suffered from the test of reliability and acceptability and reasonability.

In the proceedings it has been established that:-

(i) the Decoy to frame the C.O. paid Rs. 20.00 excess over and above the Rly dues,

(ii) the independent witness being a person with short of hearing - his evidences are not reliable and also he could not be really an independent witness as:-

Both the Decoy and independent witness belong to RPF Unit having close working understanding,

(iii) the Decoy in his statement never stated that he had any occasion to raise his voice while booking the ticket and also the C.O. never had raised his voice.

The prosecution failed to establish this Article of Charge against the C.O.

Article: II= There is no dispute that an amount of Rs. 79.00 was found excess in the counter.

4 deletion

The C.O. defended himself while explaining the cause of such excess/detention of cash by stating that the passengers were required to pay the balance in small coins for which they adopted a practice of taking small worth G.C. Notes/Coins from the nearby Pan Shop located in the Rly Station since impost cash provided to the booking cell was Rs. 5.00 only. This aspects have had the approval of the SS/TNL (incharge of the Station). The SS/TNL also confirmed the statement of the C.O. and accepted that such arrangement was within his knowledge during his deposition.

So far the C.O. is concerned, his action since was within the knowledge of the Station Authority and he was allowed to function in such manner, for greater interest of the Rly. and the prosecution failed to establish any motive behind such action for personal gain. - this Article of Charge has therefore, not been established against the C.O.

Submitted please,

(A. K. Gunguly) 8/11/05
Defence Counsel.

17 DEC 2005

महोदय न्यायाधीश

-46-

Northeast Frontier Railway

ANNEXURE-5

No. C/409/RNY/SPL-CELL/06-2.

Office of the
Divisional Commercial Manager,

Rangiya

Dated. 03.4.2007.

To

Shri L. K. Sharma, Sr. CC/TNL.

Subj:- **Orders of the DA in Major Memorandum**

No. C/421/RNY/Vig/Staff/04. Dated 17.6.2005.

In connection with the Major Memorandum No. C/421/RNY/Vig/Staff/04 Dated 17.6.2005 the orders of the Disciplinary Authority are as under:-

"I have gone through the entire DAR proceedings drawn against Shri L.K. Sharma, Sr. CC/TNL, with reference to the memorandum of charges framed against him vide memorandum No. C/421/RNY/Vig/Staff/04. dated 17.6.2005.

Regarding Article No:-1. The charge levelled for demanding and accepting is established in as much as the availability of Rs. 525/- in the Government cash of the same denomination as recorded in pre and post check memorandum it self indicating the consent of the C.O without which it is not possible to get the same denomination in the Government cash drawer. C.O's contention, therefore, that he has not demanded Rs. 20/- in excess of the actual fare is not acceptable.

Article No:- 2. The excess amount of Rs. 79/- found in the Government cash and the C.O's contention there on that he had collected the amount in question from the Pan shop for using the same as cash imprest is also not acceptable because using cash imprest to the tune of Rs. 79/- in the form of coins or currency notes of small denomination collected from an agency other than his Government cash is not authorized. No where either in the Commercial Manual or in coaching tariff such collection has been authorised. Therefore, it is clear that to cover up the whole story and to mislead the investigating team the C.O had taken the shelter of Pan shop etc.

In view of the above I hold the C.O Shri L.K. Sharma, Sr. CC/TNL responsible for both the charges leveled against him.

A close perusal of the office record shows that this is the 3rd case under D&A rules framed against Shri L.K. Sharma, Sr. CC/TNL.

In the first case a major memorandum was served in which a penalty of with holding his increment due for a period of 04 years (NC) was passed.

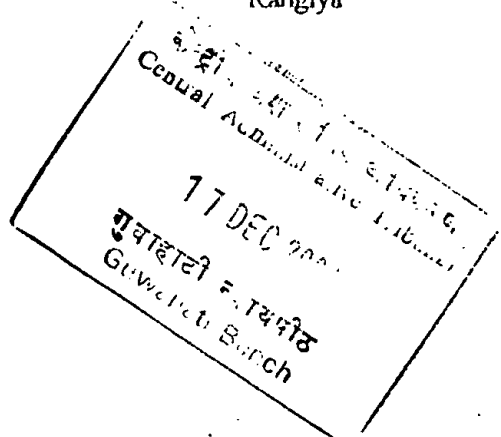
In the 2nd DAR case under minor memorandum No. C/421/RNY/VIG/Staff-19 Dated 04.10.2005 Shri L.K. Sharma, Sr. CC/TNL was reverted to the post of Jr. CC in grade Rs. 3200/- Rs 4900/- and his pay was fixed at Rs. 3200/- for a period of 02 years (NC). Even after the above 02 cases the C.O has not improved his conduct and it is clear that:-

- (a) Shri Sharma is bent upon to violate the norms laid down for the purpose for his own gain.
- (b) He has little care for the image of the railway administration and has by the above act of omission and commission continuously tarnishing the image of the railway administration.
- (c) Had there been a little sense of discipline/conduct left in him in that case he would not have committed the same offence time and again (i.e three offences continuously)."

Therefore, after due care and consideration of the facts and circumstances of the case Shri L.K. Sharma, Sr. CC/TNL is removed from the Railway Service."

(A. K. Sinha)

Divisional Commercial Manager
Rangiya



Attest.

Advocate.

To,

The Divisional Railway Manager
North East Frontier Railway
Rangiya

Sub: An appeal against the order of removal from service of
Shri L. K. Sarma, Sr. CC/TNL by the Divisional
Commercial Manager, Rangiya.

Ref: Order issued vide Memo No.C/409/RNY/SPL-CELL/ 06-2
DATE 03-04-07 from the office of the Divisional
Commercial Manager, Rangiya.

Sir,

With due respect and humble submission I, Shri Laxmi Kanta Sharma, senior commercial clerk/Tangla/ Northeast Frontier Railway beg to lay this appeal against the order of removal from service dated 03.04.07 passed by the disciplinary authority, the Divisional Commercial Manager, Rangiya on the following grounds:-

1. That Sir, I was appointed as a commercial clerk vide DRM/P/APDJ/L/No.E/227/25/V/AP/CommL/PLI dated 21.04.94. So the DRM (P) is my appointing authority not the DCM. Hence this order of removal from service given by the Hon'ble DCM has violated Article 311 (1) of the Indian Constitution which says- "No civil servant can be dismissed or removed from service by an authority subordinate to that by which he was appointed."

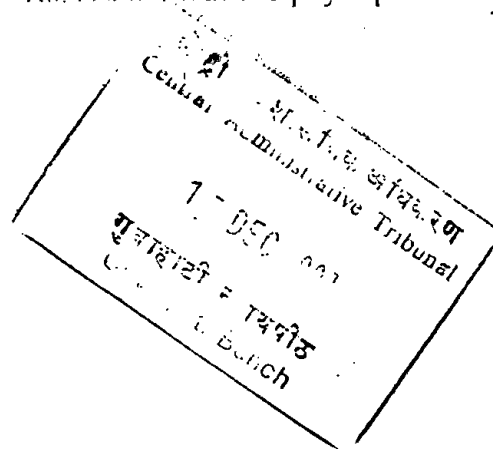
2. That Sir, in the order the Disciplinary Authority has mentioned that three cases have been framed against me under D & A Rules. And in the first case, a major Memorandum was served against me earlier in which a penalty of withholding increment due for a period of 04 years was passed. But no such order has ever been communicated to me till date. It is violative of Rule 12 of the Railway Servants (Discipline and Appeals) Rules, 1968. This commission has satched away the right to appeal against the said order also in the Appellate Authority or in the Revisional Authority, which has been given by the D & A Rules. Rule 12 begins with "Orders made by the disciplinary authority shall be communicated to the Railway servant" So the principle of natural justice has been violated. It is to be noted that no such penalty was executed against me till March 07. The 'pay slip' show that only one increment was being withheld for the first time on March - April salary without my knowledge. Hence the order has violated my statutory right to appeal under D & A Rules.

3. That in the removal order it is being stated in the 2nd DAR case under minor memorandum No.C/421/RNT/VIG/Staff-19 dtd. 04.10.05, I was reverted to post of Jr. CC in grade Rs.3200/- Rs.4900/-. But the payslips as well as

Attested

H. S.

Advocate



official records prove that this is a purely false and baseless statement. I am still a Sr. CC/TNL, as the DCM has himself wrote "To, Shri L. K. Sharma, Sr. CC/TNL" in the order dated 03-04-2007. There is no reversion of rank so far, Sir.

A copy of the order of penalty dated 03/04/07 and copies of relevant payslips are filed hereto and marked as Annexure & respectively

4. That the Disciplinary Authority has categorically said that my pay was fixed at Rs. 3200/- p.m. for a period of 02 years (NC) under the same minor memorandum No. C/421/RNY/VIG/Staff-19 dated 04-10-05. This is again a false statement/comment on part of the Hon'able DCM. The pay slips or official documents prove the fact that there is no such reduction or fixation of salary so far. I am getting full salary without any reduction.

5. That Sir, the Hon'able DCM has stated as reason of removing me from service that even after above mentioned 02 cases (i.e. reversion of rank, fixation of salary and increment withholding) my conduct has not improved and there is no chance of reformation in me. But as the documentary evidence produced by me prove the fact that I have not been penalised as he stated, this statement bears no merit. A close perusal of the order leads to the conclusion that the basis of removal of mine is earlier penalties inflicted upon me. So, as the basis of the order holds no merit, hence the order be considered as null and void please.

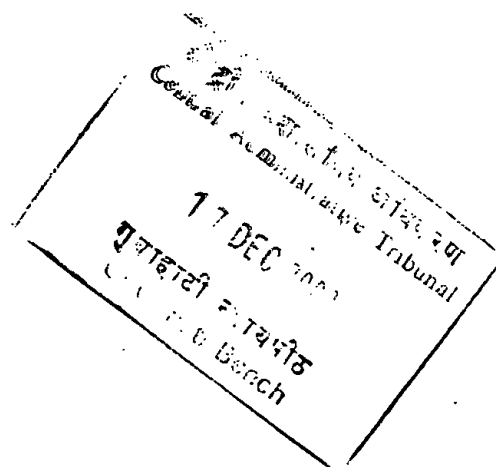
6. That the superior Authority have appreciated my devotion and sincerity to my job. The SS/TNL has confirmed the fact that there is no public complaint ever made against me. I have not caused any loss of revenue to Railway. Neither I have committed any punishable offence inside or outside the Rly premises, nor I have damaged any Rly. property in my long career. Hence, the allegation of tarnishing the image of Rly administration in the order is not correct.

A copy of the certificate of appreciation is filed hereto and marked as Annexure

7. That Sir, the crux of the charges levelled against me and their defence are enumerated below :-

(a) Under Rule 9 (2) of Railway Servants (Disciplinary and Appeals) Rules 1968, the DCM/RNY/NF Rly issued Memorandum bearing No. C/421/RNY/VIG/Staff/04, dated 17-06-2005 to me while I was working as Senior Commercial

Contd



Clerk, Tangla proposing to hold an enquiry against me for imposition of Major penalty for two article of charges framed there in subsequently Enquiry Officer and Presenting Officer were appointed and I was passing through preliminary hearing dtd. 11-08-05 and regular hearing (last 28-10-05).

On 18-03-2006 I was given a copy of Enquiry Report by the DCM where upon I submitted my report on 04-04-06 before the Disciplinary authority.

The Articles of charges levelled against me are produced as under :-

i) Article - I Shri L. K. Sharma, Sr. CC/TNL while performing his duty on Sr. CC/TNL on 14-11-2004 committed an Act of gross misconduct in as much as he demanded and accepted a sum of Rs. 20/- (Rupees Twenty) excess while allotting reservation from road side Quota of Tangla by 4055 Dn. of 23-11-2004 Ex. TNL to Delhi. The fare was Rs. 505/- but Shri Sharma demanded and accepted Rs. 20/- excess than that of actual fare for his own consideration which tantamount a serious misconduct and derelict to duty.

ii) Article - II Shri L. K. Sharma, Sr. CC/TNL while performing his duty as CC/TNL on 14-11-2004 committed an act of misconduct in as much as he produced his Govt. cash Rs. 8957 against Rs. 8878/- (excluding voucher) i.e. Rs. 79/- (Seventy Nine) excess in his Govt. cash as per DTC.

After getting my defence statements the I.O. came to the following conclusion with respect to Article - I.

The demand of Rs. 20/- excess by the C.O. is not established, but the acceptance of Rs. 20/- excess by me is established. Hence the charge is partially established.

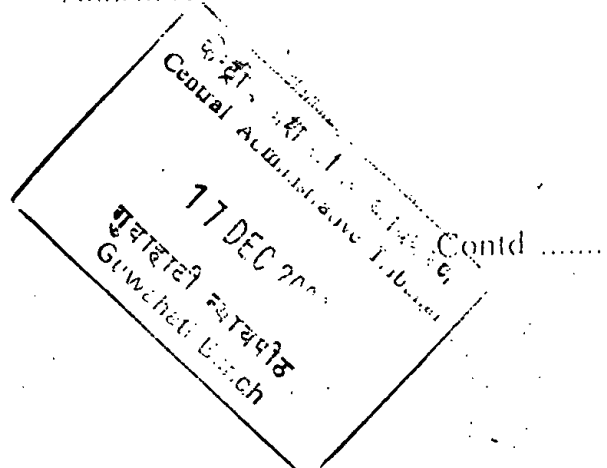
With respect to Article - II

There is no doubt that the possibilities of collecting coins before commencement of duty by the Booking clerk cannot be ruled out. Yet, the charge framed against the C.O. is established.

It is pertinent to mention here that in the Enquiry-report the Enquiry Officer had not proposed any penalty.

A copy of the reply dated 04/04/06 is filed here to and marked as

Annexure



Brief Statement of my Defence :

Article I - The charge levelled against me that I demanded and accepted Rs. 20/- in excess from the decoy with consent is not maintainable. I asked the Decoy Shri Mongba to pay Rs. 505/- for the ticket including Reservation but he paid Rs. 525/- instead of Rs. 505/-. The on-duty SS/TNI, Shri R. Singh (PW-3) also categorically admitted the fact that the decoy either mistakably or deliberately pushed Rs. 20/- excess to me only to frame me. After getting Rs. 20/- excess in the bundle of currency, I came out of the office to return the amount but I could not locate him. I then immediately informed the SS/TNI about the incident who was in his residence adjacent to the station prior to vigilance Team arrived and confronted me in the Booking Office. The SS/TNI assured me to handle the matter as per Law but I was confronted with the Vigilance Team. The SS/TNI himself tried to convince the Team about my innocence, but of no use. They left with a simple promise to give me a reasonable opportunity of representation. But the prosecution has erred in not considering the evidence given by the PW-3 i.e. SS/TNI.

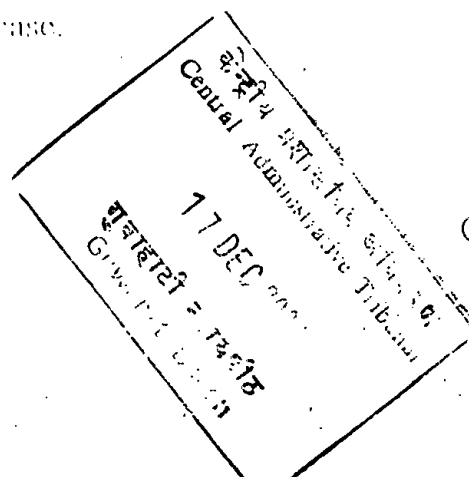
A copy of the statement of defence dated 01/07/05 is filed hereto and marked as Annexure

That Sir, it is relevant to point out the statement of Rameswar Singh SS/TNI, P.W.- 3 given on 10-07-05 regarding the alleged charges framed against me. The relevant portion of the statement is quoted below :-

".....I also pointed out to him that this was not a problem since the excess amount could be deposited with the Rly. as Rly. cash against the requisition slip as reference. As and when the claim will be submitted such matter could be settled."

A copy of the statement of Rameswar Singh P.W. 3 is filled here to and marked as Annexure

But the Enquiry Officer held that I did not demand the decoy any excess amount but I accepted that. It is to be noted here that recovering something from possession never mean that the possessor had the knowledge or intention to possess that thing. Possession never leads to acceptance of something. If I had the intention to accept Rs. 20/- excess from the decoy, I would never have gone outside to return to the decoy, nor I would have informed the SS/TNI forthwith. So the finding 'partially proved' is not appropriate in this case.



Contd

Article 2

That Sir, I humbly further beg to state that coins and currency notes of small denomination are collected from the adjacent Pan-shop only to serve the passengers at the quickest possible time. The daily window sale of Tickets in Tangla is about 500 tickets. The fare amounts to various stations require coins or small or currencies. The fares are like Rs. 7/-, 8/-, 9/-, 14/-, 16/-, 23/-, 28/-, etc. It is important to note that only Rs. 5/- is premissible to keep as imprest cash in the counter which is not sufficient. It is for the smooth selling of tickets I got the coins recovered that day from the panshop. As the coins are taken for a very short period of time and are returned to the shop keeper that is why it was not mentioned in the private cash Register. As everyday morning around at 6 am all the cash amount is deposited with the station supdt. hence Govt. cash also lacks coins often. Moreover SS/TNL also categorically accepted the fact that such practice has become a tradition for public interest and such arrangement was within his full knowledge. Hence there is no nexus between the coins/currency of small denomination and the 'personal gain' unlike the Disciplinary Authority has stated in the order of removal.

That Sir, in para 6.18 of the Enquiry Report of E.O. himself admitted the possibility of collecting coins before commencement of duty by me.

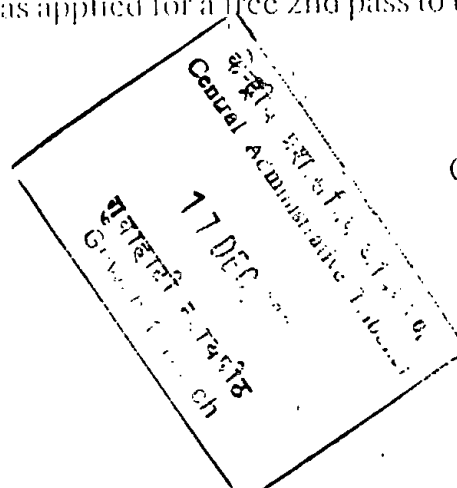
A copy of the documents showing sale of tickets per day and stations Ex-Tangla are filed here to and marked as Annexure-

8. That Sir, in the removal order the disciplinary Authority has mentioned a 2nd DAR case under minor memorandum No. c/421/REY/VIG/Staff-19 Dated 04.10.2005 upon which I submitted my defence of 2010-2005. Here the allegation/charge was that I booked on sleeper class berth by 5621 Dn of 24-09-03 EX-TNL to SPJ without filling up the pass No. for personal gain.

One copy of my chargesheet and my defence statement is filed hereto and marked as Annexure

That sir, the fact is that there are only two berths allotted for Tangla quota by 5621 Dn. on 11-09-03 two brothers i.e. Sri S.N. Sahani m/30 and Sri Sanjoy Sahani m/24 came for reservation from TNL to SPJ. As I issued a reservation ticket No. 856385 to the younger brother i.e. Mr. Sanjoy, the elder brother i.e. Shri S.N. Sahani who is a licence porter (No.5) of Tangla station requested me to mark or block the other remaining berth for him as he has applied for a free 2nd pass to the SS/TNL,

Contd



the number of which is to be entered in the reservation register. After getting confirmation from the SS/TNL I marked the berth just to help the L/porter, because other passengers may come to book the same. There is no case of ulterior motive or wrongful or unlawful gain in this case as I acted on good faith just to advance the coordination among the staffs of the station. Subsequently on 22.09.03 SS/TNL issued the 2nd pass No.039593 to the L/porter and the pass No. was entered in the register by me. But on 19.09.03 the vigilance team found the pass No. blank so charged me under a minor memorandum.

A copy of the reservation register and 2nd pass is filed hereto and marked as Annexure.... &.... respectively.

That in view of the above sir, it is respectfully submitted that the entire proceeding is liable to be tested on the four corners of :-

(i) Whether, the c.o. i.e. me is guilty of the alleged charges framed against me by issuing major memorandum of charge dtd. 17.06.05.

(ii) Whether, the c.o. i.e. me acted in good faith/bonafide for getting better service to the passengers of Railway.

(iii) Whether, the c.o. i.e. me acted/ functioned which shall go detrimental to the interest of the Railway?

(iv) Whether I was reverted to the post of Jr. CC as the DCM said?

(v) Whether my pay was fixed at Rs. 3200/- for two years?

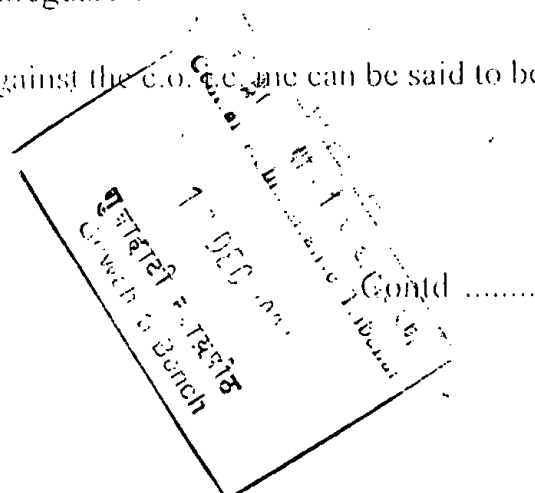
(vi) Whether my right of natural justice has been violated by the disciplinary authority.

(vii) Whether, the c.o. i.e. me violated the rules of prudential?

(viii) Whether, the c.o. i.e. me is liable to be mounted with major penalty of removal from service as the basis of it is a proved wrong.

(ix) Whether, the punishment imposed upon c.o. i.e. me is constitutional as it contravenes/overrides the constitutional safeguard?

(x) Whether, the L.O.'s finding against the c.o. i.e. me can be said to be a finding beyond all reasonable doubts?



10. Moreover, I am on the verge of retirement. Only five years of service is left to my credit and at this stage if my service is snatched away in this way, it will cause great hardship to and my dependants i.e. family members will suffer terribly.

In the premises aforesaid, it is respectfully prayed that your Honour would graciously be pleased to appreciate this appeal and pass necessary order/orders exonerating me from the alleged charges, so levelled against me, by the honourable DCM/RNY vide charge memo No.C7421/RNY/VIG/STAFF-4 dtd. 17.06.05. And/or, may further be pleased to pass such other order/or, orders as may deem fit and proper to meet the ends of justice.

And, for which act of your grace I shall remain ever grateful to you.

With the kindest regards.

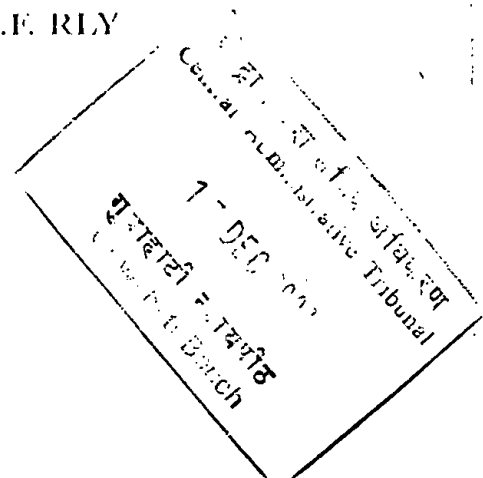
Dated :-

Rangiya the..... April, 2007

Yours faithfully;

Laxmi Kanta Sharma
(Laxmi kanta Sharma)

Sr. CC/Tangla
N.F. RLY



By Hand.

ANNEXURE - 17

-54-

69

Registered Post

✓ Office of the
Divisional Railway Manager
Rangiya

No.C/421/RNY/Vig/Staff Date 24.07.2007

✓ Shri Laxmi Kanta Sarma
Ex - Sr. CC/Tangla

Sub: Penalty of removal from service -- NIP no. C/421/RNY/Vig/Staff-4 dated 03.4.07

Ref: Your appeal dated 03.05.07/03.07.07

I have very carefully gone through your appeal and the various points/aspects raised therein, in regard to the penalty of removal from service, imposed by DCM/RNY, the DA, vide his NIP no C/421/RNY/Vig/Staff-4 dated 03.4.07. Your appeal also mentions details of your earlier DAR cases arisen out of vigilance investigation/report.

2. The first case is based on a source information received by the vigilance authorities, consequent to which a decoy check was arranged by them on 18.11.2000, in regard to delivery of 4 nos. of parcels. It was alleged, on the basis of this decoy check, that you had demanded/accepted an amount of Rs.20/- for delivery of these parcels. It is also seen/noted in your answers to question nos.7 and 17, that you have categorically accepted the charge of having demanded/accepted Rs.20/-. You had also assured that you would not take any illegal gratification in future. You had also issued a signed statement saying that none of these answers/statements were made under duress, although at a later date/time during the course of the enquiry and its proceedings, you had totally gone back on these.

3. I find from your appeal that one of the main contentions has been in regard to the non-receipt of the NIP for the above case, imposing penalty of stoppage of increment for a period of 4 years with non cumulative effect. This is quite surprising, since this NIP issued vide no.C/421/RNY/VIG/Staff-17 dated 27.9.2005 was received/acknowledged by you on 10.10.2005. A copy of the acknowledged NIP, which bears your signature and which you would recognize is enclosed for your reference.

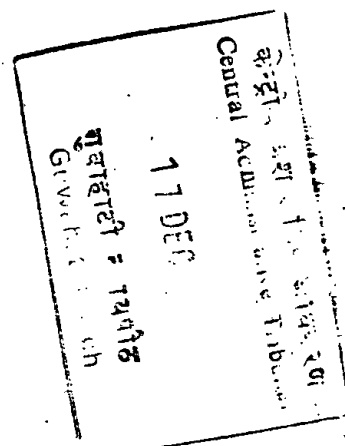
4. The other/next case is a minor DAR case arising out of a preventive vigilance check conducted on 19.9.2003 pertaining to a reservation made by you on 19.9.2003, without any travel authority. The travel authority was issued only 3 days after the preventive check on 19.9.2003. The disciplinary authority in this case had proposed the penalty of reversion to the lower post, i.e. to Jr. CC with basic pay Rs.3200/- per month. However, this was not communicated to you, as the major DAR case, against which this appeal has been preferred, was concurrently in progress and at a stage of finalization.

Contd...P/2

Attested

[Signature]

Advocate



Each of the above mentioned DAR cases (one minor and two major), arising out of vigilance report/investigation, have been dealt independently and based on the merits of each case. Your contention that these three cases would have translated into only one case, had you been given suitable opportunity to defend, is more hypothetical than practical. Also the delay in withholding of your increment imposed vide NIP no.C/421/RNY/VIG/Staff-17 dated 27.9.2005, does not in any way absolve you of the charge leveled against you. At the same time, non-issue of the NIP in regard to reversion to lower post of Jr. CC, and removing you from service against another DAR case, penalty of which has been imposed vide NIP no.C/421/RNY/VIG/STAFF-4 dated 03.4.2007, does not in any way affect the principles of natural justice, since each case has been dealt by the DA on its own merit, although the speaking order in regard to your removal from service brings out the punishment imposed/intended punishment, only as a matter of fact/record. Therefore, your apprehension that the basis for removal is consequent to earlier penalty/intended to be imposed is not correct.

I have also seen/noted that you were promoted/posted as Sr. Comm. Clerk vide DRM (P)/APDJ's office order no.E/283/20/T/Comm/AP/Pl.III dated 4/08/99. This order clearly mentions in the last sentence that it has been issued with the approval of the competent authority. Therefore, your contention that you are appointed/posted as Sr. Comm. Clerk by DRM/APDJ is not considered valid.

You were also provided adequate opportunity to defend yourself, in as much as, the enquiry report for this major DAR case was given to you vide DCM/RNY's letter no.C/421/RNY/VIG/STAFF-4 dt.18.3.2006, received by you on 27.3.07 and replied on 4.4.06. The principle of natural justice has, therefore, been evidently followed.

Be that as it may, I have also taken your statement, that your son is scheduled to appear for the Haryana State Judicial Service Examination 2007, that you have an unmarried daughter, that you are the sole earning member of your family, and that you have a 80 year old mother dependent on you, on face value and therefore take a sympathetic view and reduce the punishment of removal from service to compulsory retirement with full pensionary benefits.

An appeal against this order will lie with the Chief Commercial Manager/Maligaon.

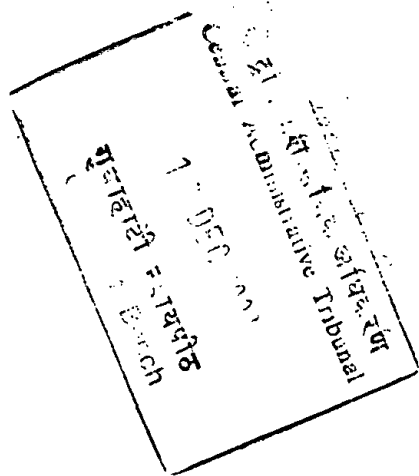
Please acknowledge receipt.

(Deepak Gupta)
DRM/Rangiya

Encl: as above

Copy to:

DCM/DPO/DFM-Rangiya



Enquiry report is not shown. Cause to remove from service.

To,

The Chief Commercial Manager, Maligaon
N.F. Railway.

Dated RNY 27th July,

2007

Sub: A Revision against the order passed by the Learned Appellate
Authority, DRM/RNY dated 24.07.2007.

Sir,

With due respect I beg to state that I, Sri Laxmi Kanta Sarma, Ex-Sr. CC/TNL, was removed from Rly. Service by Hon'ble DCM/rNY dated 03.04.07 against which I filed an appeal to Hon'ble DRM/RNY and his honour has considered to award me a lesser punishment in the form of compulsory retirement. But Sir, I, do hereby file this revision petition against the above mentioned punishment on the following grounds:

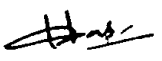
1. That Sir, Hon'ble DRM held that non-issue of N.I.P. in regard to reversion of rank and fixation of salary doesnot affect my natural justice to know the penalty imposed against me. But the DA wrote that I was reverted and my pay was fixed at Rs.3200/- for two years. But my 'pay-slips' prove these as false. So mentioning non-existent punishments in a removal order subverts the concept of 'justice' itself in all contexts, Sir.

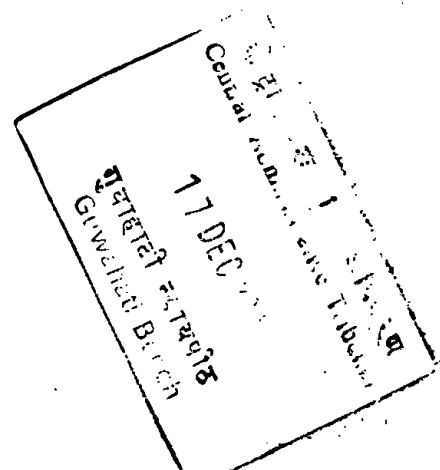
Sir, as a removed or retired employee I have no access to the official documents hence I am helpless to prove all these irregularities and lapses only with my pay slips and personal file.

2. That Sir, I wrote in the first appeal that my appointing authority is DRM (P) not the DCM. Hence according to Art 311 (1) of Indian constitution I cannot be removed or dismissed by Subordinate officer like DCM. I mentioned appointment L/NO.E/227/25/T/AP/CommL/PT II dated 21.01.94. But ignoring this crucial point, hon'ble DRM has mentioned my promoting authority in the year 1999 to Sr. CC.

3. That Sir, the DCM has said that my pay was fixed at Rs.3200/- pm. Hon'ble DRM says that my basic pay was made at R.3200- pm., but my pay slips say that both are false. There is a difference between appointing and promoting authority, there is huge gap between fixed pay and basic pay and there is a contrast between proposal to penalty (inside mind or file) and executed penalty (was reverted, was fixed). The learned Appellate Authority has not considered such discrepancies in the order dated 24-07-2007.

Attested


Advocate



4. That Sir, the principle of Natural Justice has been violated as no show-cause notice or proposal to remove was given to me. As the basis was made earlier penalties inflicted upon me and my non-improvement of conduct, I would have got an opportunity to point out the wholesome irregularities and Lapses. Then the scenario today would have been different as I could have got the chance to appeal before Superior Officers of this Deptt. This argument is said to be hypothetical rather than practical by hon'ble DRM. But this is a valid ground if we go by the procedural lapses committed by the DA, Sir.

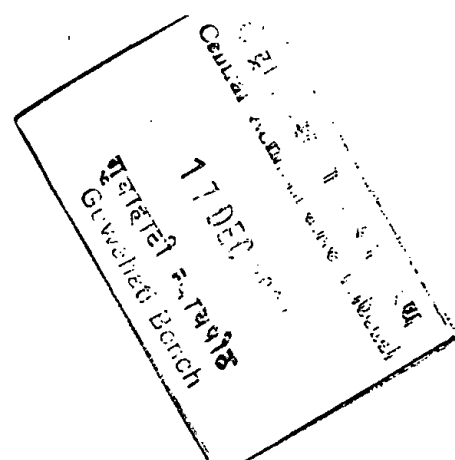
5. That Sir, the E.O. in the Enquiry Report of C/421/RNY/Vig/Staff-04 said that my demand of Rs.20/- excess is not proved. As we deal with money, the possession came innocently which I wanted to return to the decoy forthwith. Moreover the statement of on duty SS/TNL, Sri Rameshwar Singh is not taken into consideration which bears more evidentiary value than the RPF personnel i.e. decoy.

6. That Sir, five more years job was left to my credit and there is no any vigilance case against me since year 2004. My son has cleared U.P. Judicial Magistrate 1st Class Preliminary Exam recently. I need money to make him a judge Sir CR is a Legal Stigma which will adversely affect his judicial career. My unmarried daughter is pursuing higher studies. I have to feed my wife and 80 years old mother also. So, considering all the facts and circumstances I pray you Sir, kindly reinstate me setting aside the penalty of compulsory retirement.

With the kindest regards.

Yours faithfully

(Laxmi Kanta Sarma)



Northeast Frontier Railway

A3

Office of the
Dvl. Railway Manager (Commercial)
Rangiya

No.C/421/RNY/VIG/Staff-4

Dated 15.11.2007

✓ Shri L.K. Sarmah, Ex-Sr.CC/TNL
New Market, Rangiya
PO: Rangiya Ward no.9
Dist: Kamrup (Assam)
PIN no.781354

Sub: Revision application

Ref: Your application dated 27th July 2007

The case for setting aside the penalty of compulsory retirement passed by the appellate authority (DRM/RNY) was put up to the Chief Commercial Manager, N.E. Railway. After careful and close study of your application the Chief Commercial Manager has inter-alia passed the following orders:

"In his review petition, the CO has highlighted the following issues.

- (i) He had not received penalty advice of withholding of increment dtd.10.10.05 and that this is a procedural lapse.
- (ii) His pay slips do not indicate any reduction of pay earlier, a penalty claimed to have been imposed earlier by DA. This is against the principle of natural justice.
- (iii) His appointing authority was DRM, but he was removed by DCM, a violation of Article 311(1).
- (iv) No show cause notice was issued to him, prior to his removal from service.
- (v) Article of charges no.1 was not proved.
- (vi) He had 5 years of service left. According to him his son is appearing in the UP judicial service and CR will affect his judicial career. Further the CO adds that he is to support an unmarried daughter, who is still studying, his wife and 80 year old mother. Hence, he seeks financial solvency.

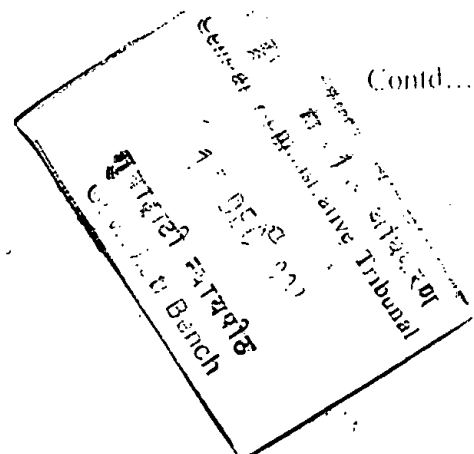
During the personal hearing of Shri L.K. Sarmah, (CO) granted to him on 08.10.2007, the CO requested to give him his job back due to the facts stated in his application. From the evidence placed on records, I find that he was given full opportunity to defend himself, and therefore, I am of the view that rules and procedures have been complied with properly and correctly in this case. DRM/RNY as appellate authority dealt with all the issues in detail, raised by the petitioner and I agree with his view on each one of them. I find that the appellate authority has already taken care of the aspect of financial solvency by reducing the punishment of removal from service to that of compulsory retirement with full pensionary benefit. The petitioner is, therefore, entitled to all pensionary benefits including railway health care facilities, pass, etc., which I consider sufficient to look after his family including his dependent mother. In fact, from the point of view of social stigma and financial benefit, the penalty of compulsory retirement is better than reversion to a lower grade or reduction of pay.

Contd...P.2

Attested

H. as.

Advocate



I am therefore, of the view that penalty of compulsory retirement with full pensionary benefit, imposed by DRM/RNY, commensurates with the gravity of the offence and hence, the same should stand.

The appeal of Shri L.K. Sarmah, Ex-Sr.CC/TNL dated 27.07.2007 is disposed off accordingly.

Please acknowledge receipt.

(A. K. Sinha)

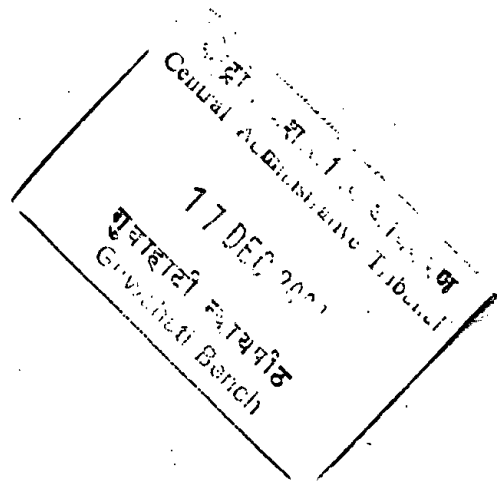
Divisional Railway Manager (Commercial)
N. F. Railway, Rangiya

Copy to:

1. DRM/RNY } for kind information
2. CCM/Maligaon }

3. CVO/I/Maligaon - for kind information and necessary action

4. DRM(P)/Cadre & Bill/RNY }
5. DFM/RNY } for information and necessary action please.
6. SS/TNL }



I give this statement at my freewill just to focus the circumstances arose during the vigilance check conducted on 14.11.04 at the TNL Booking Office.

At about 12.30 hours, the on duty Sr.CC Shri L.K.Sharma came to my Rly. Quarters and told me that a person who booked his reservation by 4055 Dn to DLI against TNL Quota gave him a bundle of G.C. Notes where he found Rs. 525.00 and the Rly. charges Rs. 505.00 thus an excess of Rs. 20.00. He also informed me that the particular person could not be located by him on the platform so that he could refund the money most probably paid by him by mistake. At this time I was about to having my lunch. I told him to go back to the station and on my return at the station further necessary action would be taken. I also pointed out to him that this was not a problem since the excess amount could be deposited with the Rly. as Rly. cash against the requisition slip as a reference. As and when the claim will be submitted such matter could be settled.

After some time I was called by the Vigilance Team at the station and got me signed the pre-check Memorandum and then the G.C.Notes available in the counter was examined and an amount worth of Rs. 525.00 G.C.Notes' number tallied with the pre-check Memorandum.

All the Govt. cash was counted and an amount of Rs. 79.00 was found excess. A post check Memorandum was drawn and I was asked to sign the same. In my presence Shri L.K. Sharma wanted to explain the position to the Vigilance Team specially in respect of his demanding from the person a sum of Rs. 20.00 excess but the Vigilance Team told him that he would be given the opportunity to explain the position during his examination in the Vigilance Office where he would be called prior to framing charges. Shri Sharma also wanted to explain the excess found in the Govt. cash but the same stand was taken by the Vigilance Team.

Since the matter concerned Shri L.K. Sharma and he could explain his conduct better and I was not asked by the Vigilance Team to forward any informations/ comment I refrained from objective participation excepting signing certain documents.

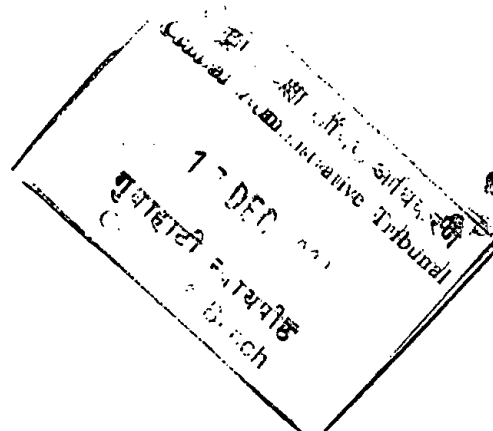
Rameshwar Singh

SS / TNL

10.7.05

Attested

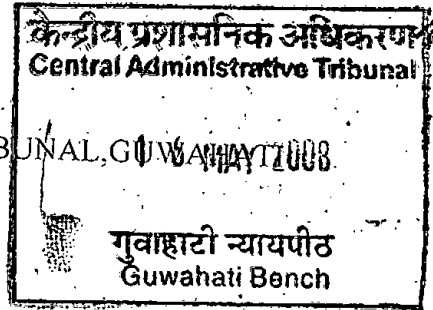
[Signature]
Advocate.



Sd/-
SGLA RLY, STATION
R. P. A

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI

Original Application No. 309/07



Sri Lakhi Kanta Sarma.....Applicant(S)

-VS-

Union Of India & Ors.....Respondant(S)

IN THE MATTER OF

Written Statement by the Respondants.

INDEX

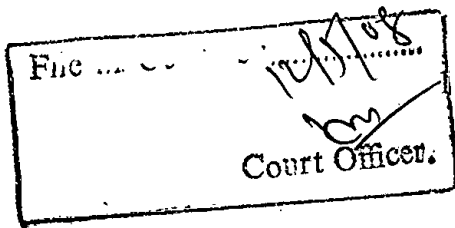
Sl.No.	ANNEXTURE	PARTICULARS	PAGE
1.		Repy written statement.....	1 to 7
		Verification.....	8
2.		Notice for Imposition of penalty for Reversion to Jr.Commercial Clerk For 2 years.....	9 to 10
3.		Notice dated 03.4.2007 for removal from Service:.....	11 to 12
4.		Promotion order dated 4.10.99 For Sr.commercial clerk(coaching):	13 to 14.
5.		Records of promotion & fixation as Sr.commercial clerk w.e.f.16.8.99-15-16	

Date:- 16-05-2008

Filed by

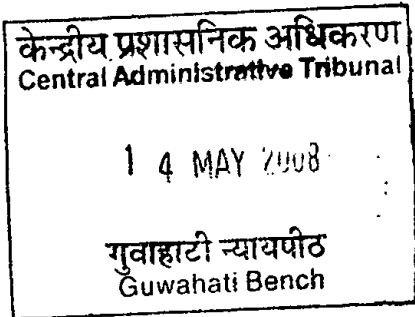
(K.K. Biswas)
Advocate

16/5/08



Filed by: 12/11/08
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI



O.A No. 309 of 2007

Sri Laxmi Kanta Sarmah Applicant

-Vrs-

Union of India and Ors..... Respondents

IN THE MATTER OF :

WRITTEN STATEMENT BY THE ANSWERING
RESPONDENTS

Awadhesh Kumar Saini
म. उ. र. बाणिज्य प्रब. ब. ब.
Divisional Commercial Manager
उ. सी. रेल्व. रंगिया
N. F. Railway Rangia

The answering Respondents most respectfully sheweth:

1. That the answering Respondents have gone through the copy of the Application filed by the above named Applicant and understood the contents thereof. Save and except the statements which have been specifically admitted herein below or those which are borne on records all other averments/allegations made in the application are hereby emphatically denied and the Applicant has put to the strictest proof thereof.

2. That for the sake of brevity meticulous denial of each and every allegation/statement made in the application has been avoided. However, the answering Respondents confined their replies to those points/ allegations/ averments of the application, which are found relevant for enabling a proper decision on the matter.

3. That the Respondents beg to state that for want of the valid cause of action for the Applicant the Application merits dismissal as the application suffers from wrong representation and lack of understanding of the basic principles followed in the matter as will be clear and candid from the statements made hereunder.

3.1 Brief history of the case:

Sri L.K. Sarmah, a Sr. Commercial Clerk at Tangla Railway station was trapped on 14.11.04 while demanding and accepting a sum of Rs. 20/- in

Received 12/5/08
H. S.

14 MAY 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

Advocate
12/5/08

excess of the fare while allotting berth reservation against Tanga station quota by 4055DN of 23-11-2004 by the Vigilance Branch of N.F. Railway. Further the Vigilance Branch also detected Rs. 79/- in excess in his Government cash as per Daily Trains cum Summary Book and accordingly action under Rly Servant (Discipline & Appeal) Rules 1968 for major penalty was initiated against Shri L.K. Sarmah. On completion of the enquiry, the Inquiry Officer found him partially guilty for the charge of demanding and accepting Rs. 20/- from the decoy (Article-I) and for the lapses mentioned in Article-II (i.e Rs. 79/- found in excess in the Government cash) the Inquiry Officer found the charge to be proved. After going through all the papers available in the case file the Disciplinary Authority found him responsible for both the charges levelled against him vide major Memorandum No. C/421/RNY/VIG/Staff-4 dated 17-06-2005.

Awadhesh Kumar Sarda

म. उ. ल. वाणिज्य प्रबंधक
Divisional Commercial Manager
पु: सी: रेडब, रंगिया
N F Railway, Rangia

Further the Disciplinary Authority on verification of the records found that there were 02 more cases against Shri Sarmah out of which one was for major DAR action for demanding and accepting Rs. 20/- from the decoy for granting delivery of parcel consignment and another for minor DAR action for blocking of berth without any traveling authority. Out of the 02 cases the Disciplinary Authority in one of the cases had imposed a penalty of withholding Shri Sarmah's next increment due for a period of 04 years (Non cumulative) and in the second case of minor DAR action the Disciplinary Authority decided to revert Shri Sarmah to the post of Jr. Commercial Clerk in scale Rs. 3200-4900/- for a period of 02 years (NC) with pay fixed at Rs. 3200/-. Therefore, as per records Shri L.K. Sarmah was found involved in two major DAR cases and one minor DAR case and in all the 03 cases he was found guilty after observing due process of law and based on the merit of each case the decision for imposing penalty was taken by the Disciplinary Authority.

The relevant papers in connection with above will be produced and exhibited before the Hon'ble Tribunal at the time of Hearing of the case and when called for by the Hon'ble Tribunal.

While disposing the case on hand the Disciplinary Authority found on record that despite repeated DAR action the Charged Official Shri Sarmah

12/5/08
Advocate
W. S. W. 13
#9

A. C. Keshavnave Sir,
 ५८८ बाणिज्य प्रबंधक
 Divisional Commercial Manager,
 पुः सी: रेल्व, रंगिया
 N. T. Railway, Rangpur

२०००-०१
 म. उ. ल. वाणिज्य प्रबंधक
 Divisional Commercial Manager
 पु. सी. रेलवे, रंगिया
 N. T. Railway, Rangpur

14 MAY 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

service issued vide NIP No. C/421/RNY/VIG/Staff-4 dated 03-04-07 all other decision taken earlier stands non-existent and therefore does not in any way affected the principle of Natural justice.

Copies of above are ^{enclosed as} Annexures A & B.

7. That it is submitted that all the cases were dealt on its individual merit, although the speaking order in regard to removal from service in the instant case bring out the punishment imposed/intended punishment only as a matter of fact/record. Therefore the Applicant's apprehension that the basis for removal is consequent to earlier penalty/intended to be imposed is not correct.

8. That it is submitted that in addition to what has been stated in para 5 above it is further submitted that in terms of Discipline and Appeal Rules/1968 Appointing authority means ... ".....the authority empowered to make appointment to the post which the railway servant for the time being holds". In the instant case Sri Sharma was holding the post of Sr. CC in grade Rs. 4000/- 6000/-, the order for which was issued by the competent authority as indicated in Divisional Railway Manager/P/Alipurduar Junction's Office Order No. E/283/20/T/Comm1/AP/Pt-III dated 04.8.99. Therefore Sri Sharma's contention that he was appointed and posted by Divisional Railway Manager/P/Alipurduar Junction and Divisional Commercial Manager being a subordinate authority can not remove him is not correct. The Divisional Commercial Manager has got the full power to deal with the case of the Applicant under Discipline & Appeal Rules & punish him according to Rules.

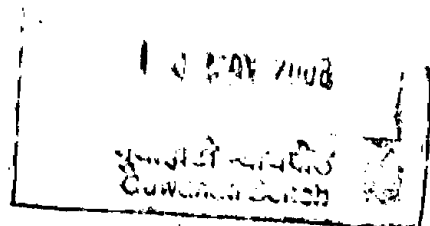
Copies of above are enclosed as Annexures..... C & D

9. The Appellate Authority after due application of mind has clarified Para-5 of his order dated 24.7.07 that there was delay in withholding of increment but the same was not going to benefit Sri Sharma from the charges levelled against him. This itself indicates that the Appellate Authority has also spoken his mind in regard to the pay slip contention of the applicant.

Copy of the Appellate Authority's observation is enclosed as Annexure...7 with the OA.

80
W.D. 2007
14/5/07
Advocate

Aswathesh Kumar Sircar
महोदय
Divisional Commercial Manager
पु: सी: रेलवे, रंगिया
Railway Renning



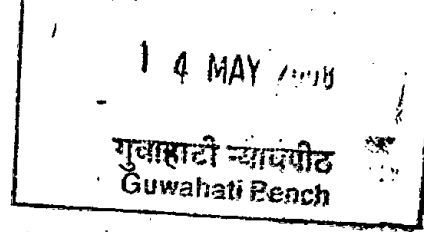
10
12/5/08
A. D. S. S. S.

10. That it is not a fact that the issue raised by the Applicant Sri Sharma has not been looked into by the Respondent No. 2. The Annexure -9 of the application clearly speaks that at revision stage the Revising Authority after careful and close study of the points raised by Sri Sarmah in his application (Annexure-8 of the Application) has passed the orders upholding the decision of the Appellate Authority.

आवाकेश प्रमाण
म. उ. व. विभाग
Divisional Commercial Manager
ग. म. र. विभाग
G. M. R. Division

11. That it is stated that it is not a fact that neither the disciplinary authority nor the Appellate Authority has taken into consideration the statement of the respondent No. 4. The Disciplinary Authority while deciding the case had gone through all the papers available before him including the report submitted by the Inquiry Officer had clearly stated that the charged official (as a booking clerk) first accepts the fare then counts it and after satisfying himself about the realization of the correct fare hands over the ticket along with return money, if any, to the passenger as per prevailing system. Therefore the question of searching the passenger coming out of the counter and going to the residence of Station Superintendent /Tangla was all concluded as 'after thought' fake and concocted. Based on Inquiry Officer's analysis of the sequence of transaction the Disciplinary Authority agreed with the findings of the Inquiry Officer and no weightage was given to the statement of the Respondent No. 4, since the Charge Official had broken the sequence of the transaction and by obtaining the statement of Respondent -4 to the effect that Sri Sarmah informed the Respondent No.4 regarding somebody paying excess money was not traceable and Station Superintendent /Tangla's advice to deposit it in the station earning under the head excess in booking was only obtained to cover up the whole story for shadowing his commission of guilt. Hence the same was not treated as relevant.

12. That it is submitted that as per DAR rules a charge is either proved or not-proved there is no provision for partially proved and hence the Disciplinary Authority did not agree with the same. Secondly in terms of para 105 (b) (I) of I.R.C.M. Vol.I, no Govt. servant should solicit or accept excess money in course of his business arising out of his duty entrusted to him. Further had the intention of Sri Sarmah been fair in that case, he should have



82
W. S. Sarmah
14/5/98
Advocate

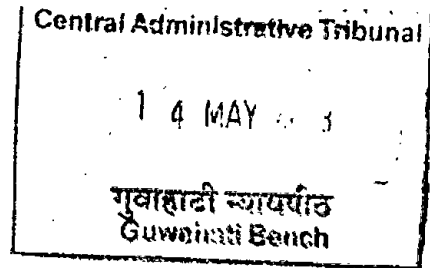
returned two ten-rupee notes tendered in excess at the booking counter. The Decoy as per post —check memorandum tendered 05 nos. one hundred-rupee notes, two ten-rupee notes and one five-rupee note. Since the fare of the ticket in question was Rs. 505/- therefore availability of Rs. 20/- (two ten-rupee notes) in excess in the Government Cash of the same denomination as shown in the post-check memorandum speaks clearly about the motif of Sri Sarmah for not dealing with transaction within Rs. 505/- (rupees five hundred five) instead keeping Rs. 525/- in the Govt. Cash. Therefore, the charge was considered to be proved and dealt with according to Rules.

Asadkesh Kumar Saini
म. उ. ल. बाणिज्य प्रब. धक
Divisional Commercial Manager
पु: सी: रेल्व. र. निगम
F. Railway Randiva

13. That in reiterating the Respondents' submission at para-8 above it is stated that the Appellate Authority and also the Revising Authority have clarified while disposing of the appeal and the revision application the promotion/posting order for the post which Shri Sarmah was holding at the time of the vigilance check was issued by the Competent Authority and Sri Sarmah was duly informed regarding the clarifications. Therefore, the question of "without any jurisdiction. and authority" does not arise at all. The Respondents crave leave of the Hon'ble Tribunal to exhibit necessary papers at the time of hearing of the O.A.

14. That the respondents do not offer any comments on the statement of the Applicant made at para 4.13 of the OA save and except that all reasonable opportunities were given to him for his defence and natural justice shown at every stage of DAR proceeding and decided his case as per Rules and no injustice or mis-carriage of justice was caused in the decision and order.

15. That it is not a fact that the Respondents have acted with a pre-determined mind. After taking care of the Rules and Norms and after giving all reasonable opportunities to the Applicant to represent himself the decisions were taken based on findings and papers available before the Respondents, and, hence, the allegation of the Applicant is not sustainable and the application is liable to be dismissed with costs.



83
M. K. S. S. S.
12/5/18
Advocate

16. That it is submitted that repeated omission of the proceedings under the rules to be followed/ observed and commission of the act not prescribed in the rules, speaks clearly about the motive and intentions of the Applicant that he was in the habit of demanding and accepting excess money from the rail-users and was bent upon to do so at the cost of the image of the railway administration. The statement made in the para 4.15 of the O.A itself speaks of the confession of his guilt committed and on this score alone the Applicant can be taken up as per DAR and penalised appropriately as per Rules.

17. That with regard to the statement of the applicant made at para 4.16 the Respondents offer no comments but pray that the Hon'ble Tribunal may be pleased to discern the case on merits and availability of records and dismiss the O.A in limine and ab initio.

18. That with regard to the grounds mentioned by the Applicant in various sub-paras of the Para-5 the Respondents respectfully submit that there had been no cause of actions caused to the Applicant. In reiterating the earlier submissions made in the foregoing paras the Respondents submit that all actions were taken by the Respondents in accordance with the provisions of the Railways' own set of Rules and other Statutory provisions and being the **model employer** has no-where caused any injustice to the Applicant as alleged and contemplated in the aversion in the O.A as well as in the Application, and the application has no merit at all and is, therefore, liable to be dismissed.

19. That the Respondents crave leave of this Hon'ble Tribunal for submission and exhibit all relevant records pertaining this case of the OA as mentioned in the foregoing paras, as and when required by the Hon'ble Tribunal.

Asadkesh Kumar Srib-
मंडल वाणिज्य प्रबंधक
(zonal Commercial Manager)
उ: सी: रेलवे, रंगिया
N F Railway, Rangia

84
 Divisional
 Commercial
 Manager
 Rangiya

VERIFICATION

I, Asadkesh Kumar Sinto son of Late Ganga Kumar Prasad
 aged about 54 years, working in the capacity of Divisional Commercial Manager,
 N.F. Railway, Rangiya, do hereby solemnly affirm and verify that the
 contents of paragraphs 3.1 to 16 are derived from the records
 and I believe them to be true to my knowledge & information and that I have
 not suppressed any material facts and the rest all are my humble and
 respectful submission before this Hon'ble Tribunal.

And I sign this VERIFICATION on this 12th day of May 2008

Place : Guwahati

Date: 12/05/2008

Asadkesh Kumar Sinto
 SIGNATURE OF THE DEPONENT

म उड बाणिज्य प्रबन्धक
 Divisional Commercial Manager
 पु: सी: रेंडब, रंगिया
 N. F. Railway, Rangiya

To

The Registrar,
 Central Administrative Tribunal,
 Guwahati Bench, Guwahati.

9
Annexure - A

N. F. G.-174 M.

Northeast Frontier Railway

Notice of 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. C/421/RNY/VIC/Staff-19

Date 13.3.06

From

DCM/RNY

To

Sh. L. K. Sharma

Sr. CC/TNL

With reference to your explanation to the charge sheet No. C/421/RNY/VIC/Staff-19 dated 4.10.05 you are hereby informed that your explanation is not considered satisfactory and that *the DCM/RNY has passed the following orders: **

Sh. Sharma is reverted to the post of Jr. CC in scale Rs. 3200/- 4900/- for a period of 2 (Two) years (NC) and his pay fixed at Rs. 3200/-

N.B:- Please see instructions on the reverse.

Signature & Designation

of the Disciplinary Authority K. SINHA

Divisional Commercial Manager

13/3/06
g. M. DIV. COMM. MANAGER

N. F. Railway, Rangiya

(The portion must be detached signed and returned to the office of issue)

ACKNOWLEDGEMENT

To

Sh. L. K. Sharma

Sr. CC/TNL

I hereby acknowledgement receipt of your Notice No.
dated..... the Charge Sheet No.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

14 MAY 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

Dated.....

Station.....

Dated.....

Signature or Thumb Impression

Designation.

*all set
14/5/08
12/5/08*

86 When the notice is signed by an authority other than the Disciplinary authority here quote the authority passing the order.

INSTRUCTIONS

DRM/RNY
orders) with in 45 days from next

55-6
- 13/03/68
(A. K. SINHA)
DIVL. COMM. MANAGER
पु. सी. रेलवे, रंगिया
N. F. Railway, Rangiya

(i) DRM/P/RNY } For information 2 x/a phase.
(ii) DFM/RNY }
(iii) AVO/T/MLG - For information in reference to vigilance
letter no-2/VIA/94/1/130/2003 dt 28.10.03

OS: 12/03/06
S/N: 15A
DIVISIONAL COM. MANAGER
N.F. RANGA

CONFIDENTIAL

N. F. G.-174 M.

11
Northeast Frontier Railway

Annexure B

87

Notice of 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 C/421/RNY/VIG/STAFF-4

Date 3.4.07

From DCM/RNY

To Sr. Laxmi Kanta Sharma
Sr. CC/TNL

With reference to your explanation to the charge sheet No C/421/RNY/VIG/STAFF-4 dated 17.6.05 you are hereby informed that your explanation is not considered satisfactory and that the has passed the following orders:**

He is removed from Railway Service to meet the ends of justice (copy of order enclosed)

Signature & Designation
of the Disciplinary Authority
Divisional Commercial Manager
N. F. Railway, Rangiya

N.B:- Please see instructions on the reverse.

(The portion must be detached signed and returned to the office of issue)

ACKNOWLEDGEMENT

To Sr. Laxmi Kanta Sharma
Sr. CC/TNL

I hereby acknowledgement receipt of your Notice No.
dated the Charge Sheet No.

Dated
Station
Dated

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

14 MAY 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

Signature or Thumb Impression
Designation

Advocate
17/9/08

12

88

When the notice is signed by an authority other than the Disciplinary authority here quote the authority passing the order.

Here quote the acceptance or rejection of explanation and the penalty imposed.

INSTRUCTIONS

An appeal against those orders lies to DRM/RNY next
(immediate superior to the authority passing the orders) With in 45 days from
the date of receipt of N/A

मंडल वाणिज्य प्रमुख
(A.K. SINHA)
पु. सी. रेलवे, रंगिया

DIVL. COMM. MANAGER
N.F. RAILWAY, RANGIYA

Cop to:-

- (1) DRM/A/RNY } For information and n/a please
- (2) DRM/RNY } For information and n/a please
- (3) Dy. CVO/T/MLG:- For information in response
to vig lit no:- 2/VIA/94/1/38/2005
Dt:- 26.4.05
- (4) SS/TNL - For information 2 n/a phase
- (5) AO/RPAN - do
- (6) DPO/airl - } For information 2 n/a phase
- (7) DPO/Cadre - }

अनुमोदित
17/5/08
अधीक्षक

मंडल वाणिज्य प्रमुख
(A.K. SINHA)
पु. सी. रेलवे, रंगिया

DIVL. COMM. MANAGER
N.F. RAILWAY, RANGIYA

Annexure - C

N. P. RAILWAY.

केन्द्रीय प्रशासनिक अदालत
Central Administrative Tribunal

Office of the
Divl. Rly. Manager (P),
Alipurduar Junction.

Dated. 4.10.99.

ICE ORDER :

The following transfer, posting & promotion orders are issued to take with immediate effect on expiry of the 1(one) year refusal promoted and also being found suitable for promotion to the post of Sr. Comml. Clerk (Goods & Coaching) in scale Rs. 4000-6000/-, the following Sr. most Jr. Comml. Clerks (qualified in both Goods/Coaching) in scale Rs. 3200-4900/- are hereby temporarily promoted & officiate to the post of Sr. Comml. Clerk (Goods) & Sr. Comml. Clerk (Coaching) in scale Rs. 4000-6000/- & posted at the station as noted against each.

S1 No.	Name, design. & Station.	Now promoted as.	Place of posting.	Pay fixed on promotion (4000-6000/-)	Remarks.
<u>Group - A</u>					
1.	Shri Manik Sarkar (UR) LR CC/BPRD.	Sr. Comml. Clerk (Goods)	BPRD/LR	4000/-	Posted via Shri B. M. Sarkar, LR Sr. CC (Goods) posted as Rg. Sr. CC (Goods).
2.	Smt. M. Bargair (ST) LR CC/RNY.	Sr. Comml. Clerk (Coaching)	MSMI (Duty cadre)	4000/-	(VICE VACANCY) -dc-
3.	L. K. Sarmah (UR) LR CC/RNY.	Sr. Comml. Clerk (Coaching)	TNL (Duty cadre)	4000/-	-dc-

Group - B

Shri B. M. Sarkar, LR Sr. CC (Goods) BPRD in scale Rs. 4000-6000/- is hereby posted at BPRD as Rg. Sr. Comml. Clerk (Goods) at BPRD, vice vacancy on his same pay & scale.

Promotion of S1 No. (2), Shrimati M. Bargair (ST) has been issued against 'ST' quota.

Staff concerned may like to exercise option for refixation of their pay from the date of accrual of next increment in the lower grade of Jr. CC (Rs. 3200-4900/-) within one month from the date of promotion after which no such option will be entertained.

S1 No. 2 & (3) are also sanctioned 10 days joining time, composite transfer grant, transfer pass etc.

This issues with the approval of competent authority.

for Divl. Rly. Manager (P)/APDJ.

Advocate
12/10/99

14
900 - *unwarranted*

(2)

NO : E/283/20/E/Comm1/AP/Pt. III.

Dated... *4* / *08* / 99.

Copy forwarded for information and necessary action to:-

1. DAO/APIJ.
2. OS/ET/BI11.
3. AM/RPAN.
4. SS/BPRD, he will utilise Shri Sarkar (Sl. No. 1) in the coaching side also as & when required as per order of the competent authority).
5. SSS & CCI's/RNY, TNL & MSMI:-
6. Staff concerned.
7. P/case.

(Pd29)

allied
referred
12/17/08
Advocate

4 / *27*
for Divl. Rly. Manager (P) / APDJ.

10 / *17*

पदोन्नति तथा स्थानान्तरण का रिकार्ड
Record of promotions and transfers

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

14 MAY 2008

नाम/Name L.K. Sarma, Sr. Secy/TNL

गुवाहाटी बेंच
Guwahati Bench

पद Capacity	स्थान Station	वेतन मान Scale of Pay	वेतन की दर Rate of Pay रु०/Rs	तारीख Date	नियंत्रण अधिकारी का. आचक्षर Initial by the controlling officer
----------------	------------------	--------------------------	-------------------------------------	---------------	---

Opted/Decided to have opted to Retire
my RA rule 1997 w.e.f. 1-1-96/
Fixed at Rs. 3285/- Scale Rs. 3285-4900/-
w.e.f. 1-1-96/- and increase to Rs. 3370/- 1-4-96
and Rs. 3450/- 1-4-97
For B.R. (P) 11/11/01

Pay raised to Rs. (3285-4900/-) 3510/- 1-4-98

का. मंडल रेल प्रबंधक (का. मंडल)
For Divl. Railway Manager (P)
पू. सी. रेलवे प्रशासक कार्यालय
N.E. Railway/Alipurduar Jn.

Pay raised to Rs. (3285-4900/-) 3625/- 1-4-99

का. मंडल रेल प्रबंधक (का. मंडल)
For Divl. Railway Manager (P)
पू. सी. रेलवे प्रशासक कार्यालय
N.E. Railway/Alipurduar Jn.

Promoted to officiate as Senior Counsel
(Coaching) Clerk in Scale (4000-6000/-) on Pay
Rs. 4000/- w.e.f. 16-8-99 & posted at TNL
Scale of Rs. 4000/- w.e.f. 16-8-99 & posted at TNL
Dated 4-8-99

का. मंडल रेल प्रबंधक (का. मंडल)
For Divl. Railway Manager (P)
पू. सी. रेलवे प्रशासक कार्यालय
N.E. Railway/Alipurduar Jn.

21/5/2008
[Signature]

92

दंड का रिकार्ड Record of Penalties

नाम/Name

क्रम संख्या Sl. No.	घटना की तारीख Date of Offence	अपराध का स्वरूप Nature of offence	दिया गया दंड Punishment inflicted	अधिकारी का प्राव Initial of authority
------------------------	----------------------------------	--------------------------------------	--------------------------------------	--

Pay raised to Rs 4100/- W.e.f. 1-8-2000 Demd/Ala

1-8-2000 to 31-12-2000

1-8-2000 to 31-12-2000

Which will qualify for Pension in the following period of Service which will not qualify for Pension & was noted against each

Which will qualify for Pension in the following period of Service which will not qualify for Pension & was noted against each

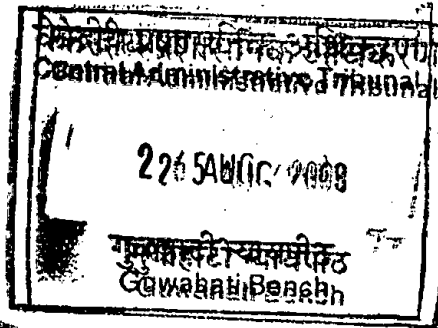
For Div. Ry. Manager (P)
For Div. Ry. Manager (P)
For Div. Ry. Manager (P)

For Div. Ry. Manager (P)
For Div. Ry. Manager (P)
For Div. Ry. Manager (P)

Placed under Suspension with immediate effect vide Dem/Ala's letter no. 4/Con/Rib/PT-I dated 10-12-2000

Suspension is here by revoked with immediate effect vide Dem/Ala's letter no. 4/Con/Rib/PT-I dated 3-01-2001

12/5/08
12/5/08
12/5/08



93

Filed by:
The Applicant
through
Hidip K. Das.
Advocate
26.9.08

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under section 19 of the Central
Administrative Tribunal Act.1985)

O.A.No. 309 of 2007

Sri Laxmi Kanta Sarma

-Vs-

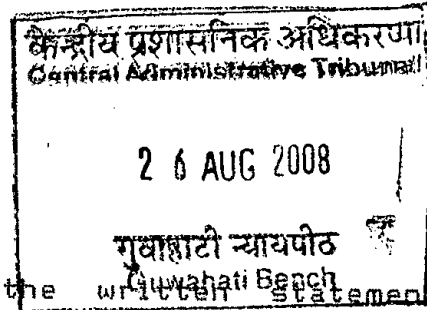
Union of India and Ors.

REJOINDER

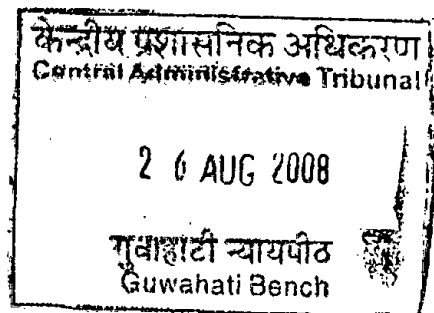
1. That a copy of the written statement filed by the respondents has been served upon the applicant and the applicant has gone through the same and has understood the contents thereof. Save and except the statements which are specifically admitted herein below other statements made in the written statement are categorically denied. The statements which are not borne on record are also denied and the respondents are put to the strictest proof thereof.

2. That with regard to the statements made in para 3.1 of the written statement the deponent while denying the contentions made therein begs to state that so far as

Laxmi Kanta Sarma



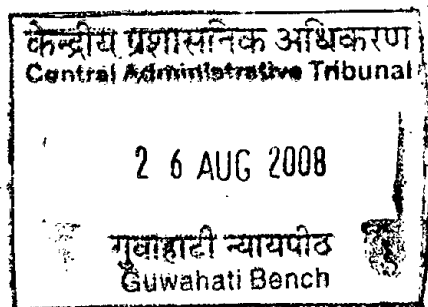
Article I charge is concerned the written statement of defence submitted by the applicant explaining the actual reasons resulting to the circumstances of issuance of the memorandum of charge sheet dated 17.06.05 has not been taken into consideration by the inquiry officer. Moreover, relevant evidence were overlooked and irrelevant evidence were taken into consideration by the inquiry officer, resulting in a perverse finding. Again the statement of the Station Superintendent/TNL, Sri Rameswar Singh confirming the defence placed by the applicant was also not been taken into consideration by the inquiry officer as well as the disciplinary and the appellate authorities. The Station Superintendent during the course of hearing admitted the fact that the applicant reported him about the incident immediately and on his return he had to face the vigilance officials, which clearly shows the bonafide on the part of the applicant. However, the inquiry officer and the disciplinary as well as the appellate authority failed to take into consideration these aspects of the matter and passed the impugned orders dated 3.4.07, 24.7.07 and 15.11.07. Hence from the written statement of defence submitted, the bonafide of the applicant can easily be established. However, the inquiry officer failed to take into consideration the bonafide of a senior employee like that of the applicant who had few years left in his service career and hold the Article- I charge to be partly proved and the disciplinary authority without assigning any reason hold the said charge to be fully proved thereby passing the impugned order of penalty. Hence, while passing the impugned order dated 3.4.07 the disciplinary authority disagreed to



the findings of the inquiry officer hold the charge to be fully proved, In such a fact situation the disciplinary authority ought to have issued notice to the applicant providing opportunity to place his say. In the instant case no such opportunity was given to the applicant. In fact the order passed by the disciplinary authority is a non speaking order.

That again so far as Article-II charge is concerned the inquiry authority also failed to take into consideration the defence placed by the applicant. On the fateful day the applicant had collected coins from the pan shop worth Rs. 80 so that he could manage the demand of the passengers. It was a daily process and it was well within the knowledge and acceptance of the Station Superintendent which has been admitted by the Station Superintendent during the course of hearing. However, the inquiry officer failed to take into consideration this aspect of the matter and hold the Article-II charge to be proved. The disciplinary, appellate and the revisional authority also failed to take into consideration the defence cited by the applicant and came to a wrong conclusion imposing penalty of compulsory retirement. Hence, the penalty imposed by the respondents is shockingly disproportionate and liable to be set aside and quashed.

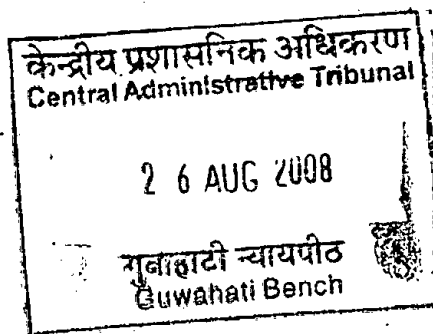
That it is further stated that the disciplinary authority while issuing the order imposing penalty dated 03.04.07 took into consideration some past charges and/or extraneous grounds which do not form part of the memorandum of charge dated 17.06.05. It is worthwhile to mention here



that no inquiry report was ever been served to the applicant so far as those extraneous charges are concerned. Therefore there is gross violation of natural justice in the case of placing reliance on the extraneous charges by the disciplinary as well as the appellate authority apart from the charges mentioned in the charge sheet dated 17.06.05 in passing the impugned orders. Hence, the orders of the disciplinary authority and appellate authority as well as the revisional authority are cryptic and passed in gross violation of natural justice.

3. That with regard to the statements made in para 4 of the written statement the deponent begs to state that all the statements made in these para are based on record and hence the respondents can not deny the same.

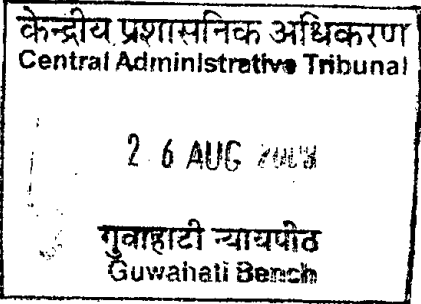
4. That with regard to the statements made in Para 5 of the written statement the deponent while denying the contentions made therein and reiterating and reaffirming the statements made in the original application begs to state that the disciplinary and the appellate authority while passing the impugned orders dated 3.4.07 and 27.7.07 took into consideration some past charges and extraneous grounds which did not form part of the memo. of charge sheet dated 17.06.05. The contention raised by the respondents regarding the order of withholding of increment for a period of 4 years is totally baseless. It is stated that in the said case no inquiry, no hearing took place and nothing was communicated to the applicant, which is a gross violation of



natural justice and clear violation of Rule 12 of the Railway Servants (Discipline & Appeal) Rules, 1968. However, so far as the other DAR is concerned in which punishment of reversion to the grade of Junior Commercial Clerk in the pay scale of Rs. 3200 - 4900/- was imposed, it is stated that the applicant is still working as Sr. Commercial Clerk. The Divisional Commercial Manager in the order imposing penalty dated 03.04.07 in the instant proceeding himself addressed the applicant as Sr. Commercial clerk. The payslip of the applicant of different period will state that the no such punishment has been imposed upon the applicant.

Copies of the payslip of different period is annexed herewith and marked as Annexure- R/1 (Series).

5. That with regard to the statements made in Para 6 of the written statement the deponent begs to state that it is admitted by the respondents that the order dated 13.03.06 imposing punishment of reversion to the post of Jr. Commercial Clerk was never been communicated to the applicant causing serious prejudice to the defence of the applicant and leading to gross violation of natural justice. It is stated by the respondents in the written statement that after the order for removal from service dated 3.4.07 all other decision taken earlier stands non existence. Therefore, in such an eventuality the respondents while issuing the orders dated 3.4.07, 27.7.07 and 15.11.07 ought not to have taken into consideration the past charges and/or the extraneous grounds. Hence, the orders dated 3.4.07, 27.7.07 and 15.11.07 are cryptic and passed in gross violation of natural justice.

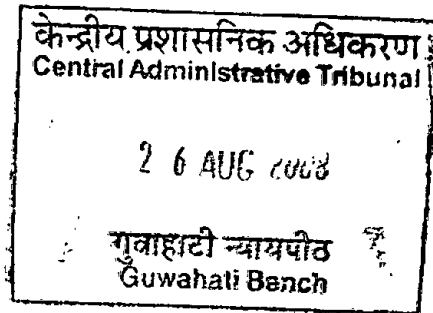


6. That with regard to the statements made in Para 7 of the written statement the deponent begs to state that the very basis of the orders dated 3.4.07, 27.7.07 and 15.11.07 are based on the past charges of the applicant which were never been acted upon and hence not sustainable in the eye of law and liable to be set aside.

7. That with regard to the statements made in Para 8 of the written statements the deponent begs to state that the Schedule II of the Railway Servants (Discipline & Appeal) Rules, 1968 clearly states that an order imposing major penalty can only be passed by the appointing authority or any higher authority. The Divisional Railway Manager rank officer is the appointing and promoting authority in the case of the applicant which can be clearly understood by the orders annexed as Annexure- C & D of the written statement filed by the respondents. Therefore, Divisional Commercial Manager being a subordinate authority has passed the impugned order imposing penalty dated 3.4.07 in clear violation of Article 311(1) of the Constitution of India. Hence, the orders dated 3.4.07, 24.7.07 and 15.11.07 are not sustainable in the eye of law and liable to be set aside.

8. That with regard to the statements made in Para 9 of the written statement the deponent while denying the contentions made therein and reiterating and reaffirming the statements made in the original application begs to state that the disciplinary as well as the appellate authority

-7-



while issuing the order imposing penalty dated 3.4.07 and 24.7.07 took into consideration the past charges, wherein there was gross violation of natural justice. The penalties on the said charges were never imposed upon the applicant. In fact the respondents in the written statement admitted that the order dated 13.3.06 was never communicated to the applicant.

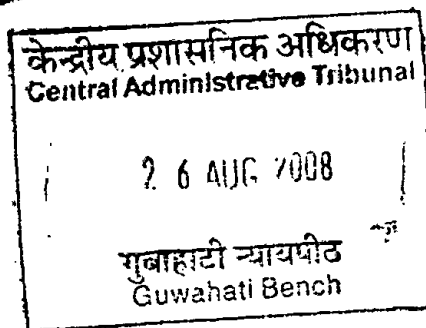
9. That with regard to the statements made in Para 10 to 19 of the written statement the deponent while denying the contentions made therein and reiterating and reaffirming the statements made in the original application begs to state that the Trap which was arranged by the respondents was in clear violation of Paras 704 and 705 of the Railway Vigilance Manual. For the sake of convenience the relevant portion of Paras 704 and 705 is quoted below:

" 704. Trap - (i) - (iv)

(v) When laying a trap, the following important points have to be kept in view:

(a) Two or more independent witnesses must hear the conversation, which should establish that the money was being passed as illegal gratification to meet the defence that the money was actually received as a loan or something else, if put up by the accused.

(b) The transaction should be within the sight and hearing of two independent witnesses.



(c) There should be an opportunity to catch the culprit red-handed immediately after passing of the illegal gratification so that the accused may not be able to dispose it of.

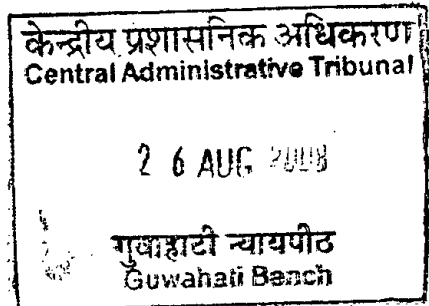
(d) The witnesses selected should be responsible witnesses who have not appeared as witness in earlier cases of the Department or the police and are man of status, considering the status of the accused. It is safer to take witnesses who are government employees and of other departments.

(e) After satisfying the above conditions, the investigating officer should take the decoy to the SP/SPE and pass on the information to him for necessary action. If the office of the SP, SPE, is not nearby and immediate action is required for laying the trap, the help of the local police may be obtained. It may be noted that the trap can be laid only by the an officer not below the rank of Deputy Superintendent of Local Police. After the SPE or local police official have been entrusted with the work, all arrangements for laying the trap and execution of the same should be done by them. All necessary help required by them should be rendered.

(vi) - (vii) * * *

705. Departmental traps- For departmental traps, the following instructions in addition to those contained under Para 704 are to be followed:

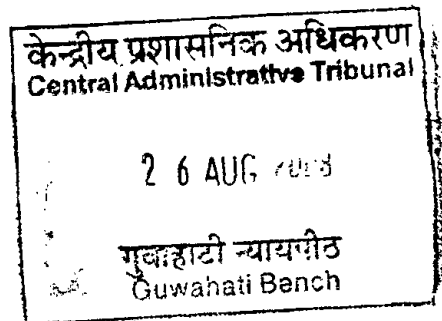
Laxmi Kant Sarmah



(a) The investigation officer/inspector should arrange two gazetted officers from Railways to act as independent witnesses as far as possible. However, in certain exceptional cases where two gazetted officers are not available immediately, the services of non-gazetted staff can be utilized.

All employees, particularly, gazetted officers, should assist and witness a trap whenever they are approached by any officer or branch. The Head of Branch should detail a suitable person or persons to be present at the scene of trap. Refusal to assist or witness a trap without a just cause/without sufficient reason may be regarded as a breach of duty, making him liable to disciplinary action.

(b) The decoy will present the money which he will give to the defaulting officer/employees as bribe money on demand. A Memo should be prepared by the investigating officer/Inspector in the presence of the independent witness and the decoy indicating the numbers of the GC notes for legal and illegal transactions. The memo, thus prepared should bear the signature of decoy, independent witnesses and the investigating officer/Inspector. Another memo, for returning the GC notes to the decoy will be prepared for making



over the GC notes to the delinquent employee on demand. This memo should also contain signatures of decoy, witnesses and investigating officer/Inspector. The independent witnesses will take up position in such a place wherefrom they can see the transaction and also hear the conversation between the decoy and the delinquent, with a view to satisfy themselves that the money was demanded, given and accepted as bribe a fact to which they will be deposing in the departmental proceeding at a later date. After the money has been passed on, the investigating officer/Inspector should disclose the identity and demand, in the presence of the witnesses, to produce all money including private, and bribe money. Then the total money produced will be verified from relevant records and memo for seizure of the money and verification particulars will be prepared. The recovered notes will be kept in an envelope sealed in the presence of the witnesses, decoy and the accused as also his immediate superior who should be called as a witness in case the accused refuses to sign the recovery memo, and sealing of the notes in the envelope.

(c) - (d) * * *

Laxmi Kant Sarmah.

26 AUG 2008

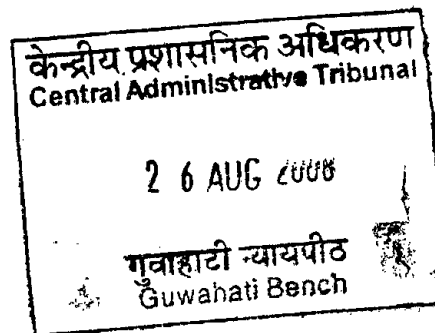
गुवाहाटी न्यायपीठ
Guwahati Bench

103

— 11 —

It is stated that the entire trap was arranged in clear violation of the procedure prescribed under Paras 704 and 705 of the Railway Vigilance Manual. In the instant case only one witness was present who was a Head Constable/RPF, whereas Paras 704 and 705 provides for two or more independent witnesses or gazetted officers to witness the trap. Again the independent witness i.e. Head Constable/RPF in his cross examination admitted that he is a person of short hearing and was at a distance of 15 feet from the decoy. It is further stated that the trap laid by the members of the RPF was a pre-arranged trap. It is, therefore, not a case which can be said to be an exceptional one where two gazetted officers as independent witnesses were not available. Hence, no reasonable person could come to a conclusion that the Head Constable/ RPF heard the conversation between the decoy and the applicant. Therefore, the entire inquiry is vitiated by procedural lapses leading to perversity in the findings of the inquiry officer.

10. That in view of the above facts and circumstances of the case the present OA deserves to be allowed with cost.



V E R I F I C A T I O N

I Sri Lakhi Kanta Sarma, son of Late Abani Sarma, aged about 56 years, resident of New Market, P.O. & P.S. Rangia, Dist: Kamrup, Assam, do hereby solemnly affirm and verify that the statements made in paragraphs 6, 8, 10, are true to my knowledge and those made in paragraphs 2, 3, 4, 5, 7, 9, are also matter of records and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

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

And I sign on this the Verification on this the 26th day of August' 2007.

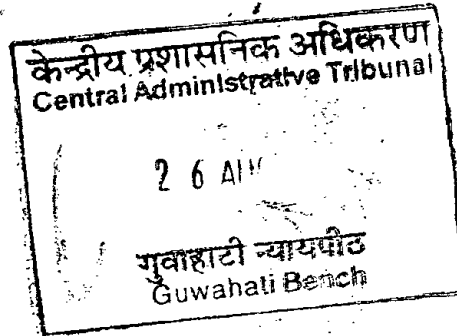
Laxmi Kanta Sarma.

Signature.

Laxmi Kanta Sarma.

ANNEXURE - R/1 (Series)

-13-



N.F.R.Y. (RMY DIV) 53-215 TNL

* PAY BILL FOR

APRIL

2004 * I.DUE

DEDUCTIONS CONTO

I.DUE DEPT COMMERCIAL SRL NO 24

LAXMI KANTA SARMA

BASIC PAY

4400.00

PF

550.00

DEARNESS PAY

2200.00

HOUSE RENT

90.00

DA

726.00

PROF-TAX

125.00

NHA

280.00

GIS

30.00

NDA

385.00

D. P. ADVANCE

150.00

3

SCA

80.00

ELECTRIC

121.00

SOCY DEPOSIT

65.00

SOCY LOAN

1177.00

33

GROSS PAY * 8074.00

TOT. DEDNS * 2305.00

NET PAY * 5766.00

DUTY DAYS 30 LEAVE 00

LWP LHP LWP ABS LND

00.00 150.00 0018

00.00 150.00 0018

B/F GRS: \$2,27,772.00

B/F DEO: \$60,233.00

B/F NET: \$1,67,539.00

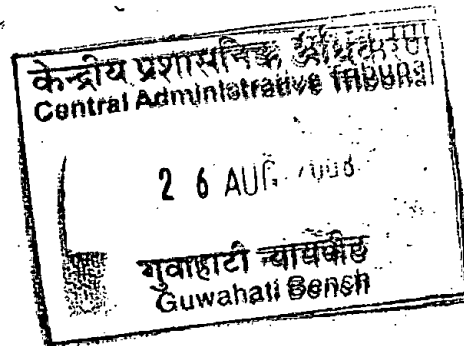


Attended

Has.

Advocate

105



-14-

N. F. RAILWAY UNIT 53-215 TNL		PAY BILL FOR NOVEMBER 2005		I. DUE DEPT COMMERCE SRL NO 14	
AXMI KANTA SARMA		BASIC PAY	4600.00	PF	575.00
ESGN* BRCC		DEARNESS PAY	2300.00	HOUSE RENT	108.00
FNO *05502986-NC		DA	1449.00	PROF-TAX	85.00
		NHA	280.00	GRIS	30.00
		NDA	446.00	D. P. ADVANCE	150.00
		SCA	120.00	FLOOD ADV. -	100.00
				G/P OTHR ALL	50.00
				ARR ELECTRIC	158.00
				SOTY DEPOSIT	100.00
				SOTY LOAN	1177.00
				GROSS PAY *	9195.00
				TOT DEDNS*	2533.00
				008 NET PAY *	6662.00
				014	

- 15 -

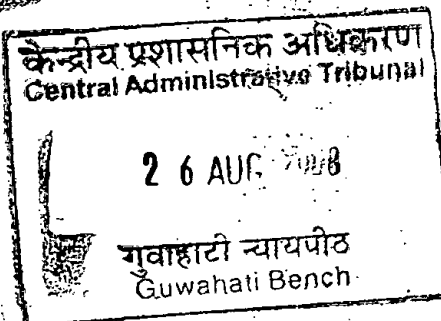
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

26 AUG 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

PAGE NO 5

M.F. RAILWAY UNIT		SE-145	TWL	PAY BILL FOR		MAY 2008	1 DUE DEPT COMMERCIAL SRL NO		17
LAXMI KANTA SARMA	BASIC PAY					575.00	GROSS PAY *		9138.00
DEEPAK ERD	DEPARTMENTAL PAY					100.00			
	DA					85.00	TOT. DEPTS *		2699.00
	DCI					30.00			
	ED					130.00	NET PAY *		6639.00
						100.00			
						174.00			
						100.00			
						1177.00			



N-G STAFF OF BU-215

:RNY Bill For: JAN 2007-FEB 2007 GU: 30001 BU: 53215 SEC:TML SL.No: 94 Page No: 52 RPage: 197

DEPT:030 Empno: 05502936 Empname: LAXMI KANTA SARMA F/H: A K SARMA

Desig:SRCC R/Pay: 4700 DAYS: Pd=31.0 Unpd=0.0

Leave Balance: LAP: 0 LHAP: 0

Pays:.....Rs Allowance Rs Allowance Rs Recovery Rs Recovery Rs Recovery

Rs Qtrs Rec Rs Adv. Rec Rs R_I Voucher/PSLIP/OFFICE

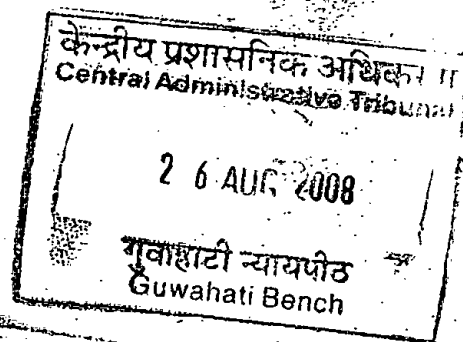
Basic	4700	D.A.	2045	PF-Sub	588
		SCA	120	CGIS-C	30
		Dearne	2350	Prof.T	140
		NDA	727	CRED S	100
		NHA	420		

Rent-W	108	Flood	100
Elec.c	160	Durga.	150 006
		ConsLo	1177 001

Sign.:

Gross Pay : 10362 Total Deduction : 2553 NetPay : 7809

Scalecode : 04000-06000 Next Increment Date : 01-AUG-2002 Date of Retirement : ~~***~~ PRIME PAYSLIP



STAFF OF BU-215

:RNY Bill For: MAR 2007-APR 2007 GU: 30001 BU: 53215 SEC: TNL SL.No: 94 Page No: 54 RPage: 199

Empno: 05502986 Enpname: LAXMI KANTA SARMA F/H: A K SARMA Desig: SRCC R/Pay: 4600 DAYS: Pd=31.0 Unpd=0.0

Leave balance: LAF: 15 LHAF: 10

Rs Allowance	Rs Allowance	Rs Recovery	Rs Recovery	Rs Recovery	Rs Qtrs Rec	Rs Adv. Rec	Rs B_I	Voucher/PSLIP/OFFICE
4600 D.A.	2001	PF-Sub	575		Rent-N	108 Durga.	150 004	Sign.:
SCA	100	SSIS-C	10		Elec.c	160		
Dearne	2700	Prof.L	125					
NDA	600	CRBD S	100					
Att.ND	653							
NHA	140							

Gross Pay : 10414 Total Deduction : 1248 NetPay : 9166

Scalecode : 04000-06000 Next Increment Date : 31-AUG-2002 Date of Retirement : ~~31-AUG-2002~~ PRIME PAYSLIP

109

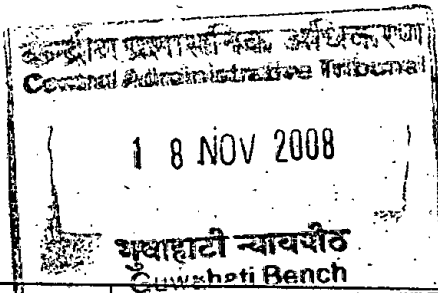
18 NOV 2008

CHRONOLOGICAL DATES OF EVENTS AND THEIR REFERENCES IN RELEVANT CASE FILES OF TWO MAJOR & ONE MINOR PENALTY CHARGE CASES AGAINST SHRI L.K. SARMA, EX. SR. CC/TANGLA

W/T Case :- (Major)

Date	Particulars	Case No.	Annexure & Page No. in file	Remarks
04.04.02	Preliminary hearing	C/421/RNY/Vig/Staff - 17	75	
29.05.02	Regular hearing	C/421/RNY/Vig/Staff - 17	73	
27.06.02	Regular hearing	C/421/RNY/Vig/Staff - 17	71	
02.08.02	Regular hearing	C/421/RNY/Vig/Staff - 17	67	
27.10.02	Regular hearing	C/421/RNY/Vig/Staff - 17	60	
11.07.03	Enquiry report served by L O	C/421/RNY/Vig/Staff - 17	76	
11.05.05	Enquiry report served to Shri Sarma	C/421/RNY/Vig/Staff - 17	78 to 80, Annex - B	
04.07.05	Reminder issued for submission of reply.	C/421/RNY/Vig/Staff - 17	79, Annex - C	
09.07.07	Acknowledgement of Shri Sharma.	C/421/RNY/Vig/Staff - 17	80, Annex - D	
12.07.08	Final defence submitted by the C.O on the basis of enquiry report received on 09.07.05	C/421/RNY/Vig/Staff - 17	88, Annex - E	
Jan/Feb-07 Mar/Apr-07	Pay slip showing implementation of WIT order (withholding of increment)	C/421/RNY/Vig/Staff - 17	Annex - F	

Filed by:
revisions
17-11-08
Advocate



Removal Case:- (Major)

Date	Particulars	Case No.	Annexure & Page No. in file	Remarks
17.06.05	Major Penalty (S F-5) was served to Sri Sarma	C/421/RNY/Vig/Staff - 4	44	
18.03.06	Enquiry report received from IO	C/421/RNY/Vig/Staff - 4	102	
27.03.06	Enquiry report received by Shri Sarma	C/421/RNY/Vig/Staff - 4	102	
03.04.07	NIP for removal of Shri Sarma	C/421/RNY/Vig/Staff - 4	187	
03.07.07	Appeal made to DRM against order of removal 03.04.07	C/421/RNY/Vig/Staff - 4	208	
24.07.07	Disposal of appeal by DRM	C/421/RNY/Vig/Staff - 4	210	Reduced punishment of removal from service to compulsory retirement with full pensionary benefit.
27.07.07	Revision application made by Sri Sarma to CCM/MLG	C/421/RNY/Vig/Staff - 4	217	Penalty of compulsory retirement with full pensionary benefit imposed by DRM/RNY commensurate with the gravity of the offence and hence the same should stand.
15.11.07	Disposal of revision application convey to Sri Sarma	C/421/RNY/Vig/Staff - 4	230	

Reversion Case:- (Minor)

Date	Particulars	Case No.	Annexure & Page No. in file	Remarks
04.10.05	Minor memorandum (SF - 11)	C/421/RNY/Vig/Staff - 19	7	
10.10.05	Acknowledgement of Shri Sarma	C/421/RNY/Vig/Staff - 19	7	
29.11.05	Defence of SF - 11 received	C/421/RNY/Vig/Staff - 19	8	

Advocate
17.11.08

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI

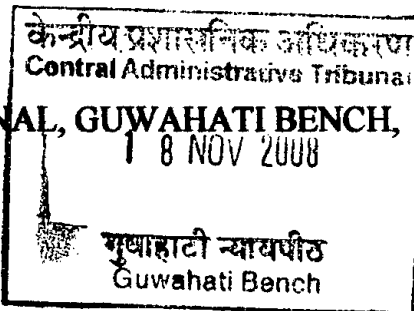
O.A. NO. 309 of 2007

Sri Laxmi Kanta Sarma..... Applicant

-Vrs-

Union of India & Others..... Respondents

INDEX OF THE ADDITIONAL WRITTEN STATEMENT



112
Asoodhesh Kumar Singh
महानगर वाणिज्य प्रबंधक
Divisional Commercial Manager
उ. सी. रेलवे, रंगिया
U. S. Railway, Rangpur

Sl. No.	Annexures	Particulars	Page No.
1.	--	Written Statement	1-11
2.	--	Verification	12
3.	Annexure A/1	Enquiry Report Served to the Applicant	13
4.	Annexure B/1	Enquiry Report Served to the Applicant for Final Brief	14
5.	Annexure C/1	Letter to Applicant for submitting his defence	15
6.	Annexure D/1	Acknowledgement by Applicant	16
7.	Annexure E/1	Defence by the Applicant	17-20
8.	Annexure F/1	Bill for January to May 2007 of the Applicant	21-22
9.	Annexure G	Pre-check Memorandum	23-24
10.	Annexure H	Post-Check Memorandum & Departmental Enquiry	25-61
11.	Annexure I	Enquiry Report by Inquiry Officer	62-74
12.	Annexure J	Brief of Defence Counsel	75-76
13.	Annexure K	Appeal of the Applicant ag. Order of removal (Extract)	77-79
14.	Annexure L	Statement of Rameswar Singh, SS/Tangla	80
15.		Service copy of the Addl. W.S. to Applicant's Counsel	81

Filed by: -

(K.K. Biswas)
Advocate

Date: 17-11-08

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

केन्द्रीय प्रशासनिक अधिकरण
GUWAHATI BENCH
Tribunal

O.A. NO. 309 of 2007

Sri Laxmi Kanta Sarma..... Applicant

-Vrs-

Union of India & Others..... Respondents

18 NOV 2008

गुवाहाटी न्यायालय
Guwahati Bench

113
Awardees Reman...

म. उ. ल. बा. वि. प्र. म. य. क.
Divisional Commercial Manager
पु. सी. रेलवे, रंगिया
N. F. Railway, Rangiva

IN THE MATTER OF:

ADDITIONAL WRITTEN STATEMENT / REPLY
BY THE RESPONDENTS TO THE REJOINDER
OF THE APPLICANT.

The Respondents above named most respectfully sheweth:-

1. That the Respondents received a copy of the Rejoinder filed by the Applicant and having gone through the same the Respondents above named have understood the contents thereof.
2. That for the sake of brevity and clarity of the case meticulous denial of each and every allegation/statement made in the application has been avoided. However the answering Respondents confined their replies to those points/ allegations /averments of the Applicant which are found relevant for enabling a proper decision on the matter.
3. That save and except what are specifically admitted herein below all other statements made in the Rejoinder are denied. Further, the statements not borne out of records and also not lawful are denied.
4. That in response to the averments made under paragraph – I of the Rejoinder the Respondents above named offer no comments.
5. That with regard to the contents of the Rejoinder under para - 2 it is stated that the averment of the Applicant regarding article 1 is not accepted by the answering Respondents in as much as the Inquiry Officer after due consideration of the fact and circumstances has arrived at the decision in regard to not giving any weightage to the statement of station Superintendent / Tangla (TNL) Sri Rameswar Singh, which has clearly been stated by the answering Respondent in Para-11 of the Written Statement. In regard to the decision of the Disciplinary Authority to consider Article 1 as proved has also been explained in Para 12 of the written statement. Since 'proved' and 'partially proved' are technical issue and has no bearing with the Charged Official. As such the Charged Official was

Filed by:
N. F. Railway
12.11.08
Advocate

Contd.....P/2 (not asked)

Awadhesh Kumar Saini. 11/4

17-11-08
Advocate
Mel Lewis

महोदय प्रबंधक
आपका आभार
श्री: श्री: देवदत्त, रंगिया
रंगिया, रंगिया

7. That with regard to the contents of the Rejoinder under paras - 4 & 5 it is stated that it is not a fact that the order of withholding of increment in case No. C/421/RNY/Vig/staff/17 was passed without any enquiry/ hearing in the case.

I) Preliminary hearing – 04.04.02 duly attended by Shri Sharma

- 27.06.02 }
07.08.02 } Duly attended by Shri Sharma
27.10.02 }

Submitted by Inquiry Officer on 11.07.03

- V) Reminder for final Brief – 04.07.05**

- VII) Final Brief submitted by Charged Official on 12.07.05**

Contd.....P/3 and, hence

//3//

and, hence, there is no violation of any rule. In regard to the averment of the applicant that he is still working as commercial clerk it is stated that the order for reversion to the lower post of Jr. Commercial Clerk issued vide No. C/421/RNY/Vig/staff-19 dated 12.03.2006 was not communicated as the first punishment was under process for implementation and the major DAR case against which this application has been filed before Hon'ble CAT Guwahati was concurrently in progress and at a finalization stage. With the issuance of the order of removal from the service all other decision taken earlier stands non-existent. It is further stated that the order for withholding of increment was issued on 27.09.2005 but in the mean time his due increment in Aug/2005 was charged and paid as stated in Para 5 of the written statement. Therefore the effect of the order got delayed which however was effected in the salary of Mar/Apr/07 instead of Aug/06 (Copy of the pay slip is annexed and marked as Annexure - 'F/1') and, therefore there is no violation of the principle of natural justice caused to the Applicant.

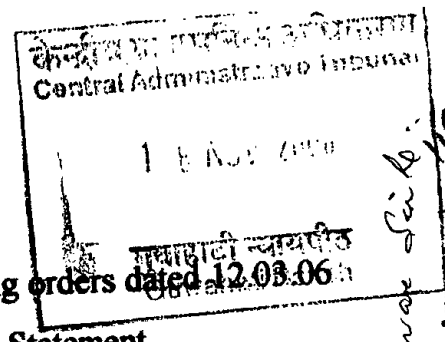
8. That with regard to the contents under para 6 of the Rejoinder it is stated that it is not a fact that the orders dated 03.04.2007 removing the Applicant from Railway service and the order dated 24.07.2007 (not 27.07.2007 as mentioned in Para 6 in the rejoinder) disposing the appeal of the Applicant by the Appellate Authority and the order dated 15.11.2007 passed by the Reviewing Authority are based on past charges. Each of the three cases of memorandum of charges was dealt with as per law of the land and therefore valid and proper for all purposes in the eyes of LAW.
9. That with regard to the contents under para 7 of the Rejoinder it is stated that the contention of the Applicant made in this paragraph is not admitted. The Divisional Commercial Manager is competent enough to exercise the power and jurisdiction being the **Appointing Authority** of the Applicant and the Respondents respectfully re-iterate their submissions made under para-8 of the Written Statement. Necessary provision of Law/Rule for such submission would be exhibited / produced at the Hearing stage.
10. That with regard to the contents under para- 8 of the Rejoinder it is stated that it is not a fact there was any violation of Natural Justice. The penalty of withholding of Increment for four years was implemented in March/April-07 (Copy of the pay Slip is annexed and marked as Annexure-"F/1"). Due enquiry/ hearing was also done where the applicant has attended and signed

Contd.....P/4, the daily

115
Awaradhesh Kumar Sub-
म. उ. ले. बाणिज्य प्रबंधक
Divisional Commercial Manager
पु. सी. रेलवे, रंगिया
N. F. Railway, Rangia
17.11.08
Advocate

//4//

the daily proceedings. In regard to not communicating orders dated 12.03.06 the same has been explained in Para- 6 of the Written Statement.



Awadhesh Kumar Singh
16

म. उ. र. म. वि. प्र. म. वि.
Divisional Commercial Manager
ग. सी. रेलवे, रंगीत
R. Railway, Rangit

11. That with regard to the contents under para - 9 of the Rejoinder it is stated that these are all matters of records. However it is reiterated that recovery of Rs. 20/- in excess of the fare in the Government cash of the same denomination as shown in the pre-check and post-check memorandum speaks clearly about the motive of Shri Sharma and fulfills the criteria behind laying a trap.

(Photocopies of both pre-cheque and post-cheque memorandum mentioned above are enclosed as Annexure- 'G' & 'H').

In addition it is humbly submitted that the provision of the Vigilance Manual under paras 704 and 705, as alleged, have not been understood by the Applicant in going through the '*in between the lines*' of the said provisions; rather the contents of the same were misunderstood, misconceived, misconstrued and misrepresented. The check by the Vigilance Team of the Respondents was conducted in accordance with law and the established provisions of the statutory rules and the Applicant was caught red handed for committing his offence mentioned above and thereby caused the violation of the service conduct rules and DA Rules and for which reasons consequently he faced the consequences of his removal from services, though, finally the Reversionary Authority was kind enough to grant him the compulsory retirement. The cause of action and the fact of offence for unbecoming of a Government servant is proved from the highlights of the following, some of which references of course were enclosed by the Applicant as Annexures in the Original Application and the extracts of the rest are enclosed herewith as Annexures by the Respondents towards the defence of their submission enumerated as under:

Advocate
17.11.08

11.1 **"Pre Check Memorandum dated 14.11.04"**

The following GC Notes have been taken over to conduct a decoy check at Tangla Booking was Reservation office on 14.11.04 and handed over to T. Mangba CD/Enquiry/RPF/MLG who will act as decoy in presence of Sri U.C. Bayan HDCB/Encoy/RPF/MLG who will act as independent witness. The decoy was strictly instructed not to handover any excess amount if not

Contd.....P/5, demanded

11/5/11

demand and the i/witness was instructed to inform the Vigilance teams about the transaction immediately.

The G.C. notes are as given below:-

- 1) 5 (Five) Hundred Rupees G.C. Note bearing number 8BT 400268, 6RK 261887, 5CV 994465, 4GG 309006 and 7GD 029034.
- 2) 1 (One) fifty Rupees G.C. Note bearing No. 6NN 413675.
- 3) 1 (One) Twenty Rupees G.C. Note bearing No. 24B 889329
- 4) 3 (three) Ten Rupees G.C. Note bearing No. 41H 864095 56C 863581 and 05D 280511
- 5) 1 (One) five Rupees G.C. Note bearing no. 16G 175610

Sd/-
T. Mangba
B.C. Mushahary
Decoy

Sd/-
L.C. Bayan
I/witness

Sd/-
A.K. Debnath

Sd/-
Cv"

Advocate
17.11.08
Advocate

11.2 "POST CHECK MEMORANDUM DATED 14.11.04"

Extract

Thereafter the Pre check memo was shown to SS/TNL Sri R. Singh and Sri. L.K. Sarma and obtained signature from them SS/TNL Sri R. Singh was requested to tally the G.C. Note of Govt. Cash of Sri Sarma in presence of his (Sarma). Sri Singh tallied the G.C. Notes of Govt. cash and during tally the G.C. Notes number -

- (1) 5 (five) one hundred Rupees found as 6RK 261857, 5CV 994465, 4GG 309006, 8BT 400268 and 7GD 029034
- (2) 2 (two) Ten Rupees G.C. Note found as 56 C 863581 and 41 H 864095.
- (3) 1 (one) five Rupees G.C. Note found as 16G 175610 which were exactly tallied with the G.C. Notes recorded in the Pre check memorandum.

The total value of Reservation ex TNL to DLI is Rs. 485 + 20 = Rs. 505/-
But here we recorded decoy money Rs. 525/- (Five hundred twenty five) from the Govt. cash of Shri L.K. Sarma, Sr. CC/TNL.

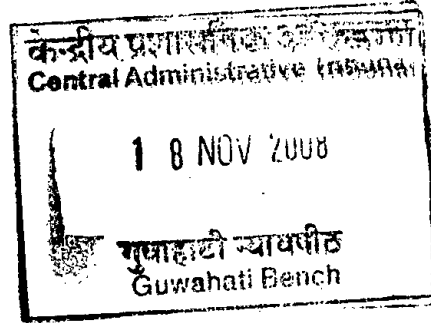
Sd/-
Sri Rameswar Singh
A.K. Debnath
SS/TNL
14.11.04

Sd/-
L.K. Sarma
Sr. CC/TNL
14.11.04

Sd/-
14.11.04

Contd.....P/6, Sd/-

//6//



Sd/-
B.C. Masahary
CVI/T/MLG
14.11.04"

Awardeesh Kumar Srib.

मंडल वाणिज्य प्रबंधक
Divisional Commercial Manager
उ: सी: रेलवे, रंगिया
S. T. Railway, Rangia

11.3 **"Statement of Sri L.C. Bayan HDCB/RPF/ERCOY/MLG who acted as independent witness in the decoy check conducted at TNL Booking office on 14.11.04 recorded at CVO/MLGs office on 16.11.04.**

I along with Sri Lohit Ch. Roy's HDCB/ERCY/RPF/MLG 14.11.04 N.F. Rly/Vigilance Team went for Decoy Check. I was accompanied by my colleague T. Mangba DB/RPF/ERCY MLG. Before going for the check the vigilance officer noted down some number of currency notes in a pre-check memo and shown as and took our signature. After he delivered those currency notes to my colleague Sri T. Mangba and instructed us what we have to do during the checking.

17-11-08
Advocate

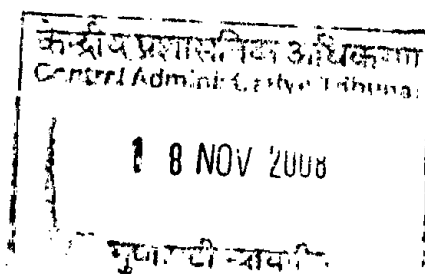
We went to the station as general public by bus. T. Mangba approached the counter of tangle Station at around 12.30 p.m. for making a reservation and I was standing at a distance place from there I heard that the officer in the counter asked for Rs. 525/- for the ticket and accordingly T. Mangba delivered Rs. 525/- to him. Immediately, after that I informed the vigilance officers standing in other side of the station regarding the happening of the transaction and saw them forwarding towards the counter.

Sd/-
(Lohit Ch. Bayan)"

11.4 **"The statement of Sri. T. Mangba CB/RPF/ERCOY/MLG who acted as decoy check conducted at TNL Booking office on 14.11.04 recorded at CVO/MLGs office on 16.11.04.**

I T. Mangba CB/RPF/ERCOY/MLG gone for decoy check with the vigilance team on 14.11.04 along with my colleague Sri L.C BAYAN HDCB/ RPF/ERCOY/MLG. Before going to check a pre-check memorandum was prepared by the vigilance team depicting some numbers of G C Note and shown to us and took signature in it. Thereafter the money handed over to me to use in the check.

Contd.....P/7, We gone



11711

We gone to Tangla station in plain dress by-bus. At about 12.20 hrs. I gone to the reservation counter of Tangla station. Sri L.C. Bayan was behind me. I asked for reservation ticket by 4055 DN EX TNL to DLI. I filled up the requisition form as given by the counter clerk. The counter clerk after preparing the ticket told me to give total Rs. 525/-. I handed over the money of Rs. 525/- from the money which were given to me through pre-check memorandum and left the counter.

Adv. Adarsh Kumar Saini
 सं. उल. वाणिज्य प्रबंधक
 Division Commercial Manager
 गु. सी. रेलवे, रंगिया
 N. F. Railway, Rangiya

Sd/-
 Temsu Mongba, Constable
 ER-
 COY/MLG
 16.11.04"

Advocate
 17.11.08

11.5 **"Sub:- Defence to SF – 5, dated 17.06.05"**

Extract

On this particular occasion, I collected coins from the said shop worth to Rs. 80.00 just at about 7 A.M. so that I could meet the demand of the passengers. But the said Rs. 80/- was not refunded to him due to my engagements in other matters.

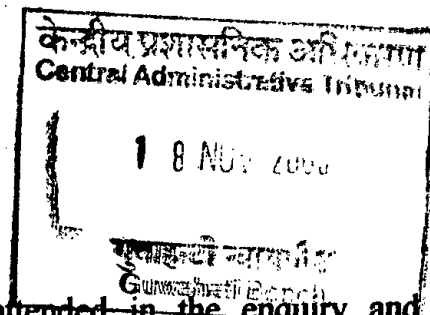
Sd/-
 Lakshmi Kanta Sarma
 Sr. CC/Tangla/N.F. Rly."

11.6 **"PROSECUTION DOCUMENTS IN THE ENQUIRY REPORT"**

Extract

Before starting the Regular Hearing, all the Relied upon Document's cited by the Disciplinary Authority vide Annexure-III were produced in original and were marked as follows:-

Sl. No.	DESCRIPTION	MARKED AS
1.	Pre-Check-Memorandum, dated 14/11/2004	PD/1
2.	Post-Check-Memorandum, dated 14/11/2004	PD/2
3.	Cash Declaration, dated 14/11/2004	PD/3
4.	Statement of Shri T. Mongbn	PD/4
5.	Statement of Shri L.C. Bayan	PD/5
6.	Sealed Cover containing Rs. 20/-	PD/6"



//8//

11.7 **"PROSECUTION WITNESSES"**

All the prosecution Witnesses were attended in the enquiry and they examined by the Presenting Officer and then Cross-Examined by the Charged Official."

Awardeed Kewar Saini
म उल बाणिज्य प्रबंधक
Divisional Commercial Manager
T: सी. रेलवे, रंगिया
S. Railway, Rangpur

11.8 **"ARTICLE - II"**

The Charged Official in his Defence Brief admitted the fact that there is no dispute that an amount of Rs. 79/- (Rupees Seventy Nine) was found excess in the Counter."

11.9 **"FINDINGS OF THE ARTICLE OF CHARGES"**

From the above discussion, documentary and oral evidence available during the course of the enquiry, it is concluded that Rs. 20/- (Rupees Twenty) (the Decoy money) was recovered from the custody of the charged Official (in the form of Govt. case) is proved but the demand of the Charged Official about the money from the Decoy is not proved and the Charged Official possessed of Rs. 79/- (Rupees Seventy Nine) excess in his Govt. cash is proved.

17-11-08
Advocate

(SISIR SEN GUPTA)
Enquiry Officer/HQ/Maligaon

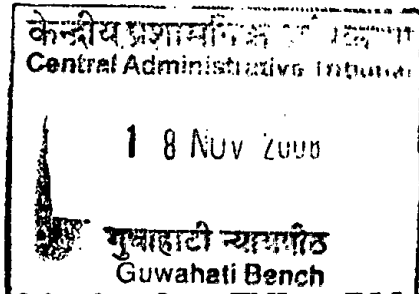
Photocopy of the enquiry report is enclosed as **Annexure - I**

11.10 **"Brief submitted by the Defence Council"** in the DAR proceeding drawn against Shri L.K. Sarma, Sr. CC/TNL in reference to the GF-5 No. C/421/RNY/VTG/Staff-4 dated 17.06.05.

Extract

P.W.-1 : (the Decoy) stated during deposition vide his answer to Q. No. 4 put by defence that he did not know the fare from TNL to DLI but the court witness in his deposition stated in his answer to Q. No. 2 that the Decoy informed him of paying Rs. 20.00 excess to the booking Clerk on demand. The Decoy further confirmed that vide his answer to Q. No. 8 that he had no idea of the fare from TNL-DLI.

ContdP/9, If the



//9//

If the Decoy had no knowledge of the fare from TNL to DLI, that how he could inform the Vigilance Team that an amount of Rs. 20.00 was paid in excess to the Rly. dues.

The independent witness accepted that he was short of hearing and heard the conversation of the C.O. and Decoy since they were talking in raised voice. When the reservations and or tickets are sold to the users there would not be any occasion to raise voice either by the Booking Clerk or by the passenger.

(A.K. Ganguly)
Defence Counsel"

Photocopy of the above is enclosed as Annexure – J

11.11 "Sub:- An appeal against the order of removal from service of Shri L.K. Sarma, Sr. CC/TNL by the Divisional Commercial manager, Rangiya.

Extract

Ref: - Order issued vide Memo No. C/409/RNY/SPL-CELL/06-2 DATE 03-04-07 from the office of the Divisional Commercial Manager, Rangiya.

As issued a reservation ticket No. 856385 to the younger brother i.e. Mr. Sanjoy, the elder brother i.e. Shri S.N. Sahani who is a licence porter (No. 5) of Tangla station requested me to mark or block the other remaining berth for him as he has applied for a free 2nd pass to the SS/TNL, the number of which is to be entered in the reservation register. After getting confirmation from the SS/TNL I marked the berth just to help the L/porter, because other passengers may come to book the same. There is no case of ulterior motive or wrongful or unlawful gain in this case as I acted on good faith just to advance the coordination among the staffs of the station. Subsequently on 22.09.03 SS/TNL issued the 2nd pass No. 039593 to the L/porter and the pass No. was entered in the register by me. But on 19.09.03 the vigilance team found the pass No. blank so charged me under a minor memorandum.

Sd/-

Laxmi Kanta Sarma
Sr. CC/Tangla"

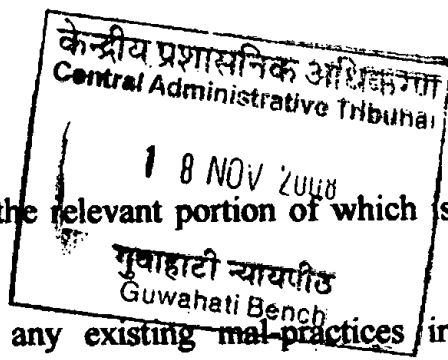
This is a clear violation of the Vigilance provision as per Government of India / Ministry of Railways/ Railway Board's DO No. 74 VIG. 1/PC/1/6 dated

Contd.....P/10, 10/02/1975

Asadkesh Kumar Singh
मंडल वाणिज्य प्रबंधक
Divisional Commercial Manager
पु: सी: रेलवे, रंगिया
N. F. Railway, Rangia
17-11-08
Advocate

//10//

10/02/1975 regarding reservation of berths/seats; the relevant portion of which is reproduced as under:



"Checks may be aimed at detection of any existing mal-practices in allotment of berths / seats generally and it may especially be seen if 'regret slips' as provided for are being issued, and if there is any indication of staff involvement in unauthorised blocking of seats / berths and consequent transfer of tickets. Scrutiny of requisition slips with the reservation register and allied records should invariably form part of such checks."

Awadhesh Kumar Singh
122
मंडल वाणिज्य प्रबंधक
Divisional Commercial Manager
पु: सी: रेलवे, रंगिया
N. F. Railway, Rangia

Thus it is surely an act of commission of guilt as admitted by the Applicant Sri L.K. Sarma above.

Photocopy of the above appeal is enclosed as Annexure - K.

17-11-08
Advocate

11.12 "Statement of Rameswar Singh, SS/Tangla

Extract

At about 12.30 hours, the on duty Sr. CC Shri L.K. Sharma came to my Rly. Quarters and told me that a person who booked his reservation by 4055 Dn to DLI against TNL Quota gave him a bundle of G.C. Notes where he found Rs.525.00/- and the Rly. Charges Rs. 505.00 thus an excess of Rs.20.00. he also informed me that the particular person could not be located by him on the platform so that he could refund the money most probably paid by him mistake. At this time I was about to having my lunch- I told him to go back to the station and on my return at the station further necessary action would be taken. I also pointed out to him that this was not a problem since the excess amount could be deposited with the Rly. As Rly. cash against the requisition slip as a reference. As and when the claim will be submitted such matter could be selected.

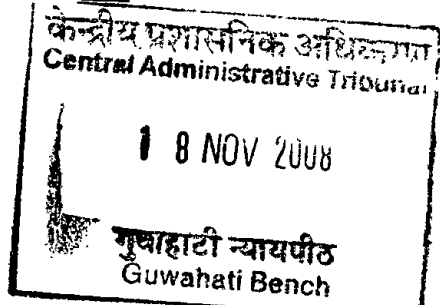
All the Govt. cash was counted and an amount of Rs. 79.00 was found excess. A post check Memorandum was drawn and I was asked to sign the same.

Sd/-
Rameswar Singh
SS/TNL
10.07.05"

Photocopy of the above statement is enclosed as Annexure - L.

12. That with regard to the contents under para-10 of the Rejoinder it is stated that the present Original Application has no merit for the reasons mentioned above and therefore the contention of the Applicant is not admitted.

Contd.....P/11, That it



//11//

13. That it is submitted that all witnesses and the Decoy in the enquiry stage agreed and signed both the pre cheque and post cheque memorandums from which it was established that a sum of Rs. 79.00 was found in excess in Govt. cash under the possession of the Applicant Sri Sarma and he had accepted a sum of Rs. 20.00 in excess of the fare mentioned in the forgoing paragraphs.

Photocopy of the above are enclosed as Annexures – G & H shown under para-11 above.

14. That in this connection it is humbly submitted that the present Memorandum of Charge of Major Penalty has also its earlier precedence of one Major and one Minor penalty of charges against the Applicant Sri L.K. Sarma. This leads a suspicion and doubt of his integrity and thereby proves his **MISCONDUCT** for unbecoming of a Govt. employee and deserves appropriate punishment after observing due process of law.

15. In the premises above, it is respectfully submitted that all actions taken in the case of the Applicant by the Respondents above named are quite legal, valid and proper and have been taken by the competent authority with proper jurisdiction and justification after due application of mind and no arbitrary or unfair play of action and miscarriage of justice was caused to the Applicant and this application is based on wrong premises and suffers from misconception and misrepresentation of facts, rules and laws on the subject and may, therefore, be liable to be dismissed.

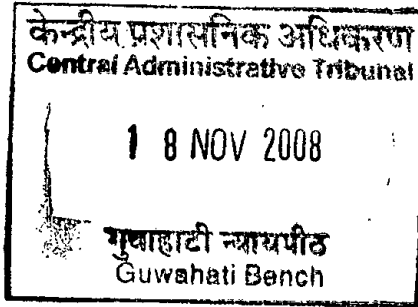
Awal K. Karan Singh (12)

W. S. Sarmah
17-11-08
Advocate

म. उ. ल. बा. नि. उ. य. प्र. व. य. क.
Regional Complaints Management
उ. सी. रेल. व. र. गि. य.
U. S. Railway, Rangpo

//12//

VERIFICATION



124

Advocate
17.11.08

I Awadhesh Kumar Senka s/o Late Girija
Kumare Prasad at present working as Divisional Commercial Manager
Rangiya, N.F.Rly do hereby solemnly affirm and state that the statements made
in the paragraphs 4 to 11-12 are derived from the records and true to
my knowledge, information and belief and the rest all are my humble and respectful
submission before this Hon'ble Tribunal and I have not suppressed any material
facts.

And I sign this Verification on this 10th Day of November,
2008, at Rangiya

Awadhesh Kumar Senka

Signature of the Deponent.

Place: Guwahati.

Date: 10 /11/08

म उल बाणिज्य प्रबंधक
Divisional Commercial Manager
पु: सी: रेलवे, रंगिया
N. F. Railway, Rangiya

ANNEXURE-A

13

SN-102
125

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
18 NOV 2008
गुवाहाटी न्यायपीठ
Guwahati Bench

N.E. Railway

Office of the
Divisional Commr. Manager
Rangiya
Dtd. 18.11.2006

No. C/421/RNY/VIA/STAFF-4

To,
Sri/Smt. Laxmi Kanta Sharma

Designation. Sr. CC/TNL

Through: SS/TNL

Sub: - DAR action for major penalty charge sheet.

Ref: - Major penalty Memorandum No- C/421/RNY
VIA/STAFF-4 dtd. 17.6.05

In connection with the subject issue enclosed please find a copy of the enquiry report submitted by E.O/MLG for furnishing your remarks/ final brief against each article of charges labeled vide memorandum cited above.

Your reply should reach this Office within 10 (Ten) days time failing which it will be presumed that you have nothing more to say and the case will be decided as per records available.

DA: 13 (thirteen)

Signature
- 18/11/06
(A.K. Sinha)

Divisional Commr. Manager
Rangiya

Laxmi Kanta Sharma
Sr. CC/TNL
27.3.06

ATTESTED

Signature
म. उल. प्रशासनिक अधिकरण
Divisional Commercial Manager
उ. सी. रेलवे, रंगिया
N. E. Railway, Rangiya

ANNEXURE-B/

14
N. F. Railway.

18 NOV 2008

গুৱাহাটী ন্যায্যপীঠ
Guwahati Bench

Office of the
Divl. Comm. Manager
Rangiya.

Dated. 11/05/05

No. C/421/RNY/VIG/staff-17

To
Shri. L. K. Sharma, Srce/TNL
(Through SS/TNL)

Sub:- DAR action for Major penalty against Shri L. K. Sharma, Srce/TNL

Ref:- Major memorandum no. CON/VIG-2/2001 Dt. 3.12.2001

Enclosed please find a copy of the enquiry report for submission of your final brief in regard to the charges labelled against you vide memorandum cited above.

Please note that your reply should reach this office within 10 days from the receipt of the letter failing which the decision will be taken based in the records available in the case file.

DA-8(Right)

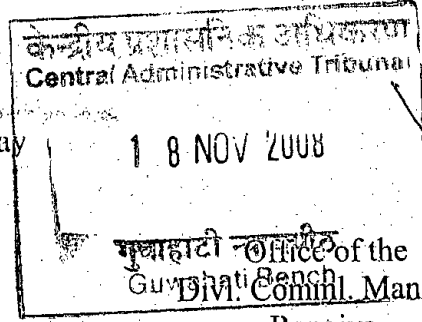
A. K. Sinha
(A. K. Sinha)
Divl. Comm. Manager
Rangiya.

ATTESTED

A. K. Sinha
10/11/08
অ ডল বাণিজ্য প্রবন্ধক
Divisional Commercial Manager
পু: সী: রেলও, রংগিয়া
N. F. Railway, Rangiya

ANNEXURE - C/1

15
N. F. Railway



SN-79

77 124

No. 421/RNY/VIG/staff-17

Dated. 4.7.05

To
Shri. L. K. Sharma, Sr. CC/TNL
(Through SS/)

Subj:- DAR action for Major penalty against Sri L. K. Sharma, Sr. CC/TNL

Ref:- Major memorandum No:- CON/VIB, - 2/2001 st 3.12.2001

Please refer to the memorandum cited above in connection with the subject issue which was received by you on 29.6.05....., But the defence against the same has not been received by this office as yet resulting in abnormal delay caused in this office.

In view of the above you are being given another 5 days time to submit your defence against the memorandum mentioned above, failing which further necessary action would be initiated to deal with the subject case.

ATTESTED

10/20/08
म. उ. ल. वाणिज्य प्रबंधक
Divisional Commercial Manager
गु. सी. रेलवे, रंगिया
N. F. Railway, Rangiya

✓ 2080 ATTESTED
Divl. Comm. Manager
Rangiya.

16

ACKNOWLEDGEMENT

ANNEXURE-D/1

(16)

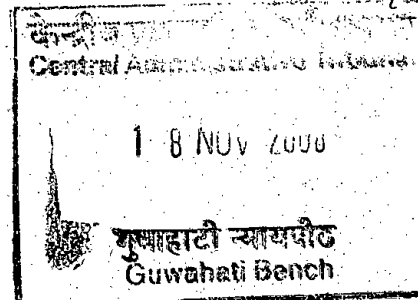
13N-80

128

FROM:- DCM/RMY to Sh L. K. Sharma, Sr TET/M

LETTER NO:- C/42/RMY/VIG/Staff-17

DATED:- 4.7.05

RevLaxmi Kanta Saha.
09.7.05

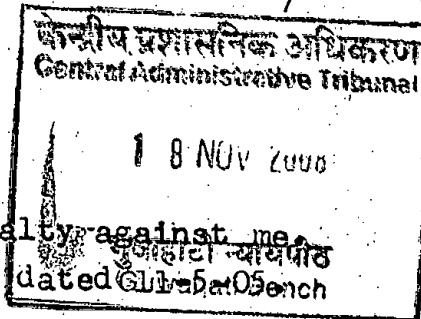
RECEIPT WITH SIGNATURE, STAMP & DATE

ATTESTED

10/07/08
মণ্ডল বাণিজ্যিক প্রবন্ধক
Divisional Commercial Manager
J. সি: দেব. র. গিয়া
N. F. Railway, Rangpur

To
The Divisional Commercial Manager,
N.F.Railway/ Rangiya.

ANNEXURE-E/1



Sir,

Sub:- DAR action for Major Penalty against me.
Ref:- C/421/RNY/VIG/Staff- 17 dated 11.12.05

Most Respectfully I beg to submit to your grace the following in the context of the above for favour of your kind consideration and favourable disposal please.

That the above letter under reference has been received by me on 09.7.05 but the reply could not be given within the time schedule since the subject matter related to about three and half years back from the issue of the Memorandum and 2 years from the date of submission of Enquiry Report. I had to gather various records for enabling me to submit my reply.

That I may draw your kind attention to my defence to the Memorandum dated 16.12.01 wherein I refuted the charges and stated as under:-

Article of Charge- I

:: The Decoy gave false statement that I demanded and accepted Rs. 20.00 just to involve me. ::

To what extent my above statement was subsequently matched with the Enquiry Proceedings- is the basic consideration.

The Decoy stated in his statement that the money marked in the Pre-check Memorandum was handed over to him. But the P W- 2 - the independent witness stated that the money was handed over to him after drawing the Pre-check Memorandum.

The E.O.- did not take into consideration this fact.

(Ref:- Decoy's Answer to Q No. 4 put by E.O.

Independent Witness's Answer to Q. No. 4 put by defence).

The E.O. overlooked the contradiction.

The Decoy stated that no instruction was given to him in the matter of pushing the marked note if not demanded but the independent witness stated that the instructions were given to him.

(Ref:- Ans. to Q. No. 5 put by E.O. to the Decoy's answer to Q. No. 5 put by E.O.)

In the report, the E.O. tried to justify that you word is also 'Plural' as it stands for Singular. But taking the help of grammatical justification the E.O. showed his biasness only and implicated me.

The basic question for consideration is if it has been established by corroborated evidence that I demanded Rs. 20.00 from Decoy for my personal gain.

The Decoy wanted to get it established by giving a statement that :-

ATTESTED

म उल बाणिज्य प्रबन्धक
Divisional Commercial Manager
उ. नौ. रेल्व. रंगिया
N.F. Railway, Rangiya

(a statement that:-)

The independent witness was inside the Parcel Office and standing by his side while allegedly I demanded the money.
(Ref:- Answer to Q.No. 3 put by defence).

The independent witness stated that he was never inside the Parcel Office along with Decoy.
(Ref:- Answer to Q.No. 6 put by Defence).

The independent witness further stated in his answer to Q. No. 4 put by E.O. that he heard some conversation but could not follow the same.

From the above it is established that there was no corroborated evidence to establish that I demanded Rs. 20.00 from the Decoy for my personal gain.

The independent witness stated that he noticed to hand over money by the Decoy while he was standing 15 ft. away outside the Parcel Office.

This is a matter for consideration if the said statement have had any evidence value.

The E.O. in his report at Page No. 5 in the last Para line 13 stated " The Decoy and I/Witness comprised a Decoy team". It is established that the Independent Witness lost his status when he himself became a member of the Raiding Party.

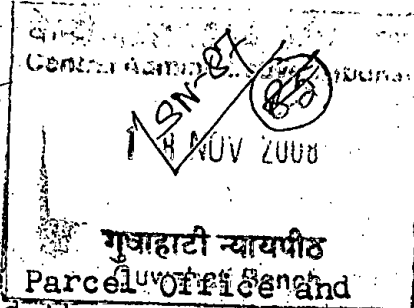
There was ample scope to tutor him by the Vigilance Team since statements were obtained from him on 20-11-2001 i.e. after two days from the raid conducted at TNL Station.

The Post-check Memorandum was drawn and it was signed by SS/TNL and the said authority signed the same although in his presence the C.C. Notes were not recovered from me. The CW-2 - Vigilance Team member in his answer to Q.No. 6 put by defence stated that the SS/TNL was called when the Memorandum was prepared. Further the Post-check Memorandum says that the SS/TNL while signing the same endorsed with the word " Seen ".

The above state of affairs clearly established that the SS/TNL had signed the pre-check and post-check memorandum when the contents of the same were otherwise to the effect that in his presence the money was recovered from me and the pre-check memorandum was shown to him not before verification of the Currency Notes.

If such was the condition of SS/TNL, the In-charge of the station, your grace will surely consider if I did have any scope to add my remarks while signing.

Sir, the Vigilance Team was to establish the raid as a success this or that way since they spent an amount of about Rs. 1600.00 on contingencies only excluding T.A. etc.



Shri /VIG-2/

Sharma, of

Const- 391450

while

& II

TNL

may

DO

1000

Q. 00

ATTESTED

उप निरीक्षक/अधीक्षक
Additional Commercial Manager
श्री. सी. रेड्डी, रंगिया
N. t. Railway, Rangiy

(T.A. etc.)

The potatoes were purchased from ~~BPRD~~ ~~Samuktala~~, the same was booked from ~~Samuktala~~, when such purchase could be made from BPRD and booked from there.

This point I submitted in my defence brief but the E.O. did not consider the matter at all.

The findings of E.O. based not on evidence but on his own opinion, as stated in the report vide Page-3, Item-4.2 that my reply to the effect that before signing the post-check Memorandum I objected verbally that the post-check Memorandum was not correctly drawn, "was not convincing" but the E.O. overlooked the evidence that the most vital statement made that the Currency Note was stated to have been recovered from me in presence of the SS/TNL was not correct.

I am placing all my ends, before your grace for judicious decision.

In the matter of my declaration of P/Cash- I am to state that I was not on duty from 6 hours to 18 hours on 18-11-2000 in the Parcel Office as confirmed by the SS/TNL in his answer to Q.No. 3 put by defence stated that Shri Bania CC/TNL was on Parcel duties from 6 hours to 18 hours. But the E.O. concluded in drawing the findings that I was on duty. Since I was not on duty there could not have been any question of declaring my "Private cash".

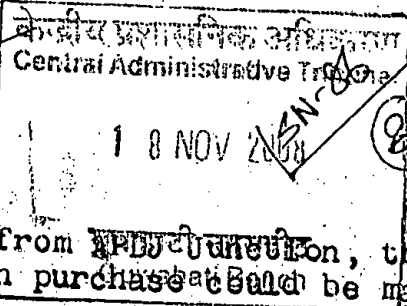
The lacuna/short-comings in the whole case which I do not want to suppress was that :-

at about 11.30 hours I entered in to the Parcel Office for up-dating some periodical statements when the on duty Parcel Clerk was not available in the Parcel Office. One person with a P.W.Bill in to the Parcel Office and requested me for giving delivery of 2 bags of potatoes. He told that the hand cart was hired for lifting the same. I considered the matter and to keep the good name of the Rly. I obtained his signature and delivered the potatoes. He wanted to get the same weighted and I told him that the weigh machine was out of order and as such he was to take the bags on inspecting the outward condition.

In the meantime SS/TNL from his chamber called me to attend telephone and I left the Parcel Office. On my return I found two Ten Rupee Notes lying on the table and could not connect the same. Before I had the opportunity to go to the SS/TNL to inform the matter, the Vigilance Team entered and took away the said Notes and also asked me to produce my personal cash which I did.

They then mixed up the Notes and charged me of demanding and accepting the money.

Sir, I was not on duty in the Parcel Office and Shri Bania was on duty but was absent from the Parcel Office. It might have been a fault on my part to effect delivery but I did it to cover up the absence of the on duty Parcel Clerk and also the consignee insisted that the delivery was to be given immediately as lifting arrangements made by him would suffer.

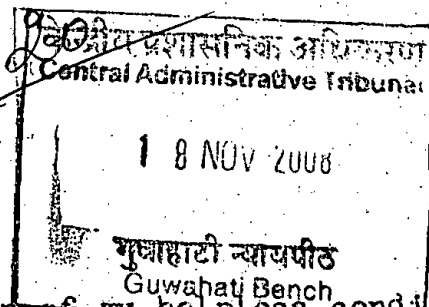


ATTESTED

उप निदेशक/प्रमुख
Deputy Commercial Manager

ना: रेलवे. र नियंत्रण
Highway. Manager

Page-(4)



Your grace in consideration of my helpless condition specially the one-sided Enquiry Report will decide my fate judiciously so that the norms of natural justice is maintained.

Thanking you,

DA:- The copy of the defence brief endorsed for your ready reference.

Yours faithfully,

Laxmi Kant Sharma

(L.K. Sharma)

Sr. CC/TNL.

ATTESTED

10/11/08
मंडल वाणिज्य प्रबंधक
Regional Commercial Manager
श्री: रेलवे रंगिया
Railway Rangiya



केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

18 NOV 2008

गुवाहाटी न्यायाधीश
Guwahati Bench

ENVY 5011 FORM: 2007-MAY 2007 ENVY 20001 MAY 20075 SECTIONAL SL. NO: 94 Page No: 54, RPage: 199

Employee: 05502936 Employee: LAXMI KANTA SARMA

Leave Entitlement: 1/4: 15 LHM: 10

Design: SRCC R/F: 4600 D-VS: Pg=31.0 Unpd=0.0

4600 D-VS 2001
SCA 120
Leave 2300
MDA 600
ATT. MD 653
NHA 140

Rs Allowance Rs Allowance Rs Recovery Rs Recovery Rs Recovery
Pr-Sub 575
CGIS-0 30
Prof. T 125
CRCS S 100

Reig: SRCC R/F: 4600 D-VS: Pg=31.0 Unpd=0.0
Rent-M 103 Durga. 150 004 Sign. 1
Elec. C 150

Gross Pay: 10414 Total Deduction: 1248 Net Pay: 9166

Scale: Rs 4600-05000 Next Increment Date: 01-AUG-2002 Date of Retirement: 31-03-2008 PRIME PAYS LIP

W.F. RAILWAY

LAXMI KANTA SARMA

DESIGN: SRCC

ENVY NO: 05502936-MC

UNIT: 53-215 TNL

PAY BILL FOR

PAGE NO: 5

MAY 2008

I. DUE DEFT COMMERCIAL SRL. NO

स. उ. उ. बाणिज्य प्रबंधक
Divisional Commercial Manager
ग. सी. रेलवे र. नि. 21
Railway Rangpur

BASIC PAY 4600.00
DEARNESS PAY 2300.00
DA 1556.00
MDA 462.00
SCA 120.00

PF 575.00
HOUSE RENT 108.00
PROF-TAX 55.00
CRIS 30.00
O.P. ADVANCE 130.00
FLODD ADV.- 130.00
ELEC CURRENT 174.00
SOTY DEPOSIT 100.00
SOTY LOAN 1177.00

GROSS PAY * 9138.00
TOT. DEDUCES * 2499.00
NET PAY * 6639.00

ATTESTED

March,

223 ANNEXURE - G
 केन्द्रीय प्रशासनिक अधिकरण
 Central Administrative Tribunal
 135

18 NOV 2008

Pre check memorandum

गुवाहाटी न्यायाधीश
 Guwahati Bench
 14.11.04

The following GC note have been taken over to conduct a decoy check at Tangla Booking cum reservation office on 14.11.04 and handed over to T.Mongba CB/ERCOY/RPF/MLG who will act as decoy in presence of Sri L.C Bayan, HD. CB/ERCOY/RPF/MLG who will act as independent witness. The decoy was strictly instructed not to handover any excess amount if not demanded and the I/witness was instructed to inform the Vigilance team about the transaction immediately.

The GC notes numbers are as given below: -

1. 05 (Five) hundred rupees GC note bearing no. 8BT 400268, 6RK 261857, 5CV 994465, 4GG 309006 and 7GD 029034.
2. 01 (One) Fifty rupee GC note bearing No. 6MN 413675.
3. 01 (One) twenty rupee GC note bearing No. 24B889329.
4. 03 (Three) ten rupee GC note bearing No. 41H864095, 56C 863581 and 05D 280511.
5. 01 (one) (five) rupee GC note bearing No. 16 G 175610.

Sd/-
 14.11.04
 T.Mongba
 Decoy

Sd/-
 14.11.04.
 L.C. Bayan
 I/Witness

Sd/-
 14.1.04
 A.K. Debnath
 Sr.VI/T/MLG

Sd/
 14.11.04
 (P.C.Masahary)
 CVI/T/MLG

Sd/-
 14.11.04
 Seen and signed
 SS/TNL.

Sd/-
 14.1.04
 Seen and signed
 Shri L.K.Sarma.

Attested
 10/04/08
 मंडल बाणिज्य प्रबंधक
 Divisional Commercial Manager
 उ: सी: रेलव. रंगिया
 N. F. Railway. Rangiva

Transcribed from the
 hand-written copy placed
 at page below.
 10/11/08
 Advocate

Pre check Memorandum

The following G.C. Notes have been taken over to conduct a decoy check at Tangle Barking Line Research Office on 14.11.04 and handed over to T. Mangba, COLERON, RPF/MLL who will act as decoy in presence of S. C. Bayan, H. C. B. RPF/MLL who will act as independent witness. The decoy will strictly instructed not to handover any excess amount if not demanded and the witness was instructed to inform the vigilance team about the transaction immediately.

The G.C. Notes number are as given below -

- 1) 5 (Five) Hundred Rupee G.C. Note bearing number BB1 400268, 6RK 261357, 5CV 994465, 444 309006 and 76D029034.
- 2) 1 (one) Fifty Rupee G.C. Note bearing no. 6AN 413675
- 3) 1 (one) Twenty Rupee G.C. Note bearing no. 248 889329
- 4) 3 (Three) Ten Rupee G.C. Note bearing no. 41H 864095, 56C 883581 and QSD 280511.
- 5) 1 (one) five Rupee G.C. Note bearing no. 166 175610.

<u>H. Mangba</u> 14.11.04 (T. Mangba) Decoy	<u>L. C. Bayan</u> 14.11 (L. C. Bayan) Witness	<u>C. B. Bhat</u> 14.11.04 (A. H. Bhatnagar) S. C. B. / RPF/MLL	<u>P. C. M. Chatterjee</u> 14.11.04 (P. C. M. Chatterjee) S. C. B. / RPF/MLL
--	---	--	---

Attested
14.11.04
S. C. B. / RPF/MLL
33 / TML

Attested
14.11.04
S. C. B. / RPF/MLL

ATTESTED
14.11.08

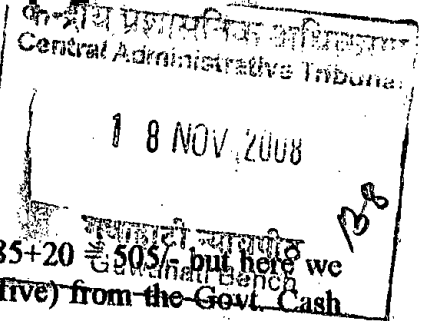
सह वरिष्ठ प्रमुख
A. H. Bhatnagar
N F. Railway (Kangriya J)

18 NOV 2008
14.11.04.
Tangla station are in the habit
Road quota Tangla-Station-To

10/11/68
 मंडल प्रमुख
 Divisional Commr. & M.D.
 पु. सी. रेल्व. इंग्लिश
 N. F. Railway. Naurve

PTO
Transcribed from copy
the hand written placed at large below.
NLRB
10/11/08
Advocate

26



The total value of reservation Ex TNL to DLI is Rs. 485+20 = 505/- but here we recover decoy money Rs. 525/- (Five hundred twenty five) from the Govt. Cash of Shri L.K. Sharma, Sr.CC/TNL.

The recover amount Rs. 525/- and the one sleeper class PCT number 00813 Ex TNL to DLI with RT No. 26406 and the reservation requisition slip which was used by the decoy were kept in a sealed cover in presence of SS/TNL Shri R.Singh and L. K. Sharma, Sr.CC/TNL and obtained signature in the cover. The actual value of the reservation from TNL to DLI Rs. 505/- was given to Shri L.K. Sharma, Sr.CC/TNL to made good his Govt. Cash and advised him to diposite the excess amount as excess in the booking.

The signature of Shri R. Singh, SS/TNL and Shri L.K. Sharma, Sr.CC/TNL recorded in the post check memorandum including the Vigilance team Sri A.K. Debnath, Sr.VI/T/MLG and Shir B.C. Masahari, CVI/T/MLG.

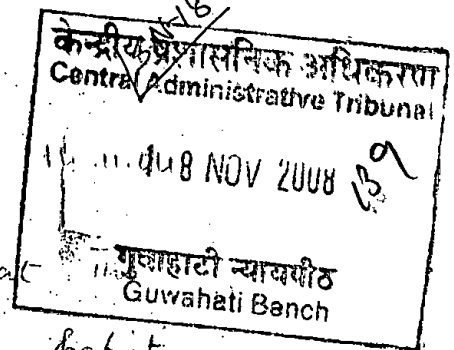
Sd/-
14.11.04.
Rameswar Singh
SS/TNL

Sd/-
14.11.04
L.K. Sharma
Sr.CC/TNL

Sd/-
14.11.04
A.K. Debnath
Sr.VI/T/MLG

Sd/-
14.11.04
B.C.Masahari
CVI/T/MLG

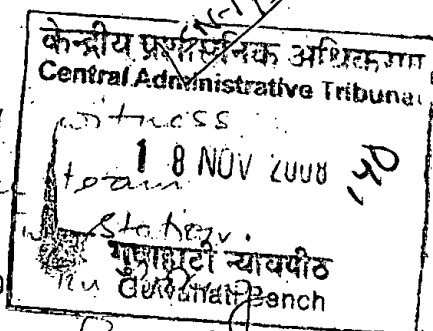
Attested
file
मंडल वाणिज्य प्रबंधक
Divisional Commercial Manager
पु: सी: रेडब. रंगिया
N. F. Railway, Rangiva

Post Check Memorandum

On receipt of source information that working staff of Tangle Station are in the habit of taking excess money while allowing reservation from Road Quota of TNL Station. To apprehend the staff indulge in such corrupt practice a decoy check was conducted on 11.11.08 aimed during check one Sri Laxmi Kanta Sarma. Since TNL was apprehended while allowing reservation from TNL to Delhi whose actual fare was Rs. 505/- but demanded and accepted Rs. 525/- i.e. excess of Rs. 20/-.

Before conducting the ^{check} change a precheck memo was prepared depicting some C.A.N.O. number thereon and obtained signed from both decoy and independent witness. These memos were handed over to decoy T. Nongba to use in the decoy check.

At about 1230 hours decoy T. Nongba approached the counter of TNL reservation where Sri L.K. Sarma was performing duty. Independent witness Sri L.K. Baryan was also there nearby. Decoy approached Sri L.K. Sarma for a reservation to Delhi from TNL. ~~on 23/11/08~~ by class in sleeper class. And then he filled up the Requisition form as given by Sri Sarma. Decoy T. Nongba filled up the requisition and forwarded to Sri Sarma. Sri Sarma then demanded Rs. 525/- (Five Hundred Twenty five) and Decoy handed over him Rs. 525/- from the money which he was given through the precheck memorandum. Thus Sri Sarma demanded and accepted Rs. 20/- over and above the actual fares Rs. 505/-.



After the transaction over independent Sri L.R. Baryan informed the vigilance team who were already there in near to the vigilance team then rushed to the /TNT where Sri L.K. Sarma was found working. The SS/TNL Sri Rameswar Singh was called to assist check and vigilance team then started check. Sri L.K. Sarma was asked to close his DTC calculating all working done by him during his duty hour.

There after the Private Cash and Govt. Cash of Sri L.K. Sarma SS/CC/TNL was checked. He declared his P/Cash Rs. 52/- and produced Rs. 52/- His Govt. Cash was Rs. 9528/- including Voucher Rs. 650/- After excluding the Voucher Value Rs. 650/- he produced Rs. 8957/- as Cash. His Govt. Cash should be Rs. 8878/- excluding the Voucher Rs. 650/- But he produced Rs. 8957/- i.e. Rs. 79/- was excess in Govt. Cash. He was asked to prepare the Cash declaration and he prepared the same in the proforma given to him by vigilance team.

Thereafter the Precheck memo was shown to SS/TNL Sri R. Singh and Sri L.K. Sarma and obtained signature from them. SS/TNL Sri R. Singh was requested to tally the G.C. Notes of Govt. Cash of Sri Sarma in presence of him (Sarma). Sri Singh tallied the G.C. Notes of Govt. Cash and during Tally the G.C. Notes number -

- 1) 5 (five) One Hundred Rupee found as 6RX 261857, 5CV 794465, 4GG 309006, 8BT 400268 and 76D 029031
- 2) 2 (two) Ten Rupee G.C. Note found as 56C 863581 and 41H 864095
- 3) 1 (one) five Rupee G.C. Note found as 16G 175610

which were exactly tallied with the G.C. Notes recorded in the Precheck memorandum.

The Total Value of Reservation ex TNL to DLI is Rs. 485 + 20 = Rs. 505/- But here we recovered ^{decoy} Rs. 525/- (five hundred twenty five) from Govt. cash of Smt L. K. Sarma Sr. cc/TNL.

The recovered amount Rs. 525/- and the one sleeper class PCT no. 00813 ex TNL to DLI with RT no. 26406 and the reservation acquisition slip which was used by the decoy were kept in a sealed cover in presence of SS/TNL Smt R. Singh and Smt L. K. Sarma Sr. cc/TNL and obtained signature in the cover. The actual value of the reservation from TNL to DLI Rs. 505/- was given to Smt L. K. Sarma Sr. cc/TNL to make good his Govt. cash and advised him to deposit the excess amount as excess in banking.

The signature of Smt R. Singh, SS/TNL, and Smt L. K. Sarma Sr. cc/TNL recorded in the Post check memorandum including the Vigilance team Smt A. K. Dibrath Sr. VI/T/MCC and B. C. Masahany Sr. VI/T/MCC.

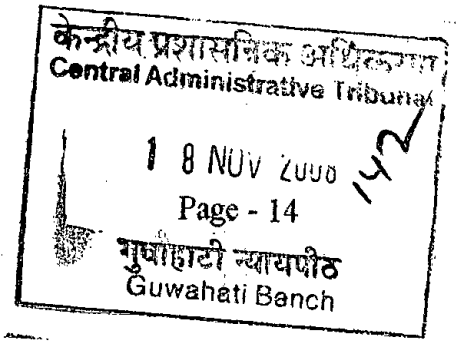
(Smt Rameswar Singh)
SS/TNL
14.11.04

(Smt L. K. Sarma)
Sr. cc/TNL
14.11.04

(A. K. Dibrath)
Sr. VI/T/MCC
14.11.04

(B. C. Masahany)
Sr. VI/T/MCC
14.11.04

30



N. F Rly

Sub: Departmental enquiry into the charge framed against Shri L.K. Sharma, Sr.CC/TNL working under DCM/RNY vide memorandum No. C421/RNY/VIG/Staff-4 dated. 17.06.05.

Preliminary Hearing

Venue: CEI/HQ

Dated. 29.08.05.

Question of IO to CO

1. Have you received the charge sheet?
Ans. Yes, I received.
2. Have you receive the documents mentioned in the Annexure – III of the charge sheet?
Ans. Yes, I received.
3. Have you understand the charge leveled against you?
Ans. Yes, I understand.
4. Do you accept the charge leveled against you?
Ans. No not at all.
5. Do you want to access over any document and witness regarding of defence documents and also defence witness will be considered on progress of the subject proceedings. At this stage the documents mentioned in Annexure – III are endorsed SL 1 as PD 1 SL No. 2 as PD 2, SL No. 3 as PD – 3, SL No. 4 as PD 4, SL No. 5 as PD – 5, SL No. 6 as PD – 6.
The defence submitted to the EO to consider calling appearance of Shri A.K. Debnath as CW to authenticate his signature and also details accommodated in PD – 1 and PD – 2. The EO agree to arrange his attendance as CW – 1.

Sd/-
CO
29.08.05

Sd/-
DC
29.08.05

Sd/-
PO
29.08.05

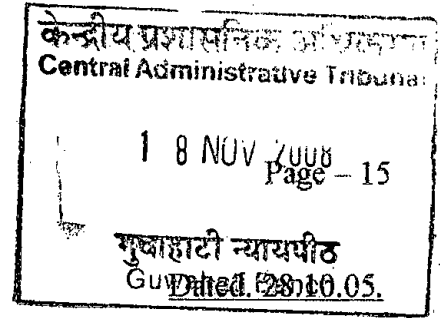
Sd/-
IO
29.08.05

Filed
side
मंडल वाणिज्य प्रबंधक
Divisional Commercial Manager
पु: सी: रेलव, रंगिया
N. F. Railway, Rangiya

*Transcribed from the
hand-written copy
placed at file below.*
10/11/08
Advocate

Received Laxmi Kanta Sharma,
Sr.CC/TNL 29.08.05

31



Venue CEI/HQ

N F Rly

Sub: Departmental enquiry into the charge framed against Shri L.K. Sharma, Sr.CC/TNL working under DCM/RNY vide memorandum No. C/421/RNY/VIG/Staff-4 dated. 17.06.05.

Clarification sought by I.O from CO

Q. I Narrate incident took place on 14.11.04 during vigilance check.

Ans. On 14.11.05 I was on duty CC/TNL at about 12.30 hrs. one person came for reservation of one berth for DLI by 4055 DN Ex. TNL. On scrutiny of reservation register I found that berth was available, and I gave him the requisition slip which was duly filled in and handed over to me. The said passenger was then issued with the J/Ticket I/C the reservation ticket. The passenger was told earlier i.e prior to issue of the ticket on his query that the fare for DLI was 485.00 and RT Rs. 20/-. He brought out a bundles of notes and was counting the money. The ticket was kept inside the counter on the supporting stand of the booking window. The passenger then handed over folded bundles of notes, and while I was counting the money the said person took out the ticket and left the counter. Although I called him back since I found that he paid Rs. 525/- instead of Rs. 505/-. He ran away immediately. I contact with the SM/TNL and requested to come to the station as a passenger paid Rs. 20.00 excess i.e Rs. 20.00 excess to the Railway dues. SM/TNL informed me that he was heaving his meal and would come after some time if no claim from the person who paid Rs. 20.00 excess unknowingly would be credited to the railway account.

In the meantime some persons entered into the booking office and indentified them as member of the V/Team and asked me to produce my cash (Govt.) along with my P/cash. Subsequently they prepares some papers and asked me to sign. Although I told them that there was in consistency in the papers they prepared and specially I told then that prior to their coming to the B/office in the matter of payment of Rs. 20.00 excess by a person

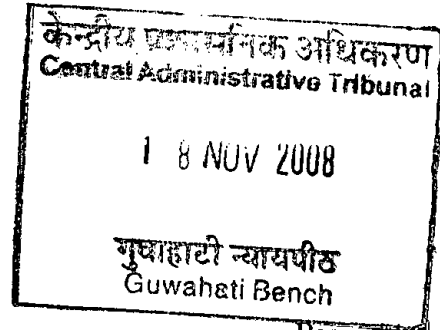
-PTO-

Sd/-
CO
28.10.05

Sd/-
IO
28.10.05

Handed
to
मंडल वाणिज्य प्रबंधक
Divisional Commercial Manager
शु. सी. रेलव. रंगिया
N. F. Railway, Rangiya

32



Contd.

Page - 16

and which was duly informed to SM/TNL such circumstances should be incorporated in the post check memorandum. The V/team refused to accommodate my request and told me that I would be given opportunity of narrating such matter, during any examination as a part of investigation by the V/Team. At this stage they asked me to co-operate with them hence they would be compel to mention that I interfered with their official duties.

In the matter of excess cash found in the counter I told them that the excess was due to certain circumstances with the knowledge of SM, Incharge of TNL station for fasciliating the transaction when passenger were to be refunded the balance- Some coins are collected form nearby Pan stall installed within the Rly area and on colosure of the duty the same amount is returned to the shop. This practice was invoke specially due to non availability of sufficient imprest. The imprest cash sanctioned for the booking office is only Rs. 5.00 which is inadequate and this I/Cash had not been devecwed for fixing at a resoanale level during last many many years.

Sd/-
CO
28.10.05

Sd/-
IO
28.10.05

Attested
28/10/05
मंडल वाणिज्य प्रबन्धक
Divisional Commercial Manager
पु: सी: रेलवे, रंगिया
N. F. Railway, Rangiva

33

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

18 NOV 2008

Page 7

गुवाहाटी न्यायपीठ
Guwahati Bench

N.F.Rly

Sub: Departmental enquiry into the charge framed against Shri L.K.Sharma,
Sr.CC/TNL working under DCM/TNY vide in memorandum No.
C/421/RNY/VIG/Staff-4 dated. 17. 06.05

Daily order sheet No. 1.

Venue: CEI/HQ dated. 29.08.05

Present:- 1) Ranjit Das, CVI/G PO.
2) L.K. Sharma, Sr.CC/TNL CO.
3) A.K. Ganguli, DC.
4) T. Mongba, Cont/RPF. PW - 1

Absent :- 1) Rameswar Singh, SS/TNL. PW- 3.
2) L.C. Bayan, Hd. Const/RPF, PW -2

PH. Was scheduled on 11.08.03 and CO & DC were absent, however as per programme RH started 10.00 hrs. of 29.08.05 and PH was completed. All the RUD's were produced by the PO and were marked as PD-1 to PD- 6 the sealed cover was opened and tallied accordingly. PW-1 was present and his deposition was recorded accordingly.

All the copies of DOS, PH, and deposition of PW- 1 was handed over to the PO & CO.

The hearing is adjourned till 10.00 hrs of 19.09.05 as the next date of RH is fixed on 19 and 20.09.05 with the consent of both CO & PO.

Received Laxmi Kanta Sharma,
Sr.CC/TNL 29.08.05

Sd/-
CO
29.08.05

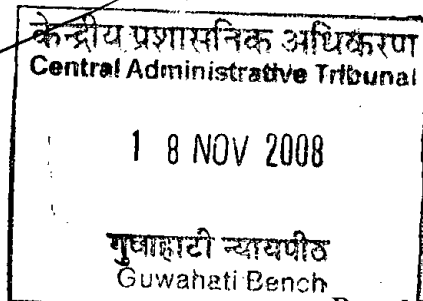
Sd/-
DC
29.08.05

Sd/-
PO
29.08.05

Sd/-
IO
29.08.05.

Attested.
Sd/-
प्रमुख
१०/०८/०५
गुवाहाटी न्यायपीठ
N. F. Hallway, Mangiya

34



46

Page No. 18.

N.F.Rly

Sub: Departmental enquiry into the charge framed against Shri L.K. Sharma, Sr.CC/TNL working under DCM/RNY vide his memorandum No. C/421/RNY/VIG/Staff-4 dated. 17.06.05.

Daily order sheet No. 2

Venue : CEI/HQ dated. 20.09.05.

- Present:- 1) Ranjit Das, CMI/G - PO
2) L.K. Sharma, Sr.CC/TNL - CO
3) A.K. Ganguli, DC
Absent:- 1) Rameswar Singh, SS/TNL PW - 3
2) L.C Bayan, Hd. Const/RPF PW - 3.

As per programme RH was started 10.00 hrs. of 19.09.05 but it was not held accordingly, due to the absence of witness. Hence the hearing was adjourned till 10.00 hrs. of 20.09.05.

On 20.09.05 RH started at 10.00 hrs. but again both the witness found absent for which RH could not be completed.

Now with the consent of both PO and DC next date (final) of RH is fixed on 06.10.05 at TNL at 10.00 hrs. and 07.10.05 at CEI/HQ at 10.00 with further direction that no adjournment will be granted. PO is requested to ensure attendance of PW's according to the programme.

The hearing is adjourned till 10.00 hrs of 06.10.05 as the next date of RH is fixed on 06.10.05 copy of this is handed over to both PO & DC.

Sd/-
CO
20.09.05

Sd/-
DC
20.09.05

Sd/-
PO
20.09.05

Sd/-
IO
20.09.05

Attended
File -

मंडल वाणिज्य प्रबंधक
Divisional Commercial Manager
पु: सी: रेलव, रंगिया
N. F. Railway, Rangiya

Received Laxmi Kanta Sharma,
Sr.CC/TNL 29.08.05

18 NOV 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

Page No. 19.

Cross examination is over

Reexamination : Nil

Sd/-
CO
06.10.05

Sd/-
DC
06.10.05

Sd/-
PW-3
06.10.05

Sd/-
IO
06.10.05

DAILY ORDER SHEET

Present :- Shri L.K. Sharma (CO)
Shri A.K. Gonguli (DC)
Shri R. Singh (PW-3)
Absent :- Shri Ranjit Das, (PO)

As per programme RH started at 10.00 hrs at TNL station as PO was absent, with the consent of CO, IO puts question to the PW - 3 to continue cross examination by the CO.

Deposition of PW - 3 was recorded and a copy is handed over to the CO.

RH is adjourned for the day till 10.00 hrs. of 07.10.05 at CEI/HQ/MLG as per programme.

Sd/-
CO
06.10.05

Sd/-
DC
06.10.05

Sd/-
PO
06.10.05

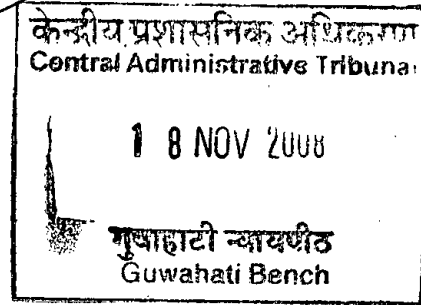
Sd/-
IO
06.10.05

Rcd
L.K.S
06/10

Attested
File
मंडल वाणिज्य प्रबंधक
Divisional Commercial Manager
पु: सी: रेल्व, रंगिया
N. F. Railway, Rangiya

36

148



Page No. 20

N. F Rly

Sub: Dar enquiry into the charge framed against Shri L.K. Sharma, Sr.CC/TNL working under DCM/RNY vide his memorandum No. C/421/RNY/VIG/Staff-4 dated. 17.06.05.

DAILY ORDER SHEET

Venue: CEI/HQ

Dated. 27.10.05.

- Present:- 1) Shri R. Das, CVI/T (PO).
2) Shri A.K. Debnath, Sr. VI/T(CW)
3) Shri L.C. Bayan, Hd/Const/RPF (PW- 2)
4) Shri A.K. Ganguli (DC)
5) Shri L.K. Sharma (CO)

As per programe RH started at 10.00 hrs. and the deposition of PW – 2 and CW were recorded. PW – 2 was examined and re-examined by the PO and CO respectively. Then deposition of prosecution side is over CW was examined and re-examined. There was no defence witness Copies of all the deposition YC is DOS is handed over to the PO & CO. The hearing is adjourned till 10.00 hrs. of 28.10.05.

Sd/-
CO
27.10.05

Sd/-
DC
27.10.05

Sd/-
PO
27.10.05

Sd/-
IO
27.10.05

Attested
File
मंडल वाणिज्य प्रबन्धक
Regional Commercial Manager
पु: सी: रेलवे, रंगिया
N. F. Railway, Rangiva

37

149

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

1 8 NOV 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

Page No. 21.

N. F Rly

Sub: Departmental enquiry into the charge framed against Shri L.K. Sharma, Sr.CC/TNL working under DCM/RNY vide his memorandum No. C/421/RNY/VIG/Staff-4 dated. 17.06.05.

DAILY ORDER SHEET

Venue: CEI/HQ

Dated. 28.10.05.

- Present:- 1) Shri R. Das, CVI/G (PO).
2) Shri A.K. Ganguli (DC)
3) Shri L.K. Sharma, Sr.CC/TNL (CO)

As per programme RH started 10.00 hrs. of 28.10.05 and mandatory questioned put by the IO to the CO and the same is recorded. One copy of which is handed over to the CO. CO stated that he has no document to produce and no witness to examined, and the CO did not like to submit his record statement of defence, though opportunity was given to the CO.

Hence, the hearing of the case is closed. Copy of the Dos is handed over to the CO & PO. The PO is to submit his brief within 10 days with a copy to Co and the CO will submit his brief within 10 days from the receipt of PO brief.

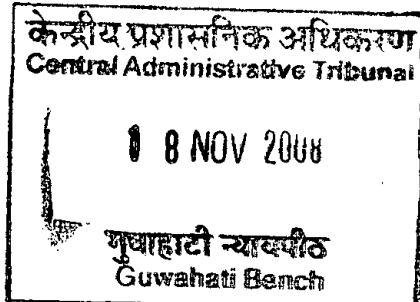
Sd/-
CO
28.10.05

Sd/-
DC
28.10.05

Sd/-
PO
28.10.05

Sd/-
IO
28.10.05

Accepted -
Sd/-
मंडल बाणिज्य प्रबंधक
Regional Commercial Manager
उ. सी. रेलवे, रंगिया
N. F. Railway, Rangiya



N. F Rly

Page No. 22

Sub: Departmental enquiry into the charges framed against Shri L.K. Sharma, Sr.CC/TNL working under DCM/RNY vide his memorandum No. C/421/RNY/VIG/Staff-4 dated. 17.06.05.

Deposition of Shri A.K. Debnath, Sr.VI/T (CW)

Venue : CEI/HQ dated. 27.10.05.

Q. 1. Please go through the PD - 1 and 2 and authenticate your signature and confirm the content of it.

Ans. I authenticated my signature and confirming the content as correct.

Cross examination

Q. 2. Mr. Debnath at any stage did the decoy and the I/witness immediately after transaction reported to you the stage of process till the ticket was issued.

Ans. Decoy informed me that the booking clerk had accepted on demand an excess of Rs. 20.00/-

Q. 3. Did you specifically told the decoy as to what would be the fare from TNL -DLI for one berth in sleeper.

Ans. No decoy was not told.

Q. 4. In the post check memorandum it has been stated that the I/Witness was also located himself nearby. DO you have any idea what was approximate distance between the decoy- I/witness.

Ans. No. no idea.

Q. 5. Can you say if a passenger willing to purchase a ticket from the booking window asks for the some in a normal voice or in a raised voice to be heard from a dist of 20-50 ft.

Ans. I have no idea.

Cross examination over.

Re-examination - NIL

Sd/-
CO
27.10.05

Sd/-
DC
27.10.05

Sd/-
CW
27.10.05

Sd/-
PO
27.10.05

Sd/-
IO
27.10.05

Attested
Sd/-
म. उ. ल. बा. वि. ज. य. प्र. न. म. क.
Regional Controller, Manager
पु. सी. रे. ल. र. म. य. र.
R. S. Railway, Rangiya

Sub: Departmental enquiry into the charge framed against Shri L.K. Sharma, Sr.CC/TNL working under DCM/RNY vide his memorandum No. C/421/RNY/VIG/Staff-4 dated. 17.06.05.

Deposition of Shri L.C Bayan, Hd. Const/RPF PW - 2

Venue - CEI/HQ dated. 27.10.05.

Examination in chief.

Q. 1. Please go thorough the RUD marked as PD - 5 and authenticate your signature and content of it.

Ans. I authenticate my signature and the content of the RUD is also correct.

Q. 2. During the check on 14.11.04 who was with you as decoy.

Ans. Shri T. Mongba, Const/RPF was with me during the decoy check.

Examination is over

Re Examination

Q. 3. In your statement you have stated that the V/team educated you as to what would be done during the decoy check.

Ans. V/Team instructions to purchase a ticket and report to V/Team.

Q. 4. How did you traveled to and fro to TNL

Ans. Traveled by bus both way.

Q. 5. Who paid the fare ?

Ans. Fare was paid by me.

Q. 6. During transaction where you located yourself.

Ans. About 10 feet off from the decoy.

Q. 7. Did you heard the conversation between decoy and booking clerk.

Ans. Yes I heard.

Sd/-
CO
27.10.05

Sd/-
DC
27.10.05

Sd/-
PW-3
27.10.05

Sd/-
PO
27.10.05

Sd/-
IO
27.10.05

मंडल बाणिज्य प्रबंधक
Divisional Commercial Manager
उ. सी. रेलवे, रंगिया
N. F. Railway, Rangiya

18 NOV 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

Page No. 24

- Q. 8. It appears that you can not pickup the normal voices and the contents due to your defect of short hearing. How could you follow the conversation remaining 10 ft away from the booking window. Between B/C and Decoy.
- Ans. I heard it as both of them had the discussion in raised voices.
- Q. 9. In the statement decoy stated that you stayed yourself 50 ft away from decoy, but you stated in your deposition vide Q. 6 that you located 10 ft away.
- Ans. I might be more then 10 ft but not more than 15 ft.
- Q. 10. How did you know that the decoy paid Rs. 525/- to the booking clerk for the ticket.
- Ans. Decoy told me that he paid Rs. 525/- for the ticket.
- Q. 11. At what stage you inform the V/Team in regard to completion of the transaction.
- Ans. I informed the V/team after the information communicated by the decoy.
- Q. 12. Can you give your comment in the matters of the raising voice by the booking clerk – decoy while ticket was asked by the booking clerk.
- Ans. I heard that the booking clerk refuse to issue ticket, immediately and the decoy paid to the money as asked by the booking clerk in raised voice.

Cross examination is over.

Re-examination by PO – NIL

Sd/-
CO
27.10.05

Sd/-
DC
27.10.05

Sd/-
PW-3
27.10.05

Sd/-
PO
27.10.05

Sd/-
IO
27.10.05

Handwritten signature
18/10/05
मंडल वाणिज्य प्रबन्धक
Divisional Commercial Manager
उ. सी. रेलवे, रंगिया
N. E. Railway, Rangiya

18 NOV 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

Page No. 25

N. F Rly

Sub: Departmental enquiry into the charge framed against Shri L.K. Sharma, Sr.CC/TNL working under DCM/RNY vide his memorandum No. C/421/RNY/VIG/Staff-4 dated. 17.06.05.

Deposition of Shri T. Mongba, Const/RPF PW – 1.

Examination by PO.

Q.1. Please state your name and designation.

Ans. My Name Tamsu Mongba, Const/RPF ER COY.

Q.2. Please go through the PD – 1 and authenticate your signature and content.

Ans. I confirm the fact and authenticated my signature by rounding the same.

Q.3. Please go through the PD – 4 and authenticate your signature and content of the same.

Ans. I have gone through, it is my hand writing about the content it was fact, and the same bears my signature.

Examination of the PO is over

Cross examination of CO

Q. 4. Can you say what is the fare form TNL – DLI.

Ans. I do not know.

Q. 5. Can you say how much money was handed over to you by V/team in ref. to PD-1.

Ans. I do not remember.

Q. 6. Can you say what instructions were given to you by the V/Team.

Ans. While handing over the money V/team instructed me to use the money for reservation one berth Ex. TNL – DLI by 4055 DN of 28.11.04. They did not tell me the fare chargeable for the ticket.

Q. 7. How much money the booking/reservation clerk asked you to pay for the ticket& reservation.

Ans. The booking clerk asked me to pay Rs. 525/-.

Sd/-
CO
29.08.05

Sd/-
DC
29.08.05

Sd/-
PW-1
29.08.05

Sd/-
PO
29.08.05

Sd/-
IO
29.08.05

Attested
29/08/08
म डल बॉमिजिय प्रबंधक
Divisional Commercial Manager
पु: सी: रेलव, रंगिया
Railway, Rangiya

Received Lxmi Kanta Sharma,
Sr.CC/TNL, 29.08.05

154

- Q. 8. Can you say if the booking clerk had asked your to pay more than the actual fare of the ticket I/C reservation charges payable.
Ans. I had no idea.
- Q. 9. Did the V/Team instruct you to pay excess money only if demanded by the booking clerk.
Ans. No such instruction were given.
- Q.10. Please go through PD - 4 wherein you may see that the statement was given on 16.11.04 i.e after two days of the particular decoy check conducted at TNL station. Will you please confirm if you have had any discussion with V/team from the time of purchasing ticket on 14.11.04 till 16.11.04.
Ans. No there was no discussion.
- Q. 11. Can you say if you returned back from TNL alongwith the V/team, if so what was the transport utilized and while traveling together, did you have any negotiation with V/Team.
Ans. We travelled along with V/team first phase by bus and second phase by train but I cannot exactly remember the portion cover in each phase there was no occasion to had any discussion with the V/team during journey.
- Q.12. Can you say where the other RPF person located himself while you negotiated the purchase of ticket and payment made.
Ans. He was installed himself about a distance of 50 ft.
- Q. 13. Can you say if the payment was made i.e accordingly to you Rs. 525/- by separating currency notes one by one.
Ans. I paid him Rs. 525/- at one bunch and not one by one.

Sd/-
CO
29.08.05

Sd/-
DC
29.08.05

Sd/-
PW-1
29.08.05

Sd/-
PO
29.08.05

Sd/-
IO
29.08.05

Attested
File
15/08/08
मंडल वाणिज्य प्रबंधक
Regional Commercial Manager
उ. सी. रेलवे, रंगिया
N. F. Railway, Rangiya

- Q. 14. Can you remember and say if you personally conveyed the signal that the desired transaction was completed.
Ans. No I did not give any signal.
- Q. 15. Can you say that what stage the ticket and balance money if any was collected by V/team from you and during the collection if they asked you any information in regard to the check.
Ans. The V/team simply took away the ticket and the balance money from me without asking any question.
- Q. 16. Can you say if the booking clerk perticulary demanded Rs. Twenty from you over and above the Railway charge payable.
Ans. No he did not asked me.
- Q. 17. Can you remember and say if you had examined the Railway dues recorded on the ticket when it was handed over to you if so why did you not protest.
Ans. I did not examined this aspect.
- Q. 18. Can you remember and say if V/team instructed you to pay excess money only on demand otherwise not.
Ans. No.

'X' Examination is over

Re-examination by PO: - PO refuse to re examine.

Sd/-	Sd/-	Sd/-	Sd/-	Sd/-
CO	DC	PW-1	PO	IO
29.08.05	29.08.05	29.08.05	29.08.05	29.08.05

Accepted -
10/08/08
मंडल वाणिज्य प्रबंधक
Regional Commercial Manager
उ. सी. रेलवे, रंगिया
N. F. Railway, Rangiya

18 NOV 2008

NFRy

गुवाहाटी न्यायपीठ
Guwahati Bench

Page No. 28

Sub: Departmental enquiry into the charge framed against Shri L.K. Sharma, Sr.CC/TNL working under DCM/RNY vide his memorandum No. C/421/RNY/VIG/Staff-4 dated. 17.06.05.

Deposition of Shri R.Singh, SS/TNL PW - 3

Venue : TNL Station dated. 06.10.05

Examination in chief.

- Q.1. Please go through PD - 2 identify your signature and confirm the content of it.
Ans. I am authenticating my signature by rounding my signature. I arrived as called by the VI/Team and on my arrival I found the VI/Team counting the coaching cash, after counting they showed me 08 (eight) G.C Notes of the value Rs. 525/-, the number of the said GC note exactly tallied with the GC notes number mentioned in pre-check memorandum (PD - 1) which also I signed.
They also after counting the cash showed me the excess amount of Rs. 79.00 which was found excess by them. In my presence they prepared the said memorandum (PD - 2) and I signed the same after going through it.

Examination in chief is over

Cross examination by CO.

- Q. 2. In your Ans. to Q. 1 you stated that on a call from Vigilance you attended the station in connection with the check. Can you say if prior to call from vigilance call it was within your knowledge that a some of Rs. 20.00 was given by a passenger on the same day for granting reservation although the concerned staff never asked for such excess payment.

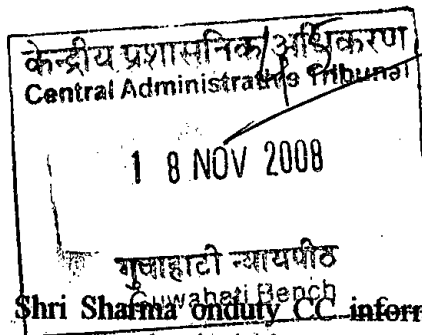
Sd/-
CO
06.10.05

Sd/-
DC
06.10.05

Sd/-
PW-3
06.10.05

Sd/-
IO
06.10.05.

Handwritten signature
उप निदेशक प्रमुख
Commercial Manager
रेलवे, रंगिया
Railway, Rangiva



Page No. 29

Ans. Prior to vigilance call, Shri Sharma on duty CC informed me that he granted a reservation to some passenger and asked him to pay Rs. 505/- as Railway dues which was also endorsed correctly on the RT. But the said passenger paid Rs. 525/- and left the counter hurriedly, attempted of Shri Sharma to locate him and to refund the excess money, but Shri Sharma failed. I advised Shri Sharma that Since the excess money could not be returned to the passenger, he should wait for reporting of the passenger to get the money back which might have been paid due to oversight else the same will be deposited in the Railway Cash.

Q. 3. It is brought to your notice that in the board(fare) exhibited at your station it is seen that fares have been declared for 67 stations (41 ordinary and 26 M/E) out of this table it is noticed only for 3 station round figures of the Railway fare are available and for the rest 64 tables the fares are not in round figure. It is a natural conclusion that the all the passenger by purchasing tickets do not present the exact fare i.e B/clerk has to refund the differences. Are you aware, if there is any imprest provided by the administration for refunding the difference when round figure GC notes not placed. In such circumstances what is the source, for the B/Clerk to manage the show to satisfaction to the passenger and also get rid of unnecessary displeasure.

Ans. I am to say that the I/cash provided i. Rs. 5.00 only which is not only insufficient but also scanty to serve the purpose. It is also a fact that while purchasing ticket, more than 60% passenger normally do not present the exact fare, but the round figures notes are presented. The B/Clerk is required to refund the differences else there would be cawas. So for I know to avoid such difficulties normally B/clerk while taking over the duty collects coins from their known sources and they refund the amount so taken while they close their shift. I am not sure if such provision is permissible under the coaching rule, but this is the practice/convention follower by the B/Clerk at this station at least for last 15 years or so.

Sd/-
CO
06.10.05

Sd/-
DC
06.10.05

Sd/-
PW-3
06.10.05

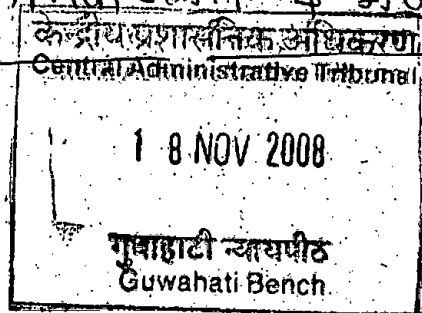
Sd/-
IO
06.10.05.

Attested
File
18/10/08
न. उल्लेखनीय प्रबंधक
ional Commercial Manager
उ. सी. रेलवे, रंगिया
N. F. Railway, Rangiya

Swk Departmental Enquiry into the Charge framed against Shri L. K. Sharma Sr. CC/PNL, working under Secy/ Rm vide memorandum no. E/421/Rm/WG/STAFF-4 dtd. 17.6.05.

PRELIMINARY HEARING

Venue: CEI/HQ. dtd. 29.8.05.



Question of PO to CO.

1) Have you received the Charge sheet.

Ans- Yes, I received.

2) Have you receive the documents mentioned in the Annexures III of the charge sheet.

Ans- Yes, I received.

3) Have you understand the charge levelled against you.

Ans- Yes, I understand.

4) Do you accept the charge levelled against you.

Ans- No, not at all.

5) Do you want to access over any document 2 witness.

Regarding of defence document, and also defence witness will be considered on progress of the subject proceedings. At this stage the documents mentioned in Annexures III are introduced SL-1 as PD-1, SL-NO. as PD-2, SL-3 as PD-3. SL-NO. 4 as PD-4 SL-NO. 5. as PD-5, and SL-NO. 6. as PD-6.

The defence submitted to the EO to consider ~~from~~ calling appearance of Shri A. K. Debnoth as CW. to authenticate his signature and also details, accommodated in PD-1 & 2. The EO agreed to arrange his attendance as CW-1.

(CO)

Answer
(DC)

29.8.05
(PO)

29/8/05
(PO)

axmi 2004 Surat.
29.8.05.

ST.CC/TM

47
N.F. RLY

P.15

Venue ECI/HA
dt. 28.10.05

Subj: Departmental enquiry into the charge framed against Shri L. K Sharma. Sr. CC/TNL working under
memorandum NO. C/421/RNY/VIG/staff-4 dtd. 17-6-05

18 NOV 2008

Guwahati Bench

Clarification sought by IO. from CO.

A/Narrate the incident took place on
vigilance check.

Ans. On 14.11.05 I was on duty CC/TNL at about 12.30 hrs. One person came for reservation of one berth for DLI by HOSS ST Sx TNL. On scrutiny of reservation registers I found that berth was available, and I gave him the requisition slip which was duly filled in and handed over to me. The said passenger was then issued with the d/ticket w/c the reservation ticket. The passenger was told earlier i.e. prior to issue of the ticket ~~from~~ on his query that the fare for DLI was Rs. 485.00 and R.T. Rs. 20.00. He brought out a bundle of notes and was counting the money. The ticket was kept inside the counter on the supporting stand of the booking window. The passenger then handed over folded bundles of notes, and while I was counting the money the said person took out the ticket and left the counter. Although I called him back since I found that he paid Rs. 525.00 instead of Rs. 505.00. He ran away. Immediately I contact with the SM/TNL and requested to come to the station ~~since~~ as a passenger paid Rs. 20.00 excess i.e. Rs. 20.00 excess to the Rly dues. SM/TNL informed me that he was having his meal and would come after some time if no claim, ~~however~~ from the person who paid Rs. 20.00 excess unknowingly would be credited to the Rs. account.

In the meantime some persons entered into the Booking office and identified them as members of the V/Sec and asked me to produce my Cash (Govt) along with my p/cash. Subsequently they prepared some papers and asked me to sign. Although I told them that there was inconsistency in the papers they prepared and specially I told them that prior to their coming to the B/office in the matter of payment of Rs. 20.00 excess by a person.

daxmi 10/10/05
28.10.05

(CG)

(20/10/05)

— P.T.O. —

48

P.16-

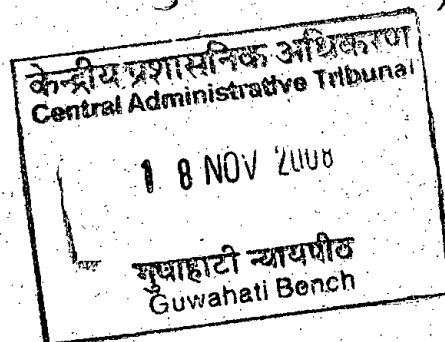
P-216N-84
100

which was ~~only~~ ^{Conf} informed to SM/TNL. and such Circumstances should be incorporated in the post check memorandum. The V/Team refused to accommodate my request and told me that I would be given opportunity of narrating such matter, during my examination as a part of investigation by the V/Team. At this stage they asked me to co-operate with them hence they would be compelled to mention that I interfered with their official duties.

In the matter of excess Cash found in the Counter I told them that the excess was due to certain Circumstances, when with the knowledge of SM/Incharge of TNL station for facilitating the transactions when passenger were to be refunded the balance - ~~but for~~ Some Coins are collected from nearby PAN-stall installed within the RJ area and on closure of the unit the said amount is returned to the shop. This practice was evoked specially due to non availability of sufficient imprest. The imprest Cash sanctioned for the Booking office is only Rs. 500 which is inadequate and this V/Cash had not been reviewed for fixing at a reasonable level during last many many years.

daxmi/cash/sdh
28/10/05

(C0)



28/10/05
(18)

49
N.F. 214.

P.17-

SN-83
161

Sub. Departmental enquiry into the charge framed against Sh. L.K. Sharma Sr. CC/TNL working under Gen/RNY vide his memorandum no. C/421/RNY/via/staff-4 dtd. 17-6-05.

DAILY ORDER SHEET NO-1.

Genm. CFI/HQ. dtd. 29.8.05.

Present- 1) Ranjit Das. evlg. PO.
2) L.K. Sharma Sr. CC/TNL CO.
3) A.K. Garguli. DC.
4) T. Mongha. Cont/RPF. PW-1.

Absent. - 1) Rameswar Singh. ss/TNL. PW-3.
2) L.C. Bayan. Hd. Cont/RPF-PW-2

PH. was scheduled on 11.8.05. and CO & DC were present, however as per programme PH. started 10.00 hrs on 29.8.05. and PH was completed. All the RUD's were produced by the PO and were marked as PD-1 to PD-6. The sealed cover was opened and toured accordingly. PW-1 was present and his deposition was recorded accordingly.

All the Copies, of DOS, PH, and deposition of PW-1 was handed over to the PO & CO.

The hearing is adjourned till 10.00 hrs of 19.9.05. as the next date of PH is fixed on 19 and 20.9.05. with the Consent of both CO & PO.

Laxmi Kanta Saha
Sr. CC/TNL
29.8.05

(CO)

(DC)

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

18 NOV 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

(PO)

29/8

Sub Departmental enquiry into the charge framed against Shri L. K. Sharma, Sr. CC/TNL working under Dem/ Rty. vide his memorandum NO. C/421/RNY/VIG/Staff-4 dt. 17.6.05.

DAILY ORDER SHEET NO-

Venue - CEI/HQ. dt. - 20.9.05.

Present - 1) Ranjit Das CV/G. - P.O.
2) L. K. Sharma. Sr. CC/TNL - CO.
3) A. K. Ganguli. DE.

Absent - 1) Ramwar Singh - SS/TNL. PW-3.
2) L. C. Bajan. Hd. Const/RPF. - PW-3.

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal 18 NOV 2008 गुवाहाटी न्यायपीठ Guwahati Bench

As per programme RH was started 10.00h of 19.9.05. but it was not held accordingly, due to the absence of witness. Hence the hearing was adjourned till 10.00h of 20.9.05.

On 20.9.05. RH started at 10.00h. but again both the witness found absent. for which RH. could not be completed.

Now with the consent of both PO and DE next date (final) of RH is fixed on 6.10.05 at TNL at 10.00h. and on 7.10.05. at CEI/HQ. at 10.00hrs, with further direction that no adjournment will be granted. PO is requested to ensure attendance of PW's according to the programme.

The hearing is adjourned till 10.00h of 6.10.05 as the next date of RH is fixed on 6.10.05. Copy of this is handed over to both PO & DE.

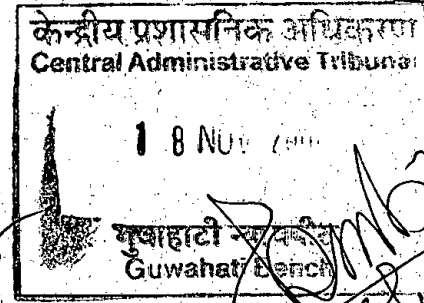
d. le. u
20/9/05
(CO)

[Signature]
(P.O.)

Ranjit Das
29/9
(PO)

[Signature]
20/9/05

51
P-19
P-3
15N-81
167
Cross examination is over.
Reexamination — NIL.



d.l.c.u
6/10

(CO)

Aravind
(DC)

6/10/05
(PW-3)

6/10
(PO)

DAILY ORDER SHEET.

Present - Shri. A.K. Sharma. (CO).
Shri. A.K. Ganguli. (DC).
Shri R. Singh. (PW-3).
Absent - Shri Ranjit Das. (PO).

As per programme RH started at 10.00 hr at TML station.
as PO was absent, with the consent of CO, PO puts
question to the PW-3, to continue cross examination
by the CO.

Deposition of PW-3 was recorded and a copy is
handed over to the CO.

RH is adjourned for the day till 10.00 hr of
7.10.05 at CEI/MR./MLG as per programme.

d.l.c.u
06/10

(CO)

Aravind
(DC)

Ranjit Das
6/10/05
(PO)

Aravind
(DC) 6/10/05

Red-
d.l.c.u
6/10

52

P.20.

SN-80
167

N.F.R.N.

Sub. DAR enquiry into the charge framed against
shri L.K. Sharma. Sr. CC/ TNL working under
DEM/RNY vide his memorandum No. C/421/RNY/
VIC/staff-4 dtd. 17.6.05.

DAILY ORDER SHEET

Venue - CEI/HQ dtd. 27.10.05

Present - 1) Shri R. Das. CIVILT. (PO)
2) Shri A.K. Debnath Sr. CIVILT. (CW)
3) Shri L.C. Baysan Hd./Cont./RPF. (PW-2)
4) Shri A.K. Ganguli. (DC)
5) Shri L.K. Sharma. (CO)

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal
18 NOV 2008
गुवाहाटी न्यायपीठ Guwahati Bench

As per programme RH started at 10.00 hrs and the
deposition of PW-2 and CW were recorded. PW-2
was examined and re-examined by the PO
and CO respectively. Then deposition of Prosecution
side is over. CW was examined and reexamined.
There was no defence witness. Copies of all the
deposition ye is DOS. is handed over to the PO & CO.
The hearing is adjourned till 10.00 hrs of
28.10.05.

Laxmi Kant Barua
27.10.05
(CO)

~~Accepted~~
(DC)

Ranjit Das
27/10/05
(PO)

Pomb-
(PO) 27/10/05

53

P.21.

SN-79

N.F.R.I.Y.

Sub. Departmental enquiry into the charge framed against
Shri L.K. Sharma. Sr. CC/TNL working under Dem/RNY.
vide his memorandum no C/42/RNY/VIG/Staff-4 dt-17.6.05.

DAILY ORDER SHEET.

Revenue - C&T/HQ. dt-28.10.05.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

18 NOV 2008

गुवाहाटी न्यायपीठ
Guwahati Bench

Present - 1) Shri R. Das C.V.I/G/ (PO)
2) Shri A.K. Ganguli. (DE)
3) Shri L.K. Sharma. Sr. CC/TNL - (CB)

As per programme RH started 10.00 hrs of 28.10.05. and
mandatory questioned put by the CO to the CO. and the
same is recorded. One copy of which is handed over
to the CO.

CO stated that he has no document to produce and
no witness to examine, and the CO did not like to
submit his second statement of defence, though
opportunity was given to the CO.

Hence the hearing of the Case is closed. Copy of
this DOS is handed over to the CO & PO. The PO is to submit
his brief within 10 days, with a copy to CO. and
the CO will submit his brief within 10 days from the
receipt of PO. brief.

Laxmi / Cnts Sankh
28/10/05

(CO)

[Signature]
(DE)

Laxmi / Cnts
28.10.05
(PO)

[Signature]
(409) 28/10/05

Sub- Departmental enquiry in to the charges framed against
Shri L.K. Sharma Sr. ec/ITL working under Deputy. Viro his
memorandum no. C/421/2NY/VIG/staff -

Deposition of Shri A.K. Debnath Sr. VIL

Venue - CEI/HQ.

27.10.05.

27.10.05 Central Administrative Tribunal (CW) 18 NOV 2008 गुवाहाटी न्यायापीठ Guwahati Bench
--

Q.1 Please go through the P-D-1 and 2 and authenticate your signature and confirm the content of it.

Ans. I authenticated my signature and confirming the content as correct.

Cross examination.

Q.2 Mr. Debnath at any stage did the decoy and the I/witness immediately after transaction reported to you the stage of process till the ticket was issued.

Ans. Decoy informed me that the booking clerk had accepted on demand an excess of Rs. 20.00.

Q.3 Did you specifically told the decoy as to what would be the fare for TNL-DLI for one berth in sleeper.

Ans. No decoy was not told.

Q.4. In the Post Check memorandum it has been stated that the I/witness was also located himself nearby. Do you have any idea, what was approximate distance between the decoy - I/witness.

Ans. No. no idea.

Q.5. Can you say if a passenger willing to purchase a ticket from the booking window asks for the same in a normal voice or in a raised voice. to be heard from a dist of 20-50 ft.

Ans. I have no idea.

Cross examination is over.

Re-examination - NIL.

Examiners Sign
27.10.05

(CO)

(DE)

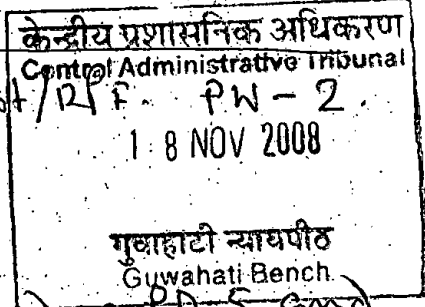
Chun
27.10.05
(CW)

Rajik
27/10/05
PO

Amth
27/10/05
IO

Subj. Departmental enquiry into the charge framed against
Shri L. K. Sharma Sr. CC/TNL working under DEM/RMY.
Vide his memorandum no. 1421/RMY/VIG/staff-4
dt. 17.6.05.

Deposition of Shri. L. C. Bayan. Hd. Const/R.F. PW-2.
Venne - CEI/HQ. dt. 27.10.05.



Examination in chief.

Q.1. Please go through the RND marked as PD 5 and
authenticate your signature and content of it.

Ans. I authenticate the my signature and the content
of the RND is also correct.

Q.2. During the check on 14.11.04 who was with you
as decoy.

Ans. Shri T. Mangba Const/R.F. was with me during
the decoy check.

Examination is over.

Re-examination.

Q.3. In your statement you have stated that the V/Team
educated you as to what would be done during the decoy
check.

Ans. V/Team instructions to purchase a ticket and
report to V/Team.

Q.4. How and you travelled to and fro to TNL.

Ans. Travelled by bus both way.

Q.5. Who paid the fare?

Ans. Fare was paid by me.

Q.6. During transaction where you located yourself.

Ans. About 10 feet off from the decoy.

Q.7. Did you heard the conversation between decoy and
proceeding clerk.

Ans. Yes I heard.

Laxmi (Sd/-) 27.10.05

(DC)

Kishor Ch. Borah 27/10/05

(PW-3)

27.10.05

PO-

Rmb - 27/10.

56

P.24

SN-76 P.2

168

Q.8. It appears that you cannot pick up the normal voices and the contents due to your defect of short hearing. How could you follow the conversation remaining 10 ft away from the Booking window between P/C and Decoy.

Ans. I heard it as both of them had the discussion in raised voices.

Q.9. In the statement decoy stated that you stayed yourself 50 ft. away from Decoy, but in your deposition vide Q.6. that you located 10 ft. away.

Ans. I might be more than 10 ft. but not more than 15 ft.

Q.10. How did you know that the decoy paid Rs. 525.00 to the booking clerk for the ticket.

Ans. Decoy told me that he paid Rs. 525.00 for the ticket.

Q.11. At what stage then inform the V/Team in regard to completion of transaction.

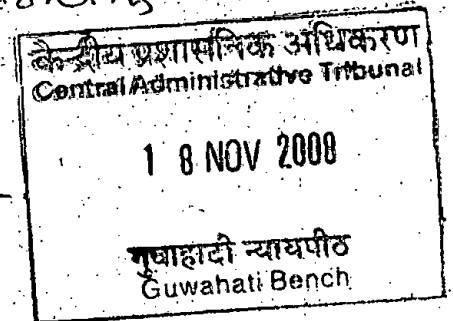
Ans. I informed the V/Team after the information was communicated by the Decoy.

Q.12. Can you give your comment in the matter of the raising voice by the booking clerk - Decoy while ticket was asked by the booking clerk.

Ans. I heard that the Booking clerk refused to issue ticket, immediately and the Decoy ^{paid} the money the money as asked by the Booking clerk in raised voice.

Cross examination is over.

Re-examination by P.O. - NIL



दखल 10/10/08
23.10.08

(CO)

[Signature]
(DC)

खेल-डी
27/10/08
PW-3

खजिद डायरी
27.10.08
P.O.

[Signature]
(DO) 27/10

57
P. 25
J.F. RLY.

Sub Departmental Enquiry into the Charge framed against Sh. T. Monba. Comd/R.F. PW-1. vide memo dated 17.6.05. C/421/DNY/VIG/STAFF-4

8 NOV 2005

गुवाहाटी न्यायाधीश
Guwahati Bench

Deposition of Sh. T. Monba. Comd/R.F. PW-1.

Examination by P.O.

Q.1. Please state your name and designation.

Ans. My name is Tamsu Monba. Comd/R.F. SR Coy.

Q.2. Please go through the PD-1 and authenticate your signature and Content.

Ans. I confirm the fact and authenticated my signature by sounding the name.

Q.3. Please go through PD-4 and authenticate your signature and Content of the same.

Ans. I have gone through, it is in my handwriting about the Content it was fact, and the same bears my signature.

Examination of P.O. is over.

Cross examination of C.O.

Q.4. Can you say what is the fare from TNL-DLF.

Ans. I do not know.

Q.5. Can you say how much money was handed over to you by V/Team in ref. to PD-1.

Ans. I do not remember.

Q.6. Can you say what instructions were given to you by the V/Team.

Ans. While handing over the money, V/Team instructed me to use the money for reservation one berth 2x TNL-DLF by 4055 DT. of 28.11.04. They did not tell me the fare chargeable for the ticket.

Q.7. How much money the booking/Reservation Clerk asked you to pay for the ticket & reservation.

Ans. The booking clerk asked me to pay Rs. 525.00.

Exmi/Case/Sd/-
St. CC/TNL
29.8.05

(C.O.)

(P.O.)

(PW-1)

(P.O.)

(P.O.)

Q.8. Can you say if the B/clerk had asked you to pay more than the actual fare of the train? Central Adm. Dist. Guwahati Bench
chayno payable.

18 NOV 2008

Ans. I had no idea.

Q.9. Did the V/Team instruct you to pay ~~only~~ ^{only} if demanded by the booking clerk. Guwahati Bench

Ans. No. such instructions were given.

Q.10. Please go through PD-4 showing you may see that the statement was given on 16.11.04 i.e. after two days of the particular ~~and~~ delay check conducted at TML/station. Will you please confirm if you have had any discussion with V/Team from the time of purchasing ticket on 14.11.04 till 16.11.04.

Ans. No. there was no discussion.

Q.11. Can you say if you returned back from TML along with the V/Team, if so what was the transport utilized and while travelling together, did you have any negotiation with V/Team.

Ans. He travelled along with V/Team first phase by bus and second phase by train. but I cannot exactly remember the portion cover in each phase. there was no occasion to had any discussion with the V/Team during journey.

Q.12. Can you say where the other ~~per~~ R/F person located himself while you negotiated the purchase of ticket and payment made.

Ans. He was installed himself about a distance of 50 feet.

Q.13. Can you say if the payment was made i.e. according to you Rs. 525.00 by separating currency notes ~~and~~ one by one.

Ans. I paid him Rs. 525.00 at one bunch and not one by one.

Xm/ Kanta Sarb
Sr. CE/Tm
29.8.05

(CO)

(DC)

(PW-1)

(PO)

(DO) 29/8

59 P.27

P.3 SN-73
131

Q.14 Can you remember and say if you personally conveyed the signal that the desired transaction was completed.

Ans. No I did not give any signal.

Q.15 Can you say that what stage the ticket and balance money if any was collected by V/Team from you and during the collection if they asked you any information in regard to the check.

Ans. The V/Team simply took away the ticket and the balance money from me without asking any question.

Q.16 Can you say if the P/clerk positively demanded Rs. twenty from you over and above the Rs. cheque payable.

Ans. No. he did not asked me.

Q.17 Can you remember and say if you had examined the Rs. ones recorded on the ticket when it was handed over to you. if so. why did you not protest.

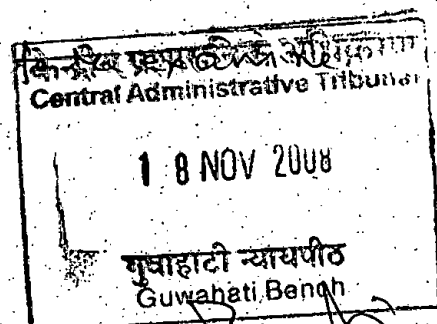
Ans. I did not examined this aspect.

Q.18 Can you remember and say if V/Team instructed you to pay excess money only on demand otherwise not.

Ans. No.

'X' Examination is over.

Reexamination by PO - P.O. refused



Xaxmi Kanta Sarth
Sr. CC/Tm
29.8.08

(CO)

(DC)

(PW-1)

(P.O.)

(SO) 29/8

60 / P-28

15N-72
102

NF-P.V.

Sub. Departmental enquiry into the charge framed against Shri L. K. Sharma Sr. CC/TNL working under Secy/IRNY vide his memorandum no. C/421/IRNY/VI/Staff-4 dt. 17.6.05.

Deposition of Shri R. Singh SS/TNL

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal
PW-3
18 NOV 2008
गुवाहाटी न्यायपीठ Guwahati Bench

Venue - TNL Station dt. 6.10.05

Examination en chief

Q.1. Please go through PD-2. identify your signature and confirm the content of it.

Ans. I am authenticating my signature, by reading my signature. I arrived as called by the VI/Team and on my arrival I found the VI/Team counting the Coaching Cash, after counting the showed me 8 (eight) G.C. notes of the value Rs. 525.00, the number of the said G.C. notes exactly tallied with the G.C. notes numbers mentioned in Pte. cheque memorandum (PD-1) which also I signed.

They also after counting the Cash, showed me the excess amount of Rs. 79.00 which was found excess by them. In my presence they prepared the said memorandum (PD-2) and I signed the same after going through it.

Examination en chief is over.

Cross examination by CO.

Q.2. In your Ans to Q.1. you stated that, on a call from vigilance, you attended the station in connection with the Cheque. Can you say if prior to Call from vigilance ~~Call~~ Call it was within your knowledge that a sum of Rs. 20.00 was given by a passenger on the same day for granting reservation although the concerned staff never asked for such excess payment.

2.6.10
6.10.05

(CO) (DE) (PW-3) (IO) 6/10



62

ANNEXURE - I

15N-99
P-1.134

NORTHEAST FRONTIER RAILWAY

ENQUIRY REPORT

ON

The Departmental Enquiry Held Against

SHRI LAXMI KANTA SHARMA

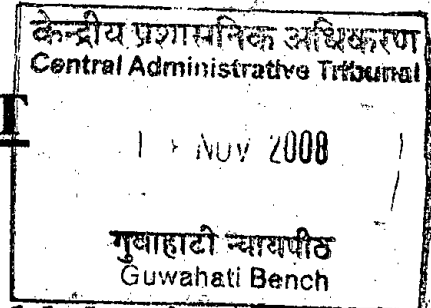
SENIOR COMMERCIAL CLERK/TANGLA

Submitted by

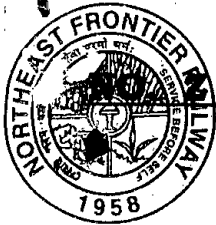
**Shri Sisir Sen Gupta
Enquiry Officer**

To

**DCM / RNY
N.F/Railway
(Disciplinary Authority)**



031873



VIG / CEI / SSG / 4 / 05

63
DATED: - 30/11/2005

केन्द्रीय प्रशासनिक विभाग
Central Administrative Tribunal
NO. 2000
गुवाहाटी न्यायपीठ
Guwahati Bench

Enquiry Report

On

The Departmental DAR Enquiry against Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway

1.0 SEQUENCE OF DAR CASE RECORDS AND AUTHORITY FOR ENQUIRY

- 1.1 Under Rule 9 (2) of Railway Servants (Disciplinary and Appeal) Rules 1968, the Divisional Commercial Manager/Rangiya/Northeast Frontier Railway issued Memorandum bearing No. C/421/RNY/VIG/STAFF - 4, dated 17/06/05 to Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway proposing to hold an enquiry against him for Imposition of Major Penalty for the Article of Charges framed therein.
- 1.2 Record Of Delivery Of Charge Sheet To The Charged Official - The above mentioned Memorandum was received by the Charged Official along with all the Annexure.
- 1.3 Order Of The Disciplinary Authority Appointing Of Enquiry Officer and the Presenting Officer - The Divisional Commercial Manager/Rangiya/Northeast Frontier Railway vide his Order No. C/421/RNY/VIG/STAFF - 4, dated 14/07/2005 appointed Shri Sisir Sen Gupta, Chief Enquiry Inspector/Maligaon/Head Quarter/Northeast Frontier Railway as Enquiry Officer and Shri Ranjit Das, Chief Vigilance Inspector (Traffic)/Maligaon/Head Quarter/Northeast Frontier Railway as Presenting Officer.

2.0 THE CASE ON BEHALF OF THE DISCIPLINARY AUTHORITY

- 2.1 The Article of Charges framed against the Charged Official Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway, which are re - produced below: -

ATTESTED

07-11-08

सहायक वाणिज्य प्रमुख
Asstt Commercial
१० सी. रेल्वे. इ. वि. ज.
N. E. Railway Rangiya Jn

0318730



64

105
SN-97
P.3.

Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway while performing his duty as Commercial Clerk/Tangla/Northeast Frontier Railway on 14/11/2004 committed an act of gross misconduct in as much as he demanded and accepted a sum of Rs. 20/- (Rupees Twenty) excess while allotting Reservation from Road Side Quota of Tangla Railway Station by 4055 Dn. of 23/11/2004 Ex. Tangla to Delhi. The cost of the fare and reservation Ex. Tangla to Delhi was Rs. 505/- (Rupees Five Hundred and Five) but Shri Sharma demanded and accepted Rs. 525/- (Rupees Five Hundred and Twenty Five). Shri Sharma demanded and accepted Rs. 20/- (Rupees Twenty) excess then that of actual fare (including reservation) for his own consideration which tantamount a serious misconduct and derelicts duty.

गुवाहाटी न्यायापीठ
Central Sinterative Tribunal
NOV 2008
Guwahati Bench

ARTICLE - II

Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway while performing his duty as Commercial Clerk/Tangla/Northeast Frontier Railway on 14/11/2004 committed an act of gross misconduct in as much as he produced his Govt. Cash Rs. 8957/- (Rupees Eight Thousand and Nine Hundred Fifty Seven) against Rs. 8878/- (Rupees Eight Thousand and Eight Hundred Seventy Eight) (excluding voucher) i.e. Rs 79/- (Seventy Nine) excess in his Govt. cash as per DTC.

Thus, by the above act Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway exhibited lack of integrity and devotion to duty and acted in a manner which is unbecoming of a Railway Servant and thereby Contravened the Provision of Rule No. 3.1 (i), (ii) & (iii) of Railway Service (Conduct) Rule's 1966.

2.2 The Statement Of Imputation Of Misconduct And Misbehavior

- 2.3 The Article of Charge - I framed against the Charged Official Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway is that Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway while performing his duty as Commercial Clerk/Tangla/Northeast Frontier Railway on 14/11/2004 committed an act of gross misconduct in as much as he demanded and accepted a sum of Rs. 20/- (Rupees Twenty) excess while allotting Reservation from Road Side Quota of Tangla Railway Station by 4055 Dn. of 23/11/2004 Ex. Tangla to Delhi. He issued One Sleeper Class Ticket bearing No. 00813 Ex. Tangla to Delhi with Reservation Ticket bearing No. 26406 and granted the Berth No. 44.

ATTESTED

04-11-11

अध्यक्ष न्यायापीठ
Asstt Comm merelal Mandala
उप-सि. रेलवे, गुवाहाटी
N F. H. Railway Kanuya Jm

031873



conducting the Check, a Pre - Check - Memorandum was prepared depicting the Govt. Currency Note numbers which would be used in the said Check and handed over to Shri T. Mongba, Constable/Railway Protection Force/Northeast Frontier Railway who acted as Decoy in the Check in presence of Shri L. C. Bayan, Head Constable/Railway Protection Force who acted as Independent Witness in the Check.

187
15N-96
P-4
8 NOV 2008

Accordingly, Shri Mongba (Decoy) went to the Booking Office and placed the Requisition in presence of the Independent Witness Shri Bayan. The on duty Booking Clerk Shri Sharma granted a Berth by 4055 Dn. Ex. Tangla to Delhi and issued One Sleeper Class Printed Card Ticket bearing No. 00813 and Reservation Ticket bearing No. 26406 and demanded and accepted a sum of Rs. 525/- (Rupees Five Hundred and Twenty Five). The transaction was witnessed by Shri Bayan (Independent Witness) and when the transaction was over, he immediately informed the matter to the Vigilance Team.

Then the Vigilance Team entered and introduced themselves and asked Shri Sharma to close the DTC and to prepare the cash declaration. Accordingly, he did the same. Then Station Superintendent/Tangla/Northeast Frontier Railway Shri R. Singh was asked to tally the numbers the Govt. Currency Notes of his Govt. cash with the numbers of Pre - Check - Memorandum and the following Govt. Currency Note numbers were tallied exactly.

- 1) Five numbers of One Hundred Rupee Govt. Currency Note bearing Nos. 6RK 261857, 5CV 994465, 4GG 309006, 8BT 400268, and 7GD 029034.
- 2) Two numbers of Ten Rupee Govt. Currency Note bearing Nos. 56C 863581 and 41H 864095.
- 3) One number of Five Rupee Govt. Currency Note bearing No. 16G 175610.

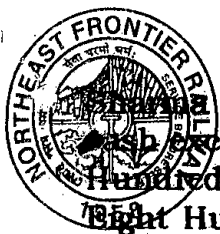
The above mentioned recovered Govt. Currency Notes amounting to Rs. 525/- (Rupees Five Hundred and Twenty Five) along with Printed Card Ticket, Reservation Ticket and the Requisition Slip used for Reservation (by the Decoy) were taken over and kept in a Cover duly Sealed and Signed as evidence.

- 2.4 The Article of Charge - II framed against the Charged Official Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway while performing his duty as Commercial Clerk/Tangla/Northeast Frontier Railway on 14/11/04 committed an act of gross misconduct in as much as he produced Rs. 79/- (Rupees Seventy Nine) excess then that of his actual Govt. Cash as per DTC. Shri

ATTESTED

सहायक वाणिज्य प्रमुख
Asstt Commercial Manager
०० सी-२, टांगला जं.
N. F. Railway Tangla Jn.

031873



66

15N-95
P-5

prepared his cash declaration wherein he produced his Govt. cash excluding vouchers is Rs. 8957/- (Rupees Eight Thousand and Nine Hundred Fifty Seven) against Rs. 8878/- (Rupees Eight Thousand and Eight Hundred Seventy Eight) i.e. Rs. 79/- (Seventy Nine) excess in his Govt. cash.

2.5 **LIST OF DOCUMENT** - The Disciplinary Authority produced 06 (Six) numbers of documents on to which Relied Upon, vide Annexure - III of the Charge Sheet.

2.6 **LIST OF WITNESS** - The Disciplinary Authority cited 03 (Three) numbers of Prosecution Witnesses vide Annexure - IV of the Charge Sheet and all were attended in the enquiry.

3.0 **PROCEEDINGS OF THE ENQUIRY**

3.1 **PRELIMINARY HEARING** - The Preliminary Hearing of the above case was held on 11/08/2005 in the Chamber of the Chief Enquiry Inspector, Head Quarter/Maligaon/Northeast Frontier Railway in presence of both the Presenting Officer and the Charge Official.

3.2 **PROSECUTION DOCUMENTS** - Before starting the Regular Hearing, all the Relied Upon Document's cited by the Disciplinary Authority vide Annexure - III were produced in original and were marked as follows: -

SL. NO.	DESCRIPTION	MARKED AS
1	Pre - Check - Memorandum, dated 14/11/2004	PD/1
2	Post - Check - Memorandum, dated 14/11/2004.	PD/2
3	Cash Declaration, dated 14/11/2004.	PD/3
4	Statement of Shri T. Mongba.	PD/4
5	Statement of Shri L. C. Bayan.	PD/5
6	Sealed Cover containing Rs. 20/-.	PD/6

3.3 **PROSECUTION WITNESSES** - All the Prosecution Witnesses were attended in the enquiry and they were examined by the Presenting Officer and then Cross - Examined by the Charged Official.

ATTESTED

04-11-07

सहायक वाणिज्य प्रबंधक
Asstt. Commercial Manager
०० सी. रेल्वे. रंगिया जं.
N.F. Railway/Rangiya Jn.

031873



67

129
15N-9A
26

No.	Name	Evidence As	Deposition Date	Pages
2	T. Mongba	PW - 1	29/08/2005	3
3	L. C. Bayan	PW - 2	27/10/2005	2
3	R. Singh	PW - 3	06/10/2005	2
4	A. K. Debnath	CW	27/10/2005	1

केन्द्रीय प्रशासनिक अधिकरण
for Administrative Tribunal

18 NOV 2008

गुवाहाटी न्यायापीठ
Guwahati Bench

3.4 **DEFENCE DOCUMENTS** - The Charged Official was asked for Documents he wants to produce but demanded nothing.

3.5 **DEFENCE WITNESS** - NIL.

3.6 **REGULAR HEARING** - The Regular Hearing was held on 29/08/2005, 06/10/2005, 27/10/2005 and 28/10/2005. The Regular Hearing of the above case was completed on 28/10/2005.

3.7 **GENERAL EXAMINATION OF THE CHARGED OFFICIAL** - On 28/10/2005, before the close of the Regular Hearing, the Enquiry Officer put mandatory Questions to the Charged Official to clarify his position in general. Reply to the mandatory Questions by the Charged Official was recorded.

3.8 **TIME FRAME** - The last Regular Hearing was held on 28/10/2005 and the Presenting Officer's Prosecution Brief was submitted on 08/11/2005 and the Defence Brief was submitted on 08/11/2005.

4.0 **GROUND TAKEN BY THE PRESENTING OFFICER IN HIS PROSECUTION BRIEF**

4.1 The Presenting Officer in his Prosecution Brief had commented Article wise as below-

4.2 The case is a Decoy case and all the Witnesses produced during the course of enquiry, examined and cross examined by the Presenting Officer and the Charged Official.

4.3 **ARTICLE - I** PW - 1 (Decoy) Shri T. Mongba vide Q* No. 2 answered that the Relied Upon Document marked as PD - 1 bears his signature and the content is correct and vide Q* No. 7, he clearly stated that the on duty Booking Clerk demanded Rs. 525/- (Rupees Five Hundred and Twenty Five) for the Ticket and the Reservation.

4.4 PW - 2 (Independent Witness) Shri L. C. Bayan, Head Constable/Railway Protection Force/Northeast Frontier Railway vide Q* No. 6 stated that he was about 10 feet away from the Booking Counter and he boldly stated

ATTESTED

6/11/08

सहायक वाणिज्य प्रबन्धक
Asst. Commercial Officer
रेलवे, गुवाहाटी
N.F. Railway, Guwahati

031872



68

15N-92
P-7.

had heard the conversation of both the Decoy and the Booking Clerk in reply to Q* No. 7 and vide Q* No. 11, Shri Bayan also stated that the Decoy paid the money to the Booking Clerk as asked by the Booking Clerk in raised voice.

4.5 PW - 3, the Station Superintendent/Tangla/Northeast Frontier Railway clearly stated that the Vigilance Team counted the cash and after counting they showed him 08 (Eight) numbers of Govt. Currency Notes valued worth Rs. 525/- (Rupees Five Hundred and Twenty Five). The Govt. Currency Notes numbers were exactly tallied with the numbers recorded in the Pre - Check - Memorandum (PD - 1) where he signed. They also after counting the cash showed him the excess amount of Rs. 79/- (Rupees Seventy Nine).

4.6 The Court Witness Shri A. K. Debnath, Senior Vigilance Inspector (Traffic)/Maligaon/Head Quarter/Northeast Frontier Railway deposed as Court Witness, stated that both PD - 1 & 2 bears signature and content of both the Memorandum are correct.

4.7 **ARTICLE - II** Cash Particulars marked as PD - 3 which was prepared by the Charged Official Shri Laxmi Kanta Sharma by his own handwriting clearly proved that he (CO) possessed Rs. 79/- (Rupees Seventy Nine) excess in his Govt. cash. The same was also admitted by the Station Superintendent/Tangla/Northeast Frontier Railway in reply to Q* No. 1.

5.0 GROUND'S TAKEN BY THE CHARGED OFFICIAL IN HIS DEFENCE BRIEF

5.1 In the Defence Brief, the Charged Official mentioned that

5.2 a.) "The Decoy Shri Mongba was asked to pay Rs. 505/- (Rupees Five Hundred and Five) for the ticket including Reservation but he paid Rs. 525/- (Rupees Five Hundred and Twenty Five) instead of Rs. 505/- (Rupees Five Hundred and Five).

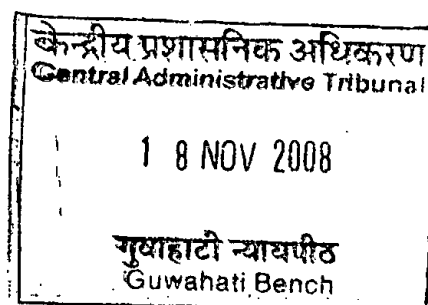
b.) The Decoy handed over a bundle of Govt. Currency Notes to him through the Counter Window and took the Ticket from the stand.

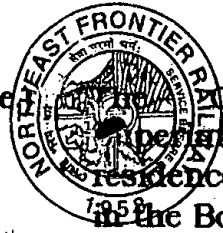
c.) The Charged Official on counting the Govt. Currency Notes found Rs. 20/- (Rupees Twenty) excess and he called the Decoy but he hurriedly left the Booking Counter.

d.) The Charged Official tried to find out the Decoy for refunding the excess money but could not locate him.

AT - STED
11-11-08

सहायक वाणिज्य प्रबंधक
Asst. Com. Merchai Maligaon
प. सी. रे. के. र. निवासी
N. F. R. Maligaon





69
18A
13N-92
P.8.

The Charged Official immediately informed the Station Superintendent/Tangla/Northeast Frontier Railway who was in his residence the matter prior to Vigilance Team arrived and confronted him at the Booking Office.

- 5.3. The Charged Official also mentioned in his Brief that: -
- 5.4. PW - 1 (Decoy) stated during deposition vide his answer to Q* No. 4 put by Defence that he did not know the fare from Tangla to Delhi but the Court Witness in his deposition stated in his answer to Q* No. 2 that the Decoy informed him of paying Rs. 20/- (Rupees Twenty) excess to the Booking Clerk on demand. The Decoy further confirmed that vide his answer to Q* No. 8 that he had no idea of the fare from Tangla to Delhi.
- 5.5. If the Decoy had no knowledge of the fare from Tangla to Delhi then how he could inform the Vigilance Team that an amount of Rs. 20/- (Rupees Twenty) was paid in excess to the Railway dues. This payment of excess demanded and accepted by the Charged Official therefore, suffers from the test of reliability and acceptability. The Charged Official stated that he had informed the Station Superintendent/Tangla/Northeast Frontier Railway (PW - 3) of payment of Rs. 20/- (Rupees Twenty) excess by a Passenger immediately after the deal and before the Vigilance Team confronted him. This Statement of the Charged Official has been confirmed by PW - 3 during his examination when the Defence Cross examined him.
- 5.6. The Decoy in course of his examination stated that the Independent Witness located himself about 50 feet away from the Counter, answer to Q* No. 12. But, the Independent Witness stated in his answer to Q* No. 6 that he located himself about 10 feet off from the Decoy. Again in his answer to Q* No. 9 stated that he located himself within 15 feet from the Decoy.
- 5.7. The Independent Witness accepted that he was short of hearing and heard the conversation of the Charged Official and the Decoy since they were talking in raised voice. When the Reservation and or Tickets are sold to the users, there would not be any occasion to raise voice either by Booking Clerk or by the Passenger.
- 5.8. The Independent Witness further stated in his answer to Q* No. 11 that the Booking Clerk refused to issue the Ticket immediately and the Booking Clerk asked the money in a raised voice.
- 5.9. It is therefore, established that the Independent Witness was suffering from short of hearing.

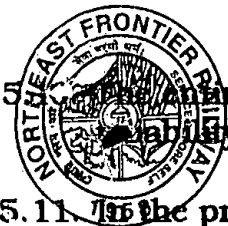
ATTESTED

सहायक वाणिज्य प्रमुख
Asstt Com merel
२० सी. रेल्वे. इंडिया ल.
N. E. Railway Kargiya Jn.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

18 NOV 2008

गुवाहाटी न्यायपीठ
Guwahati Bench.



70

15N-91
P-9
492

are evidences of the Independent Witness suffered from the test of reliability and acceptability and reasonability.

5.11 In the proceedings, it has been established that: -

- a. The Decoy to frame the Charged Official paid Rs. 20/- (Rupees Twenty) excess over and above the Railway dues.
- b. The Independent Witness being a Person of short hearing his evidences are not reliable and also he could not be really an Independent Witness as both the Decoy and the Independent Witness belong to Railway Protection Force unit having close working understanding.
- c. The Decoy in his Statement never stated that he had any occasion to raise his voice while booking the Ticket and also the Charged Official never had raised his voice.

5.12 The prosecution failed to establish this Article of Charge against the Charged Official Shri Laxmi Kanta Sharma.

5.13 **ARTICLE - II** The Charged Official in his Defence Brief admitted the fact that there is no dispute that an amount of Rs. 79/- (Rupees Seventy Nine) was found excess in the Counter.

5.14 The Charged Official defended himself while explaining the cause of such excess of cash by stating that the Passengers were required to the balance in small Coins for which they adopted a practice of taking small worth Govt. Currency Note/Coins from the nearby Pan Shop located in the Railway Station since imprest cash provided to the Booking Cell was Rs. 5/- (Rupees Five) only. These aspects have had the approval of the Station Superintendent/Tangla/Northeast Frontier Railway. The Station Superintendent/Tangla/Northeast Frontier Railway also confirmed the Statement of the Charged Official and accepted that such arrangement was within his knowledge during his deposition.

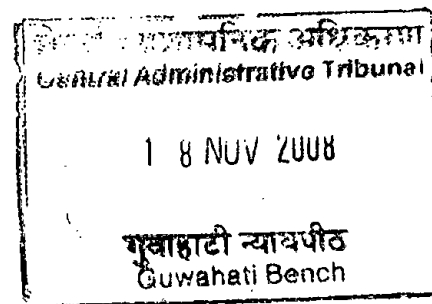
6.0 DISCUSSION, ASSESSMENT OF EVIDENCES AND REASON FOR FINDINGS IN RESPECT OF ARTICLE OF CHARGES

6.1 **ARTICLE - I** The Charge stated that the Charged Official demanded and accepted a sum of Rs. 20/- (Rupees Twenty) excess from a Passenger who was the Decoy, for granting Reservation by 4055 Dn. of 23/11/2004.

6.2 The Presenting Officer in his Prosecution Brief had commented the Article wise as below: -

ATTESTED

सहायक वाणिज्य प्रबंधक
Asstt. Commercial Manager
20 सी. रेवे. र सेवा सं.
N F. Railway Rangpur Jn.





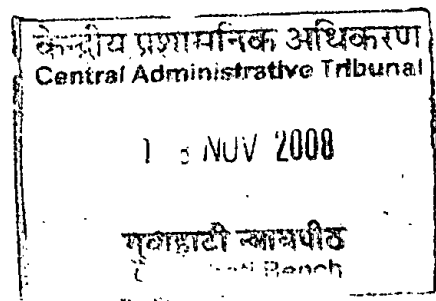
71
15N-90
P.10
C3

It was a Decoy case and all the Witnesses produced during the course of enquiry and were examined and cross examined by the Presenting Officer and the Charged Official.

- 6.4 PW - 1 (Decoy) Shri T. Mongba vide Q* No. 2 answered that the Relied Upon Document marked as PD - 1 bears his signature and the content is correct and vide Q* No. 7, he clearly stated that the on duty Booking Clerk demanded Rs. 525/- (Rupees Five Hundred and Twenty Five) for the Ticket and the Reservation.
- 6.5 PW - 2 (Independent Witness) Shri L. C. Bayan, Head Constable/Railway Protection Force/Northeast Frontier Railway vide Q* No. 6 stated that he was about 10 feet away from the Booking Counter and he boldly stated that he heard the conversation of both the Decoy and the Booking Clerk in reply to Q* No. 7 and vide Q* No. 11 Shri Bayan also stated that the Decoy paid the money to the Booking Clerk as asked by the Booking Clerk in raised voice.
- 6.6 PW - 3, the Station Superintendent/Tangla/Northeast Frontier Railway clearly stated that the Vigilance Team counted the cash and after counting they showed him 08 (Eight) numbers of Govt. Currency Notes valued worth Rs. 525/- (Rupees Five Hundred and Twenty Five). The Govt. Currency Notes numbers were exactly tallied with the numbers recorded in the Pre - Check - Memorandum (PD - 1) where he signed. They also after counting the cash showed him the excess amount of Rs. 79/- (Rupees Seventy Nine).
- 6.7 The Charged Official in his Defence Brief stated Article wise as: -
- 6.8 Shri T. Mongba, PW - 1 (Decoy) stated during deposition vide his answer to Q* No. 4 put by the Defence that he did not know the fare from Tangla to Delhi but the Court Witness in his deposition stated in his answer to Q* No. 2 that the Decoy informed him of paying Rs. 20/- (Rupees Twenty) excess to the Booking Clerk on demand. The Decoy further confirmed that vide his answer to Q* No. 8 that he had no idea of the fare from Tangla to Delhi.
- 6.9 If the Decoy had no knowledge of the fare from Tangla to Delhi then how he could inform the Vigilance Team that an amount of Rs. 20/- (Rupees Twenty) was paid in excess to the Railway dues. This payment of excess demanded and accepted by the Charged Official therefore, suffers from the test of reliability and acceptability. The Charged Official stated that he had informed the Station Superintendent/Tangla/Northeast Frontier Railway (PW - 3) of payment of Rs. 20/- (Rupees Twenty) excess by a Passenger immediately after the deal and before the Vigilance Team confronted him. This Statement of the Charged Official has been

ATT-TESTED
11-11

सहायक वाणिज्य प्रबंधक
Asstt Commercial Officer
से. सी. रेलवे, रंगीत बाजार
N F. Railway Rangit Bazar





72
15N-89
P.11.
184

examined by PW - 3 during his examination when the Defence cross-examined him.

6.10 **ARTICLE - II** The Cash Particulars marked as PD - 3 which is prepared by the Charged Official Shri Laxmi Kanta Sharma by his own handwriting clearly proved that the he (CO) possessed Rs. 79/- (Rupees Seventy Nine) excess in his Govt. cash. The same also admitted by the Station Superintendent/Tangla/Northeast Frontier Railway in reply to Q* No. 1.

6.11 The Charged Official defended himself while explaining the cause of such excess of cash by stating that the Passengers were required to the balance in small Coins for which they adopted a practice of taking small worth Govt. Currency Note/Coins from the nearby Pan Shop located in the Railway Station since imprest cash provided to the Booking Cell was Rs. 5/- (Rupees Five) only. These aspects have had the approval of the Station Superintendent/Tangla/Northeast Frontier Railway. The Station Superintendent/Tangla/Northeast Frontier Railway also confirmed the Statement of the Charged Official and accepted that such arrangement was within his knowledge during his deposition.

6.12 **ANALYSIS OF CHARGE -**

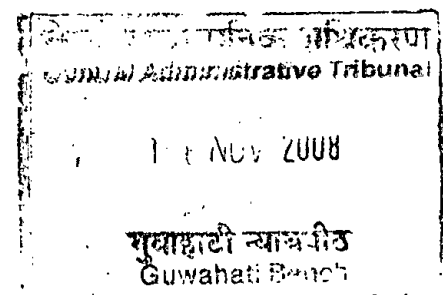
6.13 **ARTICLE - I** From the above discussion, it is very much clear that an amount of Rs. 525/- (Rupees Five Hundred and Twenty Five) was recovered from the custody of the Charged Official instead of due fare of Rs. 505/- (Rupees Five Hundred and Five) and the numbers of all the 08 (Eight) numbers of Govt. Currency Notes were exactly tallied with the numbers mentioned in the Pre - Check - Memorandum which was prepared well in advance of the Check and tallying of Govt. Currency Note numbers were done in presence of the Station Superintendent/Tangla/Northeast Frontier Railway (PW - 3). Therefore, the Charged Official's plea is not acceptable on the ground as the Charged Official should collect the fare first and then will count after satisfying himself about the realization of correct fare will hand over the Ticket along with the return money, if any. Therefore, question of searching the Passenger coming out of the Counter and went to the residence of the Station Superintendent/Tangla/Northeast Frontier Railway are all after thought.

6.14 The Post - Check - Memorandum (PD - 2) was prepared at the spot and after the check and the Charged Official signed the same and nowhere the same was mentioned nor the Charged Official signed with any remarks.

ATTES. ED.

07-11-08

सहायक वाणिज्य प्रबन्धक
Asst. Com. mercl. M. 1002
०० मी. रेलवे, गुवाहाटी
N.F. Railway Guwahati Jn.





73

SN-88
P.12

6.15 The Independent Witness who is supposed to be a vital Witness stated that he was stationed him about 15 feet away from the Counter and it is not possible/difficult to heard the conversation of the Booking Clerk who was inside the Counter.

6.16 From the above, it is clear that the demand of Rs. 20/- (Rupees Twenty) excess by the Charged Official is not established but, the acceptance of Rs. 20/- (Rupees Twenty) excess by the Charged Official is established as the fare and the excess money amounting to Rs. 525/- (Rupees Five Hundred and Twenty Five) was recovered from the custody of the Charged Official i.e. from the Govt. cash possessed by the Charged Official.

6.17 Therefore, I consider that the Article of Charge - I framed against the Charged Official is partially established.

6.18 **ARTICLE - II** The Charged Official's plea regarding Article - II of the Charge that, "Practice of taking small worth Govt. Currency Notes/Coins from the nearby Pan Shop" is neither acceptable nor encourageable. There is no doubt that the possibilities of collecting of Coins before commencement of duty by the Booking Clerk cannot be overruled.

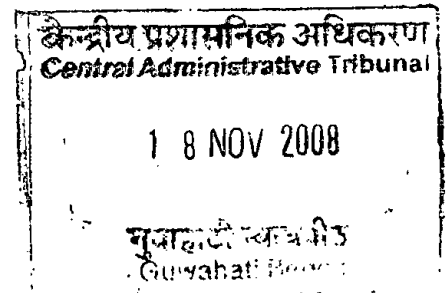
6.19 But, in the instant case, the amount of Rs. 79/- (Rupees Seventy Nine) collected from the Pan Shop as claimed by the Charged Official was not mentioned in the Private Cash Register, DTC even the matter is not mentioned in the cash particulars prepared by the Charged Official with his own handwriting and finally, not even mentioned in the Post - Check Memorandum. So, this plea of the Charged Official is not at all acceptable. Moreover, the Charged Official failed to inform the exact amount he brought on that particular day. The Charged Official clarified as "Some Coins" during General - Examination of the Charged Official by the Enquiry Officer vide P - 2, Line - 16, which clearly indicate that the plea of the Charged Official is after thought.

6.20 Therefore, I consider that the Article of Charge - II framed against the Charged Official is established.

ATTESTED

Art 11-A

सहायक बाजिज प्रमुख
Asst. Comptroller Manager
२० सी. रेलवे, रंगिया जं.
N.E. Railway, Rangiya Jn.





FINDINGS OF THE ARTICLE OF CHARGES

7.1 From the above discussion, documentary and oral evidence available during the course of the enquiry, it is concluded that Rs. 20/- (Rupees Twenty) (the Decoy money) was recovered from the custody of the Charged Official (in the form of Govt. cash) is proved but the demand of the Charged Official about the money from the Decoy is not proved and the Charged Official possessed of Rs. 79/- (Rupees Seventy Nine) excess in his Govt. cash is proved.

7.2 Hence, the Article of Charges framed against the Charged Official Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway vide Memorandum of Charge Sheet No. C/421/RNY/VIG/STAFF - 4, dated 17/06/2005 issued by the Divisional Commercial Manager/Rangiya/Northeast Frontier Railway are as under:

ARTICLE - I : PARTIALLY PROVED

ARTICLE - II : PROVED

(SISIR SEN GUPTA)

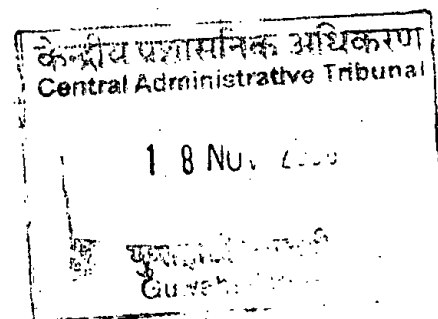
Enquiry Officer/HQ/Mallgaon

Dated: - 30/11/2005

ATTESTED

11-11-05

सहायक वाणिज्य प्रमुख
Asstt Commercial
१० सी० रोडवे, रंगिया जं.
N. E. Railway/Rangiya Jn.



75

P. 32

ANNEXURE - J

15N-68

187

Brief submitted by Defence in the DAR proceeding drawn against Shri K. Sharma, Sr. CC/TNL in reference to the SF-5 No. C/421/RNY/VIG/Staff-4 dated 17.6.05.

.....

The P.O was asked to submit his brief if any within 10 days from 28.10.05 to the I.O. with a copy to the C.O.

The Defence was asked to submit the brief within 10 days from the receipt of the P.O's brief.

The P.O's brief was due to reach the C.O. within 6.11.05. But the defence since has not received the brief from P.O., the brief of the defence is hereby submitted to I.O.

(Ref: Daily Order Sheet dt. 28.10.05).

The Article of Charges framed against the Charged Employee were as under :-

Article-I = On 14.11.04 the C.O. demanded and accepted Rs. 20.00 excess from the Decoy over and above the RLY dues for allotting one berth by 4055 Dn Ex. TNL to DLI to be availed on 23.11.04. (The Rly. dues were Fare Rs. 485.00 + Reservation Charges Rs. 20.00 = total Rs. 505 but he accepted Rs. 525.00).

Article-II = While the cash in the Booking Counter was tallied with the sale proceeds it was detected that a sum of Rs. 79.00 excess (Govt. cash as per sale proceeds = Rs. 8878.00 but cash found Rs. 8957.000 - hence excess money located was Rs. 79.00).

The C.O. denied both the Article of Charges framed against him.

The C.O. stated in his clarification being asked by the Hon'ble I.O. as under:-

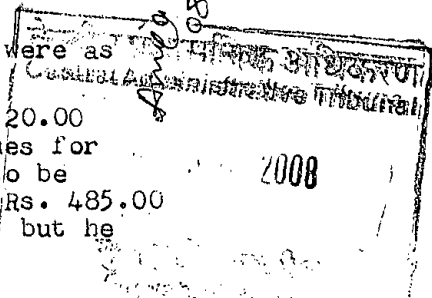
- Article-I - (i) The Decoy was asked to pay Rs. 505.00 for the ticket including reservation but he paid Rs. 525.00 instead of Rs. 505.00,
- (ii) The Decoy handed over a bundle of G.C. Notes to him through Counter Window and took the ticket from the stand,
- (iii) The C.O. on counting the G.C. Notes found Rs. 20.00 excess and the called the Decoy but he hurriedly left the Booking Counter,
- (iv) The C.O. tried to find out the Decoy for refunding the excess money but could not locate him,
- (v) The C.O. immediately informed the SS/TNL who was in his residence the matter prior to Vigilance Team arrived and confronted him in the Booking Office.

The prosecution assembled three PWS for establishing the charge against the C.O.

P.W.-1 : (the Decoy) stated during deposition vide his answer to Q. No. 4 put by defence that he did not know the fare from TNL to DLI but the court witness in his deposition stated in his answer to Q. No. 2 that the Decoy informed him of paying Rs. 20.00 excess to the Booking Clerk on demand. The Decoy further confirmed that vide his answer to Q.No. 8 that he had no idea of the fare from TNL - DLI. If the Decoy had no knowledge of the fare from TNL to DLI, then how he could inform the Vigilance Team that an amount of Rs. 20.00 was paid in excess to the Rly. dues. This payment of excess demanded and accepted by the C.O. therefore suffers from the test of reliability and acceptability. The C.O. stated that he had informed the SS/TNL - PW-3 of payment of Rs. 20.00 excess by a passenger immediately after the deal and before the V.T. confronted him.

(Contd .. 2)

also to
K. Sharma
17/11/05
Advocate



R.
B. S. S.
8/11/05

(confronted him)-

This statement of the C.O. has been confirmed by PW-3 during his examination when the defence cross examined him.

The Decoy in course of his examination stated that the independent witness located himself about 50 ft. away from the counter- Answer to Q.No. 12. But the independent witness stated in his answer to Q.No.6 that he located himself about 10 ft. off from the Decoy. Again in his answer to Q.No. 9 stated that he located himself within 15 ft. from the Decoy.

The independent witness accepted that he was short of hearing and heard the conversation of the C.O. and Decoy since they were talking in raised voice. When the reservations and/or tickets are sold to the users there would not be any occasion to raise voice either by the Booking Clerk or by the passenger.

The independent witness further stated in his answer to Q.No. 11, that the Booking Clerk refused to issue ticket immediately and the Booking Clerk asked the money in a raised voice.

It is therefore established that the independent witness was suffering from 'short of hearing'.

The entire evidence of the independent witness suffered from the test of reliability and acceptability and reasonability.

In the proceedings it has been established that:-

- (i) the Decoy to frame the C.O. paid Rs. 20.00 excess over and above the Rly dues,
- (ii) the independent witness being a person with short of hearing - his evidences are not reliable and also he could not be really an independent witness as:-
Both the Decoy and independent witness belong to RPF Unit having close working understanding,
- (iii) the Decoy in his statement never stated that he had any occasion to raise his voice while booking the ticket and also the C.O. never had raised his voice.

The prosecution failed to establish this Article of Charge against the C.O.

Article: II= There is no dispute that an amount of Rs. 79.00 was found excess in the counter.

1. Detention

The C.O. defended himself while explaining the cause of such excess/detention of cash by stating that the passengers were required to pay the balance in small coins for which they adopted a practice of taking small worth G.C. Notes/Coins from the nearby Pan Shop located in the Rly Station since imprest cash provided to the booking cell was Rs. 5.00 only. This aspects have had the approval of the SS/TNL (incharge of the Station). The SS/TNL also confirmed the statement of the C.O. and accepted that such arrangement was within his knowledge during his deposition.

So far the C.O. is concerned, his action since was within the knowledge of the Station Authority and he was allowed to function in such manner, for greater interest of the Rly. and the prosecution failed to establish any motive behind such action for personal gain - this Article of Charge has therefore, not been established against the C.O.

In the P.O's book it may please be seen that the evidences were not submitted please, and as such there was no material to rely

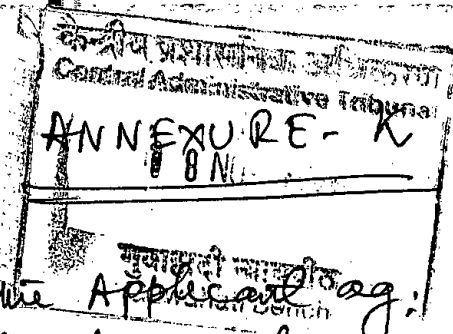
A. K. Ganguly
(A. K. Ganguly)

Defence Counsel.

107/11/08
Advocate

76 P.33-
160
18 NOV 2008
Central Administrative Tribunal

(5) 77



Article 2

Extract: Appeal of the Applicant ag. order of removal

That Sir, I humbly further beg to state that coins and currency notes of small denomination are collected from the adjacent Pan-shop only to serve the passengers at the quickest possible time. The daily window sale of Tickets in Tangla is about 500 tickets. The fare amounts to various stations require coins or small currencies. The fares are like Rs. 7/-, 8/-, 9/-, 14/-, 16/-, 23/-, 28/-, etc. It is important to note that only Rs. 5/- is premissible to keep as imprest cash in the counter which is not sufficient. It is for the smooth selling of tickets I got the coins recovered that day from the panshop. As the coins are taken for a very short period of time and are returned to the shop keeper that is why it was not mentioned in the private cash Register. As everyday morning around at 6 am all the cash amount is deposited with the station supdt. hence Govt. cash also lacks coins often. Moreover SS/TNI, also categorically accepted the fact that such practice has become a tradition for public interest and such arrangement was within his full knowledge. Hence there is no nexus between the coins/currency of small denomination and the 'personal gain' unlike the Disciplinary Authority has stated in the order of removal.

That Sir, in para 6.18 of the Enquiry Report of E.O. himself admitted the possibility of collecting coins before commencement of duty by me.

A copy of the documents showing sale of tickets per day and stations Ex-Tangla are filed here to and marked as Annexure-

8. That Sir, in the removal order the disciplinary Authority has mentioned a 2nd DAR case under minor memorandum No. c/421/RIY/VIC/Staff-19 Dated 04.10.2005 upon which I submitted my defence of 2010-2005. Here the allegation/charge was that I booked on sleeper class berth by 5621 Dn of 24-09-03 EX-TNI. to SPJ without filling up the pass No. for personal gain.

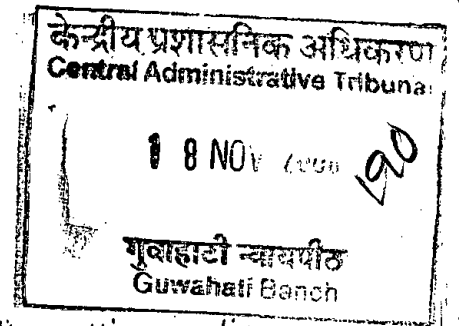
One copy of my chargesheet and my defence statement is filed hereto and marked as Annexure

That sir, the fact is that there are only two berths allotted for Tangla quota by 5621 Dn. on 11-09-03 two brothers i.e. Sri S.N. Sahani m/30 and Sri Sanjoy Sahani m/24 came for reservation from TNI to SPJ. As I issued a reservation ticket No. 856385 to the younger brother i.e. Mr. Sanjoy, the elder brother i.e. Shri S.N. Sahani who is a licence porter (No. 5) of Tangla station requested me to mark or block the other remaining berth for him as he has applied for a free 2nd pass to the SS/TNI.

Noted
10-11-08
Advocate

(b)

78



the number of which is to be entered in the reservation register. After getting confirmation from the SS/TNI, I marked the berth just to help the L/porter, because other passengers may come to book the same. There is no case of ulterior motive or wrongful or unlawful gain in this case as I acted on good faith just to advance the coordination among the staffs of the station. Subsequently on 22.09.03 SS/TNI issued the 2nd pass No.039593 to the L/porter and the pass No. was entered in the register by me. But on 19.09.03 the vigilance team found the pass No. blank so charged me under a minor memorandum.

A copy of the reservation register and 2nd pass is filed hereto and marked as Annexure.... &.... respectively.

That in view of the above sir, it is respectfully submitted that the entire proceeding is liable to be tested on the four corners of :-

(i) Whether, the c.o. i.e. me is guilty of the alleged charges framed against me by issuing major memorandum of charge dtd. 17.06.05.

(ii) Whether, the c.o. i.e. me acted in good faith/bonafide for getting better service to the passengers of Railway.

(iii) Whether, the c.o. i.e. me acted/ functioned which shall go detrimental to the interest of the Railway?

(iv) Whether I was reverted to the post of Jr. CC as the DCM said?

(v) Whether my pay was fixed at Rs. 3200/- for two years?

(vi) Whether my right of natural justice has been violated by the disciplinary authority.

(vii) Whether, the c.o. i.e. me violated the rules of prudential?

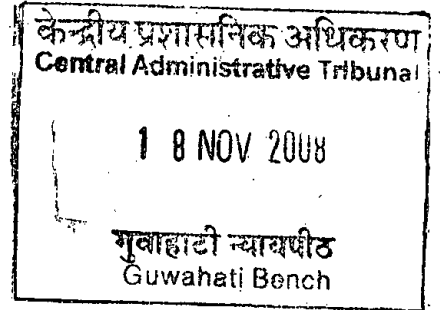
(viii) Whether, the c.o. i.e. me is liable to be mounted with major penalty of removal from service as the basis of it is a proved wrong.

(ix) Whether, the punishment imposed upon c.o. i.e. me is constitutional as it contravenes/overrides the constitutional safeguard?

(x) Whether, the F.O.'s finding against the c.o. i.e. me can be said to be a finding beyond all reasonable doubts?

Attest
15/11/08

79



10. Moreover, I am on the verge of retirement. Only five years of service is left to my credit and at this stage if my service is snatched away in this way, it will cause great hardship to and my dependants i.e. family members will suffer terribly.

In the premises aforesaid, it is respectfully prayed that your Honour would graciously be pleased to appreciate this appeal and pass necessary order/orders exonerating me from the alleged charges, so levelled against me, by the honourable DCM/RNY vide charge memo No.C/421/RNY/VIG/STAFF-4 dtd. 17.06.05. And/or, may further be pleased to pass such other order/or, orders as may deem fit and proper to meet the ends of justice.

And, for which act of your grace I shall remain ever grateful to you.

With the kindest regards.

Dated :-

Rangiya the..... April, 2007

Yours faithfully;

Laxmi kanta Sharma
(Laxmi kanta Sharma)

Sr. CC/Tangla

N.E. RLY

attested
me
10/11/08
Advocate

केंद्रीय प्रशासनिक आयोग
Central Administrative Tribunal

8 NOV 2000

मुवाहटी न्यायपीठ
Mawahati Bench

I give this statement at my freewill just to focus the circumstances arose during the vigilance check conducted on 11.04 at the TNL Booking Office.

At about 12.30 hours, the on duty Jr. CC Shri L.K. Sharma came to my Rly. Quarters and told me that a person who booked his reservation by 4055 Dn to DLI against TNL Quota gave him a bundle of G.C. Notes where he found Rs. 525.00 and the Rly. charges Rs. 505.00 thus an excess of Rs. 20.00. He also informed me that the particular person could not be located by him on the platform so that he could refund the money most probably paid by him by mistake. At this time I was about to having my lunch. I told him to go back to the station and on my return at the station further necessary action would be taken. I also pointed out to him that this was not a problem since the excess amount could be deposited with the Rly. as Rly. cash against the requisition slip as a reference. As and when the claim will be submitted such matter could be settled.

After some time I was called by the Vigilance Team at the station and got me signed the pre-check Memorandum and then the G.C. Notes available in the counter was examined and an amount worth of Rs. 525.00 G.C. Notes' number tallied with the pre-check Memorandum.

All the Govt. cash was counted and an amount of Rs. 79.00 was found excess. A post check Memorandum was drawn and I was asked to sign the same. In my presence Shri L.K. Sharma wanted to explain the position to the Vigilance Team specially in respect of his demanding from the person a sum of Rs. 20.00 excess but the Vigilance Team told him that he would be given the opportunity to explain the position during his examination in the Vigilance Office where he would be called prior to framing charges. Shri Sharma also wanted to explain the excess found in the Govt. cash but the same stand was taken by the Vigilance Team.

Since the matter concerned Shri L.K. Sharma and he could explain his conduct better and I was not asked by the Vigilance Team to forward any informations/ comment I refrained from objective participation excepting signing certain documents.

Rameshwar Singh

SS / TNL

10-7-05

Senior Superintendent
PANGLA RLY, STATION
M. P. A.

Attest
M. P. A.
10/11/08
Advocate