

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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06/07/2015  
SECTION OFFICER (JUDL.)

FORM NO. 4  
(See Rule 42)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH :  
ORDERSHEET


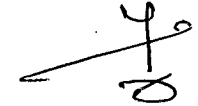
1. ORIGINAL APPLICATION No : 153 / 2009
2. Transfer Application No : ----- / 2009 in O.A. No. -----
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Applicant (S) : Laxmi Kanta Sarma

Respondent (S) : Union of Inds. Man.

Advocate for the : Mr. H.K. Das  
{Applicant (S)}

Advocate for the : Rty. Standing Counsel.  
{Respondent (S)}

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed/C. F. for Rs 50/- deposited vide P.O. No. <u>396/4/8528</u> Dated <u>12.8.09</u></p> <p><u>12.8.09</u> 4 (Four) copies of Application with envelope received from issue notice to the Respondents No. 7 to 4, Copy served.</p> <p><u>12/8/09</u> K. Das issue notice to the Respondents.</p> <p><u>14/8/09</u></p>	<p>13.08.2009</p> <p>/bb/</p>	<p>Heard Mr.H.K.Das, learned counsel appearing for the Applicant and Dr.S.L.Sarkar, learned Standing counsel for the Railways.</p> <p>Issue notice to the Respondents requiring them to file their written statement by 12.10.2009.</p> <p>Respondents should keep the departmental proceeding records ready to be produced at the time of hearing.</p> <p> (M.K. Chaturvedi) Member (A)</p> <p> (M.R. Mohanty) Vice-Chairman</p>

O.A. No.153of 2009

12.10.2009 Admit. Call this matter on 27.11.2009 awaiting written statement from the Respondents.

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

(M.K.Chaturvedi)  
Member (A)

(M.R.Mohanty)  
Vice-Chairman

D/No-9596-9599

19/8/09 Dt. 20.8.09 /lm/  
Notice duly served on R-1,2,3  
16/9/09

A/D Card received  
for Respt. No.3

16/9

1/10/09

A/D Card received  
for Respt. Nos. 1 & 2.

1/10/09

No wls filed.

9.10.09

K-Das

Send copies of this  
order to The Applicant  
and the Respondents.

12/10/09

Copies of order dt. 12/10/09  
send to D/Sec. for issuing  
to the Applicant and  
to the respondents by  
post. D/No-12487-12491

26/10/09 Dt. 11-11-2009 no wls filed.  
26/11/09

~~27.11.2009 No written statement has yet been  
filed by the Respondents.~~

~~Call this matter on 12.01.2010 awaiting  
written statement from the Respondents.~~

~~cancelled  
(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)  
Member (A) Member (J)~~

27.11.2009 No written statement has yet been  
filed by the Respondents.

Call this matter on 12.01.2010 awaiting  
written statement from the Respondents.

(Madan Kumar Chaturvedi)  
Member (A)

/bb/

Notes of the Registry

Date

Order of the Tribunal

No W/S filed.

11.1.2010

16.2.2010

W/S filed by the Respondents.  
Copy served.

16/2/2010.

12.01.2010

Dr. J.L. Sarkar, learned Railway Standing Counsel have filed written request to adjourned the case as he is unwell. No reply has been filed. Time is extended to file reply within four weeks in the interest of justice.

List the matter on 17.02.2010.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)  
Member (A) Member (J)

/PB/

17.02.2010

Enabling applicant to file rejoinder within 3 weeks as prayed for,

List on 11.3.2010.

(Madan Kr. Chaturvedi)  
Member (A)

(Mukesh Kr. Gupta)  
Member (J)

/pg/

No rejoinder filed.

10.3.2010

No rejoinder filed.

16.4.2010

11.03.2010

Rejoinder has not been filed. O.A. was admitted vide order dated 12<sup>th</sup> October 2009. In the circumstances, the case be listed for hearing. Rejoinder, if any, be filed before the date of hearing.

List on 19.04.2010 for hearing.

(Mukesh Kumar Gupta)  
Member (J)

/pp/

Rejoinder not filed.

30.4.2010

19.04.2010

On the written request of Dr J.L. Sarkar, learned counsel for the respondents, adjourned to 03.05.2010.

(Madan Kumar Chaturvedi)  
Member (A)

(Mukesh Kumar Gupta)  
Member (J)

nkmi

30.4.2010

Rejoinder filed by the Applicant with undertaking to serve to Dr. J.L. Sarkar, Rly. Counsel.

16/30/4/2010

Accepted  
Dr. J.L. Sarkar  
SC. Rly.  
16/30/4/2010

-4-  
54.153/2009

Notes of the Registry	Date	Order of the Tribunal
<p>The case is ready for hearing.</p> <p><u>24.5.2010</u></p>	03.05.2010	<p>Learned proxy counsel for respondents states that Dr.J.L.Sarkar, who is appearing for the respondents is in personal difficulty, and therefore, prays for adjournment, which is not opposed by Mr.H.K.Das, learned counsel for the applicant.</p> <p>Hence adjourned to 25.05.2010.</p> <p>(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta) Member (A) Member (J)</p> <p>/bb/</p>
<p>The case is ready for hearing.</p> <p><u>31.6.2010</u></p>	25.05.2010	<p>Mr.S.N.Tamuli, proxy counsel for respondents seeks adjournment as Dr.J.L.Sarkar is not present in Court.</p> <p>List on 04.06.2010.</p> <p>(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta) Member (A) Member (J)</p> <p>/bb/</p>
<p>Received copy</p> <p><u>16/6/10</u></p>	04.06.2010	<p>Heard Mr.H.K.Das, learned counsel for the applicant and Dr.J.L.Sarkar, learned counsel for the respondents. Reserved for orders.</p> <p>(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta) Member (A) Member (J)</p> <p>/bb/</p>
<p>27.8.2010</p> <p>Independent / Zinal order sent to the A/S for issuing record.</p> <p>bb.</p> <p>2081-2084</p> <p>22-8-2010</p>	14.06.2010	<p>Judgment pronounced in open Court.</p> <p>Kept in separate sheets. Application is dismissed.</p> <p>No costs.</p> <p>12 (Madan Kumar Chaturvedi) (Mukesh Kumar Gupta) Member (A) Member (J)</p>

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI:

O.A. No.153 of 2009

Date of Decision : 14.06. 2010

Sri Laxmi Kanta Sarma

.....

Applicant/s

Mr. H.K.Das

.....

Advocates for the  
Applicant/s

- Versus -

Union of India & Ors.

.....

Respondent/s

Dr.J.L.Sarkar, Railway Counsel

.....

Advocate for the  
Respondents

CORAM :

HON'BLE MR.MUKESH KUMAR GUPTA, MEMBER (J)

HON'BLE MR.MADAN KUMAR CHATURVEDI, MEMBER (A)

1. Whether reporters of local newspapers may be allowed to see the Judgment ?
2. Whether to be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?

Yes/No

Yes/No

Yes/No

Judgment delivered by

  
MEMBER (A)

**CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH**

Original Application No.153 of 2009

Date of Order: This the 14<sup>th</sup> Day of June 2010

**HON'BLE MR.MUKESH KUMAR GUPTA, JUDICIAL MEMBER**  
**HON'BLE MR.MADAN KUMAR CHATURVEDI, ADMINISTRATIVE MEMBER**

Sri Laxmi Kanta Sarma,  
Son of Late Abani Sarma -  
Resident of New Market, Rangia,  
P.O. Rangia, District-Kamrup, Assam  
Pin-781354

Applicant

By Advocate M.H.K.Das,

-Versus-

1. The Union of India  
Represented by the General Manager,  
North East Frontier Railways,  
Maligaon, Guwahati-781011, Assam
2. The Chief Commercial Manager  
North East Frontier Railways, Maligaon,  
Guwahati-781011, Assam
3. The Divisional Manager (Commercial),  
N.F.Railway, Rangia, P.O. &  
Dist- Rangia, Assam-781354
4. The Station Superintendent, Tangla  
Railway Station, N.F.Railway,  
PIN-784521

Respondents

By Advocate Dr.J.L.Sarkar.

**ORDER**

**MADAN KUMAR CHATURVEDI, MEMBER(A)**


By this O.A. applicant makes a prayer to quash and set aside the appellate order imposing penalty of compulsory retirement dated 24.7.2007 and review orders dated 15.11.07 and

25.06.09 and to issue directions to the respondents for reinstatement of the applicant with all consequential service benefits.

2. The applicant was working as Senior Commercial Clerk in Tangla under Rangia Division. He was served with a memorandum of charge dated 17.06.05. Two articles of charges were framed against the applicant. First charge related to demand and acceptance of Rs. 20/- in excess of actual fare while allotting a reservation by 4055 DN on 23.22.2004 Ex- TNL to DLI, detected during a pre-arranged trap. Second charge was that the applicant on 14.11.2004 committed an act of misconduct in as much as he produced his Govt. cash of Rs. 8957/- against Rs. 8878/- i.e. Rs.79/- excess than that of his actual Govt. cash.

3. Apropos the aforesaid charges, on 30.11.2005 the Inquiry Officer submitted inquiry report to the disciplinary authority holding article-I charge to be partly proved and Article-II charge to be proved. The Divisional Commercial Manager, N.F.Railway, Rangia imposed penalty of removal from service. Appellate authority reduced the penalty from removal from service imposed by the disciplinary authority to the penalty of compulsory retirement. Being aggrieved by the appellate order the applicant filed this O.A.

4. Mr H.K.Das, learned counsel for the applicant appeared before us. It was submitted that on 14.11.2004 one person approached the applicant for reservation of one berth in 3 tier sleeper against TNL quota by 4055 DN Express TNL to DLI of 20.11.2004. The applicant checked up the reservation register and





found that the berth was available. He handed over a requisition slip to the said person. After filling the same the person returned it to the applicant and the applicant issued journey cum reservation tickets and asked the person to pay Rs. 505 towards the cost of ticket. Thereafter, the person gave the applicant a rolled bundle of G.C Notes and before the applicant could count the notes the person ran away from the booking window. On being counted the applicant found that there was Rs.525/- i.e. Rs.20/- extra than the charges payable. The applicant immediately came out of the counter to locate the person to refund him the excess money, however the person disappeared from the station. Thereafter, the applicant informed the said fact to the Station Master, in charge and the Station Master assured him that the excess amount of Rs.20/- would be adjusted as per rules. On his return from the Station Master some persons approached the applicant and identified themselves to be vigilance officials and conducted the raid. Hence it was claimed that the entire action of the applicant was bonafide and there was no misconduct involved in the case.


5. In reply to Article-II charge learned counsel stated that at the time of issuing tickets to the passengers some coins are necessary for refunding the balance to the passengers because the passengers hardly pay the exact amount. To overcome such a situation it is the practice to take coins from a pan shop adjacent to the station in the morning and refund him in the evening. On 14.11.2004 the applicant collected coins worth Rs. 80/- from the pan

shop for the convenience of the passengers. When the vigilance team conducted raid coins to the tune of Rs.52/- <sup>were</sup> ~~was~~ available in the counter and on that basis the article-II charge was framed. It was stated that collecting of coins from the pan shop to meet the convenience of the passengers was a normal practice to run the railway service smoothly. Therefore there was no ill motive behind such action and it cannot be termed as misconduct. It is further stated that the entire trap was arranged in clear violation of the procedure prescribed under Para 704 & 705 of the Railway Vigilance Manual. In the instant case only one eye witness was present who was a RPF Head Constable, whereas Para 704 & 705 provides for two or more independent witnesses or Gazetted Officers to witness the trap. The independent eye witness in the instant case in his cross examination admitted that he is short of hearing and was at a distance of 15 feet from the decoy. Hence no reasonable person could come to a conclusion that the said constable heard the conversation between the decoy and the applicant. According to learned counsel the entire enquiry was vitiated by procedural lapses which leads to perversity. Our attention was invited on the statement made by Shri Rameswar Singh, Station Superintendent, Tangla Station. In his statement Sri Singh admitted that after receipt of excess amount in the rolled bundle of notes given by the decoy passenger, the applicant immediately came to him and he assured the applicant that excess amount will be deposited with the railway as railway cash. Moreover, Shri Singh with regard to article II charge

admitted during cross examination that the fact of taking coin from the pan shop for the convenience of passengers was well within his knowledge.

6. Learned counsel further stated that no opportunity was given to the applicant by the disciplinary authority as well as the appellate authority of being heard. It caused serious prejudice to the applicant. It was further stated that the Divisional Commercial Manager is not the competent disciplinary authority and he has no authority to impose major penalty. Law is trite on the subject. The order passed by the disciplinary authority and upheld by the appellate authority do not contain the reasons on the basis of which conclusion was drawn. Hence the order is liable to be quashed. It was argued that since the review order is non speaking, cryptic and defective as such it should be set aside. Learned counsel further relied on some precedents to buttress his arguments.

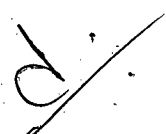
7. Mr K.Das, learned counsel for the respondents appeared before us. It was submitted that the applicant was charged on earlier occasions also for misconduct and penalties were imposed in accordance with the procedure under the Railway Service (Discipline & Appeal) Rules 1968. Those punishments were independent and while imposing the penalty recourse was not made to the earlier orders. As the applicant became oblivious of his earlier misconduct the disciplinary authority for the purpose of making the records clear mentioned about the earlier cases. The earlier penalties have in no way bear any nexus with the present



penalty. Neither the disciplinary authority nor the appellate authority or revisionary authority relied upon the earlier punishment.

8. According to learned counsel the order of penalty was issued under the Railway Servants (Discipline & Appeal) Rules 1968 following the procedure laid down therein. The applicant has been given all scope and opportunity under the procedure as such it is not correct to say that principles of natural justice were not followed.

9. Explaining the, *modus operandi*, learned counsel stated that it is the common practice to first accept the fare and then count it and after satisfying about the correctness of fare to hand over the ticket along with balance amount, if any to the passenger. It is not correct to say that first ticket should be handed over without counting the money. To adjust the excess fare there is a column in daily trains cum summary book (DTC book) as excess booking can be adjusted even without consultation of SS or any other higher authority. Booking clerk cannot leave his counter until and unless he is relieved by other CC. There is no provision to collect coins from the outsider. However, if he collects the coins from the outsider, he should mention the said amount in private cash register. Adverting to the facts of the present case it was stated that money stated to be collected from pan shop was not mentioned in the private cash register. It was not mentioned even at the time of post check memorandum. Vide column 8 of Post Check Memorandum dated 14.11.2004 applicant declared private cash to the extent of Rs.52/-.

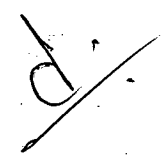


In addition to that excess amount of Rs.79/- was found. According to learned counsel during the trap non gazetted officer could also be utilized in absence of Gazetted officer. In the present 'decoy check Shri T. Mangba, RPF constable acted as an independent witness. Since Tangla station is situated in a branch line of N.F.Railway no Gazetted officer posted nearby.


10. In regard to the opportunity learned counsel submitted that it is not correct to say that appellate authority did not give adequate opportunity to the applicant of being heard. Applicant was given due opportunity to adduce arguments in defence. The same were sympathetically considered and penalty, was reduced.

11. We have heard the rival submissions in the light of material placed before us and the precedents relied upon. In the normal course booking clerk first accept the fare and then count it and after satisfying about with the correctness of the fare he hands over the ticket along with balance if any. As such the modus explained by the applicant that first he has given the ticket then counted the amount appears not to be plausible.

12. In regard to collection of coin from the pan shop no cogent material was adduced before us. The amount alleged to have been collected from the pan shop was not mentioned in the cash register. Even in the post check memorandum, there is no whisper about the receipt of the amount. Only after the detection of excess cash of Rs.79/- this story appears to have been concocted.



13. It is not a mandatory requirement that investigation officer should arrange two gazetted officer from Railway to act as independent witness. Service of non gazetted officer can also be utilized. There is no clear proof that the witness was short of hearing. Adequate opportunity of being heard was given to the applicant. On this count we do not find any infirmity in the impugned order. In the case of *Moni Shankar vs. Union of India & another*, (2008) 3 SCC 4, it was held that the Railway servant must get an opportunity to explain the circumstances appearing against him. The cumulative effect of the illegalities/irregularities required to be taken into consideration to judge as to whether the departmental proceeding stood vitiated or not. We find that opportunity to explain the circumstances was given to the applicant and there was no irregularity in arriving at the conclusion. In the case of *State of Mysore vs. K.Manche Gowda*, AIR 1964 SC 506, it was held that "if the proposed punishment is mainly based upon the previous record of the Government servant, and it is not disclosed in the notice, it would mean that the main reason for the proposed punishment is withheld from the knowledge of the Government servant. Hon'ble Supreme Court has held that second notice to Government servant must disclose the fact and if it is done punishing authority can make resort to previous record. In this case we find that competent authority has not taken into consideration the previous record for awarding the punishment. In the case of *Abujam Amuba Singh vs. State of Manipur & Ors.*, 2000(1) GLT 227, the Imphal Bench of the



Hon'ble High Court has held that if the authority wants to take action on the basis of previous record of an employee, he must have notice of such proposal. In the present case this is not relevant as the punishment was not inflicted on the basis of previous record. In the case of P.Zokha vs. State of Mizoram & Ors. 2002(1) GLT 476, past conduct and records of the petitioner were taken into account without framing a charge. On this factual matrix it was held that major penalty upon the petitioner was illegal. The facts of the present case are different as such this decision is not applicable. In the case of Tribhuvan Prasad vs. Union of India & Ors. 2005(3) ATJ 578, it was held that investigation officer should arrange two Gazetted officers from Railway to act as independent witnesses as far as possible. We have already given a finding that it was not possible in the circumstances of the present case to arrange two gazetted officers as such service of the non gazetted staff was resorted to.

14. We have taken into consideration the entire conspectus of the factual details in the light of the precedents relied upon, We have gone through the impugned order. We do not find any infirmity in it. Accordingly we uphold the same.

In the result O.A stands dismissed. No costs.

  
(MADAN KUMAR CHATURVEDI)  
ADMINISTRATIVE MEMBER

  
(MUKESH KUMAR GUPTA)  
JUDICIAL MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH :: GUWAHATI

OA No. 153 of 2009

Laxmi Kanta Sarma ..APPLICANT

- Vs -

Union of India & Ors. ...RESPONDENTS

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R copy  
12/8/09  
For Dr. S.C. Santhan  
S.C. Railways



**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH :: GUWAHATI**

OA No. 153 of 2009

Laxmi Kanta Sarma ...**APPLICANT**

- Vs -

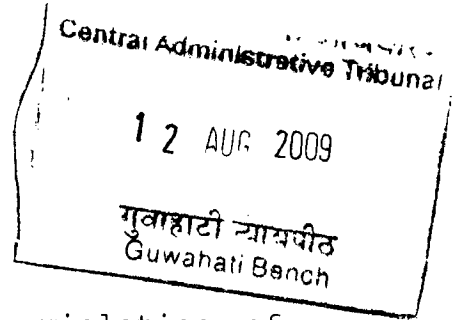
Union of India & Ors. ...**RESPONDENTS**

**S Y N O P S I S**

The applicant while was working as Sr. Commercial Clerk in Tangla under Rangia Division was served with a memorandum of charge dated 17.06.05 under No.C/421/RNY/VIG/STAFF-4, framing 2(two) article of charges against the applicant. The first charge related to demand and acceptance of Rs. 20/- (rupees twenty only) in excess than that of actual fare while allotting a reservation from Road side quota to TNL station by 4055 DN of 23.11.2004 Ex- TNL to DLI detected during a pre-arranged trap. Whereas the second charge was that the applicant on 14.11.2004 committed an act of misconduct in as much as he produced his Govt. case of Rs. 8957/- against Rs. 8878/- i.e. Rs. 79/- excess than that of his actual Govt. cash. The applicant submitted his written statement of defense denying all the charges.

On 30.11.2005 the inquiry officer submitted inquiry report to the disciplinary authority holding article- I charge to be partly proved and Article- II charge to be proved.

The Trap was laid in clear violation of Rule 704 and 705 of the Railway Vigilance Manual. Only 1 (one) independent witness was present who happened to be a Head Constable/RPF, whereas Para 704 and 705 provides for two or more independent witnesses or Gazetted officers to witness the Trap. Moreover, the inquiry officer did not take into consideration the statement of Sri Rameswar Singh, SS/TNL which is sufficient to hold both the charges to be not proved and such non consideration caused serious prejudice to the applicant establishing biasness on the part of the inquiry officer. In



the entire inquiry procedure there was gross violation of natural justice in each and every step.

On the other hand the inquiry officer hold the Article- I charge to be partly proved, however the disciplinary authority hold both the charges to be proved in disagreement with the I.O. and did not give any opportunity to the applicant to place his say in the matter in gross violation of natural justice.

The disciplinary authority in imposing the penalty of removal, the appellate authority in imposing penalty of compulsory retirement and the reviewing authority while satisfying him with the order of the appellate authority took into consideration some past charges of the applicant without giving any opportunity of hearing which alone vitiates entire inquiry.

The Divisional Commercial Manager is not competent to impose the penalty of removal from service dated 03.04.07. The DRM is the appointing and promoting authority of the applicant. Moreover, the review order dated 15.11.07 was passed by the Divisional Railway Manager (Commercial), whereas the review petition was submitted before the Chief Commercial Manager, Maligaon. The order imposing penalty of compulsory retirement dated 24.07.07, review order dated 15.11.07 and 25.06.09 does not disclose any reason as to how the charges against the applicant have been proved. There is no independent application of mind by the appellate as well as the reviewing authority.

Being aggrieved by the orders dated 24.07.07, 15.11.07 and 25.06.09 the applicant has come before this Hon'ble Court for quashing and setting aside the aforesaid orders being based on perverse finding of the inquiry officer and gross violation of natural justice.

Hence the present original application.

\*\*\*\*\*

Filed by  
Hridip Kr. Das.  
12.8.09.  
Advocate

12 AUG 2009

গুৱাহাটী ন্যায়পীঠ  
Guwahati Bench

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## GUWAHATI BENCH :: GUWAHATI

OA No. 153 of 2009LIST OF DATES

- 1994** The applicant got the promotion to the post of commercial clerk.
- 1999** The applicant got the promotion to the post of Sr. Commercial Clerk.
- 17.06.05** Memorandum of charges under no. C/421/RNY/VIG/STAFF-4 issued framing 2 (two) articles of charges.  
[Annexure- 1][Page- 19]
- 10.07.05** Sri Rameswar Singh gave his statement in the inquiry proceeding stating that after receipt of excess amount in the rolled bundle of G.C. Notes given by the decoy passenger, the applicant immediately came to him and he assured the applicant that excess amount will be deposited with the railway as railway cash against the requisition slip as a reference and when the claim will be submitted the matter will be settled. [Annexure- 5][Page- 51]
- 08.11.05** The defense assistant submitted his defense brief.  
[Annexure- 3][Page- 35]
- 30.11.05** The inquiry officer submitted his inquiry report.  
[Annexure- 4] [Page- 37]
- 03.04.07** Order of the disciplinary authority i.e. Divisional Commercial Manager, Rangia imposing the penalty of removal from service. The DCM, Rangia is not the appointing and promoting authority of the applicant. The Divisional Railway Manager is the appropriate authority. The DCM, Rangia is not competent to impose a major penalty. [Annexure- 6] [Page- 52]
- 03.05.07** Appeal submitted by the applicant. [Annexure- 7]  
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12 AUG 2009

গুৱাহাটী ন্যায্যপীঠ  
Guwahati Bench

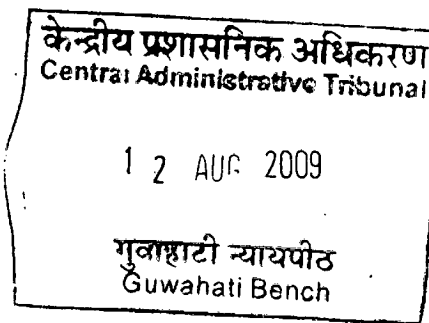
- 24.07.07 Appellate order reducing the penalty of removal from service imposed by the disciplinary authority to the penalty of compulsory retirement. [Annexure- 8]  
[Page- 60]
- 27.07.07 The applicant submitted review petition before the Chief Commercial Manager. [Annexure- 9] [Page- 62]
- 15.11.07 Review order passed by the Divisional Railway Manager (Commercial), N.F. Railway, Rangia upholding the order imposing penalty of compulsory retirement of the appellate authority. The review order was passed by an incompetent authority. [Annexure- 10]  
[Page- 64]
- 2007 The applicant approached the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati challenging the orders dated 03.04.07, 24.07.07 and 15.11.07 by way of filing O.A. No. 309/07.
- 27.03.09 Order of the Hon'ble Tribunal passed in O.A. No. 309/07. [Annexure- 11] [Page- 66]
- 30.04.09 Communication made by the applicant intimating the order of the Hon'ble Tribunal dated 27.03.09. [Annexure- 12] [Page- 69]
- 25.06.09 Order issued by the reviewing authority i.e. Chief Commercial Manager, reconsidering the matter pursuant to the direction of the Hon'ble Tribunal upholding the order imposing penalty of compulsory retirement of the appellate authority. [Annexure- 13] [Page- 70]

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Filed by

Hrisip K. Das.  
12.8.09

Advocate



Filed by:  
The Applicant  
through  
Hidip K. Das.  
Advocate  
12.8.09

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**

**GUWAHATI BENCH :: GUWAHATI**

**OA No. 153 of 2009**

**BETWEEN**

Sri Laxmi Kanta Sarma,  
Son of late Abani Sarma,  
Resident of New Market, Rangia,  
P.O. - Rangia, District- Kamrup, Assam,  
Pin- 781354.

**APPLICANT**

**-Versus-**

1. The Union of India  
Represented by the General Manager,  
North East Frontier Railways,  
Maligaon, Guwahati- 781011, Assam.
2. The Chief Commercial Manager,  
North East Frontier Railways, Maligaon,  
Guwahati- 781011, Assam.
3. The Divisional Manager (commercial),  
N.F. Railway, Rangia, P.O. & Dist-  
Rangia, Assam- 781354.
4. The Station Superintendent, Tangla,  
Railway Station, N.F. Railway. PIN- 784521

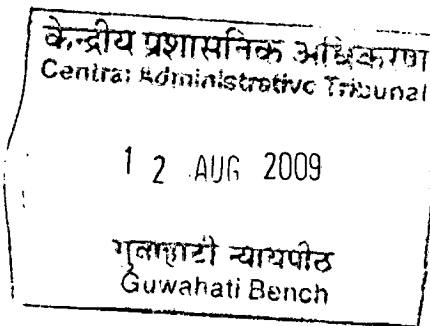
**RESPONDENTS**

**DETAILS OF APPLICATION**

**1. PARTICULARS OF THE ORDER(S) AGAINST WHICH THE APPLICATION IS MADE:**

The present application is directed against the impugned orders dated 03.04.07, 24.07.07, 15.11.07 and 25.06.09 and it is also directed against the inquiry proceeding pursuant to which the above impugned orders have been issued. [Annexure- 6, 8, 10 & 13]

Laxmi Kanta Sarma.



## 2. JURISDICTION OF THE TRIBUNAL:

The applicant further declares that the subject matter of the instant application is well within the jurisdiction of the Hon'ble Tribunal.

## 3. LIMITATION:

The applicant further declares that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

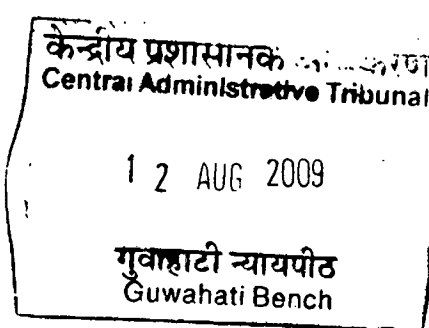
## 4. FACTS OF THE CASE:

4.1 That the applicant is a citizen of India and a permanent resident of the above mentioned place and as such entitled to all rights, protections and privileges as guaranteed under the Constitution of India.

4.2 That the applicant joined the service in the year 1981 under the respondents as Gangman. In the year 1994 he was promoted to the post of Commercial Clerk. Thereafter, he was promoted to the post of Sr. Commercial Clerk (in short Sr. C.C.) in the year 1999. It is stated that since the date of his joining he is discharging his duties to the satisfaction of all concern.

4.3. That the applicant begs to state that in the year 2005 while he was serving as Sr. C.C. at Tangla, a charge sheet was issued to him under Memo No. C/421/RNY/VIG/STAFF-4 dated 17.06.05 bearing two articles of charges. The allegation leveled against the applicant vide Article -I charge is that on 14.11.2004 he demanded and accepted Rs. 20/- (rupees twenty only) in excess than that of actual fare while allotting a reservation from Road side quota to TNL station by 4055 DN of 23.11.2004 Ex- TNL to DLI. Again the allegation under Article- II charge is that the applicant on 14.11.2004 committed an act of misconduct in as much as he produced his Govt. case of Rs. 8957/- against Rs. 8878/- i.e. Rs. 79/- excess than that of his actual Govt. cash. Thereafter, the respondents directed the applicant to submit his written statement of defense within ten days of receipt of the charge sheet.

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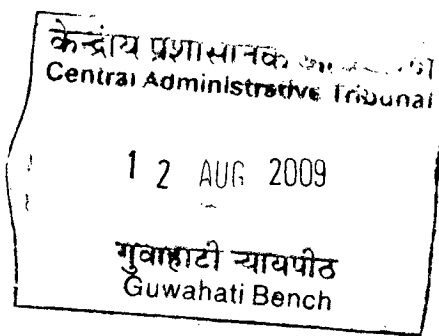


A copy of the charge sheet dated 17.06.05 is annexed herewith and marked as **ANNEXURE- 1**.

4.4 That immediately on receipt of the charge sheet the applicant submitted his written reply. The applicant in the said reply categorically denied the charges leveled against him. The applicant while denying the charges stated the actual factual position of the case. The applicant while denying the Article- I charge stated that on 14.11.2004 one person approached the applicant for reservation of one berth in 3 tire sleeper against TNL quota by 4055 DN Ex. TNL to DLI of 20.11.2004. The applicant checked up the reservation register and found that the berth was available and accordingly handed over a requisition slip to the said person. After filling up of the requisition slip the person returned it to the applicant and the applicant issued the journey cum reservation tickets and asked the person to pay Rs. 505 towards the charge. Thereafter, the person gave the applicant a rolled bundle of G.C. Notes and before the applicant could count the G.C. Notes the person ran away from the booking window. On being counted the applicant found that there was Rs. 525/- i.e. Rs. 20 extra than the charges payable. The applicant immediately came out of the counter to locate the person to refund him the excess money, however the person disappeared from the station. Thereafter, the applicant informed the said fact to the Station Master, in charge and the station master assured him that the excess amount of Rs. 20 paid by the person will be adjusted as per Rules. On his return from the Station Master some persons approached the applicant and identified themselves to be vigilance officials and conducted the raid. Hence, in the entire incident the action of the applicant was bonafide and there was no misconduct involved in the case.

The applicant while replying to the Article- II charge stated that at the time of issuing tickets to the passengers some coins are necessary for refunding the balance to the passengers because the passengers hardly pay the exact amount for the running ticket. Therefore, to overcome such a situation it is the practice to take coins from a pan shop adjacent to the station in the morning and refund him in the evening. On 14.11.04 the applicant collected coins worth Rs. 80/- from the pan shop at

*Laxmi Kant Sarma*



around 7 a.m. to meet the convenience of the passengers. Therefore, when the vigilance team conducted the raid coins to the tune of Rs. 52/- was available in the counter and on that basis the Article- II charge was framed. It is stated that collecting of coins from the pan shop to meet the convenience of the passengers was a normal practice to run the railway service smoothly. Hence, there was no ill motive behind such action and it can not be termed as misconduct.

A copy of written statement of defense is annexed herewith and marked as **ANNEXURE- 2**.

**4.5.** That the applicant begs to state that the respondents appointed one Sri Sisir Sengupta as inquiry officer and one Sri Ranjit Das as presenting officer to conduct the departmental inquiry against the applicant. Accordingly inquiry proceeding started and the preliminary hearing took place on 11.08.05. Thereafter, regular hearing took place on 29.08.05, 06.10.05, 27.10.05 and last regular hearing took place on 28.10.05. On 08.11.05 the defense counsel submitted his defense brief. Thereafter on 30.11.05 the inquiry officer submitted his inquiry report holding Article-I charge to be partially proved and Article- II charge to be proved. It is worthwhile to mention here that although the inquiry report was dated 30.11.05, however it was communicated to the applicant on 18.03.06.

A copy of the defense brief dated 08.11.05 and inquiry report dated 30.11.05 is annexed herewith and marked as **ANNEXURE- 3 and 4**.

**4.6** That the applicant begs to state that the Railway Vigilance Manual in Para 704 and 705 provides for the procedure prescribed for laying a trap to safeguard the interest of officials. For the sake of convenience the relevant portion of Para 704 and 705 is quoted below for ready reference:

**"704. Trap-**

(i) - (iv)

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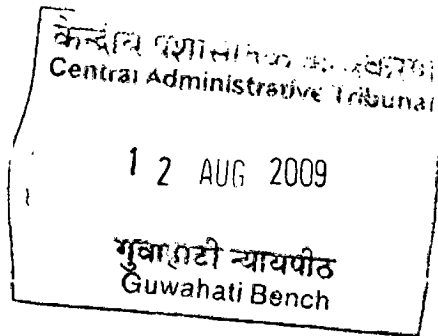
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(v) When laying a trap, the following important points have to be kept in view:

Laxmi Kantar Sarma





- (a) Two or more independent witnesses must hear the conversation, which should establish that the money was being passed as illegal gratification to meet the defense that the money was actually received as a loan or something else, if put up by he accused.
- (b) The transaction should be within the sight and hearing of two independent witnesses.
- (c) There should be opportunity to catch the culprit red-handed immediately after passing of the illegal gratification so that the accused may not be able to dispose it of.
- (d) The witnesses selected should be responsible witnesses who have not appeared as witness in earlier cases of the department or the police and are man of status, considering the status of the accused. It is safer to take witnesses who are government employees and of other department.
- (e) After satisfying the above condition, the investigating officer should take the decoy to the SP/SPE and pass on the information to him for necessary action. If the office of the SP, SPE is not nearby and immediate action is required for laying the trap, the help of the local police may be obtained. It may be noted that the trap can be laid only by an officer not below the rank of Deputy Superintendent of Local Police. After the SPE or local police official have been entrusted with the work, all arrangements for laying trap and execution of the same should be done by them. All necessary help required by them should be rendered.

(vi) – (vii)

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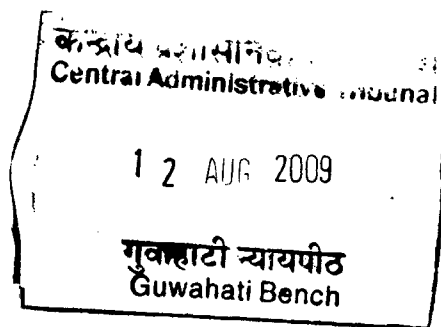
**705. Departmental Traps-**

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

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

All employees, particularly, Gazetted officers, should assist and witness a trap whenever they are approached by any officer or branch. The

*Laxmi Kant Sharma*



Head of Branch should detail a suitable person or persons to be present at the scene of trap. Refusal to assist or witness a trap without a just cause/ without sufficient reason may be regarded as a breach of duty, making him liable to disciplinary action.

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

(c) - (d)

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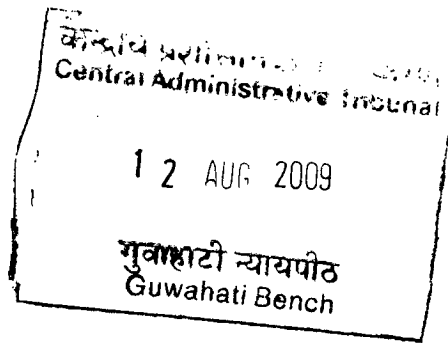
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It is stated that the entire trap was arranged in clear violation of the procedure prescribed under Para 704 and 705 of the Railway Vigilance Manual. In the instant case only 1 (one) eye witness was present who was a Head Constable/RFP, whereas Para 704 and 705 provides for two or more independent witnesses or Gazetted officers to witness the trap. Again the independent witness i.e. Head Constable/RPF in his cross examination admitted

*Adams Kantu Sarma,*



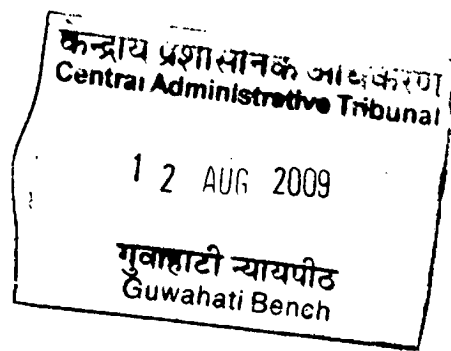
that he is a person of short hearing and was at a distance of 15 feet from the decay. It is further stated that the trap laid by the members of the RPF was a pre-arranged trap. It is therefore, not a case which can be said to be an exceptional case where two Gazetted officers as independent witness could not be made available. Hence, no reasonable person could come to a conclusion that the Head Constable/RPF heard the conversation between the decoy and the applicant. Therefore, the entire inquiry is vitiated by procedural lapses leading to perversity in the findings of the inquiry officer.

The applicant craves leave of the Hon'ble Court to produce the copy of relevant rules of Railway Vigilance Manual at the time of hearing of the case.

**4.7** That the applicant begs to state that the inquiry officer without assigning any valid reason hold the Article- I charge to be partly proved. The inquiry officer in Para 6.12 of the inquiry report under the head 'Analysis of Charge' has categorically stated that the demand of Rs. 20/- (rupees twenty) excess by the charge official is not established. Therefore, when the inquiry officer is convinced that the charges officer did not demand the excess money, in such a situation the findings recorded by the I.O. that the Article- I charge is partly proved is totally perverse.

**4.8** That the applicant begs to state that with regard to Article- II charge the inquiry officer failed to take into consideration the fact that coins were taken from the nearby Pan Shop for the convenience of the passengers and for the smooth functioning of the railway service. There was no misconduct involved in the matter. The Station Superintendent, Tangla, N.F. Railway, Sri Rameswar Singh also admitted in his deposition that such arrangement was within his knowledge and it was done for the smooth running of the railway service. However, the inquiry officer failed to take into consideration the statement of Station Superintendent and stated the explanation of the applicant to be an after thought without assigning any reason. Therefore, the inquiry officer took into consideration irrelevant facts and failed to take into consideration relevant facts while

*Dr. Ram Kandas Sarma*

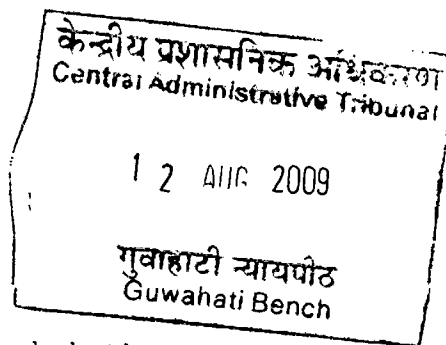


holding the Article- II charge to be proved. Hence, the findings recorded by the inquiry officer are perverse being based on no evidence.

4.9 That the applicant begs to state that inquiry officer failed to take into consideration the statement made by Sri Rameswar Singh, SS/TNL on 10.07.05. In his statement Sri Singh admitted that after receipt of excess amount in the rolled bundle of G.C. Notes given by the decoy passenger, the applicant immediately came to him and he assured the applicant that excess amount will be deposited with the railway as railway cash against the requisition slip as a reference and when the claim will be submitted the matter will be settled. Therefore, the conduct of the applicant was bonafide and there was no misconduct involved in the case. Moreover, Sri Singh with regard to Article- II charge pertaining to the excess case of Rs. 52 has admitted during cross examination that the fact of taking of coins from the pan shop for the convenience of the passengers and smooth functioning of the railway service was well within his knowledge. However, the inquiry officer citing an instance of malafide did not take into consideration the statements of Sri Rameswar Singh, SS/TNL dated 10.07.05. It is stated that no reasonable person properly instructed in law could come to a conclusion of guilt of the applicant taking into consideration the facts and circumstances of the instant case. Hence, the findings of the inquiry officer are perverse being based on no evidence.

A copy of the statement of Sri Rameswar Singh, SS/TNL dated 10.07.05 is annexed herewith and marked as **ANNEXURE- 5**.

4.10 That the applicant begs to state that immediately after the receipt of the inquiry report the applicant was served with an order issued under Memo No. C/409.RNY/SPL-CELL/06-2 dated 03.04.07 by which the disciplinary authority imposed upon the applicant penalty of removal from service. It is stated that the disciplinary authority while imposing the penalty of removal from service has gone beyond the charge sheet dated 17.06.05 of the instant case and placed reliance on some past charges of the applicant. In the order imposing penalty dated 17.06.05 the



disciplinary authority recorded that earlier also there were 2 DAR cases against the applicant and upon perusal of entire service record the applicant was removed from service.

A copy of the order dated 03.04.07 is annexed herewith and marked as **ANNEXURE- 6**.

**4.11** That the applicant begs to state that the disciplinary authority disagreed with the findings of the inquiry officer and hold both the charges to be proved and imposed upon the applicant the penalty of removal from service. It is categorically stated that the disciplinary authority while disagreeing with the findings of the inquiry officer did not give any opportunity of hearing to the applicant to place his say in the matter. Hence, the law is well settled that the disciplinary authority must give notice to the delinquent officer in the event of disagreement with the findings of the inquiry officer.

**4.12** That the applicant begs to state that immediately after receipt of order imposing penalty dated 03.04.07 the applicant submitted an appeal dated 03.05.07 before the Divisional Railway Manager, N.F. Railway, Rangia categorically stating that the Divisional Commercial Manager is not the appointing and promoting authority of the applicant and therefore the Divisional Commercial Manager is not the appropriate authority to impose the penalty of removal from service dated 03.04.07. Only an officer in the rank of Divisional Railway Manager can impose a major penalty upon the applicant. Moreover, the disciplinary authority while imposing the penalty of removal from service upon the applicant solely relied on some past charges of the applicant instead of the present charges. The order of the disciplinary authority is non- speaking and cryptic.

A copy of the appeal dated 03.05.07 is annexed herewith and marked as **ANNEXURE- 7**.

**4.13** That the applicant begs to state that the appellate authority vide appellate order dated 24.07.07 reduced the penalty of removal from service to the penalty of compulsory retirement with full pensionary benefits. It is stated that the appellate authority while imposing the penalty of compulsory retirement

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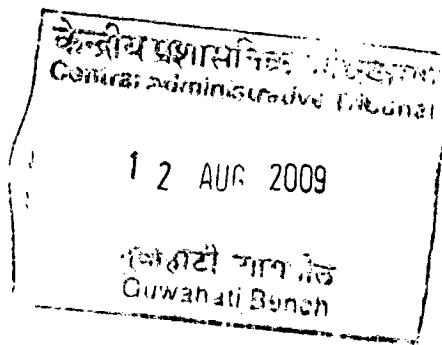
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Guwahati Bench

solely relied on the past charges of the applicant without giving any opportunity of hearing. The law is very clear that past illegalities need not be considered in departmental proceedings. Moreover, the appellate authority failed to give reasons while confirming the views of the disciplinary authority and hence on this score alone the entire departmental proceeding vitiates.

A copy of the appellate order dated 24.07.07 is annexed herewith and marked as **ANNEXURE- 8**.

**4.14** That the applicant begs to state that being aggrieved by the impugned appellate order the applicant submitted a revision petition dated 27.07.07 before the Chief Commercial Manager, N.F. Railway, Maligaon. The applicant in his revision petition categorically stated that no opportunity was given to the applicant by the disciplinary as well as the appellate authority while placing reliance on the past charges of the applicant in passing the order of removal and compulsory retirement respectively. Therefore, the denial of opportunity to place his say in the matter has caused serious prejudice to the applicant. It was also the categorical stand of the applicant that the appellate authority failed to take into consideration the fact that Divisional Commercial Manager is not the competent disciplinary authority of the applicant and has got no power to impose a major penalty. Moreover, the applicant stated that the inquiry officer failed to take into consideration the statement made by Sri Rameswar Singh, SS/TNL on 10.07.05. In his statement Sri Singh admitted that after receipt of excess amount in the rolled bundle of G.C. Notes given by the decoy passenger, the applicant immediately came to him and he assured the applicant that excess amount will be deposited with the railway as railway cash against the requisition slip as a reference and when the claim will be submitted the matter will be settled. Therefore, the conduct of the applicant was bonafide and there was no misconduct involved in the case. Hence, finding of the inquiry officer is unfounded, perverse and no reasonable person properly instructed in law could come to a conclusion of guilt of the applicant.

*daxmi kando Sarma*



A copy of the revision petition dated 27.07.07 is annexed herewith and marked as **ANNEXURE- 9.**

**4.15** That the applicant begs to state that by an order dated 15.11.07 the Divisional Railway Manager (Commercial), N.F. Railway, Rangia upheld the order imposing penalty of compulsory retirement of the appellate authority. It is stated that the DRM (C)/NFR/RNG is not the appropriate authority to pass the review order. Moreover, the reviewing authority failed in totality to consider the review petition filed by the applicant. The law is very clear that if the final orders passed by the disciplinary authority and the appellate authority do not contain the reasons on the basis whereof the decision communicated by that order reached it is liable to be set aside and quashed. Therefore, the review order is non- speaking, cryptic and defective and liable to be set aside and quashed.

A copy of the order review order dated 15.11.07 is annexed herewith and marked as **ANNEXURE- 10.**

**4.16** That the applicant begs to state that challenging the impugned orders dated 03.04.07, 24.07.07 and 15.11.07 the applicant approached the Hon'ble Central Administrative Tribunal, Guwahati Bench by way of filing O.A. No. 309/07. The Hon'ble Tribunal vide order dated 27.03.09 was pleased to hold that reviewing authority has not at all considered the grounds taken in the memo of revision and the proportionality of punishment and set aside the quashed the impugned revision order dated 15.11.07 remanding back the matter to the reviewing authority to reconsider the revision petition of the applicant by passing a reasoned and speaking order. Accordingly, the applicant submitted a communication dated 30.04.09 communicating the order passed by the Hon'ble Tribunal.

A copy of the order dated 27.03.09 passed in O.A. No. 309/07 and communication dated 30.04.09 are annexed herewith and marked as **ANNEXURE- 11 and 12.**

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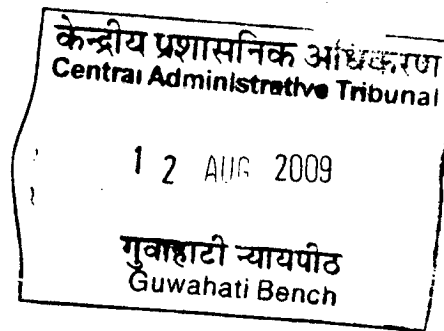
4.17 That the applicant begs to state that as per the direction of the Hon'ble Court the reviewing authority upon reconsideration of the matter passed the impugned order dated 25.06.09 upholding the order imposing penalty of compulsory retirement passed by the appellate authority. It is categorically stated that the reviewing authority while reconsidering the matter failed to appreciate the materials placed on record i.e. the statement made by Sri Rameswar Singh, SS/NFR/TNL dated 10.07.05 which clearly goes to show the bonafide and fairness of the applicant. Moreover, the reviewing in reconsidering the matter failed in totality in appreciating the fact that order imposing penalty of removal from service dated 03.04.07 was passed by an incompetent authority and the review order dated 15.11.07 has been passed by the DRM (C), N.F.Rly, MLG which is not the appropriate authority to pass the review order. However, in the order dated 25.06.09 the reviewing authority again while upholding the charges to be proved placed due consideration of the past charges of the applicant. Therefore, no opportunity was given to the applicant to place his say in the matter and which has cause gross prejudice to the applicant in clear violation of Article 14 and 16 of the Constitution of India.

A copy of the order dated 25.06.09 is annexed herewith and marked as **ANNEXURE- 13**.

4.18 That the order imposing penalty of compulsory retirement dated 24.07.07, review order dated 15.11.07 and 25.06.09 does not disclose any reason as to how the charges against the applicant have been proved. The impugned orders are cryptic, brief and it ex-facie showed non consideration of relevant details in the proceeding. The order imposing penalty only gives the details of the charges while holding the charges to be proved with out furnishing any cogent reason. Hence, the impugned order imposing penalty is a non-speaking order and not sustainable in law.

4.19 That the satisfaction of the appellate authority, disciplinary authority and the reviewing authority on the applicant being guilty of both the charges is not based on any evidence. The orders dated 24.07.07, 15.11.07 and 25.06.09 of the





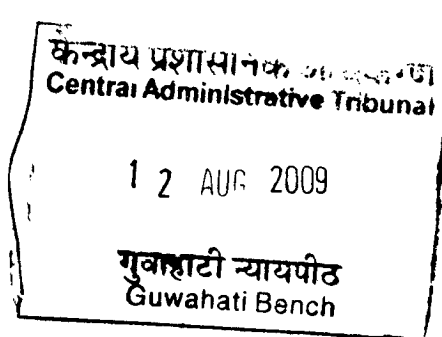
appellate authority as well as reviewing authority did not discuss anything for proving the guilt of the applicant in both the charges. However, the both the authorities while holding the charges to be proved solely relied on the past charges of the applicant wherein no opportunity was given to the applicant to place his say in the matter. Moreover, inquiry officer, disciplinary authority, the appellate and reviewing authority failed to appreciate the statements made by Sri Rameswar Singh, SS/NFR/TNL on 10.07.05, which clearly establishes the innocence of the applicant causing gross violation natural justice. Hence, on this score alone the impugned orders 24.07.07, 15.11.07 and 25.06.09 is liable to be set aside and quashed

4.20 That the applicant files this application bonafide for securing the ends of justice.

#### **5. GROUNDS FOR RELIEF(S) WITH LEGAL PROVISIONS:**

5.1 Because the disciplinary authority as well as the appellate authority while issuing the orders dated 03.04.07 and 24.07.07 took into consideration some past charges and/or extraneous grounds which do not form part of the memorandum of charge dated 17.06.05. It is stated that the penalty of compulsory retirement was imposed primarily basing on the previous record of the applicant for which he was never given any opportunity to place his say. No opportunity was given to the applicant to place his say in the matter with regard to those facts which has caused serious prejudice to the defense of the applicant. The law is very clear that there is requirement of notice if past charges are taken into consideration in imposing major penalties. However the disciplinary authority denied the applicant the said opportunity causing gross violation of natural justice and serious prejudice to his defense. Hence, on this ground alone the impugned order imposing penalty is required to be set aside and quashed.

5.2 Because the entire Trap was arranged in clear violation of the provisions mentioned in **Rule 704 and 705 of the Railway Vigilance Manual** which are mandatory provisions for conducting a trap. **The Rule 704 and 705 provides for two or more independent**



witnesses or Gazetted officers to witness the Trap, whereas in the instant case only one witness was present who happened to be a Head Constable/RPF and an interested witness. As per Para 704 the transaction should be within the sight and hearing of two independent witnesses and in the present case the independent witness i.e. Head Constable/RPF in his cross examination admitted that he is person of short hearing and was at a distance of 15 feet from the decoy. Moreover, the trap laid down was a pre-arranged trap. Therefore, it is not a case which can be said to be an exceptional one where 2 (two) Gazetted officers as independent witness were not available. No reasonable person properly instructed in law can come to the conclusion of guilt of the applicant relying on the statement of the independent witness. Therefore, the entire enquiry proceeding is vitiated for violation of natural justice. Hence the entire enquiry report is devoid of any substance and cannot form a basis for imposing penalty on the applicant because law is very clear that the departmental enquiry is not an empty formality.

5.3 Because the Divisional Railway Manager is the appointing and promoting authority of the applicant. Therefore, Divisional Commercial Manager is not the appropriate authority imposing the penalty dated 03.04.07. Hence, the order dated 03.04.07 was issued without any authority and is liable to be set aside and quashed.

5.4 Because the inquiry officer in his inquiry report hold the Article- I charge to be partly proved and Article- II charge to be proved. However, the disciplinary authority in the order imposing penalty dated 03.04.07 hold both the charges to be proved. Therefore, the disciplinary authority was in disagreement with the findings of the inquiry authority and there arises a mandatory requirement of issuing notice to the applicant to place his say in the matter. However, in the instant case no such opportunity was given to the applicant causing serious prejudice to the applicant. Hence, on this score alone the entire inquiry procedure vitiates and liable to be set aside and quashed.

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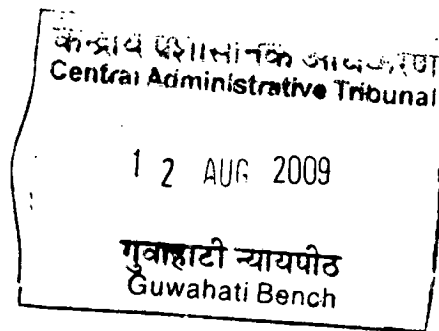
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Guwahati Bench

5.5 Because the inquiry officer failed to take into consideration the statements made by Sri Rameswar Singh, SS/TNL on 10.07.05. In his statement Sri Singh admitted that after receipt of excess amount in the rolled bundle of G.C. Notes given by the decoy passenger, the applicant immediately came to him and he assured the applicant that excess amount will be deposited with the railway as railway cash against the requisition slip as a reference and when the claim will be submitted the matter will be settled. Therefore, the conduct of the applicant was bonafide and there was no misconduct involved in the case. It is stated that no reasonable person properly instructed in law could come to a conclusion of guilt of the applicant taking into consideration the facts and circumstances of the instant case. Hence, the findings of the inquiry officer and the satisfaction of the disciplinary, appellate and reviewing authority are perverse being contrary to the evidence available on record. Hence, on this score alone the entire proceeding vitiates and the impugned orders are liable to be set aside and quashed.

5.6 Because the reviewing authority on reconsideration of the matter passed the order dated 25.06.09 upholding the order imposing penalty of compulsory retirement passed by the appellate authority. It is categorically stated that the reviewing authority while reconsidering the matter failed to appreciate the materials placed on record i.e. the statement made by Sri Rameswar Singh, SS/NFR/TNL dated 10.07.05 which clearly establishes the bonafide and fairness of the applicant. Moreover, the reviewing in reconsidering the matter failed in totality to appreciating the fact that order imposing penalty of removal from service dated 03.04.07 was passed by an incompetent authority and the review order dated 15.11.07 has been passed by the DRM (C), N.F.Rly, MLG which is not the appropriate authority to pass the review order. However, in the order dated 25.06.09 the reviewing authority again while upholding the charges to be proved placed reliance on the past charges of the applicant causing serious prejudice to the applicant and violation of Article 14 and 16 of the Constitution of India. Hence, the impugned orders are bad in law and liable to be set aside and quashed.

*Laxmi Kant Sharma.*



5.7 Because the order imposing penalty of compulsory retirement dated 24.07.07, review order dated 15.11.07 and 25.06.09 does not disclose any reason as to how the charges against the applicant have been proved. The impugned orders therefore, are arbitrary being passed in total non application of mind.

5.8 Because by applying the test of preponderance of probability no reasonable person can arrive at a finding that the applicant is guilty of both the charges. Hence the orders of the disciplinary, appellate and reviewing authority holding the applicant to be guilty of both the article of charges are unreasonable and not liable to be sustained.

5.9 Because the disciplinary authority in the present case did not apply its independent mind and was guided by the cryptic and sketchy report of the Inquiry Officer. Since the mind of the disciplinary as well as appellate authority was made up, it failed to consider the relevant evidence available on record and relied on irrelevant aspects and thus made a serious error of law and fact in holding the applicant guilty of the charges and imposing upon him major penalty.

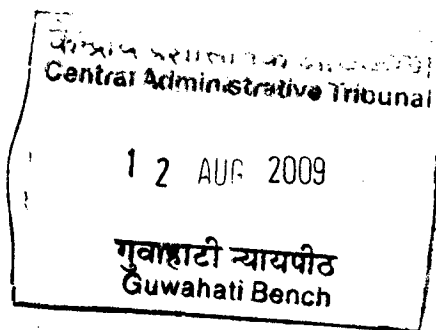
5.10 Because from the sequence of events it is clear that the order imposing penalty has been passed with the sole purpose to harass the applicant and make his service life miserable. The disciplinary authority was predetermined and the entire enquiry process was an empty formality. Hence on this ground alone the order of penalty is liable to be quashed.

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

#### 6. DETAILS OF THE 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.

*axmi kando Sarma,*



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 application is made, before any other court or any other bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. **RELIEF(S) SOUGHT FOR:**

8.1 To quash and set aside the appellate order imposing penalty of compulsory retirement dated 24.07.2007 and review orders dated 15.11.07 and 25.06.09 directing reinstatement of the applicant with all the consequential service benefits.

8.3 Cost of the application.

8.4 pass any such order/orders as Your Lordships may deem fit and proper.

9. **INTERIM ORDER PAYED FOR:**

The applicant prays for an interim order of early disposal of the present original application.

10. The application is filed through Advocates.

11. **PARTICULARS OF THE IPO:**

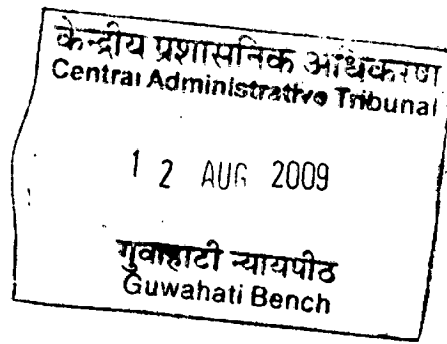
(I)	IPO No.	:	396 418528
(II)	Date of Issue	:	12.8.09
(III)	Issued from	:	
(IV)	Payable at	:	Guwahati

12. **LIST OF ENCLOSURES:**

As stated in the Index.

Laxmi Kanta Sharma,

...Verification



### VERIFICATION

I, Sri Laxmi Kanta Sarma, son of late Abani Sarma, aged about 58, resident of New Market, Rangia, P.O. - Rangia, District- Kamrup, Assam, Pin- 781354, do hereby solemnly affirm and verify that the statements made in the accompanying application in paragraphs 4.1, 4.2, 4.6, 4.7, 4.8, 4.11, 4.18 and 4.19 are true to my knowledge, those made in paragraphs 4.3, 4.4, 4.5, 4.9, 4.10, 4.12, 4.13, 4.14, 4.15, 4.16 and 4.17 being matters of records are true to my information derived there from and the grounds urged are as per legal advice. I have not suppressed any material fact.

And I sign this verification on this the 12<sup>th</sup> day of August, 2009 at Guwahati.

*Laxmi Kanta Sarma*

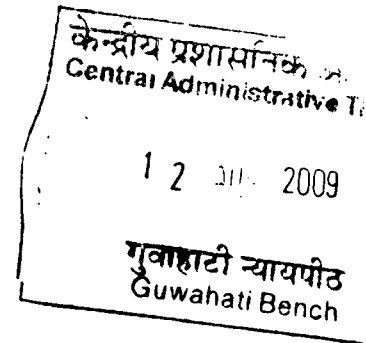
**APPLICANT**

## THE RAILWAY SERVANTS (DISCIPLINE &amp; APPEAL) RULES, 1968

## STANDARD FORM NO. 5

## Standard Form of Charge-sheet

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

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

1. The President/Railway Board/undersigned propose(s) to hold an inquiry against Shri Laxmi Kanta Sharma, S.C.C./T.N.L. under Rule 9 of Railway Servants (Discipline and Appeal) Rules, 1968. The substance of the imputations of misconduct and misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles (Annexure-I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure-III & IV). \*Further, copies of documents mentioned in the list of documents, are per annexure-III are enclosed.

2. Shri Laxmi Kanta Sharma, S.C.C./T.N.L. is hereby informed and if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure-III) at any time during office hours within ten days of receipt of this memorandum. For this purpose he should contact ..... immediately on receipt of this memorandum.

3. Shri Laxmi Kanta Sharma, S.C.C./T.N.L. is further informed that he may, if he so desires, take the assistance of another Railway servant/an official of Railway Trade Union (who satisfies the requirements of Rule 9(13) of the Railway Servants (Discipline and Appeal) Rules, 1968, and Note 1 and/or Note 2 thereunder as the case may be) for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Railway servant(s) or Railway Trade Union Official (s), Shri Laxmi Kanta Sharma, S.C.C./T.N.L. should obtain an undertaking from the nominee(s) that the (they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case(s) if any, in which the nominee(s) had already undertaken to assist and the undertaking should be furnished to the undersigned/General Manager ..... Railway alongwith the nomination.

4. Shri Laxmi Kanta Sharma, S.C.C./T.N.L. is hereby directed to submit to the undersigned (through General Manager ..... Railway) a written statement of his defence (which should reach the said General Manager) within ten days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of his defence, and within ten days after completion of inspection of documents if he desires to inspect documents, and also

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

Attended  
Hrs.  
Advocate

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

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

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

7. The attention of Shri Laxmi Kanta Sharma, SCCC/TNL is invited to Rule 20 of the Railway Servant (Conduct) Rules, 1966 under which to Railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matter pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Shri Laxmi Kanta Sharma, SCCC/TNL is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the Railway Servants (Conduct) Rules, 1966.

8. The receipt of this Memorandum may be acknowledged.

File: 17605  
DIVL. COMM. MANAGER  
[By order and in the name of the President]  
(Signature)  
Name and designation of competent authority.

Encls: 12 (Twelve)

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

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

Strike out whichever not applicable.

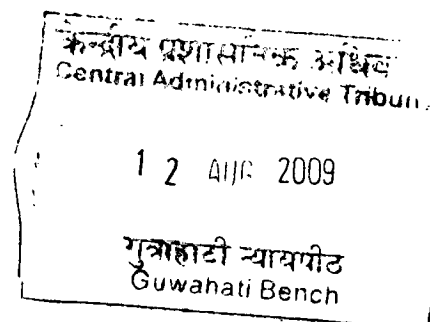
\* To be deleted if copies are given/not given with the Memorandum as the case may be.

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

Where the President is the Disciplinary Authority.

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

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





Memorandum of Charge sheet under Rule-98 of R.S.  
(D2A) Rules - 1966

Statement of Articles & charges framed  
against Sh. Laxmi Kanta Sharma, Sr. CC/TNL  
(Name and designation of the A.P. servant)

Sri Laxmi Kanta Sarma while performing his duty as cc/TNL on 14.11.04 committed an act of gross misconduct in as much as he demanded and accepted a sum of Rs. 20/- (Twenty) excess, while allotting a reservation from Road side quota of TNL station by 4055DN of 23.11.04 Ex-TNL to DLI. The cost of two fare and reservation from TNL to DLI was Rs. 50/- but Sri Sarma demanded and accepted Rs. 52/- Sri Sarma demanded and accepted Rs. 20/- excess than that of actual fare (including reservation fee) for his own consideration which tantamounts a serious misconduct and dereliction to duty.

Sri Laxmi Kanta Sarma Sr CC/TNL  
While performing his duty as CC/TNL on 14.11.04  
committed an act of gross misconduct in as  
much as he produced his Govt. Cash Rs. 89571/-  
against Rs. 88781/- (Excluding voucher) i.e. Rs. 791/-  
(Seventy nine) excess in Govt. Cash than that  
of his actual Govt. Cash as per DTC.

Thus by the above act Sri Laxmi Kanta Sarma, Sr. CFTN exhibited lack of integrity and devotion to duty and acted in a manner which is unbecoming of a Railway servant and thereby contravened the rule 3.1(i), (ii) and (iii) of Railway Service (Conduct) Rules 1966.

DIV

म. प्र. ल. क. वि. प्र. म. प्र. क.  
Divisional Commissioner  
L. COMPTROLLER-MANAGER

पुः सी; रेलव. रंगिवा

M. F. Railway, England

1. The first part of the document is a list of names and dates, which appears to be a roster or a list of individuals. The names are written in a cursive script, and the dates are written in a more formal, printed style. The list is organized into two columns, with names on the left and dates on the right.

12 APR 2004

ਪ੍ਰਸ਼ੰਸਾ ਦੀ ਸ਼ਾਇਰੀ  
ਪ੍ਰਸ਼ੰਸਾ ਦੀ ਸ਼ਾਇਰੀ

ANNEXURE-II

statement of Imputation of misconduct/misbehavior in support of the article of charges framed against Sri Laxmi Kanta Sharma, SYCC/TNL

ARTICLE-1

Sri Laxmi Kanta Sharma, SYCC/TNL while performing his duty as CE/TNL on 14.11.04 committed an act of gross misconduct in as much as he demanded and accepted a sum of Rs. 20/- (Twenty) excess for granting reservation by 4055 DN RX=TNL-DLI on 23.11.04 for one passenger. He issued one SL class Pct no-00813 RX=TNL to DLI with R.T. NO-26406 and granted the berth no-44 by 4055 DN in S/G for 23.11.04. The actual cost of the ticket with RT was Rs. 505/- (Rs. 485 + Rs. 20/-) but Sri Sharma demanded and accepted Rs. 525/- from Mr. T. Mongba, Conto/RPF/ERCOY/MLG who acted as decoy in presence of Sri L.C. Bagan, Hd.CB/RPF/ERCOY/MLG who was an independent witness. Before conducting the check a pre check memorandum was drawn depicting there in the G.C. Notes numbers which will be used in the check and obtain their signature. The mentioned G.C. Notes then handed over to Mr. T. Mongba (Decoy). Accordingly Mr. Mongba went to the booking cum Reservation office of the TNL station and place requisition to obtain a reservation by 4055 DN in SL class RX=TNL-DLI on 23.11.04 in presence of independent witness Sri Bagan. On duty booking clerk Sri L.K. Sharma granted a berth by 4055 DN RX=TNL to DLI and issued one SL class Pct no-00813 and RT-26406 on 23.11.04 and demanded and accepted Rs. 525/-. The transaction was witnessed by Sri Bagan and immediately informed the Vigilance Team. na

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

CNDT-R3

12 AUG 2014

A3.

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

i) 5 (five) One hundred rupee G.C. Notes bearing no- 6RK 261857, 5CV 994465, 4GG 309006, 8BT 400268 and 7GD 029034

ii) 2 (Two) Ten rupee G.C. Note bearing numbers 56C 863581, 41H 864095

iii) 1 (one) five rupee G.C. Note bearing no-16G 175610

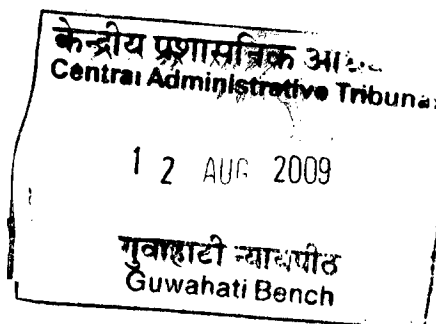
The mentioned recovered G.C. Notes amounting to Rs. 525/- along with the SLP class Pct 00813 and RT 26406. The used requisition for reservation slip (Pr decoy) were taken over by the vigilance team and kept in a cover duly sealed and signed as evidence.

#### ARTICLE-II

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

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

CMDT-A-1.



A1.

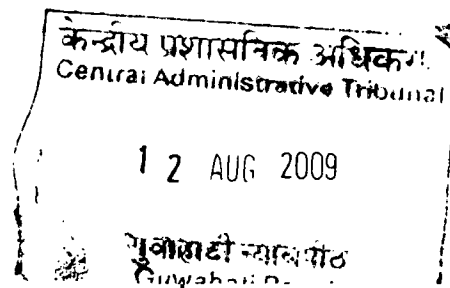
Thereby continued the Rule 3.1. (i), (ii) & (iii) of Railway Service (Conduct) Rules 1966.

File 17.6.05  
 (A.K. SINHA)  
 Divisional Comm. & Manager  
 DIV. COMM. MANAGER  
 R. F. Railway, Bangra

ANNEXURE-III

- List of documents by which the articles of the charge framed against Sri Laxmi Kanta Sharma, Sr. CC/TNL
- 1) Pre-check memorandum prepared on 14.11.04
  - 2) Post-check memorandum prepared on 14.11.04
  - 3) Cash declaration prepared by Sri Laxmi Kanta Sharma, Sr CC/TNL on 14.11.04
  - 4) Statement of Sri T. Mongka, Constb/RPF/EROX/MLG decoy recorded on 16.11.04
  - 5) Statement of Sri L. C. Bagan, HdCA/RPF/EROX/MLG independent witness recorded on 16.11.04
  - 6) One sealed cover containing 5 (five) number of one hundred G.C. Note, 2 (two) number of ten Rupee G.C. Notes, 1 (one) fine rupee G.C. Note along with the SLP class Pct No-00813, RTM-26406 and the reservation requisition slip used for the purpose by decoy, now with Dy. CWO/T/MLG.

File 17.6.05  
 (A.K. SINHA)  
 DIV. COMM. MANAGER  
CDT-A5

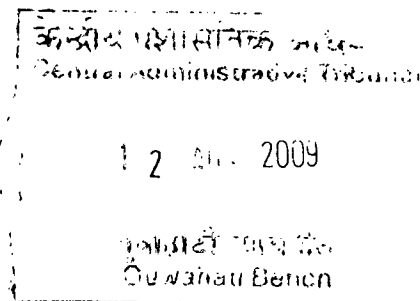


ANNEXURE-IV

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

1. Sri T. Mongba, CS/RPF/ERCOX/MLG
2. Sri L. C. Bagan, HdCS/RPF/ERCOX/MLG
3. Sri Rameswar Singh, SS/TNL

सि. 13.6.05  
मंडल बा. प्र. प्र.  
(Divisional Officer) SINHA  
पु. मंडल प्र. प्र.  
DIVISIONAL MANAGER  
N. F. Railway, Guwahati



Pre Check Memorandum

14.11.04

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

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

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

Sd/-

T.Mangba

B.C.Mushahary

Decoy

Sd/-

L.C.Bayan

I/witness

Sd/-

A.K.Debnath

Sd/-

Cv

24/11/04

24/11/04

24/11/04

POST CHECK MEMORANDUM

14.11.04

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

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

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

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

12 AUG 2009

गुवाहाटी जंक्शन  
Guwahati Branch

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

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

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

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

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

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

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

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



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

Sd/-  
Sri Rameswar Singh  
A.K.Debnath

SS/TNL  
Sr.VL/T/MLG  
14.11.04

Sd/-  
L.K.Sarma

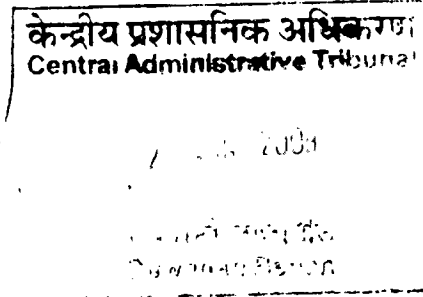
Sr.CC/TNL

14.11.04

Sd/-

14.11.04

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



Cash Declaration

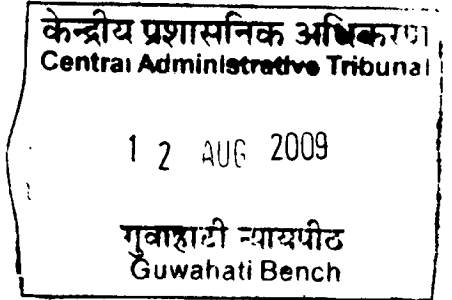
14.11.04

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

Denomination

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

Total = 8957



Rupees eight thousand nine hundred fifty seven only

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

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

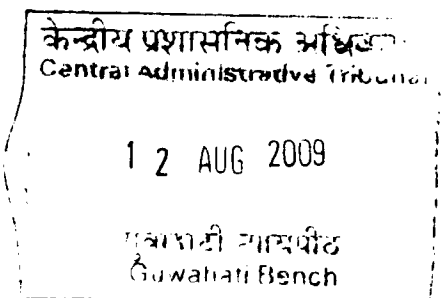
Head Constable / RPF

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

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

Sd/-

(Lohit Ch. Bayan)



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

Contable/RPF

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

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

contable's copy

Sd/-

Temsu Mongba, Contable  
ER-COY/MLG  
16.11.04

Seal

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

केन्द्रीय प्रशासनिक अदालत  
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

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

Through: Proper Channel.

Sir,

Sub:- Defence to SF- 5.

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

.....

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

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

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

In respect to Article-I.

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

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

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

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

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

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

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

Attested

Has.

Advocate

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

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

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

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

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

In regard to Article-II:

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

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

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

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

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

Thanking you,

Yours faithfully,  
[Signature]  
Sr. CC/ Tundla.  
E.F.Railway.

Brief submitted by Defence in the DAR proceeding drawn against Shri L.K. Sharma, Jr. CC/TNL in reference to the 3F-5 No. C/421/RNY/VIG/Staff-4 dated 17.6.05.

.....

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

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

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

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

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

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

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

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

- Article-I - (i) The Decoy was asked to pay Rs. 505.00 for the ticket including reservation but he paid Rs. 525.00 instead of Rs. 505.00,
- (ii) The Decoy handed over a bundle of G.C. Notes to him through Counter Window and took the ticket from the stand,
- (iii) The C.O. on counting the G.C. Notes found Rs. 20.00 excess and he called the Decoy but he hurriedly left the Booking Counter,
- (iv) The C.O. tried to find out the Decoy for refunding the excess money but could not locate him,
- (v) The C.O. immediately informed the 33/TNL who was in his residence the matter prior to Vigilance Team arrived and confronted him in the Booking office.

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

P.W.-1 : (the Decoy) stated during deposition vide his answer to Q. No. 4 put by defence that he did not know the fare from TNL to DLI but the court witness in his deposition stated in his answer to Q. No. 2 that the Decoy informed him of paying Rs. 20.00 excess to the Booking clerk on demand. The Decoy further confirmed that vide his answer to Q.No. 8 that he had no idea of the fare from TNL - DLI. If the Decoy had no knowledge of the fare from TNL to DLI, then how he could inform the Vigilance Team that an amount of Rs. 20.00 was paid in excess to the Rly. dues. This payment of excess demanded and accepted by the C.O. therefore suffers from the test of reliability and acceptability. The C.O. stated that he had informed the 33/TNL - PW-3 of payment of Rs. 20.00 excess by a passenger immediately after the deal and before the V.T. confronted him.

केन्द्रीय प्रशासनिक अधिकारी  
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गुवाहाटी न्यायाधीश  
Guwahati Bench

(Contd .. 2)

Attended  
H.S.  
Advocate

12 DEC 2009

गुवाहाटी न्यायाधीन  
Guwahati BenchPage-(2)

(confronted him)-

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

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

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

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

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

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

In the proceedings it has been established that:-

- (i) the Decoy to frame the C.O. paid Rs. 20.00 excess over and above the Rly dues,
- (ii) the independent witness being a person with short of hearing - his evidences are not reliable and also he could not be really an independent witness as:-

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

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

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

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

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

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

submitted please,

(A. K. Choudhury)  
Defence Counsel.

8/11/05



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ANNEXURE-4

N.F. Railway

Office of the  
Divisional Commr. Manager  
Rangiya  
Dtd. 18/ 3 /2006

No C/421/ANY/VIG/STAFF-4

To,  
Sri/Smt. Laxmi Kanta Sharma

Designation Sy. CC/TNL

Through SS/TNL

Sub: - DAR action for major penalty charge sheet

Ref: - Major penalty Memorandum No- C/421/ANY/  
VIG/STAFF-4 dtd. 17.6.05

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

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

DA 13 (Thirteen)

(A. K. Sinha)  
(A. K. Sinha)

Divisional Commr. Manager  
Rangiya

Accepted

H. N.

Advocate

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal

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गुवाहाटी न्यायपीठ  
Guwahati Bench



# **NORTHEAST FRONTIER RAILWAY**

2.1.

## **ENQUIRY REPORT**

**ON**

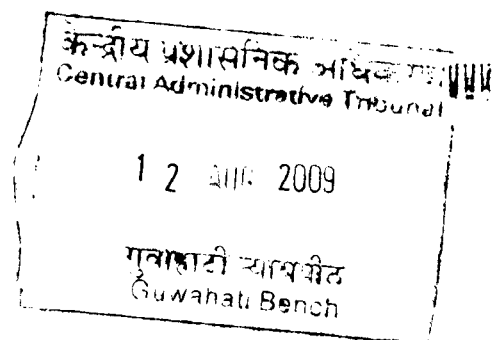
**The Departmental Enquiry Held Against**

**SHRI LAXMI KANTA SHARMA**

**SENIOR COMMERCIAL CLERK/TANGLA**

**Submitted by**

**Shri Sisir Sen Gupta  
Enquiry Officer**



**To**

**DCM / RNY  
N.F/Railway  
(Disciplinary Authority)**



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/ VIG / CEI / SSG / 4 / 05

DATED: - 30/11/2005

F 2.

## Enquiry Report

On

### **The Departmental DAR Enquiry against Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway**

#### **1.0 SEQUENCE OF DAR CASE RECORDS AND AUTHORITY FOR ENQUIRY**

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

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

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

#### **2.0 THE CASE ON BEHALF OF THE DISCIPLINARY AUTHORITY**

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

संस्था प्रशासनिक अधिकारी  
Central Administrative Tribunal

12 DEC 2009

प्रशासनिक अधिकारी  
ADMINISTRATIVE OFFICER



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

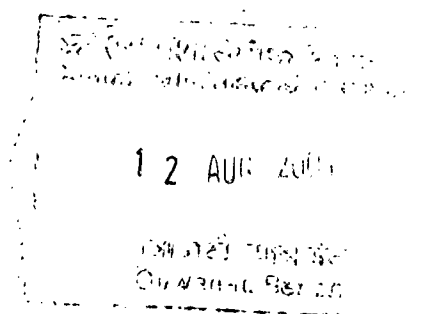
#### **ARTICLE - II**

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

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

#### **2.2 The Statement Of Imputation Of Misconduct And Misbehavior**

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





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

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

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

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

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

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

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SERIALIZED FILED

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CHARGED OFFICIAL  
SHRI LAXMI KANTA SHARMA



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

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

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

3.0 **PROCEEDINGS OF THE ENQUIRY**

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

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

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

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

13/08/2005

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13/08/2005

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

P-6.

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

3.5 **DEFENCE WITNESS - NIL.**

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

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

✓  
Rule 9(4) 1505  
Completed with

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

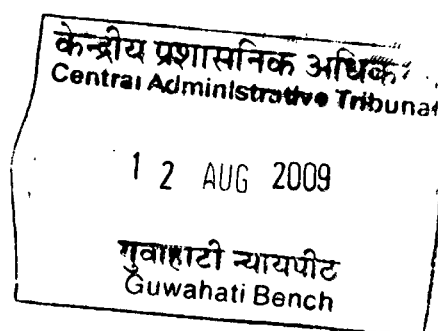
4.0 **GROUND TAKEN BY THE PRESENTING OFFICER IN HIS PROSECUTION BRIEF**

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

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

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

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





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

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

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

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

#### 5.0 **GROUND'S TAKEN BY THE CHARGED OFFICIAL IN HIS DEFENCE BRIEF**

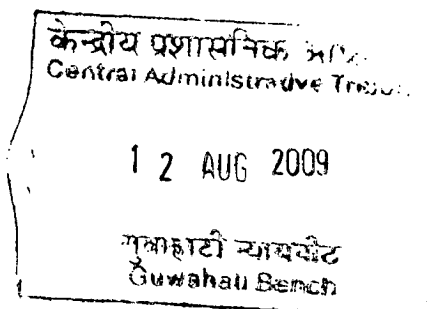
5.1 In the Defence Brief, the Charged Official mentioned that

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

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

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

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



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

P.8.

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

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

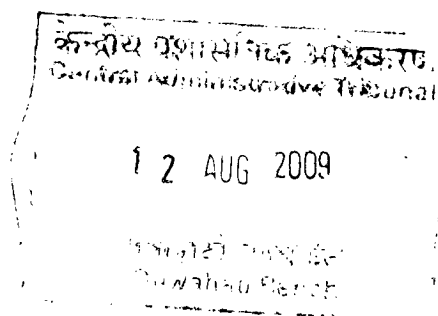
5.5. If the Decoy had no knowledge of the fare from Tangla to Delhi then how he could inform the Vigilance Team that an amount of Rs. 20/- (Rupees Twenty) was paid in excess to the Railway dues. This payment of excess demanded and accepted by the Charged Official therefore, suffers from the test of reliability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

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

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

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

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



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

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

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

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

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

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

see 42

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

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

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

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

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

OFFICE OF THE CHARGED OFFICIAL  
TANGLA, NORTHEAST FRONTIER RAILWAY

12 AUG 2004

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

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

6.5 PW - 2 (Independent Witness) Shri L. C. Bayan, Head Constable/Railway Protection Force/Northeast Frontier Railway vide Q\* No. 6 stated that he was about 10 feet away from the Booking Counter and he boldly stated that he heard the conversation of both the Decoy and the Booking Clerk in reply to Q\* No. 7 and vide Q\* No. 11 Shri Bayan also stated that the Decoy paid the money to the Booking Clerk as asked by the Booking Clerk in raised voice.

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

6.7 The Charged Official in his Defence Brief stated Article wise as: -

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

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

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

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

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

#### 6.12 **ANALYSIS OF CHARGE -**

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

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

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

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

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

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

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

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

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Noted in  
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**7.0 FINDINGS OF THE ARTICLE OF CHARGES**

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

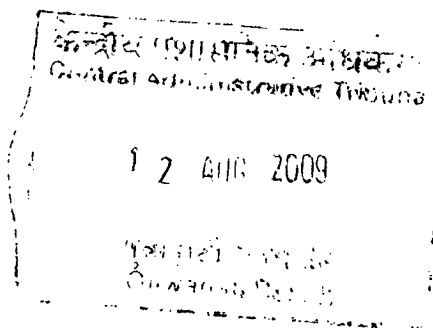
7.2 Hence, the Article of Charges framed against the Charged Official Shri Laxmi Kanta Sharma, Senior Commercial Clerk/Tangla/Northeast Frontier Railway vide Memorandum of Charge Sheet No. C/421/RNY/VIG/STAFF - 4, dated 17/06/2005 issued by the Divisional Commercial Manager/Rangiya/Northeast Frontier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

**ARTICLE - I : PARTIALLY PROVED**  
**ARTICLE - II : PROVED**

*Handwritten signature: 30/11/05*

**(SISIR SEN GUPTA)**  
**Enquiry Officer/HQ/Maligaon**

**Dated: - 30/11/2005**



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Dnp

ANNEXURE - 5

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

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

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

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

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

Attended

H.S.

Advocate

Rameshwar Singh

SS / TNL

(10.7.05)

Station Superintendent  
PANGLA RLY. STATION  
M. P. A.

Removal over

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Northeast Frontier Railway

ANNEXURE -

6

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

Office of the  
Divisional Commercial Manager,  
Rangiya  
Dated.03.4.2007.

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

Sub:- Orders of the DA in Major Memorandum  
No. C/421/RNY/Vig/Staff/04. Dated 17.6.2005.

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

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

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

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

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

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

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

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

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

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

(A. K. Sinha)

Divisional Commercial Manager  
Rangiya

44/10/07

H. S.

Advocate

केन्द्रीय प्रशासनिक अधिकारी  
Central Administrative Tribunal

12 AUG 2009

गुवाहाटी न्यायालय  
Guwahati Bench



To,

The Divisional Railway Manager  
North East Frontier Railway  
Rangiya

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

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

Sir,

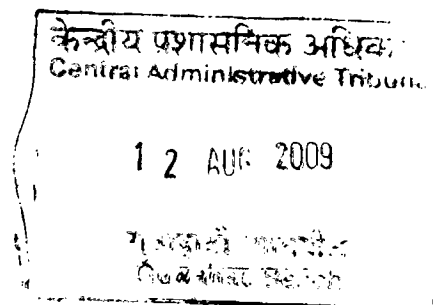
With due respect and humble submission I, Shri Laxmi Kanta Sharma, senior commercial clerk/Tangla/ Northeast Frontier Railway beg to lay this appeal against the order of removal from service dated 03.04.07 passed by the disciplinary authority, the Divisional Commercial Manager, Rangiya on the following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

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

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

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

Agreed  
Has  
Advocate



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

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

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

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

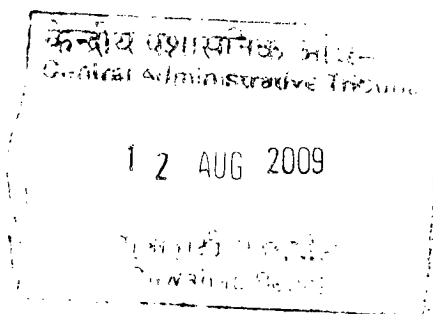
6. That the superior Authority have appreciated my devotion and sincerity to my job. The SS/TNL has confirmed the fact that there is no public complaint ever made against me. I have not caused any loss of revenue to Railway. Neither I have committed any punishable offence inside or outside the Rly premises,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

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

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

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

Contd .....



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

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

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

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

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

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

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

With respect to Article -II

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

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

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

Contd .....

**Brief Statement of my Defence :**

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

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

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

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

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

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

Contd .....

16-8-2005

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Article 2

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

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

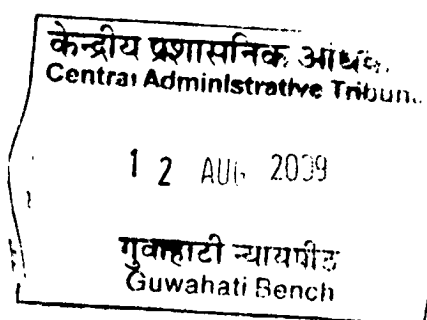
A copy of the documents  
showing sale of tickets per day  
and stations Ex-Tangla are  
filed here to and marked as Annexure-

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

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

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

Contd .....



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

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

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

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

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

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

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

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

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

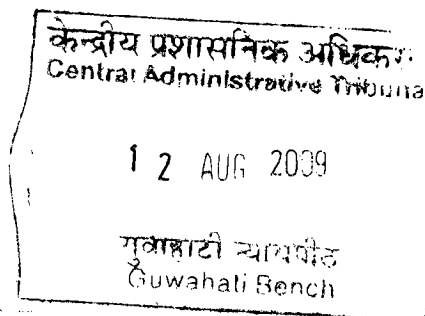
(vii) Whether, the c.o. i.e. me violated the rules of prudential ?

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

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

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

Contd .....



-59-

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

In the premises aforesaid, it is respectfully prayed that your Honour would graciously be pleased to appreciate this appeal and pass necessary order/orders exonerating me from the alleged charges, so levelled against me, by the honourable DCM/RNY vide charge memo No.C/421/RNY/VIG/STAFF-4 dtd. 17.06.05. And/or, may further be pleased to pass such other order/or. orders as may deem fit and proper to meet the ends of justice.

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

With the kindest regards.

Dated :-

Rangiya the..... April, 2007

Yours faithfully;

*Laxmi kanta Sharma*  
(Laxmi kanta Sharma)

Sr. CC/Tangla

N.F. RLY

क-रीट प्रशासनिक अधिकारी  
जिला न्यायालय, रांगीया

2 AUG 2007

By hand.

ANNEXURE - 8

- 60 -

Registered Post

Office of the  
Divisional Railway Manager  
Rangiya

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

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

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

Ref: Your appeal dated 03.05.07/03.07.07

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

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

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

4. The other/next case is a minor DAR case arising out of a preventive vigilance check conducted on 19.9.2003 pertaining to a reservation made by you on 01.9.2003, without any travel authority. The travel authority was issued only 3 days after the preventive check on 19.9.2003. The disciplinary authority in this case had proposed the penalty of reversion to the lower post, i.e. to Jr. CC with basic pay Rs.3200/- per month. However, this was not communicated to you, as the major DAR case, against which this appeal has been preferred, was concurrently in progress and at a stage of finalization.

Contd...P/2

Accepted

Has

Advocate

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal

12 JUL 2009

गुवाहाटी न्यायपीठ



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

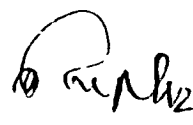
I have also seen/noted that you were promoted/posted as Sr. Comml. Clerk vide DRM (P)/APDJ's office order no.E/283/20/T/Comml/AP/Pt.III dated 4/08/99. This order clearly mentions in the last sentence that it has been issued with the approval of the competent authority. Therefore, your contention that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

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

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

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

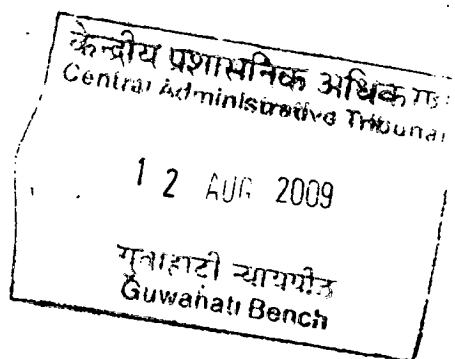
Please acknowledge receipt.

  
(Deepak Gupta)  
DRM/Rangiya

Encl: as above

Copy to:

DCM/DPO/DFM-Rangiya



To,

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

Dated RNY 27<sup>th</sup> July,

2007

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

Sir,

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

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

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

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

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

Attested

H. S.

Advocate

RECEIVED  
24.07.2007  
DRM/RNY

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

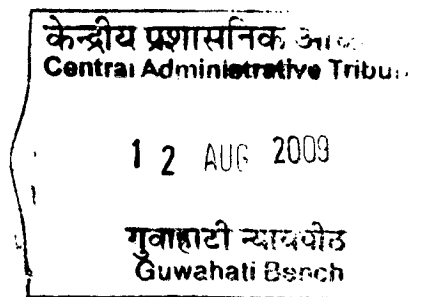
5. That Sir, the E.O. in the Enquiry Report of C/421/RNY/Vig/Staff-04 said that my demand of Rs.20/- excess is not proved. As we deal with money, the possession came innocently which I wanted to return to the decoy forthwith. Moreover the statement of on duty SS/TNL, Sri Rameshwar Singh is not taken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

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

With the kindest regards.

Yours faithfully

(Laxmi Kanta Sarma)



Northeast Frontier Railway

Office of the  
Dvl. Railway Manager (Commercial)  
Rangiya  
Dated 15.11.2007

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

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

**Sub: Revision application**

**Ref: Your application dated 27<sup>th</sup> July 2007**

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

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

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

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

Attended  
H.S.

Advocate

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal

12 Nov 2009

गुवाहाटी ब्रांच  
Guwahati Bench

Contd...P

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

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

**Please acknowledge receipt.**

(A. K. Sinha)

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

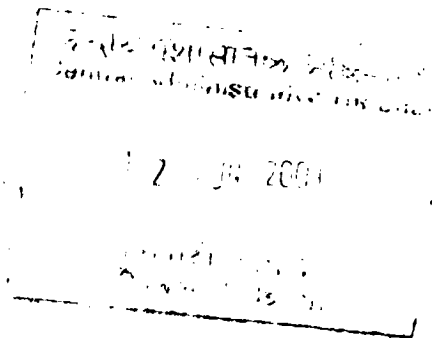
Copy to:

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

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

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

\*\*\*



**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Original Application No.309 of 2007.

Date of Order : This, the 27<sup>th</sup> day of March, 2009.

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

**THE HON'BLE MR. KHUSHIRAM, ADMINISTRATIVE MEMBER**

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

...Applicant.

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

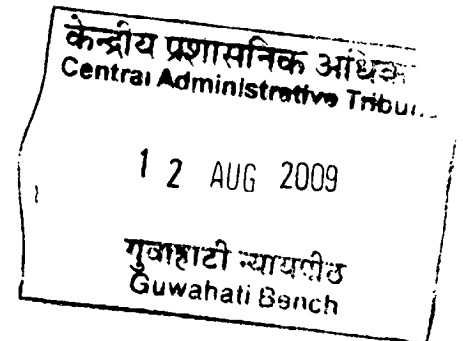
- Versus -

1. The Union of India represented by the  
General Manger, N.F.Railway  
Maligaon, Guwahati-781 011.

2. The Chief Commercial Manager  
N.F.Railway, Maligaon  
Guwahati-11.

The Divisional Manager (Commercial)  
N.F.Railway, Rangiya-781 354.

The Station Superintendent  
Tangla Railway Station  
N.F.Railway.



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

... Respondents.

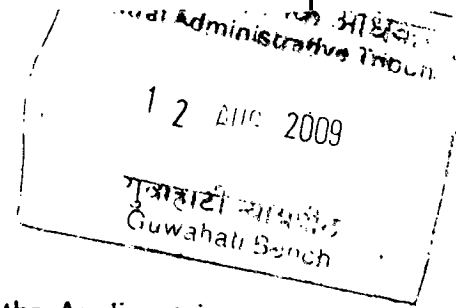
**ORDER (ORAL)**

**A.K.GAUR, MEMBER (J) :**

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

*Attended*  
*H.K.D.*  
*Advocate*

*h*



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



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

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

- 68 -

3

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal

12 AUG 2009

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

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

सी- Member (Judl)  
स्ट- Member (Admin)

Date of Application : 30.3.09  
Date on which copy is sent : 30.3.09  
Date on which copy is received : 30.7.09  
Certified to be true copy

Section Officer (Judl)  
C. A. T. Guwahati Bench  
Guwahati-5.

30/3/09



To,

The Chief Commercial Manager,  
N.F. Railway, Maligaon, Guwahati- 11.

Date: 30.04.2009

Sub:- Order dated 27.03.09 passed in Original Application No. 309/07. [Sri L.K. Sarma  
- vs- Union of India & Ors.]

Sir,

With due deference and profound submission I beg to lay the following few lines  
for your kind consideration and necessary action thereof:

1. That sir being aggrieved by the impugned order of the revisional authority dated 15.11.2007 I approached the Hon'ble Central Administrative Tribunal, Guwahati Bench by way of filing the O.A. No. 309/07.

2. That the Hon'ble Tribunal after hearing the parties to the proceeding at length on 27.03.2009 was pleased to hold that the revisional authority has not considered the aspect of proportionality and grounds taken in the memo of revision. The Hon'ble Court also held that the revisional authority failed to adhere to the principles laid down in the following decisions: -

(i) 2006 SCC L&S 840 (Narain Mohan Arya -vs- United India Insurance Co. Ltd & Others),

(ii) AIR 1986 SC 1173 (Ram Chandar -vs- U.O.I & Ors.),

(iii) (2005) 7 SCC 597 (National Fertilizer Ltd. and Another -Vs- P.K. Khanna,

(iv) 2006 (11) SCC 147 (Director of Indian Oil Corporation -vs- Santosh Kumar).

3. That sir in a similar matter reported in (2008) 3 SCC 484 (Moni Shankar -vs- U.O.I & Ors) the Hon'ble Apex Court held that compliance of Paras 704 and 705 of the Railway Vigilance Manual while holding a decoy check is a mandatory provision. It has further been held by the Apex Court that if the trap was not conducted in terms of the manual, the entire proceeding vitiates and liable to be set aside and quashed.

4. That the Hon'ble Tribunal placing reliance of the aforesaid decisions vide order dated 27.03.2009 was pleased hold that the order dated 15.11.2007 is a non speaking order and has not been passed in accordance with the provisions of rules and set aside and quash the order dated 15.11.2007 directing the respondents to reconsider the grievance of the applicant by passing reasoned order within a period of three months of receipt of the order. [Copy of the order dated 27.03.09 enclosed]

Therefore, in pursuance to the observations and directions made by the Hon'ble Tribunal and in consequence of setting aside and quashing of the order dated 15.11.07, I request your kind Honor to reinstate me in service and grant me the consequential benefits.

Thanking you

Sincerely yours

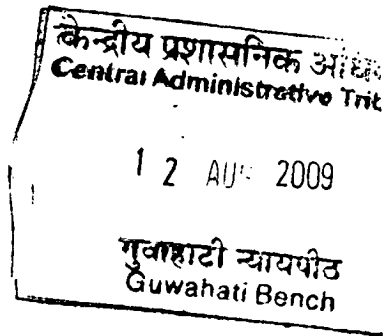
Laxmi Kanta Sarma

Sri Laxmi Kanta Sarma  
S/o Late Abani Sarma,  
R/o New Market, Rangia,  
P.O- Rangia, Ward No. -9,  
District- Kamrup (Assam).

30/4/09

Advocate

Advocate



Office of the  
CHIEF COMERCIAL MANAGER,  
Maligaon:Guwahati-781 011.

**ORDER.**

In compliance with the order passed by the Hon'ble Central Administrative Tribunal/Guwahati in OA No. 309/07, I being the revisionary authority, after careful consideration of the case, pass the following reasoned and speaking orders in accordance with the provisions of rule. The certified copy of the order dated. 29.03.09 was received by the Railway Advocate on 31.03.09. Since I was on medical leave up to 01.06.09, the case could not be finalized immediately.

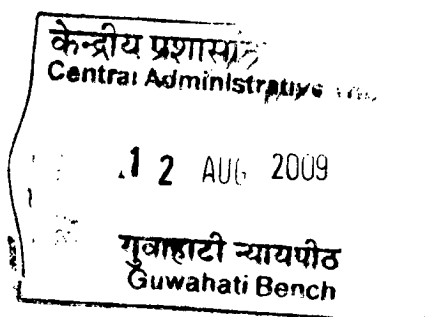
1. I have gone through the revision petition submitted by Shri Laxmi Kanta Sarma former Sr.CC/Tangla dtd. 27.07.07, seeking reinstatement by canceling the penalty of compulsory retirement from service imposed on him by appellate authority (DRM/RNY) vide order dated. 24.07.2007.
2. Shri Laxmi Kanta Sarma, the then Sr.CC/TNL was issued SF-5 for alleged violation of Railway Service Conduct Rule, 1966 by DCM/RNY on 17.06.2005 with two articles of charges i.e. (i) illegal demand and acceptance of a sum of Rs.20/- from a passenger on 14.11.2004 for allotment of reservation quota and (ii) having an excess amount of Rs. 79/- in his Govt. cash, while performing official duty. Accordingly enquiry was conducted by EO/Hd.qrs. in August -October-2005.
3. In his report of enquiry dated. 30.11.2005, the EO concluded that the charges against the CO, Shri Laxmi Kanta Sarma are (i) Partially proved and (ii) proved.
4. The DA, agreeing with the above conclusions of EO, imposed the penalty of removal from service on CO, Shri Laxmi Kanta Sarma, Ex. Sr.CC/TNL.
5. The CO then appealed to DRM/RNY vide his application dtd. 03.05.07 and 03.07.07. The appellate authority on sympathetic consideration, modified the penalty of removal, to that a compulsory retirement, with full pensionary benefits.
6. In his review petition , the CO has highlighted the following issues:
  - (i) He had not received penalty advice of withholding of increment dtd. 10.10.05 and that this is a procedural lapse.

Contd.2/-

Appealed

Hrs

Advocate



- (ii) His pay slips do not indicate any reduction of pay earlier, a penalty claimed to have been imposed earlier by DA. This is against the principle of natural justice.
  - (iii) His appointing authority was DRM, but he was removed by DCM, a violation of article 311(1).
  - (iv) Same as para (i) and (ii).
  - (v) No show cause notice was issued to him, prior to his removal from service.
  - (vi) Article of charges No. 1 was not proved.
  - (vii) He had 5 years of service left. According to him, his son has appeared UP judicial service and the penalty of CR will affect his judicial career. Further the CO adds that he is to support an unmarried daughter, who is still studying, his wife and 80 years old mother. Hence, he seeks financial assistance by getting back the job.
7. I also granted a personal hearing to him on 08.10.07, where he laid stress on sympathetic consideration due to the facts stated in Para VII above. He requested me to give his job back.

8. In this connection my observations are as follows:

- (i) The order withholding the increment for a period of 04 (four) years communicated vide no. C/421/RNY/VIG/Staff-17 dtd. 27.09.05 was received by Shri Sarma (CO) on 10.10.05 under his clear signature. It is mentioned here that vide the aforesaid NIP, the next increment due was withheld for a period of 04 (four) years (NC). The order was issued on 27.09.05 but in the mean time his increment due in August 2005 was charged and paid. Therefore, the effect of the order got delayed, which however, was effected in the salary of March/April/2007 instead of August 2006. But this does not absolve the C.O. from the charges leveled against him.
- (ii) It is pointed out that the first punishment withholding the increment for a period of 04(four) year (NC) was communicated on 27.09.05 and effected in the salary of March/April/2007 due to the reasons stated in para-I above. The order for reversion dated 12.03.06 was not communicated as the first punishment was under the process of implementation and the major DAR case against which this appeal has been preferred was concurrently in progress and at a finalization stage. Penalty of which has been imposed vide NIP No.C/421/RNY/VIG/Staff-4 dtd. 03.04.07. With the issuance of order dated 03.04.07 for removal, all other decisions taken earlier stands non-existent and therefore, does not in any way affect the principle of natural justice.

Contd..3/-

केन्द्रीय प्रशासनिक आधिकारिक  
Central Administrative Tribunal

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गुवाहाटी न्यायपीठ  
Guwahati Bench

Secondly, all the cases were dealt on its individual merit, therefore citing the fact/records brining out the punishment imposed/intended punishment does not in any way subverts the concepts of justice.

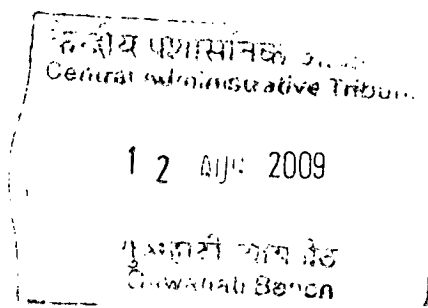
- (iii) In terms of D&A Rules appointing authority means "..... The authority empowered to make appointment to the post which the Railway servant for the time being holds". In the instant case Shri Sarma was holding the post of Sr. CC in Grade Rs. 4000-6000/-, the order for which was issued by the competent authority as indicated in DRM(P)/APDJ's office order No. E/283/20/T/Comml/AP/Pt.III dated. 04.08.99.

Therefore, Shri Sarma's contention that he was appointed/posted by RM/APDJ and DCM being a subordinate authority can not remove him is not correct.

- (iv) Already dealt in Para 1 & 2.
- (v) In addition to the remarks given in Para 1, 2 & 3, it is further pointed out that adequate opportunity was given to the C.O. to defend himself, in as much as the inquiry report submitted by the IO in both the major penalty cases were given to the C.O. vide letter No. C/421/RNY/VIG/Staff-17 dtd. 11.05.2005 and letter No. C/421/RNY/VIG/Staff-4 dtd. 18.03.06 and the final brief submitted by the CO on 12.07.2005 and 04.04.2006 against the decision of the I.O. Therefore, CO's contention that the principle of natural justice were violated is not correct.
- (vi) The contention of CO in Para -6 in revision application is also not correct. The availability of Rs. 525/- in stead of Rs. 505/- (being the fare) in the Government cash under the custody of the C.O. of the same denomination as used by the Vigilance team in the decoy check itself goes to establish that he had the consent to accept Rs. 20/- in excess of the actual fare. The acceptance of Rs. 20/- in excess itself needs no further clarification regarding the desire/willingness of the CO. Availability of the excess money than the actual fare in the Government Cash speaks enough about the intentions of Shri Sarma, CO.

- ✓ (vii) Finally, considering the issue of financial crisis, I find that the Appellate authority has already taken care of this aspect by reducing the punishment of removal from service to that of compulsory retirement with full pensionary benefit. The petitioner is, therefore, entitled to all pensionary benefits including railway health care facilities, pass, etc. which I consider, as sufficient to look after his family including his dependent mother. In fact, from the point of view of social stigma and financial benefits, the penalty of compulsory retirement is better than reversion to a lower grade or reduction of pay.

Contd..4/-



Further, in regard to his son's career, I opine that it is only his apprehension based on wrong perception. Father's service record has no relation to any appointment/administrative career.

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

The appeal of Shri Laxmi Kanta Sarma, Ex. Sr. CC/Tangla dated. 27.07.07 is disposed off accordingly.

  
(J. D. Goswami)  
**CHIEF COMMERCIAL MANAGER.**  
**N. F. Railway, Maligaon.**

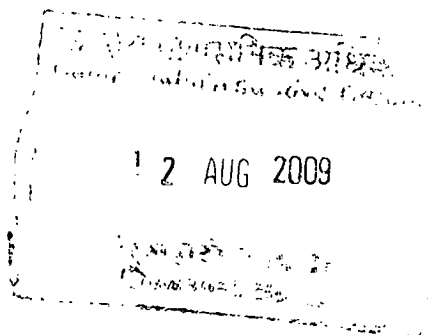
No. C/421/RNY/VIG/Staff-4

Maligaon, dt. 25.06.2009.

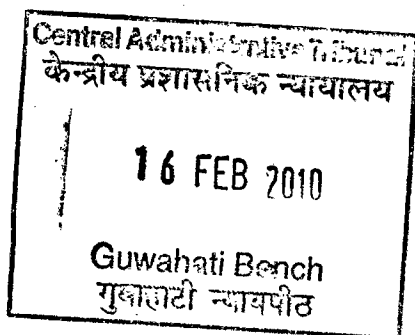
To

Shri Laxmi Kanta Sarma  
Ex. Sr. CC /Tangla  
NEW MARKET, RANGIYA  
PO. RANGIYA WARD NO. 9  
DIST- KAMRUP ( ASSAM)  
PIN-781354

\*\*\* \*\*



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH  
GUWAHATI.



O. A. No. 153/2009

Shri L.K. Sarma

- Vs -

Union of India & Ors.

Written statement of the Respondents.

The Respondents most respectfully begs to state  
as under :

1. That the respondents have gone through the O.A. and understood the contents therein.
2. That in reply to statements in para 4.2 of the O.A. it is stated that the appointing authority of Sr.Div. Commercial Manager (for short DCM, mentioned herein after). The correctness of the statement that since his joining he was discharging his duties to satisfaction of all concerned is denied. He was on earlier occasions also charged for misconduct and penalties were imposed following procedures under the Railway Servants (Discipline and Appeal) Rules, 1968. Those punishments are independent of the instant order of penalty and have not been taken into consideration in the instant case of penalty. As the applicant became oblivious of his earlier misconducts, the Disciplinary authority for the purpose of making the

Contd.....2

File by the  
Respondent  
Shri L.K. Sarma  
16.2.10  
S. Sarma  
16.2.10

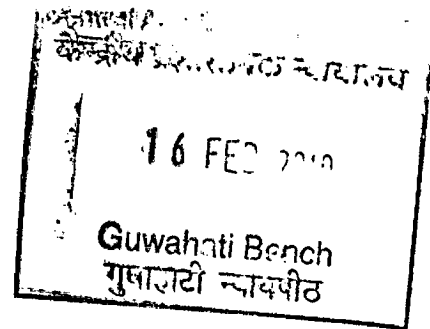
Received copy  
H. Das  
16.2.10

-: 2 :-

1955 11 27 11:30 AM  
 Sasidharan Ch. Sarman  
 N. E. Kumbhar, Kalyan

3. That in reply to statements in para 4.4, 4.5 and 4.6 it is stated that the order of penalty has been issued under the R.S.(D.A.) Rules, 1968, following the procedure laid down therein. On the trap case the applicant has been given all scope and opportunity under the procedure, and penalty imposed. A copy of the IO's report was given to the applicant giving him full scope under the Rules and Law. The IO had clearly stated that the CO (Booking Clerk) first accepts the fare then counts it ; and after satisfying himself about the realization of the correct fare, hands over the ticket along with return money if any to the passenger. Therefore, it is gross negligence towards his duties from the part of the CO. Again to adjust the excess fare there is a column in daily trains cum summary book (DTC book) as excess booking which can be adjusted without consultation of SS or any other higher authority, it is also a part of gross negligence by CO. On duty booking clerk cannot leave his counter until and unless he is relieved by other CO

Contd....3



and with proper handling and taking over of charge. There is no provision/permissible to collect coins/money from the outsider to man the station. However, if he collects the coins of Rs. 80.00 for smooth functioning of station from the outsider he should mention the said amount in private cash register. As per rule a private cash who delays the government cash/money. But in the instant case the amount collected from pan shop as claimed by Shri L.K. Sarma was not mentioned in the private cash register, DTC even the matter is not mentioned in the cash particulars prepared by Shri L.K. Sarma, not even mentioned in the post check memorandum. Hence, the question of consideration of Station Superintendent/Tangla's statement does not arise. As alleged in para 4.6 there is no violation in the instant case. It is clearly mentioned vide item No. 705(a) under departmental traps which read as "The investigation Officer/Inspector should arrange two Gazetted Officers from Railway to act as independent witness as far as possible. However, in certain exceptional cases where two Gazetted Officers are not available immediately, the services of non-Gazetted staff can be utilized". Utilisation of two Gazetted Officers in trap vide item No. 704 does not hold good in the instant decoy case as it was a departmental trap case where utilization of non-Gazetted Officers is permitted if Gazetted Officers are not available as per item 705 (a) given above. Further item (ii) in the end of the chapter VII (Method investigation in Railway Board's office and Railways) action to be taken when a bribe is offered item (a)(ii) read as under -

Contd....4

গুৱাহাটী ন্যায়পীঠ  
 ১৬ ফেব্রুৱাৰী ২০১০  
 Guwahati Bench  
 16 FEB 2010



16 FEB 2010

Guwahati Bench  
गुवाहाटी न्यायापीठ

-: 4 :-

"Should it not be possible to follow the above course of action, the bribe giver may be detained for a short time and any person or persons who may be readily available may be requested to witness the transaction and to overhear the conversation between the bribe giver and the public servant".

In the above decoy check Shri T. Mongba, Const/RPF/E.COY was acted as independent witness.

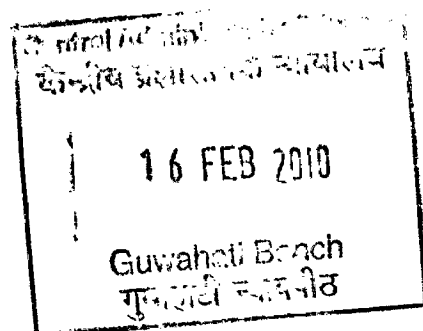
Since Tangla station is situated in branch line of RNY Division and no gazetted officer is posted nearby, non-gazetted staff were utilized. Moreover, one Senior Supervisor of that station i.e. Station Superintendent SRI R. Singh was requisitioned and utilized as one of the witness in the rest of the check procedure.

As far as short hearing by 1/witness is concerned, it is not correct and not medically recommended.

4. That in reply to statements in para 4.7, 4.8 and 4.9 it is stated that the T.O in his report has held to proved the allegation against in that he has accepted Rs. 20.00 in excess from the passenger, which was established, it is pertinent to mention here that the IO has mentioned in Para-6.13 that the CO should collect the fare first and then will count and after satisfying himself (CO) about the correct realization of fare will hand over the ticket to the passenger along with the returned money if any. The observation of the IO about demanding excess

Contd....5

Manager  
 Salauke Ch. Barman  
 P.O. 11 Kanayo



-: 5 :-

money not proved, but proved that he accepted excess money is proof of the allegation. No prejudice has been caused to the applicant. There is no provision/permissible to collect coins/money from the outsider to run the station. However, if he collects the coins of Rs. 60.00 for smooth functioning of station from the outsider he should mention the said amount in private cash register.

*Saleem Khan - Chief Bazaar Manager*

As per rule a private cash register is maintaining in every station/booking counter to declare private cash who deals the government cash/money. But in the instant case the amount collected from pan shop as claimed by Sri L.K. Sarma was not mentioned in the private cash register, DTC even the matter is not mentioned in the cash particulars prepared by Shri L.K. Sarma, not even mentioned in the post check memorandum.

Hence, the question of consideration of Station Superintendent/Tangla's statement does not arise. It is worthwhile to mention that after the CO came to know that he has accepted Rs. 20.00 from the passenger he immediately went to SS/Tangla's residence which is also a gross negligence from the part of CO as being a booking clerk he should aware with the rules that he cannot leave the counter until & unless he is relieved by other CO and with proper handling and taking over of charge. So question of taking in to consideration the statement of SS/THL does not arise. Moreover, the alleged coins collected from the pan shop has not been mentioned anywhere in the private cash register.

16 FEB 2010

Guwahati Bench  
गुवाहाटी न्यायापीठ

-: 6 :-

As per rule a private cash register is maintainin in every station/booking counter to declare private cash wh deals the government cash/money. But in the instance case the amount collected from pan shop as claimed by Sri L.K. Sarma was not mentioned in the private cash register, DTC even the matter in not mentioned in the case particulars prepared by Sri L.K. Sarma, not even mentioned in the post check memorandum.

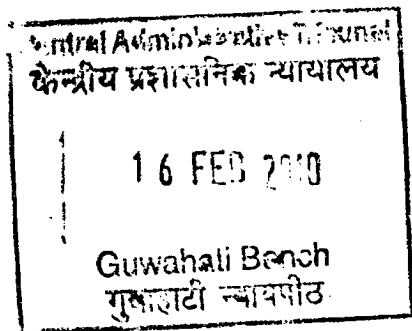
5. That in reply to the statements in para 4.10 the allegation that the D.A. has gone beyond charge sheet dated 17.6.2005 and placed reliance on past charges, is denied. Impose of penalty the applicant of removal from service by the DA was issued on the merit of the charge sheet dated 17.06.2005 only. Previous references were made only for making records clear. The statements in para 1 above are reiterated.

6. That in reply to the statements in para 4.11 it is stated that I.O. has proved that the Applicant received excess money of Rs. 20/- and kept the same. The D.A. agreed with the same. The mere report that the demand of the money was not proved caused no prejudice to the C.O. This is not a case of disagreement by D.A. with I.O. The C.O. retained Rs. 525/- instead of Rs. 505/- for his illegal personal gain.

7. That in reply to statements in para 4.12 it is stated that in terms of Discipline and Appeal Rules, 1968.

Contd....7

Sasanka Ch. Chatterjee

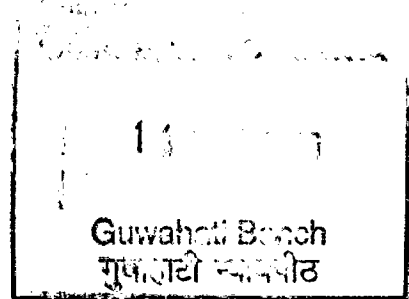


Appointing authority means....."..... the authority empowered to make appointment to the post which the Railway servant for the time being holds", in the instant case Sri Sharma was holding the post of Sr. CC in grade Rs. 4000/--6000/--, the order for which was issued by the competent authority in the instance case DCM is the competent authority, as such the statement made by the applicant that DCM being a subordinate authority was not competent to impose the penalty, is not correct. It is denied that past changes have not been relied upon while imposing the penalty, the statements in para 1 and 5 above are reiterated.

8. That in reply to the statements in para 4.13 to 4.20 the respondents reiterate the statements in para 1 to 7 above. The past changes have not been relied upon as explained. Full opportunity has been given to the applicant in all stages as per R.S. (D.A) Rules, 1968. It is not correct that the appellate authority has not given opportunity to the applicant. DRM/RNY, (the appellate authority) has personally taken statement from the applicant and considering all his problems, a sympathetic order was issued by reducing the punishment of removal from service to compulsory retirement with full pensionary benefit. It is also not correct that the issue raised by the applicant Sri Sharma has not been looked into by Revisionary authority. Revisionary authority after careful and close study of the points raised by Sri Sharma in his review application has passed the orders upholding the decision of the Appellate authority by passing an order of compulsory retirement with

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Salawika Ch. Principal Manager  
 20/2/2010, Rangia

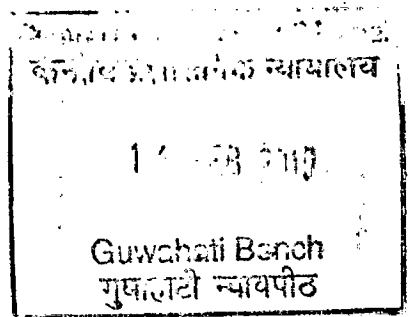


Commercial Manager  
S. P. Singh, Rangla  
S. P. Singh, Rangla  
S. P. Singh, Rangla

full pensionary benefit from removal of service, taking a lenient view of the Chief Commercial Manager who is the reviewing authority keeping in view all the aspects, passed the order dated 25.6.2009. The on duty staff (booking clerk) cannot leave his counter, but the applicant for his personal gain and perpetuating the irregularity illegally and irresponsibly left the counter and went to Shri Rameswar Singh SS/N.F. Rly/Tangla. In the facts of the case as already stated in para 3 and 4 above, the question of consideration of SS/Tangla (Shri R. Singh)', does not arise.

9. That in the circumstances explained above the O.A. deserves to be dismissed with cost.

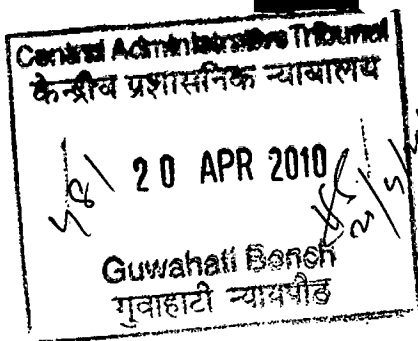
V E R I F I C A T I O N .



I, Shri Sabauka Chandra Borman ..... aged  
about 58+ years , Son of Late Rangit Kr. Borman.  
working as Sr. Dcn/Rangiya....., do hereby  
verify that the statements made in para 1 to 9 above  
are true to my knowledge and that I have not suppressed  
any material facts.

I sign this verification this 16<sup>th</sup> day of  
January, 2010 at Rangia.

Sabauka Ch. Borman  
N. F. Roadway, Rangia  
Signature. ১৬  
Commercial Manager  
১৬ জানুৱাৰী ২০১০



- 83 -

1  
Filed by:  
The applicant  
through  
Hrdip K. Das.  
Associate  
19/4/10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

OA No. 153 of 2009.

Sri Laxmi Kanta Sarma.

Applicant

- versus -

Union of India & ors.

Respondents

REJOINDER TO THE WRITTEN STATEMENT FILED BY RESPONDENTS

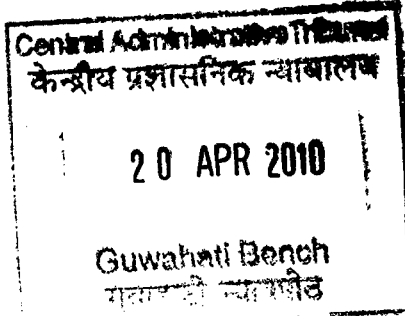
1. That the copy of the written statement filed by the respondents No 5 to 10 has been served upon our counsel. I have gone through the statements made therein and have understood the contents thereof. Save and except the statements which are admitted herein below, other statements made in the written statement may be treated as total denial by the deponent. The statements which are not borne on records are also treated to be denied by the deponent, and the respondents are put to the strictest proof thereof.

That with regard to the statement made in Para 2 of the written statement the deponent while denying the contentions made therein and reiterating and reaffirming the statements made in the O.A. begs to state that so far as earlier penalties are concerned i.e. reversion to the lower rank of Jr. Commercial Cleark from the Sr. commercial Cleark and fixation of pay at Rs. 3200/- p.m. for a period of 2 (two) years were never imposed on the applicant by the

Laxmi Kanta Sarma

Copy  
for Dr. J.L. Saha  
3/4/2010  
3/5/10

I hereby undertake  
to serve the copy upon  
Dr. J.L. Saha.  
Hsd  
20.4.10



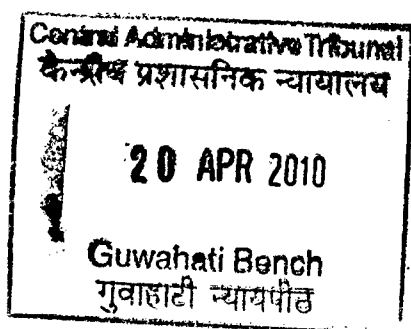
disciplinary authority although these had been made a ground of removal from service in the N.I.P issued dated 03.04.07. This fact is admitted by the appellate authority, DRM/RNY in his order dated 24.07.07. The appellate authority also admitted the non communication of the said 'proposed' penalty in contravention of Rule 12 of Discipline and appeal Rules' 1968. Moreover, it is apparent from the impugned orders that the disciplinary, appellate and the reviewing authority while coming to the conclusion of the guilt of the applicant in the present proceeding relied on some past charges which do not form part of the instant charge sheet causing serious prejudice to the defense of the applicant and on this score alone the impugned orders are liable to be set aside and quashed.

3. That with regard to the statement made in Para 3 of the W.S. the deponent begs to state that the disciplinary authority while issuing the order imposing penalty dated 03.04.09 took into consideration some past charges and/or extraneous grounds which do not form part of the memorandum of charge dated 17.06.05. It is worthwhile to mention here that no inquiry report was ever been served to the applicant so far as DAR case No. C/421/RNY/VIG/Staff-19 is concerned. Therefore, there is gross violation of natural justice in the case of placing reliance on the extraneous charges by the disciplinary, appellate as well as reviewing authority apart from the charge mentioned in the charge sheet dated 17.06.05. The impugned orders are cryptic and passed in gross violation of natural justice.

It is further stated that the inquiry officer awarded the findings in respect of Article- I as partly proved in fact not proved wherein he concluded that the demand of Rs. 20/- excess to the railway dues from the decoy was not established. Therefore, when the demand is not established

*Saxmi Kantu Sarma*





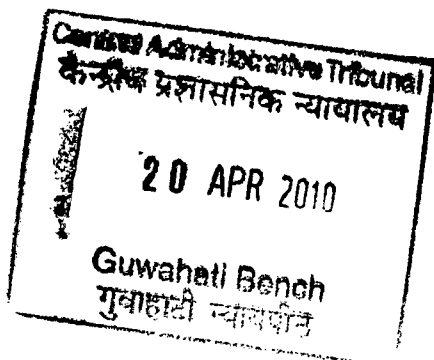
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there is no malafide intention on the part of the applicant to take excess money from the passenger. Moreover, the applicant established his bonafide by intimating the incident to the Sri Rameswar Singh, SS/TNL which fact was admitted by Sri Rameswar Singh, SS/TNL in his statement [Annexure- 5][Page- 51 of O.A.]. Hence, no reasonable person properly instructed in law can come to the conclusion that the applicant is guilty of misconduct. But the disciplinary authority disagreed with the findings of the I.O. and held both the charges to be proved and imposed upon the applicant the penalty of removal from service. It is categorically stated that the D.A. while disagreeing with the findings of the I.O. did not give any opportunity of hearing to the applicant. Hence, the D.A. violated the well settled law that the D.A. must give notice to the charged officer in the event of disagreement with the findings of the I.O. which caused serious prejudice to the applicant.

It is stated that the help of excess booking of the Daily Train Cash cum Summary book is taken at the close of the duty hour after counting the total tickets sold and fare realized thereby. The excess Rs. 20/- in the bundle of G.C. notes was supposed to be deposited in the excess booking at the close of the duty hours which fact was also admitted by his superior Sri Singh in his statement dated 10.07.05. However, the respondents causing serious prejudice to the defense of the applicant did not consider the statement of Sri Singh in the departmental proceeding. Had the statements of Sri Singh, SS/TNL be considered, in such an eventuality the applicant would have got exoneration from the charges. So far as consultation with SS/TNL is concerned the applicant felt it necessary as well as it was a spontaneous action on the part of the applicant in that given situation during the trap programme as the

Laxmi Kant Sarmah.



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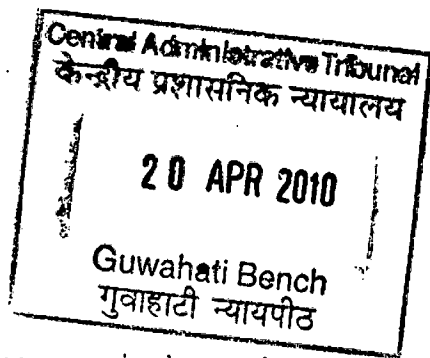
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decoy vanished from the window suddenly. Therefore there is no negligence on the part of the applicant in discharging his duties. It is stated that everyday duty hour is 12 hours and it is humanly impossible to stay all the long 12 hours inside the booking office especially during the gap period between the running /arrival of two trains. Hence, leaving the office room after taking due caution to meet the adjacent SS/TNL does not incur any negligence in duty on the part of the applicant.

It is stated that the 'Trap' which was arranged by the respondents was in clear violation of Para 704 and 705 of the Railway Vigilance Manual. The entire 'Trap' was arranged in clear violation of the procedure prescribed under Para 7.4 and 7.5 of the Railway Vigilance Manual which are mandatory provisions for conducting a trap. In the instant case only 1 (One) eye witness was present who was a Head Constable/RPF. On the other hand the Para 704 and 705 clearly provides for two or more independent witnesses or Gazetted officers to witness the trap. Both the decoy and the witness belong to RPF and he is an interested witness. Again the independent witness i.e., Head Constable/RPF in his cross-examination admitted that he is a person of short hearing and was at a distance of 15 feet from the decoy. Therefore, the evidence given by the independent witness are not at all correct and are the outcome of the dictation given by his superiors and his evidence can not be relied upon to prove the charges against the applicant.

It is further stated that the 'Trap' laid down was a pre-arranged trap and the explanation given by the respondents towards non availability of 2 (two) Gazatted officers is not tenable in the present facts and circumstances of the case. It is not a case which can be said to be an exceptional one where 2 (two) Gazatted

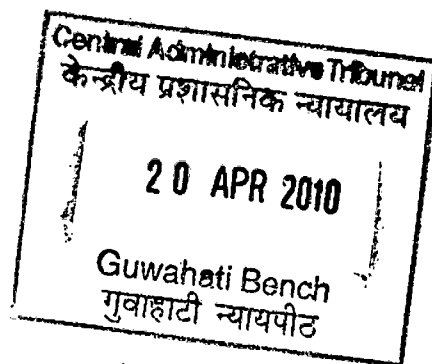
*Daxmi kanta Sarmah*



officers as independent witnesses could not have been made available because it was a pre-arranged trap. Moreover, there are about 30 Gazetted officers available in the division unlike the respondents have stated in the written statement. Even in departmental trap in exceptional cases 2 (two) or more witnesses are mandatory as per said manual. Hence, in this score alone the entire trap along with the inquiry vitiated and the impugned order dated 03.04.07, 24.07.07 and 15.11.07 are liable to be set aside and quashed. As regards requisition and utilization of Sri Rameswar Singh, SS/ TNL as one of the witnesses, the deponent begs to state that SS/TNL was not the witness to the trap and nowhere in the evidence he said that he heard and saw the applicant demanding and accepting Rs. 20/- excess. Instead, his testimony has not been taken into consideration causing serious prejudice to the defense of the applicant. Had the evidence of Sri Singh, SS/TNL would have been taken into consideration, in such an eventuality the bonafide of the applicant is apparent and the I.O. if properly instructed in law could not have come to the conclusion of guilt of the applicant because there was no ill intention on the part of the applicant to take excess money and hence the applicant immediately informed his superior about the incident. As regard medical recommendation of short hearing of the lone independent witness, Head Constable/ RPF is concerned, it is the admission of the prosecution witness himself and the respondents can not deny such admission now making stale attempt to improve their case.

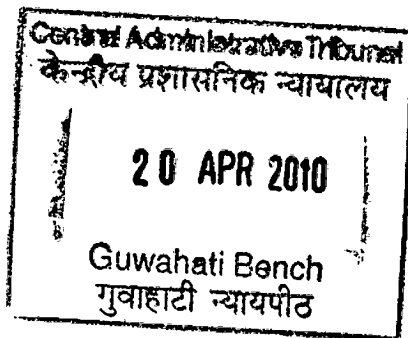
4. That with regard to the statements made in Para 4 of the written statement the deponent while denying the contentions made therein and reiterating and reaffirming the statements made in the O.A. as well as statements made

*Daxmi Kanta Sarman.*



in the above Para begs to state that only up to Rs. 100/- is permissible in law prevailing at the relevant point of time to be kept as personal cash amount in the private cash register. The applicant kept Rs. 72/- with him and mentioned the same in the said register and the vigilance team recovered exactly the same amount of money mentioned therein. The applicant used the coins for smooth functioning of the ticket window and got it collected from adjutant pan-shop which was situated hardly 3 meters away from the window. This custom was very much in knowledge of the SS/TNL and in his statements Sri Rameswar Singh, SS/TNL on 10.07.05 admitted the aforesaid facts. Sri Singh in his statement also admitted that after receipt of the excess amount in the rolled bundle of G.C. Notes given by the decoy passenger, the applicant immediately came to him and he assured the applicant that excess amount will be deposited with the railway as railway cash against the requisition slip as a reference and when the claim will be submitted, the matter will be settled. Therefore, the conduct of the applicant was bonafide and there was no misconduct involved in the instant case. Therefore, no reasonable person properly instructed in law can come to the conclusion of guilt of the applicant taking into consideration the facts and circumstances of the case. Hence, the findings of the inquiry officer and the satisfaction of the disciplinary, appellate and reviewing authority are perverse being contrary to the evidence available on record and on this score alone the entire proceeding vitiated and the impugned orders are liable to be set aside and quashed. It is pertinent to mention here that the inquiry officer in Para 6.18 of his report admitted the facts that the possibility of collecting coins before commencement of duty by the C.O. can not be ruled out.

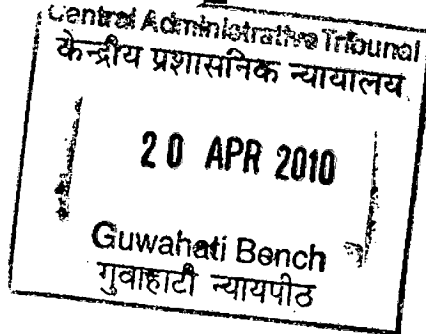
*daxmi kanti Sarma*



5. That with regard to the statements made in Para 5 of the written statement the deponent while denying the contentions made therein begs to state that the justification given by the respondents for relying upon the past charges in coming to the conclusion of guilt of the applicant is totally baseless and evasive. It will be unfortunate on the part of the respondents to keep records of proceedings by mentioning in the order imposing penalty. Therefore, the respondents solely relied on the past charges without giving any opportunity of hearing to the applicant while issuing the impugned orders of penalty. Hence, on this score alone the entire proceeding vitiated and the impugned orders are liable to be set aside and quashed.

6. That with regard to the statements made in Para 6 of the written statement the deponent while denying the contentions made therein and reiterating and reaffirming the statements made in the O.A. begs to state that mere acceptance of excess money without the essential ingredient of demand can not form a basis for proving the alleged misconduct against the applicant. Therefore, the inquiry officer held Article- I partly proved which ought to have been not proved. However, the D.A. held both the charges to be proved in gross violation of principles of natural justice. It is stated that the decoy gave rolled bundle of G.C. noted having excess money after receipt of the ticket and immediately vanished from the window. In such an eventuality if such acceptance of excess money in understood by the respondents to be misconduct, then nothing can prevent the poor employees from the swinging sword of the employer mis-utilizing unfettered power of administrative discretion.

*Laxmi Kant Sharma.*



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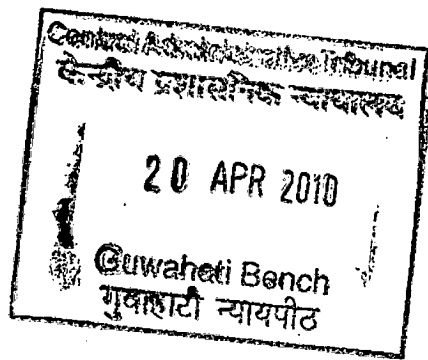
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7. That with regard to the statements made in Para 7 of the written statements the deponent while denying the contentions made therein and reiterating and reaffirming the statements made in the O.A. begs to state that Schedule II of the Railway Servants (Discipline and Appeal) Rules 1968 clearly provides that an order imposing major penalty can only be passed by the appointing authority or any higher authority. The DRM rank officer is the appointing and promoting authority in the case of the applicant which can be easily understood by the order of the DRM(P)/APDJ dated 03.08.1999. Therefore, the impugned order imposing penalty dated 03.04.07 passed by DCM, a subordinate authority is in clear violation of Article 311 (1) of the Constitution of India. Hence the impugned orders 03.04.07, 27.07.07 and 25.06.09 are not at all sustainable in the eye of law and liable to be set aside and quashed reinstating the applicant with full back wages and consequential service benefits.

A copy of the order dated 03.08.99 is annexed herewith and marked as **ANNEXURE- A.**

8. That with regard to the statements made in Para 8 of the written statement the deponent begs to state that the DRM/RNY [appellate authority] had never personally took statement from the applicant unlike as stated by the respondents. Neither the DRM/RNY has mentioned about such taking of statements in his order dated 27.07.07. Moreover, from the aforesaid narration of facts it can very well be construed that the applicant being an innocent employee has been piqued by the respondents in the contents of the charge sheet. There is no iota of doubt that the applicant is innocent and he is not guilty of misconduct of taking excess money. Time and again he has proved his bonafide.

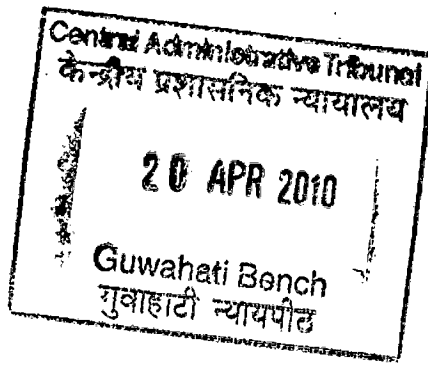
Laxmi Kant Saran,



But the appellate as well as reviewing authority failed in totality to outlook the innocence of the applicant and imposed upon the applicant major penalty of compulsory retirement which is surprisingly stated to be lenient view by the respondents. In the entire proceeding the respondents being bias are predetermined to impose specific penalty upon the applicant which incurs interference of this Hon'ble Tribunal for the ends of justice.

9. That in view of the facts and circumstances stated above the OA deserves to be allowed with cost.

Laxmi Kant Baruah.



### VERIFICATION

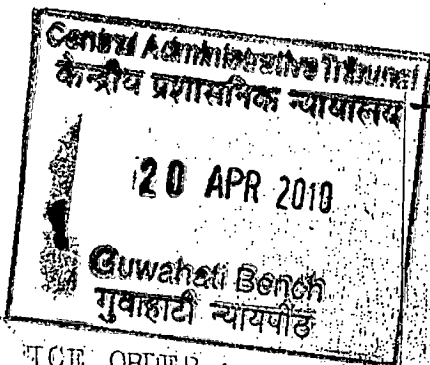
I, Sri Laxmi Kanta Sarma, son of late Abani Sarma, resident of New Market, Rangia, P.O. - Rangia, District-Kamrup, Assam, Pin- 781354, do hereby solemnly affirm and verify that the statements made in the accompanying application in paragraphs 1, 2, 3 (Partly), 4, 5, 6 & 8 are true to my knowledge, those made in paragraphs 3 (Partly), 7, being matters of records are true to my information derived there from and the grounds urged are as per legal advice. I have not suppressed any material fact.

And I sign this verification on this the 9<sup>th</sup> day of April, 2010 at Guwahati.

*Laxmi Kanta Sarma*

APPLICANT





11-

Annexure - A

N.F. RAILWAY.

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

Dated: 14.10.99.

ICE ORDER :

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

S1 No.	Name, design, & Station.	Now promoted as.	Place of posting.	Pay fixed on promotion (4000-6000/-)	Remarks.
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Group-A1

1. Shri Manik Sarkar (UR) LR CC/BPRD. Sr. Comm. Clerk BPRD/LR (Goods) 4000/- Posted with Shri B. M. Sarkar, LR Sr. CC (Goods) posted as Rg. Sr. CC (Goods).
2. Smt. M. Bargair (ST) LR CC/BNY. Sr. Comm. Clerk MMCI (Coaching) (Duty cadre) 4000/- (VICE VACANCY) -dc-
3. L. K. Sarmah (UR) LR CC/BNY. Sr. Comm. Clerk TNL (Coaching) (Duty cadre) 4000/- -dc-

Group-15

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

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

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

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

This issues with the approval of competent authority.

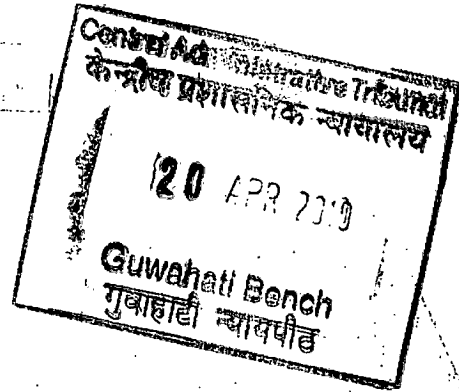
For Divl. Ry. Manager(P)/ARDJ.

Agarwal

Dr.

Agarwal

114



- 1. 2. :-

NO : E/283/20/T/Comml/AP/Pt. III.

Dated... 4/10/99

Copy forwarded for information and necessary action to:-

1. DAO/APDJ. 2. OS/ET/BILL. 3. AM/BPAH.
4. SS/BPRD. He will utilise Shri Sarkar(Sl.No.1) in the coaching side also as & when required as per order of the competent authority).
5. SSS & CCLs/RNY, TNL & MSML. 6. Staff concerned.
7. P/case.

(Fd29)

*Handwritten notes:*  
12/9/08  
Advocate

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