

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

1. Original Application No. 66/07
2. Misc Petition No. /
3. Contempt Petition No. /
4. Review Application No. /

Applicant(s) Ambika Prasad Saikia vs Union of India & Ors

Advocate for the Applicant(s) D.K. Saikia, P.C. Boro
Ms. B. Deka, H.K. Das

Advocate for the Respondent(s) Railway Counsel, Mrs. Bhawati Das

Notes of the Registry	Date	Order of the Tribunal
This application is in form. is filed/C.R. for Rs. 50/- deposited vide I.P.C./D.D. No. 346651560 Dated 8.3.07	15.3.07	Issue involved in this case is that the applicant who was working as Chief Personal Inspector he was responsible in conducting cases but in a widow's case he was not taken due diligence and thereby caused delay and blame has been attributed against him and punishment was imposed upon him by withholding 3 sets of privilege pass and PTO for the year 2005. The applicant preferred an appeal and the appellate authority reduced the punishment to withholding of 2 sets of privilege passes for the year 2005. Aggrieved by certain action of the respondents the applicant has filed this O.A. with a prayer to set aside and quash the impugned orders dated 10.5.05 & 19.07.05 and also for a direction to extend the consequential benefit after setting aside those orders.

Notice and order

Sent to D/Section
for issuing to

R- 1, 3 and 4 by
regd. A/10 post and
another R-2 sent to
received by hand.

①/No-34470346

Class
26/3/07 DT= 29/3/07

Heard Mr D.K.Sarma, learned
counsel for the applicant and Dr
J.L.Sarkar, learned Railway standing
counsel for the respondents. When the
matter came up for consideration the
counsel for the parties submit that notice
may be issued to the respondents at this
stage.

Issue notice to the respondents
returnable by four weeks.

Post on 26.4.07 for admission.

Member(A)

Vice-Chairman

pg

and Mrs. B. Devi

Received for Reg No-2
Date 26.4.07 Dr. J.L.Sarkar learned counsel for the
Respondents prays for some more time to file
written statement. Four weeks time is granted to
file written statement. Post the matter on
29.5.07.

Member(A)

Member(J)

lm

① Service awaited
from R.No-1,3 & 4.

29.5.07.

Counsel for the respondents wanted
time to file written statement. Let it be
done. Post the matter on 20.6.07.

Vice-Chairman

Notice duly served

lm

on R-2,3.

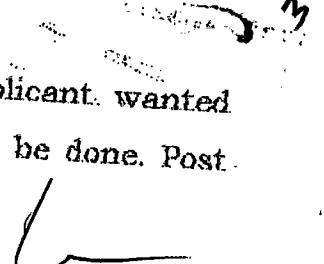
28.5.07

No WVS filed so far.
No WVS has been filed.

29.6.07

20.6.07.

Counsel for the applicant wanted time to file rejoinder. Let it be done. Post the matter on 6.7.07.


Vice-Chairman

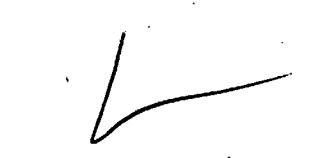
22.6.07

WTS filed by
the Respondents.
page NO-1 to 4 copy
not yet served.

Ans.

6.7.2007

Post the case on 17.7.2007 granting further time to the Applicant to file rejoinder.


Vice-Chairman

Rejoinder not filed.

22
15.7.07.

/bb/

Rejoinder not filed.

22
16.7.07.

17.7.2007

Rejoinder not filed.

Post on 9.8.07 for order.


Vice-Chairman

pg

21.9.07 The counsel for the applicant submitted that rejoinder is being filed to day. Let it be placed on record. Since the pleadings are complete counsel appearing for the parties pray that the case may listed for hearing.

Post on 9.10.07 for hearing.

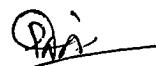

Vice-Chairman

pg

9

09.10.2007 Mr H.K.Das, learned Counsel for the Applicant and Mrs Bharati Devi, learned Counsel for the Railways are present. In this case written statement has already been filed and Counsel for the parties do agree to set the matter for final hearing on 29.11.2007.

10.10.07
Rejoinder submitted
by the Applicant
Copy served.



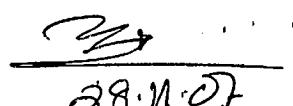
Call this matter on 29.11.2007 for hearing. Rejoinder, if any, may be filed in the meantime.


(Khusiram)
Member

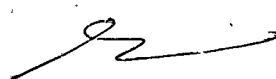

(M. Mohanty)
Vice-Chairman

The case is ready
for hearing.

nkm


29.11.07

This is a Division Bench matter. The case is adjourned and listed on 10.12.2007 as prayed by Mr/H.K.Das, learned counsel for the Applicant.

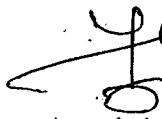

(Khusiram)
Member (A)

/bb/

10.12.2007

On the request made on behalf of learned counsel for the Respondents call this matter on 11.12.2007.


(Gautam Ray)
Member (A)


(M.R. Mohanty)
Vice-Chairman

/bb/

11.12.2007 Heard Mr H.K. Das, learned Counsel for the Applicant and Mrs Bharati Devi, learned Counsel for the Respondents/Railways and perused the materials on record.

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



(G. Ray)
Member (A)

nkm



(M. R. Mohanty)
Vice-Chairman

Received copy
Hridip Mr. Das
8. 1. 08

19.3.08
Ans^t issued
vide D.No. 1977 to
1981 820 28.12.07
Hb

10 2
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.66 of 2007

DATE OF DECISION: 11.12.2007

Shri Ambika Prasad Sarma

.....APPLICANT(S)

Mr D.K. Sarmah, Mr P.C. Boro,
Ms B. Devi and Mr H.K. Das.

ADVOCATE(S) FOR THE
APPLICANT(S)

- VERSUS -

Union of India & Ors.

.....RESPONDENT(S)

Mrs B. Devi, Railway Standing Counsel

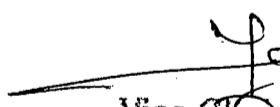
ADVOCATE(S) FOR THE
RESPONDENT(S)

CORAM:

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

The Hon'ble Shri G. Ray, Administrative Member

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


Vice-Chairman/Member

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.66 of 2007

Date of Order: This the 11th day of December 2007

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

The Hon'ble Shri G. Ray, Administrative Member

Shri Ambika Prasad Sarma,
S/o Late Madhab Chandra Sarma,
At present working as Chief Personnel Inspector,
Guwahati, under A.P.O. Guwahati,
N.F. Railway.

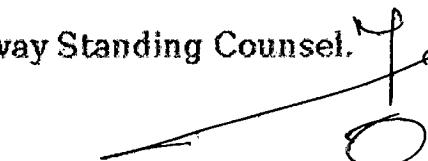
.....Applicant

By Advocates Mr D.K. Sarmah, Mr P.C. Boro,
Ms B. Devi and Mr H.K. Das.

- versus -

1. The Union of India, represented by the General Manager, N.F. Railway, Maligaon, Guwahati-11.
2. The Chief Personnel Officer, N.F. Railway, Maligaon, Guwahati.
3. The Additional Divisional Railway Manager, N.F. Railway, Lumding.
4. The Divisional Personnel Officer, N.F. Railway, Lumding Division, Lumding.Respondents

By Advocate Mrs B. Devi, Railway Standing Counsel.



ORDER (ORAL)M.R. MOHANTY (VICE-CHAIRMAN)

Heard Mr H.K. Das, learned Counsel appearing for the Applicant and Mrs B. Devi, learned Counsel appearing for the Respondents/Railways and perused the materials placed on record.

2. Having faced punishment in a Disciplinary Proceeding, the present Applicant preferred an appeal and, as it appears from the Annexure-E Order dated 19.07.2005, the Appellate Authority has given due consideration in the matter and has reduced the punishment, confining the same in respect of the year 2005 only. The text of the said Order dated 19.07.2005 reads as under:

"I have read the charge, representation, NIP and appeal. I do find that there has been considerable delay in the dealing of the case and getting the compensation sanctioned. There has been lack of adequate interest on the part of the employee to get the case finalised quickly. However, the NIP is reduced to stoppage of 02(two) sets of privilege passes for the year 2005.

An appeal against this order lies to DRM/LMG within 45 days."

Challenging the aforesaid order dated 19.07.2005 of the Appellate Authority the Applicant preferred the present O.A. under Section 19 of the Administrative Tribunals Act, 1985 in the year 2007.

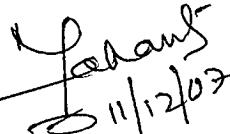
3. The Respondents have filed a written statement in the case and a Rejoinder has also been filed by the Applicant.

4. At the hearing, today, Mrs B. Devi, learned Counsel appearing for the Railways pointed out that the penalty "of not issuing passes for the year 2005" has already become infructuous in the year 2005

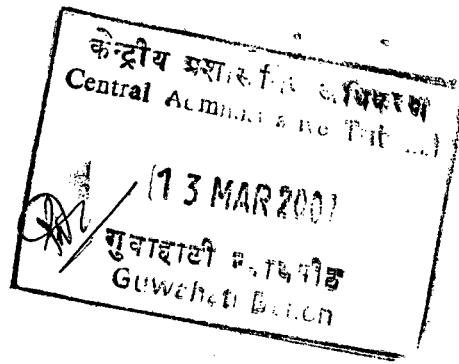
2007. She also raises the question of limitation in filing of the O.A. She has also pointed out that although alternate (and equally efficacious) remedy were available to the Applicant under the statutory rules (which was pointed out under the impugned Appellate Order), the Applicant did not avail the same and approached the Tribunal belatedly.

5. It, *prima facie*, appears that the case has become infructuous for the reason of delay and laches. Learned Counsel appearing for the Respondents/Railways also prays for declaring this case to have become infructuous with lapse of time. Learned Counsel for the Applicant also miserably failed to explain the delay and laches and as to why the Applicant did not resort to alternative remedy available to him. In the said premises, this case is disposed of having become infructuous with lapse of time.


 (G. RAY)
 ADMINISTRATIVE MEMBER


 11/12/07
 (M. R. MOHANTY)
 VICE-CHAIRMAN

nkm



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

O.A. No. 66 of 2007

BETWEEN

Ambika Prasad Sarma. Applicant.

AND

Union of India & ors. Respondents.

SYNOPSIS

The grievance projected by the present applicant in the instant OA is against the impugned order of the Disciplinary authority which was fully/partly upheld by the Appellate Authority holding the applicant to be guilty of the charges. Though the aforesaid impugned order stated to have been issued following the provisions of the rules holding the field and after holding departmental enquiries but in reality no enquiry was held and the authority concerned without following the prescribed procedure closed the proceeding violating the settled proposition of Audi-alterem partem. The applicant ventilated his grievance by exhausting departmental remedies but same yielded no result in positive. Hence this OA.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title Case No.

Q.A NO. 86 /07

BETWEEN

Sri Ambika Prasad Sarma

... Applicant

AND

Union of India & Others

... Respondents

I N D E X

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4.	Annexure B & B-1.....	
5.	Annexure C.....	
6.	Annexure D.....	
7.	Annexure E.....	

Filed By

Bordoma *Sur*

Advocate

Regd. No.

Date. 9. 3. 07

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

*Filed by:-
The Applicant
Bordoloi Devi
Advocate
ar 3.07*

(An application under Section 19 of the Central administrative Tribunal Act, 1985)

Q.A. NO. 66/07

BETWEEN

Sri Ambika Prasad Sarma, Son of Madhav Chandra Sarma, at present working as Chief Personal Inspector, Guwahati, under A.P.O., Guwahati, N.F. Railway.

...Applicant

-AND-

1. The Union of India represented by the General Manager, N.F. Railway, Maligaon, Guwahati- 11.
2. The Chief Personal Officer, N.F. Railway, Maligaon, Guwahati- 11.
3. The Additional Divisional Railway Manager, N.F. Railway, Lamding.
4. The Divisional Personal Officer, N.F. Railway, Lamding Division, Lamding.

...Respondents.

W. Sarma

PARTICULARS OF THE APPLICATION

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

This application is directed against the Order dated 26.05.05 passed by the Respondent No.4 (Disciplinary Authority) imposing minor penalty by which 3 sets of privileges passes and PTO's are withheld for the year 2005 and against the order dated 19.07.05 by which the order of Appellate Authority of reducing the stoppage of 2 sets of privilege passes has been communicated by the Assistant Personnel Officer(APO)/IC, Lumding(LMG).

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 as such he is entitled to all the rights, privileges and protections as guaranteed under the constitution of India laws framed there under.

4.2 That the applicant has been entered in Railway Service way back in the year 26.05.72 as Junior Clerk and he has completed more than 34 years of blemish free Service in different posts and by now a few years only to go for superannuation. More particularly, the applicant served as a Welfare Inspector sincerely to the utmost satisfaction to all concerned since last 20 years. During the aforesaid period of 34 years of his services, the applicant has never been communicated with a single show- cause notice nor any employee, retired employee or successors of any retired/expired employee had made any complaint/allegation against the applicant at any point of time. As such, the applicant who has been working as a Chief Personnel Inspector without any blemish since last long 34 years of his service till the date of receipt of the Memorandum of Charge sheet along with the Article of charges communicated vide Memorandum No.



EQ/27-A (DAR-Minor) dated 10.05.05. It is pertinent to mention herein that altogether 6 charge sheets have been issued against the applicant during last 8 months.

4.3 That the application begs to state that while he has been rendering his duties and responsibilities entrusted to him without any blemish/allegations and to the satisfaction of all concerned since last 34 years of his dedicated service, he shocked and surprised on receipt of the order under bearing Memo No. EQ/27-A (DAR-Minor) dated 10.05.05 along with the Article of charges from the Divisional Personnel Officer (DPO), Lumding (LMG), whereby the authority proposed to impose minor penalties upon the applicant under Rule 11 of Railway Service(Disciplinary and Appeal) Rules, 1968 and asked the applicant to submit the representation against the proposed action. The allegation against the applicant in the Article of charges is that due to the improper handling of the case of one late Birendra Chandra Das, Ex Carriage Fitter/Gr.I, who had met with an accident while he was on duty on 06.11.97 and expired, the compensation has been received by the widow of the deceased lately. The applicant was therefore charged with violation of Rule-3 (1) (II) of the Railway Service Conduct Rules.

A copy of the aforesaid Memorandum dated 10.05.05 along with the Article of charge is annexed herewith and marked as Annexure -A & A1 respectively.

4.4 That the applicant on receipt of the said Memorandum along with the Article charges dated 10.05.05 (Annexure A & A1) submitted his written representation before the Divisional Personnel Officer/IC, Lumding on 19.05.05. In the said representation the applicant while denying the charges levelled against him stated that after expiry of late Birendra Chandra Das, ex-carriage Fitter, Guwahati, the applicant visited the house of late Birendra Chandra Das at Pandu, Sadilapur for payment of ex-gratia and advised the widow to obtain the postmortem Report from the Hospital authority. The widow failed to collect the postmortem report since long time. As a result, the applicant himself approached the Hospital authority to collect the postmortem report, failing which the applicant informed the APO/GHY and the APO/GHY had issued a letter to the Hon'ble Chief Judicial Magistrate, Kamrup, Guwahati for giving permission to issue the Postmortem Report to the Hospital authority. Accordingly, the Hon'ble Chief Judicial Magistrate, Kamrup ordered on 11.05.99 pursuant to which, the applicant personally had collected the postmortem report from Dr. P. Sarma, MMC Hospital, Panbazar on 03.06.99 and send it to the Divisional Railway Manager(P)/Lumding for necessary



action. But due to not sending the necessary instruction, the case had been delayed from July 1999 to September, 2002 in the dealing section of the Office of the Divisional Personnel Officer, Lumding for which the applicant is not at all responsible. As such only to shift the responsibility, the Divisional Personnel Officer issued the impugned Article of charges against the applicant. The applicant also stated the side reply that inspite of his several approach/request, the applicant failed to collect the report from the OC/GRP, Guwahati which he got only on 19.05.05.

A copy of the aforesaid representation dated 19.05.05 along with the Report of OC, GRP/Guwahati dated 19.05.05 are annexed herewith and marked Annexure-B and B1.

4.5 That the applicant begs to state that on receipt of the aforesaid representation from the applicant, the Divisional Personnel Officer/IC, Lumding vide his letter under Memo No. EQ/27-A(DAR-Minor dated 26.05.05 issued the order of imposition of Minor penalties upon the applicant by which 3 sets of privilege passes and PTO's have been withheld for the year 2005. The Disciplinary Authority while imposing the aforesaid penalty did not consider the factual aspect as narrated in the representation of the applicant and no findings has been recorded in the impugned order of imposition of penalty dated 26.05.05.

A copy of the aforesaid order dated 26.05.05 is annexed herewith and marked as Annexure-C.

4.6. That the applicant begs to state that as the Disciplinary Authority has passed the impugned order of imposition of penalty of stoppage of 3 sets of privilege pass and PTO's vide order dated 26.05.05 (Annexure-C) without taking into account the explanation and factual aspects narrated in the representation preferred by the applicant against the proposed action, the applicant preferred an appeal before the Respondent No.3 i.e. the Additional Divisional Railway Manager, Lumding (Appellate Authority) to consider his case. In the said appeal, the applicant stated that there were so many factors involved in the process due to which delay for payment of compensation has occurred. Firstly, on the part of the widow of the deceased B.C. Das, who failed to obtain the postmortem report. Secondly, the applicant himself tried to obtain the postmortem report but due to non-cooperation of the Hospital authority, the permission from the Hon'ble Chief Judicial Magistrate court was required to be obtained and during the said process



some delay had occurred. Thirdly, the case file of late B.C. Das was pending at the Dealing Section of DRM(P)/ Lumding from July 1999 to September, 2002. Therefore, the applicant have nothing to advise the widow of the deceased during the said period and the charges brought against the applicant that "considerable delay had taken place due to improper handling of the case and the aggrieved family should have been properly advised by the concerning Welfare Inspector, regarding the course of action to be followed and has not taken any interest to the welfare of widow" are not true and baseless. The applicant prayed before the Appellate Authority to reconsider the case of the applicant and to exonerate him from the charges leveled against him as the same has been imposed only to shift the responsibility of the Disciplinary Authority to the applicant.

A copy of the aforesaid appeal dated 05.07.05 is annexed herewith and marked as Annexure- D.

4.7 That the applicant begs to state that as like the Disciplinary Authority, the Appellate Authority also did not exonerate the applicant from the charges although the Appellate Authority convinced that the delay has not caused due to negligence and improper handling on the part of the applicant. The reason behind not exonerating the applicant may be that if the applicant is being exonerated from the charges, the whole responsibility would falls to the Disciplinary Authority for which the necessary action is required to be taken up against the Office of the DRM(P)/LMG, who is the Disciplinary Authority herein. However, the Appellate Authority reduced the penalty to stoppage of 2 sets of privilege passes for the year 2005 instead of stoppage of 3 sets of privilege pass and PTO's for the year 2005 which had been communicated to the applicant by the APO/PC/LMG vide letter under Memo No. EQ/27-A(DAR-Minor) dated 19.07.05.

A copy of the aforesaid order dated 19.07.05 is annexed herewith and marked as Annexure -E.

4.8. That the applicant begs to state that both the Disciplinary and Appellate Authority failed to consider the case of the applicant and the impugned order of imposition of minor penalty has been issued for no-fault of the applicant. Hence, this application is preferred before this Hon'ble Tribunal seeking an appropriate direction considering the facts and circumstances as narrated above



4.9. That the applicant begs to state that the respondents have acted without any jurisdiction and have acted beyond jurisdiction. Apart from that the respondents have failed to provide the reasonable opportunity of hearing to the applicant in every stage of the proceeding and the procedure for recording the evidence and records have not been followed. The findings arrived at by the I/O was perverse and without any materials. It is under this fact situation of the case the findings arrived at by the I/O as well as the impugned orders are not at all sustainable and liable to be set aside.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the action on the part of the Respondents for not considering the case of the applicant towards exonerate him from the charges is per-se illegal, arbitrary, discriminatory and violation of the principle of Natural Justice and Administrative Fair play.

5.2. For that the imposition of penalty upon the applicant is required to be set aside and quashed along with the charge leveled against him. As the same has been imposed upon the applicant for no-fault on his part. There is neither any delay, lapses or negligence on the part of the applicant nor the applicant handled the case of late Birendra Chandra Das improperly as has been alleged. The delay has occurred due to some other factors involved in the process for which the applicant is not responsible at all.

5.3. For that the respondent authority cannot shift entire responsibility to the applicant and the Divisional Personnel Officer/IC, Lumding has got more jurisdiction to impose punishment to the applicant having regard to the present pay and post. Moreso, when the delay has occurred for finalization of the case of the Birendra Chandra Das in the Office of the Disciplinary Authority. As such, the DPO/LMG is also involved in the proceeding and he should not have passed the impugned order of imposition of penalty dated 26.05.05 (Annexure-C).

5.4. For that the Appellate Authority should have considered the case of the applicant taking into account the fact that there was no single allegation/complaint against the applicant during his last 34 years of service. More particularly, when the applicant rendered 20 years of continuous service as Welfare Inspector without any break.



5.5. For that in any view of the matter both the impugned orders dated 06.10.05 and 19.12.06 including the Article charges passed by the Disciplinary and Appellate Authority respectively are not sustainable in the eye of law and liable to be set aside and quashed.

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

The applicant craves leave of the Hon'ble Tribunal to advance more grounds both legal as well as 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 him 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 any applicant, writ petition or suit regarding the grievances in respect of which this applicant is made before any other court or any other Bench of this Tribunal or any other Authority nor any such applicant, writ petition pursued and 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 relieves to the applicant.

8.1. To set aside and quashed the impugned order dated 10.05.05 and 19.07.05 (Annexure-C and E) passed by the Respondent No. 4 and 3 respectively including the Article of charge framed against the applicant vide Memorandum dated 10.05.05 (Annexure-A).

8.2. To direct the respondents to extend the consequential benefits after setting aside the aforesaid orders as mentioned above.



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

9. INTERIM ORDER PRAYED FOR

Under the facts and circumstances of the case the applicant does not pray for any Interim order at this state.

10. This application is filed through advocates.

11. PARTICULARS OF THE L.P.O.

(I) L.P.O. NO. : 346 651500
(II) Date : 8.3.07
(III) Payable at : Guwahati.

12. LIST OF ENCLOSURE:

As stated in the Index.



VERIFICATION

I Shri Ambika Prasad Sarma, aged about 56 years, son of Late Madhav Chandra Sarma, resident of Maligaon, Guwahati-11, Kamrup, Assam do hereby solemnly affirm and verified that the statements made in paragraphs 2,3, 4.8 & 6 to 8 are true to my knowledge and those made in paragraphs 1, 4.1 to 4.7 & 5 are also true to my legal advise and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material fact of the case.

AND I sign this verification on this 9th day of March/2007 at Guwahati.

Ambika Prasad Sarma

SIGNATURE

ANNEXURE - A

- 10 -

STANDARD FORM NO. 11

Standard Form of Memorandum of Charge for Imposing Minor Penalties
(Rules 11 of RS(D & A) Rules, 1968)

No. ECO/27-A (DAK - minor) .

Date 10-1-2006.

Railway - Northeast Frontier
Place of issue - Lumding

MEMORANDUM

1. Shri/Smt. A. P. S. SARKAR Design. S.P.I./G.H. (office in which working) is hereby informed that the undersigned proposes to take action against him/her under Rule 11 of the Railway Disciplinary and Appeal Rules, 1968. A statement of the imputations of misconduct or infirmity on which action is proposed to be taken as mentioned above, is enclosed.
2. Shri/Smt. A. P. S. SARKAR is hereby given an opportunity to make such representation as he/she may wish to make against the proposal. The representation, if any, should be submitted to the undersigned so as to reach within ten days of receipt of this Memorandum.
3. If Shri/Smt. A. P. S. SARKAR fails to submit his/her representation within the period specified in para 2, it will be presumed that he/she has no representation to make and orders will be liable to be passed against Shri/Smt. A. P. S. SARKAR ex-parte.
4. The receipt of this Memorandum should be acknowledged by Shri/Smt. A. P. S. SARKAR

Signature.....

Name (A. P. S. SARKAR)

Designation (DPO/IC/LMC)

To
✓ Shri/Smt. A. P. S. SARKAR, (THROUGH:
Designation S.P.I./G.H.)

Order of charge
(See memorandum of allegation
enclosed).

Received from A. P. S. SARKAR
on 13.5.2006

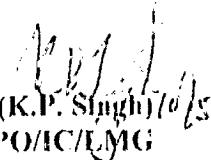
Attested

Advocate

Article of charge

One late Birendra Ch Das, ex. Carriage Fitter/Gr.I under SSE/C&W/BG/GHY had met with an accident while on duty on 06.11.1997 and expired. The compensation of Rs.1,56,470/- under WC Act was sanctioned only in September 2002 and paid to the widow. The case was then sent to GM(P)/MLG on 18.02.2004 for processing further for payment of lump-sum ex-gratia. Such delay in getting the compensation sanctioned (about 5 years) and sending the case to HQ (about 1 1/2 year) is due to the improper handling of the case.

Sri A. P. Sarma, CPI/GHY being the concerning Welfare Inspector was supposed to advise the aggrieved party and help the widow in chasing the case. He has contributed to the delay (from 06.11.97 to September 2002) caused by the incomplete submission of necessary documents and he has not taken any interest towards the welfare of the widow. He has, therefore, failed to maintain devotion to duty and thereby violated Rule-3(1)(ii) of the Service Conduct Rules.


(K.P. Singh) b/s
DPO/IC/EMG

Attesting



Advocate

To
Divl. Personnel Officer/IC,
Northeast Frontier Railway
Lumding.

Sub:- Representation against S.F.-11.
Ref:- Your Memorandum Of Charges No.EO-27/A (DAN)
Minor dated 10-05-2005.

In terms of your letter under reference dated 10-05-2005 against S.F.-11 I would like to bring your notice the following few lines for kind consideration please.

That Sir, although the ex-employee Late Birendra Ch Das expired on 6-11-1997 his family failed to collect the necessary Postmortem Report from the Medical Authority in time. As a result myself being the concerned Welfare Inspector several times approached the concerned Medical Authority to collect the Postmortem report. For this report it took a long time as the issuing Authority of Postmortem report is related to state Govt. Lastly the then APO/CHY issued a letter addressed to Chief Judicial Magistrate(K)/Guwahati for giving a permission to issue the Post Mortem report to the Medical Authority. Accordingly CJM(K)/CHY ordered on 11-05-99 I personally collected the postmortem report and send to DRM(P)/LMG for further action without delay. All other relevant papers for payment of compensation were also sent after few days. and sanction of competent authority after completing the case in all respect, vetting of account.

That Sir, Rs.1,56,470/- was paid to the widow of Late Birendra Ch Das from Office of the Labour Commission (W.C. Act) which was duly identified by me. Final Settlement dues also received by the widow as the necessary F.S.

Papers for this purpose were timely executed by me after going to her residence without execution of any paper from my side it was not possible for expeditious payment of F.S. dues and compensation.

That Sir, for payment of compensation I have several times chased-up the issue with the concerned dealing Clerk in your Office. The payment of compensation is dealt from respective department and for this there is a specific dealer. Welfare Inspector only helped the widow and collect papers for early payment. In this regard I have not ignored anything to help the administration for the payment of compensation and F.S. dues as early as possible.

That Sir, after getting the compensation the party concerned nothing has been informed from your Office to me whether any other report is required for further disposal of the case in Head quarter level till April/05.

contd..2

Attested

Advocate.

- 2 -

That Sir, I was on leave for 30 days and during this period one report from GRP/GIV was asked as demanded by GM(F)/MLG. Accordingly the letter was handed over and chased-up the same at GRP Office/GIV by Sri L.Zannan, and P.C.Deka, Welfare Inspector of this Office. I have also several days met OC/GRP/GIV for this purpose, but till date I have failed to collect the report. However, OC/GRP/GIV assured that he will issue this report in detail within a short time. ~~has given a report on 19.5.05 which is enclosed herewith.~~

That Sir, in my service life as Welfare Inspector I have never showed lack of devotion in my duty nor any displeasure letter has been issued from the higher authority.

In view of the above circumstances I fervently requested you to look into the matter sympathetically and to exonerated me from the charge as indicated the memorandum for this time.

For this act of kindness I shall ever grateful to you and oblige thereby.

Yours faithfully,

Ambika Prasad Sarma

19.5.2005

(SRI AMBIKA PRASAD SARMA
Chief Personnel Inspector,
N.F. Railways, Guwahati - I)

Report regarding death of Bordenor, Mith. Ch. Das of
Gondi II, male, Gondi GRPS, U/D Case NO 53/97.

The brief of the U/D Case is that Compt. Bajirao Hanur
See Eng. pit line Ghy lodged FIR at 11.00 AM 6.11.97
to the effect that on the same day 10 AM 6.11.97 (A)
6.55 PM. on Sri Bordenor Ch. Das, C.F. Gd. II under
Section Eng., was found by son of pit line while
he was on duty, in the Ghy GRPS U/D Case NO 53/97
dtd. 6.11.97 has been re-registered and investigation
taken up.

During the Period of investigation, all
initiatives taken by Police in respect has been
done, directly sent for PMI examination and
recalled the relevant witness. From the
PMI examination it is found that death was due
to train accident.

The Case was ~~not~~ returned to
P.R. as the death of victim was due to accidental
one. From the statement of witness it was found
that victim Bordenor Ch. Das was on duty at
the time of incident.

Opposed
19/11/05
S. C. MURTHY
Examiner

Attested


Advocate.

Memorandum

Dated 1/7/2005

In reference to the memorandum of Charge Sheet (SF-11) received by Shri A.P.Sarma, CPI/GHY vide this office No. D.G.I.7/AF/2005 dated 10.6.2005 of his representation against the charge sheet submitted by Shri A.P.Sarma the undersigned has passed the following orders

"The under signed has gone through the charge sheet and the same is correct submitted by Shri Salma, CPI/GHY. The following is the conceivable reason it taken place due to improper handling of the case and the aggrieved family, except have been properly advised by the concerning welfare inspector regarding the course of action to be followed.

Shri Salma is given the following penalty.

• 03 sets of privilege pass and PTO are withheld for the year 2005.

An appeal against this order lies to ADRM/LIC within 45 days.

W.L.

(K.P. Singh)
DGM/ICAO

(Vice-Presidency Authority)

✓ Shri A.P.Sarma,
CPI/GHY

No. 2017-A/DAF/Authority - Lumding, Dibrugarh, Assam

Copy forwarded for information and necessary action to

- 1) APG/HY. He is requested to debit 0.3 days in Privilege pass and PTO of Shri A.P.Sarma, CPI/GHY for the year 2005.
- 2) Vice-Presidency

For Div. Rly Manager (P)
N F Railways, Lumding.

Attachment

Attachment

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The Additional Divisional Railway Manager,
Northeast Frontier Railway,
Lumding.

Dated: 5/11/2005

Sub:- Appeal against NIP v/s L.R. (P) / T.I.G.L. Lumding, W.P.
No. EO/27-A (DAR-Airport) Lumding dated 26-05-2005.

Sir,

With due respect, I beg to represent the following in connection with imposition of Minor Penalty (3 Sets of Privilege Pass and PTO are withheld for the year 2005) by DPO/IC/LMG (Disciplinary authority) against Memorandum No. EO/27-A (DAR-Minor) dated 10-05-2005 which is considered to be injustice to me as I feel in view of my explanation of the circumstances in favour of my innocence.

That sir, I have already explained the action taken by me for finalisation of the compensation Case of Late Narendra Chandra Das, Ex.C/Fitter/Cr.I in my representation submitted to DPO/IC/LMG on 19-05-2005 which I fail to get proper consideration of the Disciplinary Authority as a result of which the aforesaid Penalty was imposed.

So, I am submitting explanation again for your consideration and review of the aforesaid NIP.

As soon as the accident occurred on 6-11-97 I visited the house of Late B.C.Das at Pandu Sadilapur for payment of Ex-gratia, and advise the Widow to obtain Post-Mortem Report from G.M.C. Authority. I kept contact with the Widow at regular interval and advise her to obtain Post-Mortem Report. But She informed me all the time that getting Post-Mortem Report is a time taking process for which She is getting delayed to get it. Ultimately She informed me on 1-05-99 that it would not be possible for her to get the Post-Mortem Report as the concerned authority was not co-operating with her. So, She sought my help to get the Post Mortem Report. In response to her request I visited foreign Sick Laboratory on 7-05-99 and talk to Mr. Chettri, in-charge of the Laboratory. He informed me the process that permission of C.J.M is required for getting the Post Mortem Report. Accordingly I proceeded to CJM Court, Guwahati alongwith APO/GYIY's letter on 11-05-99 and request CJM for his permission. CJM/GYIY's permission was obtain on 11-05-99. Then I proceed to M.M.C. Hospital, Panbazar with the CJM's Order and met Sr. Professor D.V. P. Sarma I managed to get the Post Mortem Report on 3-06-99 and submitted to DRM(P)/LMG for processing the Compensation Case.

I understand that the duty of a Welfare Inspector is to help Railway Employee and their families where they face difficulty to collect documents etc. In this case major problem of the Widow was to get Post-Mortem Report for claiming compensation which was solved by me as soon as possible and there-after the necessary papers were sent to DRM(P)/LMG for processing the compensation Case. I further understand that I had to comply any instruction from DRM(P)/Lumding in case of necessity of additional documents in this case. But no such

contd..2

Attested

Advocate.

- 2 -

instruction was received by me and the case was delayed at the dealing section of DEM(P)/Lumding for which I may not be held responsible. I pursued the case occasionally whenever I visited Lumding, but there was no progress of the case. Therefore I have nothing to advise the Widow. In view of the above the charge brought against me that "considerable delay had taken place due to improper handling of the case and the aggrieved family should have been properly advised by the concerning Welfare Inspector, regarding the course of action to be followed" and that I have contributed to the delay (from 6-11-97 to Sept/2002) caused by incomplete submission of documents and has not taken any interest to the Welfare of the widow" are not true. Therefore, the imposition of Penalty on the above charges is an injustice to me which may please be reconsidered by your sagacity and exonerate me from the aforesaid charges.

I will be liable thereby.

Yours faithfully,

Amika Prasad Sarma

(SHRI AMIKA-PRASAD SARMA)
CPI/Guahati.

ED. B9/27-A (DAR-Minor)

Office of the
DRM(P)/LMG
Dtd 19.07.2005

TO:
Sri. A. P. Sarna,
CPI/GHY
C/o. APO/GHY.

Sub:-Appeal against the NIP for stoppage of
3 sets of Pass and PTOS for the year 2005

Ref:-Your appeal dated 05.07.2005

With reference to the above, it is informed that your
above appeal was put up to ADRM/LMG (the Appellate authority) who
has passed the following orders:-

I have read the charge, representation, NIP and
appeal. I do find that there has been considerable
laxity in the dealing of the case and getting the
compensation sanctioned. There has been lack of
adequate interest on the part of the employee
to get the case finalised quickly. However, the NIP
is reduced to stoppage of 02(two) sets of
privilege passes for the year 2005.

All appeal against this order lies to DRM/LMG within 45
days.

(N.K.Sutradhar)
APO/FC/LMG
For.Divil.Rly.Manager(P),
N.E.Railways,Lumding.

Copy to:- 1) APO/GHY for information and necessary action.
2) S/copy for p/case.

18/7/05
For.Divil.Rly.Manager(P),
N.E.Railways,Lumding.

(10)
RTO

Attested

[Signature]

Advocate

22 JUN 2007

गुवाहाटी न्यायालय
Guwahati Bench

DIST. - KAMRUP

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :
GUWAHATI BENCH AT GUWAHATI

O.A. No. 66 of 2007

Shri Ambika Prasad Sarma.....Applicant
-Vs-

Union of India & others..... Respondents.

WRITTEN STATEMENTS ON BEHALF OF THE
RESPONDENTS.

The Written statements of the Respondents are as
follows :-

1. That a copy of the Original Application No. 66/07 (herein after referred to as the "application" has been served upon the respondents. The respondents have gone through the same and understood the contents thereof.
2. That save and except the statements which are specifically admitted by the respondents, the rest of the statements made in the application may be treated as denied.
3. That the statements made in paragraph 4.1 to the application the answering respondent has no comment unless contrary to the records.
4. That in regard to the statements made in paragraph 4.2 & 4.3 to the application the answering respondent has no comments unless contrary to the records. The answering respondent further begs to state that the respondents served the charge- sheet (minor- memorandum) bearing No. EQ/ 27-A (DAR-Minor) dated 10.05.05 to the applicant Sri A.P.Sarma due to misconduct or misbehaviors in performing his duties in his official capacity by delaying payment of compensation to the widow of Late Birendra Ch. Das, Ex. CF/ Gr-I under SSE/C&W/BG/GHY who died on 06.11.1997 in an accident while performing his duties. Hence the averments made by the applicant regarding rendering of his duties and responsibilities as entrusted to him without any blemish is completely false and baseless as he was found guilty of improper

Yours Kante Nakati
FILED BY

DIV. L. Personnel Officer
N. F. Lly., Guwahati-1
R/7, Guwahati
20/6/07

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handling of the compensation case which resulted in the unnecessary and prolonged delay of about 6 ½ years in the payment of compensation to the widow of Late Birendra Ch. Das.

5. That the statements made in paragraph 4.4 to the application are not admitted by the deponent. The grounds of delay, as submitted by the applicant, of 5(five) years for processing the compensation case under W.C.Act. and obtaining the postmortem report of the deceased and 1 ½ (one and half) years for processing of ex-gratia payment to GM(P)/MLG, in favour of the widow of Late Birendra Ch. Das, is baseless, unreasonable and untenable in the eye of law. From the above facts and circumstances it transpires that the applicant has not performed his duties with a sense of devotion and dedication.

6. That the statements of allegation made in paragraph 4.5, 4.6 & 4.7 to the application are baseless and the same are hereby denied by the answering respondent. The order of imposition of minor penalty under Memorandum No. EQ/27-A (DAR-Minor) dated 26.05.05 ie stoppage of 3 sets of privilege pass and PTO for the year 2005 was imposed against the applicant considering all facts and circumstances of the case and with all due care for his gross misconduct / misbehaviors in dealing with the case and performing his duties. The applicant further submitted an appeal against the said 'NIP' (Memorandum dated 10.05.05) on 05.07.05, before the Appellate Authority (Additional Divisional Railway Manager, Lumding) for reconsideration of the case of the applicant and to exonerate him from the charges leveled against him. The Appellate Authority after due consideration of all aspects of the case disposed of the Appeal and reduced the penalty to stoppage of 2(two) sets of privilege pass for the year 2005 vide *Annexure -E* to the application.

7. That the statements made in paragraphs 4.8 & 4.9 to the application are not acceptable at all and the same are hereby denied by the answering respondent. It may be mentioned herein that the Disciplinary and the appellate Authority had acted after perusal of the documents on records and after considering the facts and circumstances of the case. As such there is no

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Gyan kanta want
DIVL Personnel Officer
N. F. Lly., Guwahati-1

illegality, irregularity and infirmity in passing the order of penalty to the applicant which is just and proper and the same is sustainable law. The answering respondent further begs to state that the applicant has not exhausted all the forums of law for redressal available to him. As per DAR rules, there is provision for filing revision/review petition. The applicant has not availed/exhausted all the avenues, as such the application is not maintainable at all and liable to be dismissed.

8. That from the facts and circumstances quoted above, no arbitrary and illegality has been committed by the Railway Authority and there is no violation of fundamental rights as alleged by the applicant. The applicant has no *prima facie* case at all.

9. That the application filed by the applicant is baseless and devoid of merit and as such not tenable in the eye of law and liable to be dismissed.

10. That in any view of the matter raised in the application and the reasons set forth thereon, there cannot be any cause of action against the respondents at all and the application is liable to be dismissed with cost.

In the premises aforesaid, it is, therefore, prayed that Your Lordships would be pleased to peruse the records and after hearing the parties be pleased to dismiss the application with cost. And pass such other orders/orders as to the Hon'ble Court may deem fit and proper considering the facts and circumstances of the case and for the ends of justice.

And for this the humble respondent as in duty bond shall ever pray.

DIVL. Personnel Officer
N.F.Ly., Guwahati-1

VERIFICATION

I, Shri Gauri Kanta Kakati Son of late Lohit
 Ch. Kakati resident of Guwahati
 at present working as the D.P.O./as. F. Rly.
 Guwahati Guwahati being
 competent and duly authorized to sign this verification do hereby
 solemnly affirm and state that the statements made in paragraph
 1 to 10 & 13 are true to my knowledge and belief, and the rests
 are my humble submission before this Hon'ble Tribunal. I have
 not suppressed any material fact.

And I sign this verification on this 20th day of
 June, 2007 at Guwahati.

Gauri Kanta Kakati

DEPONENT

*DIVL. Personnel Officer
 N. F. Lly., Guwahati-1*

* * * * *

18 OCT 2007

गुवाहाटी ब.1 बची

Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. NO. 66/07

Sri Ambika Prasad Sarma

-VRESUS-

Union of India and Others.

Filed by:
The Applicant
Anup K. Das
Advocate

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21.9.07

REJOINDER TO THE WRITTEN STATEMENT FILED BY THE RESPONDENTS :

1. That the applicant has gone through the copy of the Written Statement submitted by the Respondent and has understood the contents thereof. Save and except the statements, which are specifically admitted herein below. Other statements made in the written Statements are categorically denied. Further the statements which are not born on records are also denied and the respondents are put to the strictest proof thereof.
2. That with regards to the statements made in paragraphs 1, 2 & 3 of the Written Statements, the applicant has no comment to offer.
3. That with regards to the statements made in paragraph 4 of the written statements, the applicant while denying the contentions made therein begs to state that the respondents have not controverted or denied about the past 34 years of blemish free services rendered by the applicant in the different posts more particularly the 20 years of service rendered by him as an Welfare Inspector without any allegation as has been stated in paragraphs 4.2 and 4.3 of the O.A. Hence the contention/averment made therein is deemed to be admitted. The only averments made in the paragraph 4 of the written statement is regarding the mis-conduct as alleged by the Charge -sheet dated 10.05.05 communicated to the applicant regarding delayed payment of compensation to the widow of Late Birendra Chandra Das, EX- CF/ Grade- I under SSE/C&W/BG/GHY who died on 06.11.07 in an accident which is the subject matter in the impugned Case.
4. That with regards to the statements made in paragraph 5 of the written statement, the applicant while denying the contentions made therein begs to state that the Respondent Authority did not controvert and specifically deny the fact and circumstances as has been narrated in paragraph 4.4 of the O.A. and without saying anything about the negligence on the part of the applicant just stated that the applicant had not performed his duties with a sense of devotion and dedication.

10 OCT 2007

ગુજરાતી ન્યાયપીઠ
Guj. High Bench

5. That with regards to the statements made in paragraph 6 of the written statement, the applicant while denying the contentions made therein begs to state that the applicant is not at all responsible and there was no negligence on the part of the applicant for delayed payment of compensation that has been occurred. In fact there is counter allegation against the Disciplinary Authority for the impugned action of delay on his part and the written statement filed by the Respondent Authority is totally silent about the same. It is pertinent to mention herein that the application is in dark about the person who had signed the verification and filed the Written Statement on behalf of the respondent authority as there is no mention about the same neither in the verification nor in the cause title of the copy of the Written Statement served upon the counsel of the applicant.

6. That with regards to the statement made on paragraph 7 of the written statement, the applicant while denying the contentions made therein begs to state that the respondent authority did not controvert and clarify about the statement made in paragraph 4.8 and 4.9 to the effect that the penalty has been imposed for no fault on the part of the applicant and the reasonable opportunity herein to the applicant has not been given in the Inquiry proceeding. As such the same shall be deemed to be admitted by the respondent authority.

7. That the applicant begs to state that in view of the contentions and averments made herein above, it is a fit case wherein this Hon'ble Court may be pleased to interfere in the matter and be set aside and quashed the impugned order directing the respondents to extend all the consequential benefit with costs.

10 OCT 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

VERIFICATION

I Shri Ambika Prasad Sarma, aged about 56 years, son of Late Madhav Chandra Sarma, resident of Maligaon, Guwahati-11, Kamrup, Assam do hereby solemnly affirm and verified that the statements made in paragraphs.....4.1.7.....are true to my knowledge and those made in paragraphs.....3.5..... are also true to my legal advise and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material fact of the case.

AND I sign this verification on this ^{Sep.} 24th day of March/2007 at Guwahati.

Ambika Prasad Sarma

SIGNATURE