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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓
O.A/T.A No. 68/2007

R.A/C.P No.

E.P/M.A No.

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SECTION OFFICER (Judl.)

Kalita
25/09/17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

1. Original Application No. 68/07
2. Miscellaneous Petition No. _____
3. Contempt Petition No. _____
4. Review Application No. _____

Applicant(S) Amalika Prasad Saona VS Union of India & Ors

Advocate for the Applicant(S) D.K. Sauman, P.C. Boro
B. Devi, H.K. Das

Advocate for the Respondant(S) Railway Counsel, Mrs. Bharati Devi

Notes of the Registry	Date	Order of the Tribunal
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Application is in form
of C.F. for Rs. 50/-
deposited vide IPO/BD
No. 34665/505
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 for helping the ex employees who died while in service in getting their FS dues cleared but he was failed to carry out his duties in time as alleged and blame has been attributed against him by conducting enquiry and the disciplinary authority imposed punishment upon him by reducing his rank to the post of P.I. Grade III in the scale of Rs.5000-8000/- for a period of 3 years with cumulative effect by fixing his pay at Rs.5000/- The applicant preferred an appeal against the order of the disciplinary authority. The appellate authority revised the order by fixing his pay at Rs.7100/- in the scale of Rs.6500-10500/- for a period of 2 years 6 months (NC). Aggrieved by certain action of the

Dy. Registrar

Petitioner's C.F. for
issue notices with
envelops are not
received.

Pri.
13/3/07

Notice & order sent to D/Section for issuing to R-1,3,4 by regd. A/D post and another resp. no-2 sent to received by hand.

Cms 26/3/07 D/NO-341 to 343 Dt 29/3/07

Received for Res. N-2 dia/eposic IV-F. Rly 9-4-07

Notice duly served on R-2

9/4/07

① Service awaited from R.No-1,3&4.

25.4.07

Notice duly served on R-2,3.

6/5

28.5.07 no Ws filed so far

No Ws has been filed. 19.6.07

respondents the applicant has filed this O.A. with a prayer to set aside and quash the impugned orders dated 11.9.06 & 14.11.06 including the article of charges dated 14.12.05 and also for a direction to extend the consequential benefit after setting aside those orders.

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

and Mrs.B.Devi

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

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

Vice-Chairman

O.A. 68 of 07 -4-

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

25.6.07.

Lm

Wf filed by
in Respondent. 6.7.2007
page 1 to 8. Copy
not served.

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


Vice-Chairman


Rejoinder not
filed.

/bb/

17.7.2007

Rejoinder not filed.

Post on 9.8.07 for order.


Vice-Chairman

Rejoinder not
filed.

pg

22.11.07

Rejoinder filed
by the Applicant.
Copy served.

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

The case is ready
for hearing.


pg

28.11.07.

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.

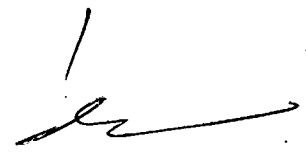
Call this matter on 29.11.2007 for hearing. Rejoinder, if any, may be filed in the meantime.


(Khusiram)
Member


(M. Mohanty)
Vice-Chairman

nk m

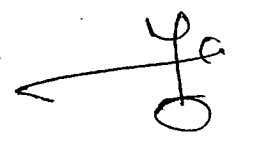
29.11.2007 This is a Division Bench matter. The case is adjourned and listed on 10.12.2007 as prayed by Mr/H.K.Das learned counsel for the Applicant.


(Khushiram)
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/

QA-M 68/2007

11.12.2007 Mr H.K. Das, learned Counsel for the Applicant and Mrs B. Devi, learned Counsel for the Respondents/Railways are present.

Call this matter on 13.12.2007.



(G. Ray)
Member (A)

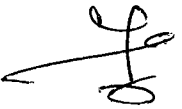

(M. R. Mohanty)
Vice-Chairman

nkm

13.12.2007 Heard Mrs Bandana Devi, 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)


(M. R. Mohanty)
Vice-Chairman

nkm

Received Copy -
Pradip K. Das.
8.1.08

10

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.68 of 2007

DATE OF DECISION:13.12.2007

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

.....

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.68 of 2007

Date of Order: This the 13th 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.

.....

O.A.No.68/2007

ORDER (ORAL)

Date:13.12.2007

M.R. MOHANTY (VICE-CHAIRMAN)

The Applicant, a Chief Personnel Inspector of N.F. Railways, faced a Departmental Proceeding and, ultimately, visited with the following punishment order vide Annexure-L dated 11.09.2006:

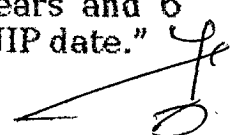
"Shri A.P. Sarma is reduced to the post of P.I. Grade III in the scale Rs.5000-8000/- for a period of 3 (three) years with cumulative effect. His pay is fixed at Rs.5000/-"

The Applicant challenged the aforesaid punishment order in a comprehensive appeal, which was disposed of by an order under Annexure-N dated 14.11.2006, the relevant portion of which is extracted below:

"I have read the charges, the representation of the employee, the enquiry proceedings, the written submission of defence of the employee dt. 06-6-06, the employee's preliminary and detailed submission dated 15-06-06 and the findings of the enquiry officer wherein it has been established that in case of the four cases there was delay on the part of Shri A.P. Sarma. I have read the NIP imposed by the Disciplinary Authority. The employee has not denied the fact that there has been delay in all the 4 cases mentioned in the charges.

It is also seen that the employee is more than 55 years of age and has two previous NIP of withholding increment of 1 year dated 06-10-05 and another of withholding of increment for 1 year dated 31-7-06.

It would meet justice if NIP is imposed of being Rs.7100/- in scale Rs.6500-10,500/- for a period of 2 years and 6 months N.C. w.e.f. 11-9-06 viz. issue of earlier NIP date."



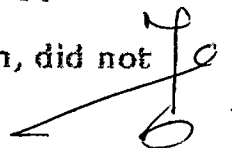
The present Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, is, virtually, directed against the abovesaid Appellate Order dated 14.11.2006.

2. In this case a Written Statement has already been filed by the Respondents and a Rejoinder has also been filed by the Applicant.

3. Heard Mrs Bandana Devi, learned Counsel appearing for the Applicant and Mrs Bharati Devi, learned Counsel appearing for the Respondents/Railways and perused the materials placed on record.

4. It appears from the Appellate Order that the Appellate Authority took into consideration two previous punishments (of withholding of increment for one year) that were imposed on the Applicant on 06.10.2005 and another on 31.07.2006. While passing the Appellate Order those two punishments (dated 06.10.2005 and that of 31.07.2006) weighed in the mind of the Appellate Authority. It has been argued by the learned Counsel for the Applicant that those punishments ought not to have been taken into consideration, by the Appellate Authority, for imposition of punishment on the Applicant; as no opportunity were given to the Applicant before taking the same into consideration.

5. In the present case, chargesheet was drawn against the Applicant on 14.12.2005. The Applicant was never confronted (neither in the chargesheet nor at any subsequent stage) about the punishments that were inflicted on him on 06.10.2005 nor about the punishment that was imposed on 31.07.2006. Even the Appellate Authority, who took those two punishments into consideration, did not

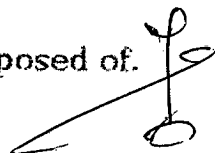


notice the Applicant about the same; before taking the same into consideration at the Appellate stage. Such of the materials which were never confronted/noticed to the Applicant should not have been taken into consideration before taking a final decision. Therefore, on the said ground alone, the Appellate Order is bound to be held as bad.

6. On close examination of the materials placed on record, it appears that the punishment imposed on the Applicant (although it is reduced one) by the Appellate Authority is also disproportionately high and in all fairness of things a punishment of withholding of increment for one year (NC) would have met ends of justice; as for similar lapse, such punishments were imposed during 2005 and 2006 by the same authority.


7. For the reasons of our observations made above, we remit back the matter to the Appellate Authority who should pass a revised order reducing the punishment that has been imposed on the Applicant within a period of 30 (thirty) days from the date of receipt of a copy of this order. While passing the order the Appellate Authority should keep in mind that the Applicant was facing, almost simultaneously, different proceedings for same nature of allegations and the so called previous punishments (of the year 2005 and of the year 2006) did not act as notice to the Applicant to speed up his work in the filed and that, therefore, those so called previous punishments should not weigh in the mind to impose any higher punishment on the Applicant.

8. With the aforesaid observations and directions, this O.A. stands disposed of.



9. Send copies of this order to the Applicant and to all the Respondents in the addresses given in the O.A.


(G. RAY)
ADMINISTRATIVE MEMBER


(M. R. MOHANTY)
VICE-CHAIRMAN

nkmm

13 MAR 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH.

O.A. No. 68 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.

**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Title Case No.

O.A NO. 68 /07

BETWEEN

Sri Ambika Prasad Sarma

... Applicant

AND

Union of India & Others

... Respondents

I N D E X

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Filed By

Hridip Kr. Das

Advocate

Regd. No.

Date. 18.3.07

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

Filed by:-
The Applicant
Through Mr. Adv.
Jitidip
19.3.07

Q.A. NO. 68 /07

BETWEEN

Sri Ambika Prasad Sarma, Son of- Late 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-
II.
2. The Chief Personal Officer, N.F. Railway,
Maligaon, Guwahati- II.
3. The Additional Divisional Railway Manager,
N.F. Railway, Lalding.
4. The Divisional Personal Officer, N.F. Railway,
Lalding Division, Lalding.

... Respondents.

Answer

PARTICULARS OF THE APPLICATION

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

This application is directed against the Order under Memo No. E/74/GHY/APS dated 11.09.06 passed by the Divisional Personnel Officer/IC, Lunding (Disciplinary Authority) imposing penalty of reduction of rank and against the order under Memo No. E/74/GHY/APS dated 14.11.06 by which the order of the Appellate Authority has been communicated by the Respondent No.4.

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.

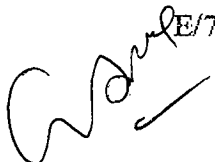
3. JURISDICTION :-

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 and laws frame 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 Services in different posts and by now a few years only has left 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 service, the applicant had 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 the receipt of the Memorandum of Charge sheet along with the statements of allegation communicated vide Memo No. E/74/GHY/APS dated 14.12.05. It is pertinent to mention herein that before and after



issuance of the aforesaid charge sheet altogether 6 charge sheets have been issued incorporating some allegations of similar nature against the applicant during the last 6 months with the intention to harass the applicant.

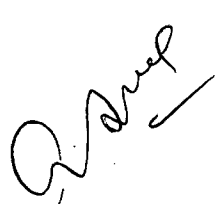
4.3 That the application begs to state that while he has been rendering his duties and responsibilities entrusted to him without any blemish/allegations and to the satisfaction of all concerned since last 34 years of his dedicated service, he shocked and surprised on receipt of the order under bearing Memo No. E/74/GHY/APS dated 02.11.05 issued by the Assistant Personnel Officer, Guwahati, Lunding Division by which the applicant has been placed under suspension without indicating anything regarding contemplating any departmental proceedings etc. The said order has been issued by the Assistant Personnel Officer, who has no power and authority to place the applicant under suspension.

A copy of the aforesaid order dated 02.11.05 is annexed herewith and marked as Annexure -A.

4.4 That the applicant begs to state that the respondents had realized the mistake/irregularities committed by them and revoked the said illegal suspension order by issuing another order vide Memo No. E/74/GHY/APS dated 29.11.05 issued by the Divisional Personnel Officer/IC, Lunding.

A copy of the of the aforesaid order dated 29.11.05 is annexed herewith and marked ANNEXURE-B.

4.5. That the applicant begs to state that after revocation of the aforesaid order of suspension, the respondent No.4 i.e. the Divisional Personnel Officer, Lunding issued a charge sheet vide Memorandum No.E/74/Ghy/APS dated 14.12.05 under Rule 9 of Railway Servants (Disciplinary and Appeal) Rules, 1968. By the said Memorandum it was indicated that the authority proposed to hold an enquiry against the applicant on the charge framed against him. The charge framed against the applicant was that the applicant committed Gross Mis-conduct in as much as he failed to submit necessary settlement papers in time in respect of finalisation of payment of settlement dues to some families of deceased employees.



A copy of the aforesaid Memorandum dated 14.12.05 along with the statement of Allegation are annexed herewith and marked as Annexure-C series.

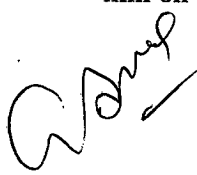
4.6 That the applicant on receipt of the said Memorandum dated 14.12.05 along with the Article of charge framed against him submitted his written representation before the Disciplinary Authority on 22.12.05 without inspecting documents, but the applicant reserves the right of the documents and witnesses as and when required. The said representation, the applicant while denying the charge levelled against him stated that for early settlement of the cases as reflected in the Article of charge so many factors are involved e.g. co-operation of the family members of beneficiaries, the co-operation of other staff of the concerned department, the co-operation of the State Government departments for obtaining the relevant documents etc. As such, this is not an unilateral act of the applicant. Hence, the applicant is not at all responsible for the delay occurred in settlement of those 4(four) cases as reflected in the statements of allegation. Apart from that the applicant also categorically stated in the said reply that he had done all possible action/steps towards submission of necessary settlement papers in time. But there were some complication in the aforesaid cases for which such delay has occurred and such occurrence was unavoidable which were unique in nature.

A copy of the aforesaid representation dated 22.12.05 is annexed herewith and marked as ANNEXURE- D.

4.7 That the applicant begs to state that in spite of elaborate explanation made in the said representation the Disciplinary authority did not consider the case of the applicant and has not dropped the charge levelled against him and instead of that Shri Narayan Mukherjee, Assistant Personnel Officer/I/Lumding has been appointed as Inquiry Officer to conduct the enquiry against the applicant into the charge framed against him vide his letter No.E/74/GHY/APS dated 06.01.06.

A copy of the said letter dated 06.01.06 is annexed herewith and marked as Annexure -E.

4.8 That the applicant begs to state that the Inquiry Officer vide his letter under Memo No. E/74/GHY/APS dated 20.02.06 asked the applicant to appear before him on 24.02.06 in his chamber and requested to submit the same of the Defence Counsel



if any. Accordingly the applicant appeared before the Inquiry Officer and submitted the name of his Defence Counsel.

A copy of the letter dated 20/02/06 is annexed herewith and marked as Annexure-F.

4.9. That the Applicant begs to state that, he vide his letter dated 03.03.06 requested the Inquiry Officer to allow him to inspect of some documents which he feels necessary to defend his case against the charge-sheet during the enquiry.

A copy of the said letter dated 03/03/06 is annexed herewith and marked as Annexure-G.

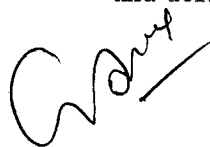
4.10. That the applicant begs to state that the Inquiry Officer did not permit the applicant to inspect the aforesaid documents as has been asked for by the applicant vide his letter dated 28.03.06 stating reason that the entire case cannot be treated as a document.

A copy of the letter dated 28.03.06 is annexed herewith and marked as Annexure-H.

4.11. That the applicant after the aforesaid development participated in the enquiry and has submitted his written defence before the Inquiry Officer enclosing the documents which were duly signed by (i) Ajufa Begum, w/o. late Jamatulla Ali, (2) Smt. Righini Devi, w/o. late Rajendra Roy, (3) Shri Kailash Basfore guardian of the minor daughter of late Bhutan Basfore which clearly shows and indicates that there was no negligence on the part of the applicant towards expeditious disposal of their final settlement cases. The aforesaid persons have also stated in their letters that they have no grievances and complaint against the applicant.

A copy of the aforesaid written defence dated 06.06.06 along with its enclosures are annexed herewith and marked as Annexure-I series.

4.12. That the applicant begs to state that after submissions of written defence (Annexure-I) the applicant also filed his written submission preliminary as well as in details wherein while denying the charges leveled against him he elaborately explained and defended against the said charges and also stated that the said charges were baseless.



The applicant in his written submission has also stated that the charge-sheet is not clear and silent about the responsibility and extent of work of Chief Personnel Inspector towards helping final settlement. He stated that the duty of the CPI's duty is only to advise and guide the survivor/successor on the eventuality and the necessary documents required for the final settlement and helped expeditious settlement by filling up the booklet depositing the same to the Final Settlement Section of Divisional Railway Manager(DRM)/Lunding(LMG). It is not the duty and responsibility of a Chief Personnel Inspector (CPI) to do each and every work for final settlement. He can perform his responsibility only in association with other concerned.


A copy of the aforesaid preliminary and detailed written submission are annexed herewith and marked as Annexure-J series.

4.13. That the applicant begs to state that after conducting the enquiry the Inquiry Officer submitted the report of enquiry before the Disciplinary authority and a copy of the same has been duly forwarded to the applicant for submission of his representation within a period of 15 days vide letter No.E/74/GHY/APS dated 03.08.06. The findings of the enquiry report dated 31.07.06 are quoted below:

" from all evidence adduced during the course of enquiry it is concluded that the charge as framed in Annexure-I of the Memorandum of Charge against Shri A.P. Sharma, CPI/GHY are established and hence stands proved as mentioned above."

A copy of the enquiry report dated 31/07/06 and forwarding letter dated 03/08/06 are annexed herewith and marked as Annexure-K series.

4.14. That the applicant begs to state that he did not like to prefer any representation before the Disciplinary authority against the findings of the enquiry report as because the DPI/LMG who is the Disciplinary authority is also involved in the process of delay for settlement of the cases in question. As the Disciplinary authority himself involved in the proceedings how the applicant can expect justice from him considering the said aspect of the matter, the applicant did not prefer any representation before him.



4.15. That the applicant begs to state that the Disciplinary authority on the basis of the findings of the enquiry report held that the applicant violated the Rule 3.1 (i) (ii) and (iii) of the Railway Service (Conduct) Rules, 1966 and imposed the penalty of reduction of rank from CPI to the post of PI grade III in the scale of Rs. 5000-8000/- for a period of 3 (three) years with cumulative effect. The pay of the applicant has been fixed at Rs.5000/-. The aforesaid order of imposition of penalty has been communicated to the applicant vide letter No. E/74/GHY/APS dated 11.09.06 with the instructions that he may prefer appeal before the DRM/N.F.Riy/Lumding.

A copy of the said NIP dated 11.09.06 is annexed herewith and marked as Annexure-I.

4.16. That the applicant begs to state that he preferred an appeal against the order dated 11.09.06 before the DRM/N.F.Riy/Lumding (Appellate authority) with a request to re-consider his case on the factual background of the case by exonerating him from the charge levelled against him. That the applicant in his appeal stated that the penalty imposed upon him is disproportionate un-acceptable. More so, the applicant has completed 34 years of his services without any blemish and the delay which occurred for final settlement of those 4(four) cases are not for the fault of the applicant. As such, the appellate authority has been requested to exonerate him from the charges levelled against him.

A copy of the aforesaid appeal dated 28.09.06 along with its annexures is annexed herewith and marked as Annexure-M series.

4.17. That the applicant begs to state that the appellate authority has not gone into the deep of the matter and has not applied judicial mind towards the consideration of the case of the applicant and has the order by which instead of exonerating the applicant from the charges levelled against him, has reduced the penalty by fixing the basic pay of Rs. 7100/- in scale of Rs. 6500-10500/- for a period of 2 years and six months (NC) w.e.f. 11.09.06 viz. issue of the earlier NIP date. The order of the appellate authority has been communicated to the applicant vide letter No.E/74/GHY/APS dated 14.11.06 by the DRM(P)/LMG.

A copy of the aforesaid order dated 14.11.06 is annexed herewith and marked as Annexure-N.

Wams

4.18. That the applicant begs to state that both the Disciplinary and Appellate authorities failed to consider the case of the applicant on the basis of the materials available before them. Hence this application seeking an appropriate direction from this Hon'ble Tribunal.

4.19. 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 to exonerate him is per-se illegal, arbitrary, discriminatory and violation of the principle of Natural Justice and Administrative Fair play.

5.2. For that the charge sheet ought not to have issued for the 4(four) cases mentioned in statement of allegation wherein the Final settlement dues have already been paid.

5.3. For that the Annexure-III circulars mentioned in the statement of allegations are not at all applicable to the case of the applicant. All these circulars are relates to only the pending cases.

5.4. For that not the applicant but the office of the DRM(P)/LMG is responsible for delay, if any for finalisation of those 4(four) cases mentioned in the Statement of Allegation.

5.5. For that Inquiry Officer did not conduct the enquiry in proper way. The procedure mentioned in the Railway Service(Discipline & Appeal) Rules have not been followed and the applicant was not provided with the reasonable opportunity of hearing the defence.

5.6. For that , there are some questions incorporated in the Inquiry Officer's the report which were not mentioned in the Article of charges. The Inquiry Officer asked



the question of Babul Rao Pantia in the inquiry for non submission of Final settlement papers which is completely out of charges.

5.7. For that the penalty imposed is totally disproportionate and has been imposed without considering the factual matrix of the unavoidable circumstances of the submissions of the necessary settlement papers in time in respect of those 4 cases.

5.8. For that the Divisional Personnel Officer/Lumding has got no jurisdiction to impose punishment to the applicant having regard to him present pay and post. More so, when there is counter allegation of delay upon the Office of the DPO/Lumding (Disciplinary Authority) as the said Office is responsible for the delay. As such, DPO/LMG is directly involved in the proceedings and he should not have passed the impugned order of imposition of penalty dated 11.09.06.

5.9. For that, the Authority should have considered the case of the applicant as there was no single allegation/complaint against the applicant during his last 34 years of service. More particularly, when he rendered 20 years of continuous service as Welfare Inspector.

5.10. For that in any view of the matter, both the impugned orders dated 11.09.06 and 14.11.06 passed by the Disciplinary and Appellate Authority including the Article of charge communicated vide letter dated 14.12.05 are not sustainable in the eye of law and liable to be set aside and quashed.

5.11. 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 be set aside and quashed.

The applicant craves leave of this 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 application, 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 being 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 11.09.06 and 14.11.06 (Annexure-L and N) passed by the Respondent No. 4 and 3 respectively including the Article of charge communicated vide Memorandum dated 14.12.05 (Annexure-C series.)

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

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 prayed that pending disposal of this application, the Hon'ble Tribunal may please to suspend the effect and operation of the Impugned Orders dated 11.09.06 (Annexure-L) and order dated 14.11.06 (Annexure-N) issued by the DPO/IC, Lumding and ADRM/LMG respectively and/or pass any such further order/orders deem fit and proper.

10. This application has been filed through Advocates.

11. PARTICULARS OF THE I.P.O.

(I) I.P.O. NO. : 346 651505
(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 1, 3, 4.8, 4.9, 4.10 & 6 to 8 are true to my knowledge and those made in paragraphs 1, 4.1 to 4.7, 4.11 to 4.17 & 5 are also true to my legal advice 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

CAM/CHY - 2730424

ANNEXURE - A

N.F. Railway

Office of the
Asst. Personnel Officer
Guwahati

No. E/74/GHY/APS


2nd November, 2005

To

Shri A.P. Sharma,
CPI/GHY
Lumding Division.

Sub : Suspension.

Shri A.P. Sharma, CPI/GHY of Lumding division is hereby suspended
with immediate effect.


(G.K. Kakati)
Asst. Personnel Officer/GHY
Lumding Division

Copy to :

1. GM(P)/N.F. Railway/MLG
2. DPO/IC/LMG
3. CAM/GHY


Asst. Personnel Officer/GHY
Lumding Division

Attested



Advocate.

-13-

FAX - 953612730424

ANNEXURE - B

STANDARD FORM NO. 4

N. F. RAILWAY

G. 174 B

Standard form of order for revocation of suspension order

(Rule 5 (5) (c) of RS (D&A) Rules, 1968)

No. E/74/GHY/APSN.F.Rly (Name of the Rly. Administration)(Place of issue) Lumding Dated 29-11-05

ORDER

Whereas an order placing Shri/Smt. A. P. Sharma CP/444 (name and designation of Railway Servant) under suspension was made; ~~was deemed to have been made~~ by APG/444 2-11-05.

Now, therefore, the president/the Railway Board/the undersigned (the authority which made or is deemed to have made the order of suspension or any other authority to which that authority is subordinate) in exercise of the powers conferred by clause (c) of sub-rule (5) of rule 5 of the RS (D&A) Rules, 1968, hereby revokes the said order of suspension with immediate effect/with effect from 29-11-05.

*(By order and in the name of the President).

(Signature) K. P. Simli(Name) (K. P. Simli)Designation of the authority making this order Secretary

(Secretary, Railway Board, where the order is made by the Railway Board)

Designation of the officer authorised under article 77 (2) of the Constitution to authenticate orders on behalf of the President, where the order is made by the President).

Copy to—

Shri/Smt. A. P. Sharma (name and designation of the suspended Railway Servant).CP/444, APG/444

*Where the order is expressed to be made in the name of the President.

Attested

Atroc.

STANDARD FORM NO. 5

STANDARD FORM OF CHARGESHEET

{Rule 9 of Railway Servants (Discipline and Appeal Rules, 1968)}

No. E/74/643/APS

Date: 14/12/05

Office: DRM (Personnel)/LMG, N.F. Railway

Place of issue: Lunding

MEMORANDUM

1. The undersigned proposes to hold an inquiry against *Shri A.P. Sarma*
C.P.I./643.....
under Rule 9 of the 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 of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure II). The list of documents by which the articles of charge are proposed to be sustained are also enclosed (Annexure III).
2. *Shri A.P. Sarma, C.P.I./643*..... is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure III) at any time during office hours within ten days of receipt of this Memorandum. For this purpose he should contact *D.P.O./LMG*..... immediately on receipt of this memorandum.
3. *Shri A.P. Sarma, C.P.I./643*..... 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 Rules 9 (13) of the Railway Servants (Discipline and Appeal) Rules, 1968, and Note I and/or Note 2 there under as the case may be) for inspecting the documents 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 A.P. Sarma*..... should obtain an undertaking from the nominee(s) that he (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 along with the nomination.

Attested

Advocate.

4. Sri. A.P. Sarma is hereby directed to submit to the undersigned (through Dy. CPO ()/msh) a written statement of his defence (which should reach Dy. CPO ()/msh) 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
- (b) to furnish the names and address of the witnesses if any, whom he wishes to call in support of his defence.

5. Sri. A.P. Sarma 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. Sri. A.P. Sarma 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 Rules 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 or the order/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry ex-parte.

7. The attention of Sri. A.P. Sarma is invited to Rule 20 of the Railway Services (Conduct) Rules, 1966, under which no 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 matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Sri. A.P. Sarma 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 Services (Conduct) Rules, 1966.

8. The receipt of this memorandum should be acknowledged.

(Handwritten signature)
(K.P. Singh, DPO/IC/msh)

(Signature)
Name & Designation
of the Competent Authority
Divisional Personnel Officer/K
H. F. Roy, Secy. to the Secy.

Encls. : Annexures I, II, III & IV.

To,
Sri. A.P. Sarma
CPI/6H7

Annexure-I.

ARTICLE OF CHARGE FRAMED AGAINST SRI A.P.SARMA, CPI/GHY.

Article-I.

That the said Sri A.P.Sarma while functioning as CPI/GHY committed gross misconduct in as much as he failed to submit necessary settlement papers in time in respect of finalization of payment of settlement dues to the families of the following deceased employees or co-operate with the families in befitting manner in assisting them as his duty in expediting early settlement of their dues.

- 1) Late Jamatulla Ali, Ex.C/Khal/GHY expired on 11-09-2001.
(Sri A.P.Sarma, CPI/GHY has submitted settlement papers on 28-01-2004 i.e. after 2 Yrs. 4 months 17 days).
- 2) Late Rajendra Ch.Roy, Ex.Sr.Gangman/NGC Expired on 01-03-99.
Documents submitted by CPI/GHY on 13-01-2000.
- 3) Late Babloo Basfore, Ex.Sr.Gangman/NGC. Expired on 05-10-99.
Documents submitted on 28-02-2002.
- 4) Late Bhutan Basfore, Ex.S/C/GHY. Expired on 08-02-2001.
Documents submitted on 16-12-2004.

Thus by his aforesaid act of delinquency Sri A.P.Sarma, CPI/GHY committed great misconduct and contravened Rule 3.1(i)(ii) & (iii) of Rly. Service (Conduct) Rules, 1966.

Annexure-II.

Imputation of misconduct & misbehaviour against Article-I of the charge framed against Sri A.P.Sarma, CPI/GHY.

That the said Sri A.P.Sarma, CPI/GHY was entrusted to perform the job of Chief Personnel Inspector covering the area of PNO/GHY/NGC area of Engineering & C&W departments with settlement cases and others..

But he failed to submit settlement cases of the above staff with utter laxity on his part. He thus violates GM(P)/MLG's order communicated under their No.FS/704/E/207/O Pt.XVI(C) dated 29-06-87 and letter No.E/105/31/2(FS)dated 6/7-12-2000 and joint circular of CPO & FA&CAO/MLG vide No.PNO/PF/FS/01/Pt.I dated 01-03-01.

If Sri Sarma had a little initiative and sense of responsibility to process the papers in time such delay could be avoided.

Thus by his aforesaid acts Sri A.P.Sarma exhibited lack of integrity & devotion to duty which is unbecoming of a Rly. servant. He thereby violated Rule 3.1(i)(ii) & (iii) of Rly. service (Conduct) Rules, 1966.

Annexure-III.

List of documents by which Article of charge framed against Sri Sarma are proposed to be sustained.

- 1) GM(P)/MLG's L/No. FS/704/E/207/O Pt.XVI(C) dated 29-06-87, E/105/31/2(FS)dated 6/7-12-2000 and joint circular of CPO & FA&CAO/MLG vide No.PNO/PF/FS/01/Pt.I dated 01-03-01.

Contd...P/No.2.

14/12/05
K.P. Singh, DPO/II (UG)
Disciplinary Authority
Principal Officer/IC
N F

**List of documents by which Article of charge framed
against Sri Sarma are proposed to be sustained.**

1) GM(P)/MLG's L/No. FS/704/E/207/O Pt.XVI(C) dated 29-06-87,
E/105/31/2(FS)dated 6/7-12-2000 and joint circular of CPO & FA&CAO/MLG vide
No PNO/PF/FS/01/Pt.I dated 01-03-01. PD 1 PD 3

2) List of pending cases presently figuring for monthly/fortnightly discussion with
CPO/Admn at HQ.

3) Final settlement cases of :-

- 1) Late Jamatulla Ali, Ex.C/Khal/GHY expired on 11-09-2001. — PD/4
- 2) Late Rajendra Ch.Roy, Ex.Sr.Gangman/NGC Expired on 01-03-99.— PD/5
- 3) Late Babloo Basfore, Ex.Sr.Gangman/NGC. Expired on 05-10-99.— PD/6
- 4) Late Bhutan Basfore, Ex.S/C/GHY. Expired on 08-02-2001. — PD/7

Lit of witness by whom the Article of charge proposed to be sustained.

- NIL -

[Handwritten Signature]
14/11/01
K.P. Singh, D.P.O. (Pun)
Disciplinary Authority
Divisional Officer

ANNEXURE - D

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(4) In case of late Ali (son) 9 months.

In case of late Ali, the existence of family members and their respective age as declared by the family members was investigated. After investigation, it was found that Jamatulla Ali and Jerina were the first wife of late Ali and they had a daughter named Jamowara Begum who was married to a person named separately. In regard to the family structure I had to do investigation in response to D.O. letter issued in regard. I had to take a situation and having regard to the fact that the family was (Muhaween law), I had to take the necessary steps for the submission of submitting the necessary documents like Birth Certificate, Bond, Affidavit etc. and the party concern could not afford to pay for such documents. After investigation on 12.12.93, I submitted the final settlement papers to the concerned authority and accordingly payment have been made. From the above it is clear that there is no negligence/laxity on my part in settling the case pertaining to late Jamatulla Ali.

That in case of Rajendra Roy ex-Sr. Gnanman who expired on 1.7.79 left behind the following legal heirs.

- (1) Sri Raghini Devi
- (2) Sri P.
- (3) Sri S.
- (4) Sri S.

In case of late S., from the case it could be seen that he did not submit necessary papers and as such did not follow the procedure of submitting legal documents. In this case I had to insist the party for making submission of a proper Affidavit, Indemnity Bond of 4 lakhs and separate bank account of 4 members including the deceased etc. As stated above the settlement was not an unilateral effort and it requires co-operation from the party seeking final settlement. In this case the party took two months in submitting the Birth Certificate and thereafter they left for their native place. After several requests they could open Bank Account, but they did not do so immediately and the settlement was delayed because of this. In this case, the party was negligent in collecting the necessary documents and there was negligence as such in settling the case which I did on 1.1.94.

In case of late Bablu B. Gore, who expired on 1.1.79, in his case he left behind his son Sri S. Gore, Sri S. Gore and daughter Miss Priya Gore. During investigation I found one Smt. Umabati who was forward as second wife of late Bablu. The issue made by the second wife made the issue complicated and it required a long phase of investigation and submission of necessary papers like Affidavit, Indemnity Bond, Bank Account etc. papers, Guardianship certificate etc. The concerned party submitted these papers in the month of February, 2002.

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and after making careful examination of all these papers and depositions, I submitted the final settlement papers on 23.2.2002 for which I can not be held to be responsible for the delay.

Lastly, in case of late Bhutan Basfore S/cleaner who expired on 3.2.01 I had to face various complications in submitting his final settlement papers. Late Basfore did not submit nomination papers and at the time of his death he only left behind minor daughter namely Chintamoni Basfore having the date of birth 17.12.90. During the course of investigation none of his family members came forward to take the responsibility of obtaining guardianship certificate and for which I had to approach lastly the brother of late Basfore requesting him to take the responsibility of obtaining guardianship certificate for Chintamoni Basfore i.e. the only legal heir who was minor at that relevant point of time. After repeated persuasion the said brother Sri Prasad Basfore brother of late Basfore obtained the guardianship certificate for which it took about one and half year. Thereafter I had to pursue him again for opening Bank Account for Chintamoni Basfore and after repeated persuasion on 1.10.04 he could open a Bank Account for Chintamoni Basfore. The above information have been submitted to me after about one month and on 13.12.04 after making necessary scrutiny of the papers I submitted the final settlement papers for which I am apparently not responsible for the delay as alleged in the charge sheet.

From the detailed discussion of above four cases it is crystal clear that there is no negligence on my part as alleged in the charge-sheet and as such I categorically deny the entire charge with a request to drop the same. Further I reserve my right to inspect document as indicated in the memorandum of charge. In addition to that if required I may be permitted to inspect additional documents as well as additional witnesses as and when required.

Thanking you,

Yours faithfully

Ambika Prasad Sarma

22.12.05

A.P. Sarma
CPI, GHY.

ANNEXURE - E
3

STANDARD FORM NO. 7

N. F. RAILWAY

G-174 F

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

No. E/74/GHY/APS

N. F. (Name of Rly. Administration)

(Place of issue) LMG Dated 06.01.06

ORDER

Whereas an inquiry under rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 is being held against Shri A. P. Sarma, CPD/GHY (name and designation of the railway servant).

AND WHEREAS the Railway Board/the undersigned consider (s) that a Board of Inquiry/ an Inquiry Officer should be appointed to inquire into the charges framed against him.

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

A Board of Inquiry consisting of

1. {
2. { Here enter names and designations
3. { of Members of the Board of Inquiry.

OR

Shri. Batraayan Mukherjee, APO/1/LMG (name and designation of the Inquiry Officer) as Inquiry Officer to inquire into the charges framed against the said Shri A. P. Sarma, CPD/GHY.

Copy to — (1) APD/1/LMG

(2) Sri A. P. Sarma, CPD/GHY
c/o APO/GHY

Signature [Signature]
Name K. P. Singh, DPO/1/LMG
Divisional Personnel Officer
Secretary, Railway Board, LMG
OR N. F. Rly. Lending.
Designation of the Disciplinary Authority

Copy to (name and designation of the Railway Servant)

Copy to (name and designation of the Members of the Board of Inquiry/Inquiry Officer)

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

*Note — (1) and wherever applicable (2) to be inserted in the copy sent to the Railway servant.

Attested

[Signature]

Advocate.

NO. - E/74/GHY/APS

Office Of the

DRM(P)/LMG

Dt. 20/02/06

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TO

Sri A. P. Sarma

CPI /GHY

Under APO/GHY

Sub - DAR enquiry against the Chargesheet NO -
E/74/GHY/APS dt.06/01/06,

The date of DAR enquiry against the chargesheet as quoted
above, has been fixed to be held on 24/02/06 at 10.00 hrs in
APO/I/LMG'S Chamber.

As such You are advised to attend in the said enquiry at
the scheduled date, time and venue without fail and submit the
name of Your defence Counsel, if any.

Copy for information & N/action Pl. -

1. APO/GHY,

(N. Mukherjee)

(APO/I/LMG - 3 - 540)

For DRM(P)/LMG

DRM(P)/LMG

DRM(P)/LMG

DRM(P)/LMG

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DRM(P)/LMG

Attested



Advocate.

To

The Enquiry officer
in DAR Enquiry in Charge Sheet NO
E/74/GHY/APS Dt. 6.1.06

Ref: APO/1/LMG's letter NO E/74/GHY/
APS Dt. 20.2.06

Sir,

With reference to the above, I have the
honour to inform you that certain documents
relevant to the above Charge Sheet are
required for defence myself against the
chargesheet during Enquiry. The documents
having a bearing on the Final Settlement
Cases are in the nature of Chronology of the
Process at various levels and Stages where/
when the concerned files are put up before
competent authority and the exact dates of
the inception of the claim for Final Settlement,
call for necessary documents, response of the
parties, date of submission of the documents/
evidence called for and time taken for their
verification. Thus notes from Puccis Pages will also
be required when relevant. The Present requirement
of the documents/Particulars for verification
are listed below

- 1) Docket Case of Late. Jamarulla Ali, Ex C/Khat
- 2) " " " " Rajendra Ch Roy, Ex g/mon
- 3) " " " " Babloo Basfir
- 4) " " " " Bhutom Basfir, Ex S/c/GHY

5) Detailed movements of the concerned
files for Passing and finally Payment of
F.S dues in the aforesaid Cases.

Yours faithfully

Ambika Prasanna Sarma
CPI/GHY

3.3.2006

Attested



Advocate

Reason for refusing inspection or
taking extracts of the documents

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The charge relates to charged official's failure to submit necessary legal documents in respect of settlement cases of 4(four) deceased employees in time.

C.O. in his request for additional documents has stated that the documents are required to ascertain processing of the cases at various levels till inception of the claims for final settlement.

The charge levelled against C.O. is not at all connected with the processing of the cases at various levels after submission of the legal documents of the cases by the charged official. Therefore, the additional documents sought for by the C.O. is considered as not relevant to the charge.

Further, C.O. has asked for 4(four) docket files. He should clearly specify the documents he wants to inspect indicating relevancy of such documents with the charge. The entire case file can not be treated as a document and as such C.O. can not ask for the inspection/verification of the whole file. Notings on the precis pages are not documents and as such can not be inspected by the charged official.

I, therefore, after careful consideration of his request have decided to refuse such permission to inspect the documents asked for due to the reason quoted above.

M. Mukherjee 28/7/06
(M. Mukherjee)
APO/I/LMG
INQUIRY OFFICER/LMG

Attest:

[Signature]
Advocate.

STANDARD FORM NO. 6

Standard Form for Refusing Permission to inspect Documents

Rule 9 (16) M.Y. Servants (D&A) Rule, 1963

No. E/74/GHY/APS

RAILWAY N.F.

Place of issue DRM(P)/LMG

Dated March 23, 2006

O R D E R

Sri Ambika Prasad Sarma, CPI/GHY under APO/GHY
(Name and designation of the Railway Servant)

has requested permission to inspect and take extracts from the records specified below for the purpose of preparing his defence in the inquiry pending against him in pursuant to memorandum No. E/74/GHY/APS

dated 14-12-05 The undersigned has carefully considered the request and has decided to refuse such permission for the reasons recorded below against each item:

Description of records

Reason for refusing inspection of taking extracts

Processing of the cases at various levels after submission of the L/Ds of the cases by the C.O.

and,

Case No. of Late Jamatulla Ali,
Rajendra Ch. Roy, Pablo Basfore
and Pablo Basfore

At reverse

Signature Mukherjee

Name Sri N. Mukherjee, APO/I/LMG
Inquiry Officer

(Designation of the Inquiry Authority)

Written Defence of Co. bearing D.A.R. Proceedings under
Memo No. E/74/GHY/APS dt. 6.1.06.

In defence I submit that in the case of Late Jamatulla Ali, Late. Rajendra Ch. Roy, Late. Bablu Basfore and of Late Bhutan Basfore I did my duty scrupulously according to the extent rules and procedure. There was no laxity on my part in my effort to fill-up the proforma Booklet and send them to the F.S. section in DRM(P)/LMG's office in the state and manner totally appropriate and complete in required legal documents.

I was handicapped in sending the cases to F.S. section earlier than the time taken because in the main the papers came with the required signature of the authorities in the Sub-ordinate Offices concerned very late. This delay was again caused by the long time taken by each of the staff's legal representatives/successors in furnishing the legal papers. On the basis of these the proforma Booklet could be filled up for onward transmission for the signature of the executives under whom the deceased staff worked.

I began my effort for very quick disposal of F.S. from the very day. I had the occasion to pay the Funeral Assistance. But the status of successors in each of the above cases proved to be lacking in ready clarity. Therefore the C.O. undersigned had to take sufficient care and time to get correct response and documents from the concerned surviving members/successors of the deceased staff. I will state the facts case by case as follows.

1. Late Jamatulla Ali died on 11.9.01. He had 2 wives and both the wives had minor children. Thus for considering the surviving successor's rights, Guardianship Certificate ~~ex~~ were required which was clearly explained to them. The Guardianship certificates for his 1st wife's minors was issued on 2.5.03 and that of the minors of the 2nd wife on 10.3.03. Thus the parties themselves delayed final settlement by late Submission of these two vital documents taking 18/20 months or so. In this above the stipulated time for CPI/GHY work of filling up the Proforma Booklet was impossible to be met inspite of his best efforts. Here the death certificate was issued on 5.10.01. But the court affidavit was dated 26.5.03. SSE (C&W)/GHY signed papers on 20.11.03, 9.12.03 and 27.1.04 and I submitted F.S. papers to F.S. section/LMG on 15.12.03 to effect the Final settlement on P.F. money at first as per Procedure. These facts show that I have never caused any delay in F.S. of Late Jamatulla Ali.

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2. In the case of Late Rajendra Roy, he died on 1.3.99. He had no nomination and that procedure for collecting legal documents were followed by me. They were advised to submit death certificate of Late Roy, affidavit, 10 Bond and individual Bank Accounts of 4 successors. Here obtaining Death certificate took 2 months and opening of Bank Account at Central Bank of India, Hanuman Nagar, Bihar took another period at the end of the party and these two types of documentation above consumed the prescribed target time of D+ 25 days as laid down in PD 2 and D + 15 days as laid down in PD 3. This was beyond the purview of a CPI's normal persuasion with the party and beyond his control of the response of the party.

Thus in this case the Death certificate was issued on 4.5.99, F.S. papers of wife filled up on 15.10.99 after Bank Account particulars were submitted, SSE (PWay)/NGC, the relevant controlling authority signed the F.S. paper on 15.12.99. DEN/GHY signed on the declaration of surviving family members on 3.1.2000 and F.S. papers were submitted to F.S. section DRM(P)/LMG by me on 13.1.2000 and this began the phase of actual payment. Obviously the delay is not on account of me.

Due to non submission of Bank Account particular of the three (3) major sons theirs F.S. papers were filled up on 23.11.01 by me. These were signed by SSE (PWay)/NGC on 30.11.01. F.S. Memo for P.F. Money was signed by DRM(P)/LMG on 4.4.2000 and this authority signed the pension calculation ^{sheet} on 19.10.01. It is obvious that my effort for quick settlement was negatived by the Party's lack of promptness and fortune taken by the executives the Final settlement was delayed.

I would like to point out that the MOP form submitted by me on 1.1.2000 was signed by DRM(P)/LMG on 4.4.2000 and 19.10.2001 and thus the Final settlement was again delayed though I did my part of the job as soon as the parties submitted the papers and that too on my constant persuasion with them.

3. In the case of Babu Basfore, he expired on 5.10.99. The surviving members were advised repeatedly to submit legal documents, so that F.S. was effected within departmental target of D + 15 days. But the successors submitted the legal papers only in Feb/2002. His pre-deceased wife expired on 13.9.97 but her death certificate was issued on 22.9.2000 i.e. about 11 months since the death of the wife. The Guardianship certificate was issued on 14.11.2000 and F.S. papers were filled up by me on 28.2.2001. Thus my part of the job was delayed by the late obtaining and late submission of

Contd....3

: 3 :

the enabling legal documents by the parties. The F.S. was further delayed by the executives :- SSE(PWay)/NGC signed the filled up papers on 13.2.02 and 23.5.02. DEN/GHY signed on the surviving Family members of the deceased's family on 22.2.02 with ADEN/GHY's signing on 15.2.02. So, F.S. papers could be submitted only on 28.2.02 to the F.S. section. And finally F/Pension took another long period at the end of the executives as DRM(P)/LMG signed in sanction Memo only on 22.3.04. Various movement of the files have not been to my access and of therefore cannot pin point the time taken by each executive in delaying the Final settlement as a goal of the departments But I have no role in delaying the F.S. on any way.

4. In the case of Late Bhutan Basfore, he died on 8.2.01. Here there was no nomination and the surviving successor was only a minor daughter of the deceased staff. My effort of quick final settlement therefore met with an obstacle particularly in that, no one of the relatives was coming forward to be the guardian of the minor. With much persuasion I make his brother Prasad Basfore to apply for Guardianship. He delayed the process obviously for the lack of found and by one and half, a yearus missing the target as laid down in PD 2/PD 3.

Other legal documents also delayed F.S. death certificate was issued on 26.2.01. The death certificate of his predeceased wife expired on 20.8.92 was issued on 30.4.02. Guardianship by above Prasad Basfore was allowed on 6.6.02. And thereafter only I could fill-up the F.S papers on 17.6.2002 and submitted to F.S. ~~papers~~ section on 13.12.04. This delay in submission was occasioned by late submission of Bank Account particulars of the minor daughter DRM(P)/LMG advised to furnish F.S. papers within 10 days vide his letter No. EB/355/Pen/Mech dt. 19.7.04. When it was already 3 years 5 months delay was caused by the party. In addition even the Bank Account was opened only in Oct/2004 for the minor daughter. It is plainly true that the target could not be adhered to because of the hapless Party's incapacity to furnish documents and this incapacity was not removeable by geolous efforts of mine at the earliest.

I submit that written evidence in support of my statement that I am personally not responsible for any delay in F.S. of each one

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: 4 :

of these cases and that I did my best with the parties for expeditious disposal of F.S. cases (O N R Cases) is adduced herewith in the form of authenticated statements signed by (1) Ajufa Begum, W/o Late Jamatulla Ali. (2) Smt. Righini Devi W/o Late Rajendra Roy (3) Sri Kailash Basfore, Guardian of the minors of Late Bablu Basfore. (4) Sri Prasad Basfore Guardian of the minor daughter of Late Bhutan Basfore.

Signature : *Ambika Prasad Swarna*
6.6.2006

Designation: *C.P.I/GHY*

C.O. :

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Late Bablu Basfore was working as
Sr. Gangman under SSE (Pway) NSL
and he expired on 5.10.99. His wife
Bina Basfore also expired on 13.9.97
Late Bablu Basfore died leaving
3 (three) minor Children (2 Sons + 1 daughter)
A. P. Sarma, CPI/GHY advice to Collect
the documents such as, Court Affidavit
1/Bond, 3 SB Account for minor
Children operated by the Guardians
Guardianship Certificate, Photograph
Death Certificate of the deceased
employee and his wife for filling up
of the F.S Papers. CPI/GHY could not
submit the F.S Papers in time as I
failed to submit the necessary documents
as mentioned above in proper time
As I was unable to submit the documents
in time, late submission of F.S Papers
by the CPI/GHY is occurred.

Witness

① C. P. L. DeKa
81-1/99

(2) L. BARMAN

Kailash Basfore
Guardian of the minor children
of Late Bablu Basfore
Ex Sr. Trackman

Atteste
do.
Advocate

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p17.

Witness of Srimati Ajufa Begam
Wife of Late Jamatulla Ali, Ex-Carriage,
Khalashi under S.S.E. (C & W) Guwahati

I Srimati Ajufa Begam wife of late Jamatulla Ali do
hereby declare as under:-

Late Jamatulla Ali working under SSE (C & W) Guwahati
has expired on 11.9.01. In this connection Sri A.P.Sarma,
C.P.I., Guwahati attended in my family after getting
death and advise us to collect the documents
such as court Affidavit, I/Bond, 3 SB Account for minor
Children opened by the Guardians, Guardianship certificate,
Photograph, death certificate for filling up F.S.Papers. But
I have failed to submit the documents as mentioned above in
time, for which court not submit the F.S.Papers in time.

MRS. Ajufa Begam
wife of Late Jamatulla Ali

Witness of Smti Righini Devi, w/o Late Rajendra Roy
Ex-Sr.Gangman under S.S.E.(P.way)/NGC Expired on 1.3.1999.

I Smt. Righini Devi w/o Late Rajendra Roy do hereby
declare as under.

Late Rajendra Roy was working under S.S.E. (P.way)/NGC
as expired on 1.3.1999. In this connection A.P.Sarma C.P.I.
Ghy attended in my Rly. Q/R and advised us to collect the
documents such as court affidavit, I/Bond, 3 S.B. account of
major sons, photograph and death certificate for filling up
of F.S.Papers. But I had gone to Bihar for opening the bank
account. Sufficient time spend for the same for which I have
failed to submit the documents mention above in time.

On no occasion I felt that C.P.I. Ghy was negligent or
uncooperative in helping me in finalizing my final
settlement.

R.T.I of
Smt. Righini Devi
w/o Late Rajendra Roy

Witness

1. sd/- P.C.Deka

2. sd/- L.Barman

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Witness of Shri Prasad Basfore, Guardian of the minor daughter of late Bhutan Basfore, Ex C/Fitter under S.S.E.(C&W)/Ghy expired on 8.2.2001

I Shri Prasad Basfore, Guardian of Smt Chintamoni Basfore i.e. the minor daughter of Late Bhutan Basfore do hereby declare as under:

Late Bhutan Basfore was working under S.S.E.(C&W)/Ghy expired on 8.2.2001 w/o Late Bhutan Basfore who expired on 20.8.1992 leaving only minor daughter Smt. Chitamoni Basfore. A.P.Sarma C.P.I. Ghy attended in the Q/R and advised to collect the documents as under:- Court affidavit, I/Bond, bank account of the minor operated by guardian, guardianship certificate, photograph, death certificate of the deceased employee and wife. C.P.I.Ghy has also chase up the improvement of documents in several days in our residence. But I would not collect the documents in time as such the filling up of F.S.Papers also submission are delayed.

I did not have any cause to complain in processing my claim for settlement dues at the hands of Shri Sarmaji, C.P.I., Ghy.

Witness

L.T.I. of

Prasad Basfore

1. sd/-

Guardian of Smt.Chintamoni Basfore

2. sd/-

15/6/00

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PRELIMINARY SUBMISSION

1. That the CO undersigned denies the Article of charge in Article-I and the imputation of misconduct and misbehaviour in Article-II of the subject charge sheet memo.
2. That the list of documents by which the charge is sought to be sustained includes irrelevant document. PDI is GM/P/MLG's letter No. EC/704/E/20720 Pt.XVI(c) dt.29.6.67 and it has no relation with the charge. PDI nowhere has any provision for time limit of CPI's work in respect of other than normal retirement cases. On the other hand in Pr.7 of PDI it is stated that the process of determination of qualifying service and qualifying emoluments in case of death of Rly servant while in service should be completed within one month of the receipt of intimation regarding the date of death of Rly servant and amount of family pension and DCPE.

In all the cases under the charge sheet this target was not adhered to by the executives and this was the only cause for the delay in completion of CPI's work of collecting documents and filling up the proforma booklet related to deceased staff.

Further PD2 has no relation with the chargesheet. PD2 speaks of the case Babul Rao Pahdia at P.4. Whereas the chargesheet is about the cases of others. It is not understood how PD2 can be used by prosecution to prove the charge.

3. The charge sheet is not clear as to the responsibility and extent of work of CPI helping final settlement. Final settlement is not done by CPI. CPI's duty is only to advise and guide the survivors/successors on the modalities and necessary documents required for final settlement and help expedite settlement by

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filling up the Booklet and depositing the same to final settlement Sec. in DEM/P/IMG's Office after obtaining requisite signatures of the executive under which the deceased staff worked.

4. Thus the "submission of" necessary settlement papers in respect of finalisation of payment of settlement dues" is not the CPI's responsibility in whole. It is responsibility is only in association of others concerned. When those others caused delay in fulfilling their part further delay was the consequence which was not under the control of the C.O.

5. The chargé sheet has sigled out the C.O. for all delay whereas the delay was caused at the end of the parties at the beginning and through the process and by the executives.

DETAILED SUBMISSIONS

1. The charge is that the charged official (C.O.) has admitted a gross misconduct in as much as he failed to submit necessary settlement papers in time in respect of finalisation of payment of settlement dues or co-operate with the families in a fitting manner in assisting them as was his duty in expediting early settlement of their dues. While denying the charge refutation of that count by count is amply achieved during the DAR proceeding in the examination of the C.O. and in his defence.

2. The following paras are stated for the sake of summing up the defence and a discussion of the evidence adduced during the inquiry.

3. That there were several settlement papers involved in all the four cases in Article-I of the charge sheet. But the charge sheet nowhere specifically mentions what settlement papers were not filed in time. Nor the prosecution shown any details of dates of submission of each one of the settlement papers and their forward and backward movement from the C.O. to the various executives and back from them to CPI/GHY and again to PS section at DEM/P/LRS's office.

4. That the term settlement papers are not defined anywhere in the chargesheet and the Relied upon documents. The particular settlement papers as are the responsibility of the CFI in the 04 particular cases which he was required to expedite, was not pointed out during the enquiry. As a result all the papers required for the finalisation of the ONR cases' settlement were made the burden of CFI whereas there are some such papers which are the responsibility of others e.g. ~~xxx~~ certificate

of surviving members of family, life time nomination, Mode of payment, payee's Letter of Authority etc. It is submitted that without establishing what document was delayed by how much delay solely because of failure of the C.O. alone, he can't be proved guilty.

5. The Final Settlement follows a procedure and is done in stages and the CFI is involved in only certain stages and not in all stages. He does not control the stages where the parties and the executives need to furnish documents and sign the forms/documents. The C.O. can't be made responsible for these stages if delayed.

6. The C.O. has described the mode of settlement of ~~ONEX~~ ONR Cases in his reply to Q.No.2 dt. 26.4.06. It is an established procedure and no evidence has been adduced by prosecution to show that this procedure was personally delayed by C.O.

7. It is submitted that on the other hand the CO has clearly shown in all the 04 cases what documents as in Booklet (A) and what particulars of individual Bank Accounts were submitted by the parties for filling up the Booklet (B) for onward transmission for signature of the executives vide his replies to Q.No.1, Q.No.2, Q.No.4, Q.No.5, Q.No.6, Q.No.7 and Q.No.8 dated 23-5-06 and Q.No.9 and Q.No.10 dated 26-4-06.

8. The C.O. has shown in his examination and defence that he did everything possible within the ambit of his official capacity and humane approach to motivate the successors in all the 04 cases to have their dues settled as expected and targeted by the Hly.rules. He has taken pains to find relatives to agree to be guardian and obtain Guardian certificate vide his reply to Q.No.9 dated 26-4-06 and his written defence. Further the

C.O. has advised and pursued opening of Bank A/c vide his reply to Q.No.6,7, 8 and 9 dated 26.4.06.

8. The C.O. has shown that he consistently pursued for early and targetted settlement with the executives over telephone and during personal visits to the subordinate offices/Divisional Offices vide his reply to Q.No.3,6 and 8 dated 23/5/06.

10. The CO has also personal contact with the survivors of all the 04 cases in order to obtain the Legal documents from them vide his reply to Q.No.4 dt. 23/5/06 Q.No.2, 6, 8 and 9 dated 26.4.06.

11. The CO has shown that inspite of his best efforts and inspite of the parties' desire for very quick settlement, the Legal documents itself in all the 04 cases consumed the target days of D + 15 and D + 25 let the completion of other requirements alone vide his reply to Q.No.10 date 26.4.06 and his written defence.

12. The CO has shown that there was never any complaint of his targeting credentials on his effort for targetted settlement vide the written evidence in the form of statements from the 04 parties. These evidences show that the C.O. always did his duties for complete satisfaction of the successors through final settlement at the earliest and they had no grievance against the C.O.

13. That the prosecution has not adduced any evidence comprising official memo, directives or office notes envisaging any difficulty parquite with the successors, Bank Authorities, legal forums and the executives to get at any amount of effort the legal documents and other documents from the execu-

times required for filling up the Book-let (B) and their submission in PS section. Nor on written communication from C.O. to the parties and the authorities.

It is submitted that written request for legal documents, other documents or steps by executives for final settlement was not in vogue at that time relevant to the 04 cases. What was not in practice and part of the procedure cannot, it is submitted, be the basis of any charge against CPI/GHY(CO).

14. The charge is that Late Jamatulla Ali expired on 11.9.2001 but the C.O. has submitted settlement papers on 22.1.04. In humble submission I put below the chronology of my and related work on this case :

(1) Late Jamatullah Ali, Ex.C/Khalasi/GHY : Expd.on 11/9/2001 :

F.S.Papers of 1st wife and other members are filled up on 17-7-03, SSE (C&W)/GHY signed on 20/11/03.

F.S.Papers of 2nd Wife & other members are filled up on 27-10-03 and documents of minors on 21-1-04 SSE(C&W)/GHY signed on 20.11.03, 9.12.03 & 27.1.04.

Guardianship certificate for the minor of 1st wife issued on 2.5.03.

Guardianship certificate for the minor of 2nd wife issued on 10.3.02.

C.O./GHY signed in the Surviving Family members but date of signing not available Death Certificate issued on 5.10.01. Court Affidavit issued on 26.5.03.

F.S.Papers submitted by Welfare Inspector/GHY to F.S.Section DE (P)/LMC on 15.12.03 but the sealing clerk of F.S. Section

(DRM(P)/LMG) shown the date of submission as 28.6.04. Dealing Clerk of F.S. Section Signed in the P.S. Memo (P.F.Money) on 19.7.04. DRM(P)/LMG signed in the papers but not shown the date. Forwarding letter addressed to DRM/LMG signed by DRM(P)/LMG for pension on 12.10.04 P.P.O. issued by DRM/LMG on 30.10.04.

15. The charge is that Lt. Rajendra Ch. Roy expired on 1.3.99 but CPI/GHY submitted documents on 13.01.2000. In humble submission I put below the chronology of my and related work on this case :

2) Late Rajendra Ch. Roy, Ex. Sr. Gangman/NGC, Expired on 1.3.99.

Death certificate issued on 4.5.99.

P.S. Papers of the wife filled up on 15.10.99.

SSE(P-Way)/NGC signed on 15.12.99. DEN/GHY signed in the surviving Family members on 3.1.2000.

P.S. Papers submitted by welfare Inspectors to F.S. Section on 13.1.2000.

P.S. Papers of 3 major sons filled up on 23.11.2001. SSE, (P-Way)/NGC signed on 30.11.01 due to non-receipt of SB Account.

P.S. Memo (P.F.Money) signed by DRM(P)/LMG on 4.4.2000

Pension calculation sheet signed by DRM(P)/LMG on 19.10.2001.

It is seen that the M.O.P. form (P1-16) of the wife Smt. Raghini Devi are signed by DRM(P)/LMG on 4.4.2000 and 19.10.01 but the same were submitted on 13.1.2000.

16. The charge is that in Babloo Basfore expired on 5.10.99 but CPI/GHY submitted documents on 28.02.2002. In humble submission, I put below the chronology of my and related work on this case :

3) Late Babloo Basfore, Ex.Sr.Gangman/NGC, Expired on 5.10.99.

Late Bina Basore, wife of Late Babloo Basfore, Expired on 13.9.97.

Death certificate of Late Bina Basfore issued 22.9.2000.

Death certificate of Late Babloo Basore issued 24.3.2001.

Guardianship certificate issued on 14.11.2000.

F.S. papers filled up on 28.2.2001.

SEE(P-Way)/NGC signed on 13.2.2002, 23.5.2002.

DER/GHY signed in the surviving Family Members on 22/2/02.

ADEN/GHY signed on 15.2.02.

F.S.Papers submitted to F.S. section on 28.2.2002.

F/Pension sanction Memorandum Signed by DRM(P)/LMG on 22.3.04.

17. The charge is that Late Bhutan Basfore, expired on 8.2.2001, documents submitted on 16.12.2004. In humble submission, I put below the chronology of my and related work in this case :

4) Late Bhutan Basfore, Ex.C/Fitter/GHY, Expired on 8.2.2001.

Wife of Late Bhutan Basfore, i.e. Late Lalua Basfore expired on 20.8.93.

Death certificate of Bhutan Basfore issued on 26.2.01.

Death certificate of Lalua Basfore issued on 30.4.02

Guardianship certificate for the minor daughter of Late Bhutan Basfore issued on 6.6.2002.

F.S. Papers filled up Welfare Inspector on 17.6.2002 and submitted to F.S. section DRM(P)/LMG on 13.12.04 due to non-receipt of SB Account of the minor daughter. DRM(P)/LMG vide letter No.EB/355/Pen/Mech. dt.19.7.04 adviced CPI/GHY for submission of F.S.Papers within 10 days i.e. after 3 yrs, 5 months from the date of death.

SE count at CBI/Guwahati opened Oct/04. (1-10-2004).

18. From the cited chronology above and from the above submission it is crystal clear that everywhere delayed submission of legal documents consumed the target period without Frank Final settlement inspite of the CO's doing his duties to the full extent with declared satisfaction of the parties. It is also clear that where there was delay in the part of the executives in clearing the papers put by CPI/GHY and F.S. section/DEM/P/LMG the ~~del~~ submission of completed papers suffered delay for which the C.O. is not responsible, it is submitted.

19. It is also crystal clear from the evidence submitted by C.O. in the form of written, authenticated statements by Ajufa Begum W/o Late Jemalulla Ali, Smt. Raghini Devi W/o Late Rajendra Roy, Sri Kailash Basfore. Guardian of the minors of Late Basfore and by Sri Prasad Basfore Guardian of the minor sole survivor/successor daughter of Late Bhutan Basfore.

Against this evidence from the parties the charge is merely based on conjectures about the lack of initiative and laxity and lack of devotion to duty and integrity of the C.O. There is no evidence by prosecution to refute this evidence in Defence.

20. In sum it is submitted that the prosecution has no case against the C.O. and the charges are not proved in the Inquiry. The ~~humble~~ C.O. deserves to be exonerated without any ~~dubt~~ for the sake of departmental justice.

This is submitted as Defence Brief.

Dated : 15/06/2006

Signed :

(Ambika Prasad Sarma)
CPI/GHY, N.F.Rly.
Charged Official.

under Memo No.E/74/GHY/APS dt.
14.12.05 issued by DPO/ic/LMG/
N.F.Railway.

To Inquiry Officer,
under Memo No.E/74/GHY/APS,
dt. 14.12.05 issued by
DPO/ic/LMG/N. lway.

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N.F. Railway

ANNEXURE - K. S. 123
Office of the
Divisional Rly. Manager (P)
Lunding

Dated 03-8-2006

NO. E/74/GHY/APS

To
Shri A.P. Sarma,
CPI/Gwahati.

Sub :- Forwarding of Inquiry Report.

A copy of Report of Enquiry Officer are enclosed herewith. The Disciplinary Authority shall take suitable action on the above report.

You may submit your representation, if any, on the above Report of Enquiry Officer within 15(fifteen) days of receipt of the same.

DA/ as stated

[Signature]
FOR Divisional Rly. Manager (P)
N.F. Rly. : Lunding.

Attested
[Signature]
Advocate

Report of Inquiry officer on Disciplinary inquiry under Rule 9 & 10 of Rly Service (D&AP) Rule, 1968 against Sri A.P. Sharma, CPI/GHY.

I was appointed as inquiry officer by DPO/IC/MLG vide his order No. E/105/31/2/FS dt 06.01.2006 to enquiry in to the charges framed against Sri Ambika Prasad Sharma, CPI/GHY vide DPO/IC/MLG's major charge memorandum No E/105/31/2/FS dt 14.12.05.

Sri Mridul Kumar Das, Hd. Clerk under CCO/MLG has been nominated by charged official Sri A.P. Sharma, CPI/GHY to act as Defence counsel to assist him during hearing vide his application dated 24.02.2006.

Preliminary hearing on the above case was held on 24.2.06. Regular hearing was held on 26.4.06, 23.5.06 & 06.6.06 as per scheduled programme.

The Defence written brief was received on 19.6.2006.

The charged official participated in the enquiry from the beginning to the end & defended his case with the help/assistance of his nominated Defence counsel Sri Mridul Kumar Das, Hd. Clerk/ CCO/MLG.

(A) Article of charge framed against the charged official :-

Article-1 - Sri A.P. Sharma while functioning as CPI/GHY committed gross misconduct inasmuch as he failed to submit necessary settlement papers in time in respect of finalization of payment of Settlement dues to the families of the following deceased employees or co-operate with the families in befitting manner in assisting them as was his duty in expediting early settlement of their dues.

1. Late Jamatulla Ali, Ex-C/ Kha/GHY Expired on 11.9.2001. Sri A.P. Sharma, CPI/GHY submitted Settlement papers on 28.01.04 i.e. after 02 years 04 months 17 days.
2. Late Rajendra Ch. Roy, Ex. Sr. Gangman/NGC expired on 01.3.99, documents submitted by CPI/ GHY on 13.01.2000.
3. Late Babloo Basfore, Ex. Sr Gangman/NGC expired on 05.10.99. Documents submitted on 28.2. 2002.
4. Late Bhutan Basfore, Ex. S/C/GHY expired on 08.02.2001. Documents submitted on 16.12.2004.

(B) Statement of Imputation of misconduct against Sri A.P. Sharma, CPI/GHY in support of the charge:-

Article-1:- Sri A.P. Sharma, CPI/GHY was entrusted to perform the job of Chief Personnel Inspector covering the area of PNO/GHY/ NGC area of Engineering & S&W deptt. with settlement cases & others.

But he failed to submit settlement cases of the above staff with utter delay on his part. He thus violates OM(F)/MLG's order communicated under their letter No. E/105/31/2/FS dt 20.6.87 and letter No. E/105/31/2(FS) dt 6/7-12-2000 & joint Circular of CPO & FA/CCAG/MLG vide No. PNO/PF/FS/01/Pt-I dt 12.01.2001.

If Sri Sharma had a little initiative & sense of responsibility to process the cases, such delay could be avoided.

Thus by his aforesaid act of delinquency Sri A.P.Sarma, CPI/GHY Committed gross misconduct and contravened Rule 3.I (i) (ii)&(iii) of Rly. service(conduct) Rule, 1955.

2. Case of Disciplinary Authority.

The prosecution relied on 8(eight) documents as listed in Annexure -III of the charge memorandum. Based on the relied upon documents, the prosecution case is as under:-

Article 11- charged official failed to submit settlement papers within prescribed time limit fixed for the purpose in the following 4(four) cases:-

- i) Late J. Matulla Ali, Ex.C/Cha /GHY Submitted after 02 years 04 months 17 days of his death.
- ii) Late Rajendra ch Roy, Sr.G/Man NGC submitted after 10 months 12 days of his death.
- iii) Late Babloo Basfore, Ex- Sr.G/Man NGC submitted after 02 years 04 months 27 days of his death.
- iv) Late Bhutan Basfore, Ex- Sp- GHY submitted after 03 years 10 month 08 days of his death.

The C.O. in his defence statement stated that late J. Ali have 06 family members & it took time to verify the respective age of family members declared by late Ali. It was also argued that the C.O. reinvestigated the case on 15.12.03.

Here the C.O. did not furnish any information about the outcome of his investigation. He however, has not denied the delay of 02 yrs 04 month 17 days.

In respect of late Rajendra Roy C.O. stated that in the instant case the party took 2(two) months time to submit Death Certificate & thereafter they left for their native place at Bihar. After several request they could open Bank Account.

Here also C.O. was sitting idle for 2(two) month till submission of Death Certificate & after they left for native place at Bihar C.O. began to request them several times for submission of Bank account. C.O. however not denied the delay of 10 months and 12 days.

Again in the case of late Babloo Basfore, C.O. in his defence statement argued that during investigation he found that one Smt Umabati Basfore came forward as second wife of late Basfore and thereby made the issue complicated which required second case of investigation & submission of court papers like affidavit, indemnity bond, account of each members, guardianship certificate etc. The concerned party submitted those papers in the month of Feb/02.

In the routine of pocket case of Late Babloo Basfore neither any papers like affidavit, Bond etc. of Smt. Umabati Basfore appears in the file nor the charged official was asked to prove existence of such 2nd wife namely Smt Umabati Basfore. This argument advanced by C.O. is only to hide the real fact of his dilatory tactic to submit all settlement papers of late Basfore.

In the case of Late Bhutan Basfore S. Cleaner, C.O. in his defence statement argued that the delay caused due to non-shouldering of responsibility of guardianship by any body for the minors of the deceased employee. But in his Defence he admitted

3. In the case of Sri Prasad Basfore, brother of late Bhutan Basfore obtained guardianship Certificate.

Although C.O. claimed that none of the family members came forward to take responsibility of guardianship, but Sri Prasad Basfore submitted guardianship as will be evident from C.O.'s own statement. Hence his plea of repeated persuasion to make Sri Prasad Basfore agree for submission of guardianship is an afterthought. In fact he had not taken any initiative to finalize the settlement dues of late Bhutan Basfore.

3. Case of the charged official.

In the case of C.O.'s Defence statement i.e. reply of the C.O. to the charge sheet, in addition to additional (Defence) documents and Defence brief, the Defence case is as follows:

In the case of C.O. in his defence statement argued that the case of late Jamatulla Ali was not required thorough investigation & after receipt at Bank account, Death Certificate, guardianship certificate and on completion of re-investigation he submitted the papers.

In the case of Late Rajendra Roy, delay caused due to delayed submission of death Certificate. The party thereafter left for Bihar at their native place & after several reminders from C.O. they opened Bank Account at CBI /Darbhanga (Bihar).

In the case of late Babloo Basfore, delay caused due to one Smt. Umabati Basfore claimed as 2nd wife of Late Babloo Basfore which required thorough investigation & after that on receipt of death certificate, affidavit, I/Bond etc. in February, C.O. was able to process the case.

Further in the case of Late Bhutan Basfore, none of the family members of late Bhutan Basfore came forward to take guardianship in favour of his minor daughter and hence time to convince one Sri Prasad Basfore, brother of late Bhutan Basfore to be guardian. Sri Prasad Basfore took One & half year time to submit guardianship certificate & again for opening Bank account took another 2 years 04 months.

Further in his written brief C.O. Submitted that PD/2 has no relation with the charge sheet as PD/2 speaks of the case of Babul Rao Pandia which does not exist in the charge sheet. It has also been contended that nowhere in the charge sheet it has been specifically mentioned what settlement papers were not filed in time nor the prosecution has shown any details of dates of submission of each one of the settlement papers and their forward & back ward movement from C.O. to the various executives and back to C.O. & then to FS section. The C.O. further contended that the particular settlement papers as are the responsibility of CPI in above 4 ONR cases was not cleared out during inquiry. C.O. contended that he submitted FS paper of Late J. Ali to the Asst. CHY to D. M(P)/FS/LMG on 15.12.03 but the dealing clerk of FS/Section 100 gave him the date of submission as 26.6.04.

Lastly C.O. with his brief submitted written statements of (1) Smt Ajufa Begum, widow of late Jamatulla Ali (2) Smt Righini Das, W/o Lt. Rajendra Roy (3) Sri Kailash Basfore, Guardian of minor children of Late Babloo Basfore & (4) Shri Prasad Basfore Guardian of minor daughter of Late Bhutan Basfore. Based on the above statements C.O. asserted that the charge is based on conjecture.

Assessment & Analysis of Evidence

The allegation is that the charged official failed to submit settlement papers in time in respect of the following death cases:-

- (A) Late Jamatulla Ali.
- (B) Late Rajendra Roy.
- (C) Late Babbar Basfore.
- (D) Late Bhutan Basfore.

By the above act C.O. violated administrative instruction communicated under GMRG/ LMG' No. FS/ 34/L/207/O pt -XVI(C) dt 29-6-87 & No. E/105/ 31/2(FS) dt 6/7-2-2000 and joint circular of CPO & FA&CAO vide No. PNO/PF/FS/01/Pt-I dt 01.3.01.

Delay alleged by prosecution is as under:-

- (A) Late Jamatulla Ali :- Expired on 11-9-01. Case submitted by C.O. on 28-01-04 i.e. delay for 02 years 04 months & 17 days.
- (B) Late Rajendra Roy :- Expired on 01-3-99. Case submitted by C.O. on 13-01-99 i.e. delay for 10 months & 12 days.
- (C) Late Babbar Basfore :- Expired on 05-10-94. Case submitted by C.O. on 28-02-02 i.e. delay for 02 years 04 months & 23 days.
- (D) Late Bhutan Basfore :- Expired on 08-02-01. Case submitted by C.O. on 16-12-04 i.e. delay for 03 years 10 months & 08 days.

(a) In the case of Late Jamatulla Ali, Ex.C/Kha/GHY expired on 11.9.2001, Guardianship certificates were issued on 10.3.03 & 02.5.03 but settlement papers were submitted to DRM(P)LMG' FS section on 28.01.04.

The C.O in his defence statement as well as answer to the question no. 01 of the proceeding dated 2.5.05 has not denied the delay of 2 years 04 months & 17 days in submitting the settlement papers in the case of Late Jamatulla Ali, Ex. C/Kha/GHY but stated the reasons as (i) due to delay in submission of supporting documents, like death certificate, guardianship certificate, Bank Account etc. by the family members of late (A) and (ii) due to delay in signing the legal documents by the concerned Sr. Subordinate. While the delay caused due to non submission of Death certificate, guardianship certificate, bank Account etc. is logical but the other reason i.e. delay caused due to delay in signing the settlement papers by the concerned Sr. Subordinate is not logical since as SR it was his duty to obtain the signature of the concerned subordinate in the settlement papers in order to ensure its timely submission to FS section of DRM(P)LMG's office instead of leaving the settlement papers at the disposal of the concerned Sr.Subordinate and thus delayed subsequent processing of the case by FS section for arranging payment.

Thus C.O is responsible for the delay in submitting the settlement papers in this case for the period from May'03 to 28.01.04.

(b) In respect of the case of Late Rajendra Ch. Roy, Ex Sr. Gangman /NGC expired on 03.3.99, C.O. stated in his answer to Q.no.02 of the proceedings dated 23.5.06 that after submission of death certificate and Bank A/C Nos. by the family members of Late Roy, filling up of settlement papers were completed on 15.10.99 and after signature of the concerned Sr. subordinate and executive the settlement papers were submitted to FS section on 13.01.2000.

Here also, C.O. has shifted the responsibilities on the concerned Sr. Subordinates and executive for not signing the settlement papers in time.

C.O. in his answer to the Q.No.03 of the Proceedings dated 23.5.06 stated that he had telephonically chased up the issue with the concerned Sr. Subordinate and the documents were signed by the Sr. Subordinate only after his personal visit to the office of the concerned Subordinate.

Thus, C.O. waited for two months and thereafter paid personal visit to the office of the Sr. Subordinate to get the settlement papers signed. C.O. thus delayed the subsequent process of the case by FS Section for arranging payment. **Therefore, C.O. is responsible for delay in this case for the period from 15.10.99 to 13.01.2000.**

(c) In the case of Late Babloo Basfore, Ex. Sr. Gangman NGC expired on 05.10.99, C.O. in his answer to Q.No.05 of the proceeding dated 23.5.06 stated that after issue of guardianship certificate on 14.11.2000 and opening of individual Bank account in favour of 3 minors to be operated by Guardian, FS papers were filled up by him on 28.2.2001. Death certificate of Late Basfore was issued on 24.3.2001 and settlement papers were submitted to FS section on 28.2.2002 after signature of the concerned Sr. Subordinate and Executive.

Thus C.O. instead of chasing up personally waited for long one year after filling up the FS papers for the signatures of the concerned Sr. subordinate and Executive and thereby delayed the subsequent processing of the case by FS section for arranging payments. **Therefore, C.O. is responsible for the delay in submission of settlement papers in this case for the period from 24.3.2001 i.e. after issue of death certificate to 28.02.2002.**

(d) Lastly, in the case of Late Bhutan Basfore Ex- C/Fitter /III/GHY expired on 8.2.2001, C.O. in his defence statement stated the reasons for delay in submitting the FS papers due to delay in obtaining guardianship certificate (issued on 04.06.2002) and opening of bank A/C in favour of the minor daughter to be operated by the guardian which was opened on 1.10.04 and settlement papers were submitted by C.O. on 16.1.04.

C.O. in his answer to Q.No.06 of the proceeding dated 26.4.06 stated that he had issued written advice to the survivor for opening of Bank account after 02 years of issue of guardianship certificate.

C.O. further in his answer to Q.No.08 of the proceeding dated 26.4.06 stated that the written advice was issued to the party only after he was approached by the party.

It shows that C.O. had not contacted the surviving member/ guardian for opening Bank A/C during those 02 yrs. after issue of guardianship certificate and he took action only after he was approached by the party after two years.

- 49 -

b3

It proves that C.O failed to Co-operate with the family of the deceased employee in befitting manner in assisting them as was his duty in expediting early settlement of their FS dues. **Thus C.O is responsible for delay in this case for the period from 04.02.06 to 16.12.04.**

C.O in his brief pleaded that PD/2 has no relation with the charge-sheet as PD/2 speaks of the case of Babul Koo Pandey which does not exist in the charge memorandum. In this connection I invite attention of C.O to the answer to Q.No.03 of the preliminary Hearing held on 24.02.06 wherein C.O admitted receipt of all relied upon documents mentioned at Annexure -III of the charge sheet and the above document has been marked at item-5(b) of page 2 of the DOS as PD/2 which is a letter of CPO/IR/MLG which contains a time bound programme to finalize FS (NR & ONR) cases bearing No F/105/31/2/FS) dtd 6/7-12-2000.

In respect of the statements of witnesses submitted by C.O it is desirable for C.O to mention that the documents which have been sought to be proved were proved with valid evidence. However, even if the statements of witnesses are agreed the fact remained that the C.O. neither denied the delayed submission of FS documents in his defence statement nor he could prove during inquiry that there was no delay as per laid down rules & guidelines which is the basic charge in the charge memorandum framed against C.O. During the entire proceedings of the inquiry C.O tried to prove that the delay was for genuine reasons & not attributable to C.O which can not be agreed with the facts & circumstances of the cases.

Moreover, the fact that C.O failed to co-operate and assist the family members of the deceased employees in befitting manner is ample clear from his answer to Q.No.06 of the proceedings dated 26.4.06 wherein he stated that he had advised the families of the deceased employees to visit him in his office for any guidance/assistance required by them. But as CPI it is his duty to contact the families of deceased employees and render necessary assistance/guidance instead of compelling them to visit his office for assistance.

In view of the above C.O is held responsible for his failure to submit necessary document papers in time for finalization of payment of settlement dues to the families of the 4 deceased employees or co-operate with the families in befitting manner in expediting early settlement of their dues.

Findings.

From all evidence adduced during the course of inquiry it is concluded that the charge as framed in Annexure-I of the memorandum of charge against Sri A.P.Sarma is fully established & hence stands proved as mentioned above.

Dated:- 31.7.2006

Place:- Lumding

(N. Mukherjee)
(N. Mukherjee)

Inquiry Officer

NORTHEAST FRONTIER RAILWAY

NOTICE FOR IMPOSITION OF PENALTIES UNDER ITEM IV TO
IX OF RULE 6 OF RAILWAY SERVANTS (DISCIPLINE AND APPEAL)
RULE, 1968 AND ITEM 91) (ii) & (iii) OF RULE 1707 AND
RULE 1707 (2) RI (Ref. SR 9 UNDER RULE 1716 RI)

NO. E/74/GHY/APS

Dated 11-9-2006

From : Shri K.P. Singh,
DPO/IC/LMG - N.F.Rly.

To
Shri A.P. Sarma,
CPI/GHY .

Ref :- Your Defence Statement No. Nil Dt. 22-12-05

After due consideration of your defence to the charge-sheet No. E/74/GHY/APS dated 14-12-05, the Disciplinary Authority had passed the orders that an Inquiry should be held. Sri N. Mukherjee, APO/I/LMG was nominated as Enquiry Officer to inquire into the charge to find out the truth.

Accordingly, the Enquiry Officer submitted his Inquiry Report alongwith his findings on 31-7-06 which was also supplied to you on 07-8-06 to afford you an opportunity to make representation, if any, on the above report within 15 days from the date of receipt of the Inquiry Report. No representation has since been received from your end within the period of limitation which expired on 22-8-06.

Now, therefore, the Disciplinary Authority after consideration of the Enquiry Officer's report and taking into account all other factors has passed the following orders.

Orders

" After going through the charge, defence statement of the charged official and the Inquiry Report, the following facts are clear -

- 1) The C.O. did not make any concrete efforts in finalising the works of submitting FS papers.
- 2) In all the final settlement cases mentioned in the charge-sheet, there are periods of delay which were well within the control of the C.O.
- 3) The C.O. is silent on important issues like how many times he had visited the families of the ex.employees and how much assistance he had been to the families.

Attested

Advocate.

Therefore, the C.O. has failed to carry out his duties and show no responsibility of helping the families of the ex.employees who died while in service in getting their ES dues cleared.

Shri A.P. Sarma has therefore, violated Rule 3.1 (i) (ii) and (iii) of the Railway Service (Conduct) Rule, 1966 and for which the following penalty is given -

Shri A.P. Sarma is reduced to the post of P.I. Grade III in the scale Rs. 5000-8000/- for a period of 3(three) years with cumulative effect. His pay is fixed at Rs. 5000/- . "

(K.P. Singh)
Divisional Personnel Officer/IC
N.F. Rly. : Lunding
(DISCIPLINARY AUTHORITY)

INSTRUCTIONS :- An appeal against these orders lies to Divisional Railway Manager/NF Rly. Lunding .

Copy to :- 1) OS/EO at office • They are advised to implement
2) APO/Guwahati | the above order with immediate
3) E/Pass at office | effect.

(K.P. Singh)
Divisional Personnel Officer/IC
N.F. Rly- : Lunding .

To,
The DRM, N.F.Rly,
Lumding.

Sub:- Appeal against the order dated 11.9.06.

Sir,

With due respect I beg to lay the following few lines for your kind consideration and necessary action thereof.

That the charge sheet dated 14.12.05 has been received by me and after receipt of the same I have submitted a detailed reply dealing with each and every issue of the present case. For better appreciation of the factual aspect of the matter I beg to enclose the said reply dated 22.12.06 and rely and refer the same.

The factual back ground of the case is that while I was at Lumding on 31.10.05, DPO/Lumding (A.K.Sengupta) called me to his Chamber along with Pritam Sarkar, dealing clerk of Final settlement Section to give remarks of pending ONR cases on the statement of Sept/05 for preparation of ensuing statement is to be placed at HQ Meeting and DPO/LMG collected the remarks of Pending ONR cases. But DPO/LMG prepared the statement and he did not highlight the remarks against my pending ONR cases. He placed the statement in the meeting on 2.11.06 with CPO/Adm/MLG as it was in the previous month. Even DPO/IC/LMG imposed me N.I.P on 6.10.05 (withholding of one year Increment) for the case of Babul

Attestes


Advocate.

Rao Pantia, which is also not mentioned in the statement and it was done intentionally to give me harassment. For the reason mentioned above CPO/Adm/MLG in the meeting on 2.11.05 ordered to issue Major Penalty charge sheet again for the pending ONR case of Babul Rao Pantia. APO/GHY in the meeting on 2.11.05 issued suspension order for me, but APO/Ghy has got no authority to issue suspension order to me. DPO/IC/LMG revoked my suspension order on 29.11.05 and I resumed duty on 30.11.05. DPO/IC/LMG issued major/penalty charge sheet on 14.12.05. In Annexure II DPO/IC/LMG stated that I was entrusted to perform the job of CPI covering the area of PND/GHY/NGC area of Engineering & C&W Deptt. with settlement cases and others." This is not true. I think DPO/IC/LMG is out of knowledge of my jurisdiction. Hence a copy of my jurisdiction attached.

In Annexure II DPO/IC/LMG stated as List of Pending cases presently figuring for monthly fort nightly discussion with CPO/Admn/HD. The Final settlement cases mentioned in the Annexure II has already submitted to DRM(P) LMG Final settlement section on 15.12.03, 13.12.2000 28.2.2002 & 13.12.04 and also paid the F.S. dues. So after making payment, how DPO/IC/LMG brought the charges against the 4 cases. In meeting only discussion is on the pending ONR cases & not violating the circular of CM(P)/LMG, CPO etc. Therefore, the 4 cases are not pending. But it is astonish that putting me under suspension DPO/IC.LMG getting no way to give me charge sheet he searched in the ^{Final} First Settlement Section and from the Register of ONR cases he collected 4 nos ONR cases and selected it to bring charges

against me for the said cases. But actually Major penalty charge sheet is to be issued in favour of me against the case of Babul Rao Pantia as per CPO/ADM/HQs order in the copy of the meeting. As DPO/IC/LMG already issued NIP to me for the case of Babul Rao Pantia on 6.10.05 so to save his skin (DPO/IC/LMG) he makes this conspiracy and the 4 cases which are not pending he makes them pending and issued major penalty charge sheet against me. From the fact above it is very clear that DPO/IC/LMG intentionally issued charge sheet right & left against me to condemn my career.

At Annexure III he mentioned, the circular and all these circular are not only applicable to me but for all those who are linked with SO, punishment to be imposed to others those who could not maintain the target. From the copy of the minutes of the meeting on 2.11.05 it has seen that there are several cases pending in LMG Division but there is no action against those. How many charge sheet issued DPO/IC/LMG against these pending DNR case.

In the case of Late Bhutan Basfore Ex S/Cleaner/GHY, Basfore expired on 8.2.01. DRM(P)/LMG (DPO/IC/LMG) vide order dated 19.7.04 advised P.I/GHY to submit the settlement papers within 10 days. But Late Bhutan Basfore expired on 8.2.01. There is no explanation as to why the papers were sent to the PI so belatedly. As DPO/IC/LMG on his own showing the circular in Annexure-III, the target date has already over. Why there is no action or no explanation.

In this case why DPO/IC/LMG has issued the letter and not issued the charge sheet although the mentioned GM(P)/MLG's circulars are available at that time. DPO/IC/LMG issued the charge sheet on 14.12.05 i.e. after submission of the case showing the charges as pending ONR case and violating the order of GM(p) MLG

No.1 APO/1/LMG (N Mukharjee) conducted the inquiry in such a manner that he establish the charges. At the time of inquiry he engaged practically Sri Bose helped N.Mukherjee for asking questions and inquiry officer discussed with him in every movement. so, inquiry officer could not conduct the inquiry in proper way. The procedure mentioned in the RS(D&A) Rules have not been followed and I was not provided with the reasonable opportunity of hearing and defence.

No.2 Inquiry officer's report some questions which are incorporated which are not mentioned in the Article of charges. He asked the question of Babul Rao Pantia in the inquiry for non submission of FS papers which is completely out of charges.

NO.3. In the report of inquiry officer out of the bottom of page NO.2 stated that neither any papers affidavit I/Bond etc. of Smt. Umabati Basfor appears in the file claiming as 2nd wife of Late Babulal Basfor. But in the enquiry on 23.5.06, I have clearly answered that one Mrs. Umabati Basfore who stated to have been the surviving & 2nd wife of late Babul Basfore and verbally

claimed so, inquiry officer asking for Affidavit & I/Bond in his report is purely perverse. So, inquiry officer (N.Mukherejee) who submitted the inquiry can not sustain any charge on me and as such I rely on my representation submitted earlier in this regard.

DPO/IC/LMG issued NIP vide No.E/74/GHY/APS dated 11.9.86 reduced to the Post of P.1/111 in scale Rs.5000-8000/- for a period of 3 years with cumulative effect pay fixed at Rs.5000/-, basing solely on the inquiry report which contains perverse findings and same has the result of the illegal proceeding violating the Rules holding the filed and without providing me the reasonable opportunity of hearing.

That Sir, I had availed the above scale since Sept/1986 i.e. before 20 years. But as punishment. On the whole DPO/IC/LMG fixed my scale after 3 grades lower and he keeps me in the lowest position of Inspector in the N.F.Railway, which is shocking dis-proportionate and unacceptable. But Sir, my seniority position on CPI in Scale Rs.7450-11500/- was 4th in the N.F.Rly. likewise, DPO/IC/LMG imposed 4 punishment against the one penalty which is not tenable at all. Apart from that the DPO/IC/LMG could not have passed the said punishment order on the count of SOP as well as on the count of serious violation of the settled proposition as laid down by the rules.

That Sir I have complied 34 years of service which I claim it to be an unblamish one till the date of service

of the charge sheet. I had no occasion to face any such proceeding before but within time span of few months I have been harassed by issuing as many as six charge sheets. The doubt of my efficiency in service as indicated in the charge sheets will be over from the data enclosed in the present Appeal. It is clear from the said data that I have completed all most all the pending cases in my hand and there is also few ready case where the official are yet to be retired.

That Sir in that view of the matter I earnestly request your honour to exhonourate me from the charges leveled against me along with a prayer for suspending the effect and operation of the order dated 22.9.06 issued by the DPO/IC/LMG (DRM(P)/LMG), suspending my " 1 st Class Duty Card Pass " , till finalisation of this appeal.

Thanking you,

Encl: 8 (Eight)

Your Faithfully,

Ambika Prasad Sarana
P.I./M/GHY

NO. English / Bel mech

OFFICE OF THE
DIVISIONAL MANAGER (P)
LUMDING, DTM: 19/7/04

10

SSE (CLW) / G.H.

SUB: FINAL SETTLEMENT PAPERS OF LATE Bhutan Baspre

UNDER DMG / 11/1 EXP. 8.2.201

THE ABOVE NAMED STAFF DIED ON 8.2.201 TWO COPIES OF
BOOK LET OF PENSION PAPER ARE SEND HERWITH FOR SUBMISSION TO THIS
OFFICE WITHIN 10(TEN) DAYS.

AT THE TIME OF NECESSARY HELP MAY PLEASE BE TAKEN FROM PL/WL
AND FOLLOWING DOCUMENT MUST BE IN-CORPORATED.

- 1) 3(THREE) COPIES ~~BOOK~~ PASS PORT SIZE 2"/3" PHOTOGRAPH
- 2) BANK ACCOUNT NUMBER (NATIONALIZED BANK.)
- 3) SUFFICIENT NUMBER OF MOP WITH REVENUE STAMP.
- 4) SUFFICIENT COPY OF DEATH CERTIFICATE.
- 5) PROPER AFFIDAVIT AND INDEMNITY BOND IN ABSENCE OF NOMINATION.

APO/II/LUMDING.
N.F.RAILWAY.

- COPY TO: 1) SECTIONAL PL/WL FOR INFORMATION TO SUBMISSION
THE FS PAPER WITH IN TEN (10) DAYS.
- 2) OS BILL TO SUBMIT THE LPC.
 - 3) OS / CADRE TO SUBMIT THE UP DATED P/CASE AND S/SHEET.

FOR DIVISIONAL MANAGER (P)
N.F.RAILWAY. LUMDING.

[Signature]

[Signature] 19/7/2004

[Signature] 19/7/04

N.F.Railway

Office of N.F.Railway

APD-Guwahati

dated.....

Office Order:-

Sub: Revised allotment of duties of welfare Inspector under this office has been modified as under:

This should be implemented immediately.

Name & Designation

Jurisdiction allotted

1.Sri A.P.Sarma, CPI

1. Overall supervisor of welfare organisation and LWI/PI'S duties.

The Station & subordinate offices

2. ACI, KYO&PNO Station including subordinate offices of CS/PNO,CS(BG)/GHY,PWI/GHY, NGC,CTCI/Auto/MLG& Wireless offices/MLG, CSI/GHY.

3. Welfare Organisation

a. Railway Institutes/MLG, Pandu Central & GHY.

b. Railway School PNO & MLG area.

c. Railway Womens organisation GHY&PNO

2. Shri L.Barman CLWI

1. All electrical Offices under AEE/MLG & AEE/GHY including EC/CPK.

2. All offices/Deptt. of NGC area except DGE/D/NGC & ENGG.Deptt.

3.Welfare Organisations

- a. Railway Cooperative/NGO.
- b. Railway institutes/NGC
- c. Health units/NGS
- d. Railway School of NGC area

3. Shri P.D.Deka, SPI

I.F.C.Station & Subordinate Offices

1.NNGE:-TKG including all subordinate offices & Ghy Stations.

2. Welfare organisation

- a. Railway Cooperative/CPK
- b. Railway Institute/CPK
- c. Health Unit/JID & CPK.
- d. Colony care committee

4. Sri N.C.Kalita

1. Sr.DME(D)/NGC& all subordinate offices under Sr.DEN/MLG.

2.Welfare Organisation:-

- a. Staff canteen/NGC
- b. Colony Care Committee/NGC

In addition to the above, Sri Kalita also keep liason with Law Section and R.A. in connection with Court Cases of the division.

The above jurisdiction have been allotted provisionally subject to approval of CPO/LMG.

No. WB/GHY/MISC

APD- GHY

dated: 24.10.95

Copy forwarded for information & necessary action to:-

(1). Sr.DME(D)/NGC. He is requested to arrange seating accommodation for Sri N.C.Kalita, LWI/GHY at DME(D)/NGC office. (2). Sr.DEN/MLG. (3) DPD/LMG (4) CWI/LMG (5) OS/DG Section/LMG (6) Sri N.C.Kalita, LWI/GHY

Office of the
Divisional Rly. Manager (P)
Lundig

Dated 14-11-2006

NO. E/74/GHY/APS

To
Shri A. P. Sarma, ✓
P.I./III/GHY.

Sub :- Order of Appellate Authority.

Ref :- Your appeal dated 28-9-06 against NIP
dated 11-9-06 .

Your appeal as above was submitted to Appellate
Authority (ADRM/LMG) who has passed the following orders :

Order of Appellate Authority

" I have read the charges, the representation of the employee, the enquiry proceedings, the written submission of defence of the employee dt. 06-6-06, the employee's preliminary and detailed submission dated 15-06-06 and the findings of the enquiry officer wherein it has been established that in case of the four cases there was delay on the part of Shri A.P. Sarma. I have read the NIP imposed by the Disciplinary Authority. The employee has not denied the fact that there has been delay in all the 4 cases mentioned in the charges.

It is also seen that the employee is more than 55 years of age and has two previous NIP of withholding increment of 1 year dated 06-10-05 and another of withholding of increment for 1 year dated 31-7-06.

It would meet justice if NIP is imposed of basic Rs. 7100/- in scale Rs. 6500-10,500/- for a period of 2 years and 6 months N.C. w.e.f. 11-9-06 viz. issue of earlier NIP date. "

In view of the above order of the Appellate Authority, your pay is fixed at Rs. 7100/- in scale Rs. 6500-10500/- for a period of 2 years 6 months (NC).

(K.P. Singh)
DPO/IC/LMG
(Disciplinary Authority)

7450/- 11500
w.e.f. 11-9-06

Copy to :- 1) OS/ED at office
2) APO/GHY

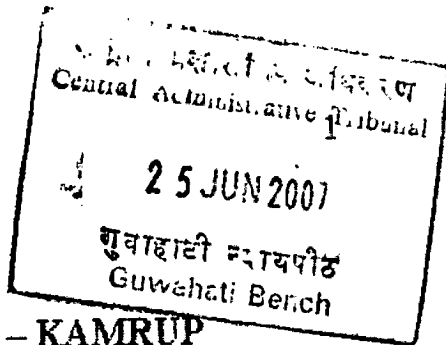
(K.P. Singh)
DPO/IC/LMG

Attested

Advocate

Received on
22/11/06

(110)
A.P.



DIST. - KAMRUP

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :
GUWAHATI BENCH AT GUWAHATI

O.A. No. 68 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. 68/07(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 begs to state that it is a fact that the applicant was appointed as Jr. Clerk and was finally promoted to the post of Chief Personnel Inspector w.e.f. 10.05.98 as per seniority of service and the arguments advanced by the applicant are false and untrue allegations as in the previous two occasion he was issued two charge-sheets vide Memorandum No. EQ/27-A (DAR-Minor) dated 10.05.05 and Memorandum No. EQ/27-A (DAR-Minor/III) dated 13.09.05. The Answering Respondent further begs to state that the applicant Sri A.P. Sarma, CPI/GHY was entrusted to perform the job of Chief Personal Inspector covering the area of PNO/GHY/NGC area of Engineering and C&W Deptt. with settlement cases and others. But he failed to submit the

Gauri Kanta Karati
Filed by
DIV. I, Personnel Officer, (Sherrak to him
N. F. Ly., Guwahati-1
P/A, Guwahati
22/206/07

necessary settlement papers in time in respect of finalization of payment of settlement due to the families of the following deceased Employees or co-operate with the families in befitting manner in assisting them as was his duty in expediting early settlement of their dues. It is also not a fact that the Asstt. Personal Officer do not have power and authority to place the applicant under suspension as the effect of suspension is neither removal nor dismissal from service. Hence there is no scope for violation of any provision of Constitution while placing the applicant under suspension.

The list of the deceased employees against whom the Applicant failed to submit the necessary settlement papers :-

Sl. No.	NAME	EXPIRED ON:	DATE OF SUBMISSION OF SETTLEMENT PAPERS.
(i).	Late Jamatulla Ali Ex-C/Kha/GHY	11.09.2001	28.01.2004
(ii).	Late Rajendra Ch. Roy Ex Sr Gangman/NGC	01.03.1999	13.01.2000
(iii).	Late Babloo Basfor Ex Sr Gangman/NGC	05.10.1999	28.02.2002
(iv).	Late Bhutan Basfore Ex. S/C/GHY	08.02.2002	16.12.2004

5. That in regard to the statements made in paragraph 4.4 to the application the answering respondent begs to state no irregularity has been committed while placing the applicant under suspension. The revocation of suspension order was made under the relevant provisions of existing rules. The allegation set forth by the applicant is untrue allegations and not acceptable at all.

6. That the statements made in paragraph 4.5, 4.6 & 4.7 to the application are not totally correct at all. The answering respondent begs to state that it is a fact that the applicant was served with a Major Charge Memorandum vide No. E/74/GHY/APS dated 14.12.05 but it is not a fact that the charge framed against the applicant was only for failure to submit settlement papers in time in respect of finalization of payment of settlement dues to the families of the four deceased employees. It also includes for non co-operation with the families of the deceased employees in befitting manner in assisting them. As it was his duty and responsibility in expediting

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Kavali

DIV L. Personal Officer.
N. F. Lly., Gwalhati-1

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early settlement of their dues. The answering respondent further begs to state that the applicant had submitted his defense representation against the charge memorandum. After due consideration of his defense statements, the Disciplinary Authority was of the opinion that an oral enquiry is necessary to find out the truth. Accordingly an Inquiry Officer (Sri Narayan Mukherjee) was appointed by the Disciplinary Authority vide his order No. E/74/GHY/APS dated 6.1.06. It is not a fact that the explanation to the charge sheet of the applicant was not considered. The D.A. duly considered the representation and decided to hold an enquiry extending reasonable opportunity to the applicant for his defense.

7. That in regard to the statements made in paragraphs 4.8 to the application the answering respondent has no comments unless contrary to the records.

8. That the statements that averred in paragraphs 4.9 & 4.10 are not admitted by the deponent. The answering respondent further submits that the applicant in his letter dated 3.3.06 asked for inspection of some additional documents but he had not mentioned in his letter about the relevancy of the above documents with the charges leveled against him. The applicant failed to comply with the relevant rules prescribed by the Rly. Servants (D & A) Rules 1989 and RB's letter No. E(D&A) 61 RG6-45 dated 10.10.61. After careful examination of the applicant's request for additional documents, the I/O refused inspection of Additional documents by his office order dated 28.3.06.

However, the applicant's demand for inspection of additional documents was allowed by the I/O dated 27.4.06 during regular hearing when the applicant explained the relevancy of documents for his defense. Thereafter the applicant inspected the aforementioned docket cases on 5.5.06. As such the denial of inspection of the relevant documents as desired by the applicant is not true at all.

9. That the statements made in paragraphs 4.11 & 4.12 are not admitted by the deponent. It may be mentioned herein that the documents, as mentioned in the paragraph 4.11 in the defense statements of the applicant, are neither included in the list of prosecution documents nor

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DIV L. Personnel Officer.
N. F. Lly., Gwalhati-I

reflected in the list of additional documents submitted by the applicant. Being the Chief Personnel Inspector, the applicant should be well aware in discharging his duties and responsibilities in the proper manner.

10. That in regard the statements made in paragraph 4.13 the deponent has no comments unless contrary to the records.

11. That the statements made in paragraph 4.14 to the application are denied by the deponent.

12. That in regard to the statements made in paragraph 4.15 to the application the answering respondent begs to state that the D.A. while deciding the case considered not only the enquiry report but also the defense representation of the applicant against the charge memorandum. Therefore, the averments made by the applicant that the D.A. on the basis of the enquiry report alone held the applicant to be guilty of the charge and impose penalty as per law vide annexure- L to the application.

13. That in respect of the statements made in paragraph 4.16 to the application the answering respondent has no comment unless contrary to the records.

14. That in respect of the statements made in paragraph 4.17, 4.18 & 4.19 to the application the answering respondent begs to state that on appeal being preferred by the applicant before the Appellate Authority (DRM/N.F.Rly/Lumding) against the order of the D/A, imposing the penalty of reduction in rank in the scale of Rs. 5000-8000/- for a period of 3(three) years with cumulative effect fixing the pay at Rs. 5000/-, was reviewed by the Appellate Authority and by its order dated 14.11.06 reduced the penalty by placing the applicant in higher post in the scale of Rs. 6500-10500/- for a period of 2(two) years and 6(six) months without cumulative effect fixing his pay at Rs.7100/-. The competent authority has rightly passed the order of penalty with due care applying judicial mind and giving all reasonable opportunities to the applicant at every stage of the proceeding. Both the D/A and the Appellate Authority decided the case on the basis of records available with absolute reasoning and justification within the frame of Rules provided for the purpose and there is no lack of jurisdiction involved in this case.

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DIVL. Personnel Officer.
N. F. Rly., Gauhati-I

There is no illegality & infirmity in passing the order of penalty to the applicant which is just, proper and reasonable 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.

15. That the submissions made by the applicant in the ground portion is hereby denied by the answering respondent and the answering respondent curves the indulgence of the Hon'ble Tribunal to produce the relevant documents at the time of hearing of the case.

16. That from the facts and circumstances quoted above, no arbitrary and discriminatory exercise of power 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.

17. 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.

18. 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 bound shall ever pray.

Gauri Kantar Karati

DIV L. Personal Officer.
N. E. Dy. G. W. Unit-1

VERIFICATION

I, Shri Gauri Kanta Kakati Son of Late Lohit
ch. Kakati resident of Guwahati
 at present working as the DPO/N.E. 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
 DEPENDENT
DEPONENT

10 OCT 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

9/3
Filed by
The Applicant
Sri Ambika Prasad
Sarma
21.9.07

O.A. NO. 68/07

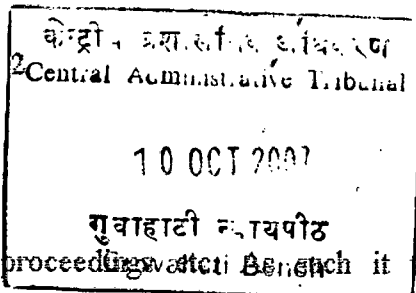
Sri Ambika Prasad Sarma

-VRESUS-

Union of India and Others.

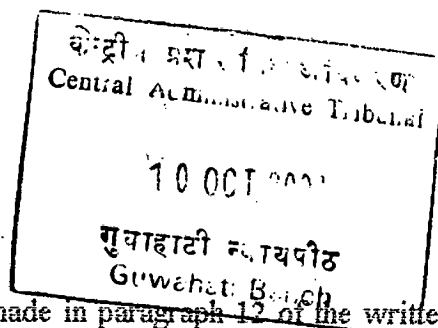
REJOINDER TO THE WRITTEN STATEMENT FILED BY THE RESPONDENTS :-

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 statement, the applicant while denying the contentions made therein begs to state that the Respondents have virtually admitted that the applicant have rendered 34 years of blemish free service since his initial appointment as Junior Clerk till the year 2005 while he was working as Chief Personal Inspector till receipt of 6 nos of charge- sheets in 8 months duration in the year 2005 incorporating similar nature of allegations in each of the charge-sheets. The aforesaid charge-sheets have been issued by the Disciplinary Authority inspite of the fact that the progress and performance of the applicant for settlement of NR and ONR cases were for better in comparison to other Division as reflected in several PNM Meeting. Further the order of suspension has been issued without authority and without maintaining the proper procedure. So far the allegation of non-submitting the necessary settlement papers are concerned, the applicant denied that charges in toto which is false, incorrect and fabricated one.
4. That with regards to the statement made in paragraph 5 of the written statement, the applicant while denying the contentions made therein begs to state that the revocation of suspension order was made under the relevant provisions of rules. But the order of placing the applicant under suspension was made by a below ranking officer without indicating anything

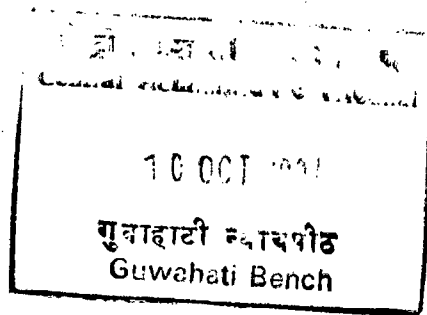


regarding contemplating any Departmental proceedings against it was illegal and irregular.

5. That with regards to the statements made in paragraph 6 of the written statements, the applicant while denying the contentions made therein begs to state that the settlement of dues to any family is not a one man's work, several persons are involved in the process of settlement, but the Disciplinary Authority with the pre-determined intention victimized the applicant for no allegations/complaint against the applicant by the four families for non-compensation with them at any point of time. As such the explanations given by the applicant was not at all considered before imposition of the penalty on the applicant.
6. That with regards to the statements made in paragraph 7 of the written statements, the applicant has no comments to offer.
7. That with regards to the statements made in paragraph 8 of the written statements, the applicant while denying the contentions made therein begs to state that due to not allowing him to inspect the documents as has been asked for, the applicant was not able to prepare his written defence properly. The aforesaid facts have not been denied by the respondents also in the written statement filed by them.
8. That with regards to the statements made in paragraph 9 of the written statements, the applicant while denying the contentions made therein begs to state that the Respondents neither denied nor controverted the statements made in paragraph 4.11 and 4.12 of the O.A. to the effect that all the persons concerned clearly indicated that there was no negligence from the part of the applicant towards expeditious disposal of their final settlement cases. Further the respondents are still silent and trying to avoid the fact that CPI alone can not do each and every work for final settlement.
9. That with regards to the statements made in paragraph 10 of the written statement, the applicant has no comments to offer.
10. That with regards to the statements made in paragraph 11 of the written statement, the applicant while denying the contentions made therein begs to state that the respondents tactfully avoided to make any comments against the averments made in paragraph 4.14 of the O.A. Hence it is deemed to be admitted.



11. That with regards to the statements made in paragraph 12 of the written statement, the applicant while denying the contentions made therein, the applicant begs to re-iterate and re-affirm the statements made in paragraphs 4.15 of the Original Application.
12. That with regards to the statements made in paragraph 13 of the written statement the applicant has no comments to offer.
13. That with regards to the statements made in paragraph 14 of the written statements, the applicant while denying the contentions made therein begs to re-iterate and re-affirm the statements made in paragraph 4.17, 4.18 and 4.19 of the Original Application.
14. That with regards to the statements made in paragraph 15,16,17, and 18 of the Written statements, the applicant while denying the contentions made therein begs to submit that the authority has violated the fundamental rights of the applicant and the action on the part of the authority is arbitrary and discriminatory in nature.
15. 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.



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.....are true to my knowledge and those made in paragraphs..... 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 day of March/2007 at Guwahati.

Ambika Prasad Sarma

SIGNATURE