

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./TA/ NO. 182/2009 - 3908
R.A./CP/NO..... 2015
E.P./M.P./NO..... 2015

1. Order Sheets..... pg..... 01 to..... 07 ✓
2. Judgment/ order dtd. 05.05.2010. pg..... 01 to..... 13 ✓
3. Judgment & Order dtd..... received from H.C. /Supreme Court.
4. O.A..... 182/03 page..... 01 to.... 113 ✓
5. E.P/M.P. page..... to.....
6. R.A./C.P. page..... to.....
7. W.S. *Filed by the Respondent* Page..... 01 to..... 04/05 ✓
8. Rejoinder..... page..... to.....
9. Reply page..... to.....
10. Any other papers page..... to.....

21/7/2015
SECTION OFFICER (JUDL.)

*car. f. m/s
21.7.2015*

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

1. ORIGINAL APPLICATION No : 182 / 2009

2. Transfer Application No : ----- / 2009 in O.A. No. -----

3. Misc. Petition No : ----- / 2009 in O.A. No. -----

4. Contempt Petition No : ----- / 2009 in O.A. No. -----

5. Review Application No : ----- / 2009 in O.A. No. -----

6. Execution Petition No : ----- / 2009 in O.A. No. -----

Applicant (S) : Manoj Kumar Barman

Respondent (S) : Union of India's Arms

Advocate for the : Mr. P. Sarma
(Applicant (S))

Advocate for the : Mr. H. Begbarua
(Respondent (S))

Advocate for the : Rly.
(Respondent (S))

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed/C. F. for Rs. 30/- deposited via IPO, BD No. <u>72 F 121855, 121856</u> Dated <u>8.9.09</u></p> <p>Dy. Registrar <u>RS/5165</u></p> <p><u>5 (Five) Copies of</u> <u>Application with envelop</u> <u>received for issue</u> <u>Notice to the Respondents</u> <u>No 1 to 5. Copy send.</u></p> <p><u>9/9/09</u></p> <p><u>K. Das</u> Issue notice to the Respondents.</p> <p><u>10/9/09</u></p>	09.09.2009	<p>On being mentioned by Mr.P.Sarma, learned counsel for the Applicant, the matter is taken up.</p> <p>Mr.P.Sarma, learned counsel for the Applicant undertakes to replace the illegible copies of the Annexures by the next date. Unless the legible copies are not filed by the next date, this case shall ^{stand} be dismissed.</p> <p>Heard Mr.P.Sarma, learned counsel for the Applicant and Dr.J.L.Sarkar, learned counsel for the Respondents (to whom a copy of this O.A. has already been supplied) and perused the materials placed on records.</p> <p>Issue notice to the Respondents requiring them to file their written statement by 26.10.2009.</p> <p>(M.K.Chaturvedi) Member (A)</p> <p>(M.R.Mohanty) Vice-Chairman</p>
	/lm/	

Copies of notices along with order dated 9/9/09 send to D/Sec. for issuing to the respondents by regd. A/D post.

D/No-11292-11296/lm/

16/9/09. Dt 16/9/09

9.10.09
A/D received from
Repdt. No. 5 and 1

9.10.09

No W/S b/lst.

23.10.09

W/S filed by
the Respondents
w/s under b/lst.
11/12/09

No rejoinder
b/lst.

23.12.09

No rejoinder
b/lst.

27.1.2010

No rejoinder b/lst.

3/4.2.2010

26.10.2009 Dr. J. L. Sarkar, learned Railway Standing counsel appearing for Respondents seeks four weeks time to file reply. Prayer allowed.

List on 30.11.2009.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

30.11.2009 Learned proxy counsel states that reply is to be filed during the course of the day and copy of the same to be served on the learned counsel for Applicant. Rejoinder, if any, may be filed by the Applicant before next date.

23.12.2009
Call this matter on 23.2.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

23.12.2009 Mr. P. Sarma, learned counsel for applicant appeared. It is submitted that rejoinder has not yet been filed. Case may be fixed for final hearing.

List for hearing on 28.01.2010.

(Madan Kumar Chaturvedi)
Member (A)

/pb/

28.01.2010

Mr.H.Bezbarua, learned counsel for Applicant states that Mr.P.Sarma, his senior is not available today.

List on 05.02.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/bb/

05.02.2010

On the request of Dr J.L.Sarkar, learned Railway standing counsel, the case is adjourned to 9.2.2010.

No rejoinder filed.

22
8.2.2010

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

/pg/

09.02.2010 List the matter on 17th February 2010.

(Madan Kumar Chaturvedi)
Member (A)

/PB/

No rejoinder filed.

22
19.2.2010

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

rnkm

22.02.2010

Mr.H.Bezbarua, learned counsel for Applicant prays for adjournment, which is not opposed by Dr.J.L.Sarkar, learned counsel appearing for Respondents. List on 16.03.2010.

No rejoinder filed.

22
15.3.2010

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/bb/

16.03.2010 List on 08.04.2010.

No rejoinder filed.

22
17.5.2010

/bb/

(Madan Kr. Chaturvedi)
Member (A)

4 ~

O.A. 182/09

08.04.2010

None for the applicant. In the interest
of justice adjourned to 5.5.2010.

Rejoinder not
filed.

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

1/pg/

05.05.2010 Heard Mr P. Sarma, learned counsel
for applicant and Dr J.L. Sarkar, learned
Standing Counsel for the Railways.

For the reasons recorded separately,
O.A. is allowed.

(Madan Kumar Chaturvedi)

Member (A)

(Mukesh Kumar Gupta)

Member (J)

nkrm

31-5-2010

Judgment / Final order
dated 5/5/2010 Prepared and
seen to be signed by
Issuing & Respondent of
Post vide No - 2212 to 2216
dated - 01-6-2010
Copy handed over to
advocate on both sides.

010..10.80 no fau

010.8.10.81

10/5/2010 (A) signature

10/5/2010

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.182 of 2009

DATE OF DECISION: 05.05.2010

Shri Manoj Kumar Barman

.....Applicant/s.

Mr.P.Sarmah

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

- Versus -

G.M., N.F.Railway & Ors.

.....Respondent/s

Dr.J.L.Sarkar.

..... Advocate for the
Respondents

CORAM

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

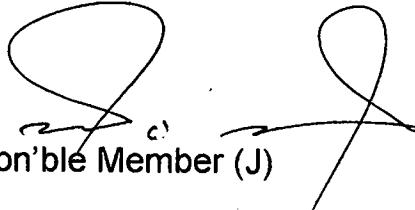
THE HON'BLE MR. MADAN KUMAR CHATURVEDI, MEMBER (A)

1. Whether Reporters of local newspapers may be allowed to see
the Judgment? Yes/No

2. Whether to be referred to the Reporter or not? Yes/No

3. Whether their Lordships wish to see the fair copy
of the Judgment? Yes/No

Judgment delivered by


Hon'ble Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 182 of 2009

Date of Decision: This, the 5th Day of May, 2010.

HON'BLE SHRI MUKESH KUMAR GUPTA, JUDICIAL MEMBER

HON'BLE SHRI MADAN KUMAR CHATURVEDI, ADMINISTRATIVE MEMBER

Shri Manoj Kumar Barman
Son of Late Mangala Barman
Resident of No.2 Mathgharia
Guwahati-20, P.O: Noonmati
District: Kamrup (M), Assam.

...Applicant

By Advocate: Mr.P.Sarmah

-Versus-

1. The Union of India
Represented by the General Manager
N.F.Railway, Maligaon, Guwahati-11
District: Kamrup, Assam.
2. Chief Commercial Manager
N.F.Railway Maligaon
Guwahati-11, Dist: Kamrup(M)
Assam.
3. Additional Divisional Railway Manager
N.F.Railway, Lumding-782447
District: Nagaon, Assam.
4. Divisional Commercial Manager
N.F.Railway, Guwahati Station Road
Guwahati-1, Dist: Kamrup (M)
Assam.
5. Senior Divisional Commercial Manager
N.F.Railway, Lumding-782 447.
District: Nagaon, Assam.

...Respondents

By Advocate: Dr.J.L.Sarkar

* * * * *

ORDER (ORAL)

MUKESH KUMAR GUPTA, MEMBER (J):

Shri Manoj Kumar Barman, Head Clerk, GC/NGC in the office of Chief Commercial Manager, N.F.Railway, Guwahati in this O.A. challenges penalty imposed in disciplinary proceedings vide order dated 09.06.2007, as upheld by appellate authority order dated 08.12.2007 as well as revisional authority order dated 28.07.2009 (Annexures-VIII, XII and XVIII respectively). He also seeks direction to release the entire service benefits.

2. Admitted facts are charge memorandum dated 10.05.2004 was issued under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 containing two articles of charge, which read as follow:-

"ARTICLE-I

Shri M.K.Barman Hd. GC/NGC while functioning as delivery clerk of NGC/Goods office during the month of November and December/2001 committed a serious negligence in his duty in as much as he permitted the parties to put fictitious remarks in the delivery book regarding packets left for A/D. During the delivery of the onion consignment on 1.12.01 and the remarks were without signature of the person who took delivery.

ARTICLE-II

Shri M.K.Barman, Hd.GC/NGC while functioning as delivery clerk of NGC/Goods office during the month of November and December/2001 committed a serious misconduct in as much as he delivered the onion consignment from NGC/Goods office on 1/12/01 without verifying the genuineness of the party who took delivery. Thus he facilitated fictitious parties who were neither consignee nor endorsee to take fictitious A/D.

Thus by the above acts said Shri M.K.Barman Hd.Gc/NGC exhibited lack of integrity and devotion to duty and acted in a manner unbecoming of a Railway servant and thereby contravened the provisions of



para 3.1(i)(ii) and (iii) of Railway Service Conduct Rules, 1966."

As said charges were denied on 15.07.2004, an oral enquiry was held. Enquiry Officer vide his report dated 17.11.2004 concluded that article-I was not proved and article-II was "partially proved". Copy of said enquiry report was forwarded to applicant vide communication dated 07.12.2004 and he was required to submit representation, if any, within 10 days of its receipt. He indeed submitted representation dated 16.12.2004 (Annexure VI) stating that he should be exonerated as the findings of Enquiry Officer with regard to article-II were based on surmises and conjectures. Disciplinary authority vide order dated 09.06.2007 imposed penalty of reduction to the lower stage in the time scale of pay by one stage for a period of three years and further observed that said reduction will not have effect of postponing his future increment of pay. A statutory appeal was preferred to the Addl. D.R.M., N.F.Railway, Lumding on 21.09.2007. When said appeal was pending consideration, the disciplinary authority issued memorandum of disagreement vide communication dated 23.11.2007 (Annexure-X) and required him to submit representation, if any, against it within 15 days. Applicant in its reply dated 05.12.2007 conveyed that since his statutory appeal is pending consideration before the appellate authority, he was not in a position to submit any representation against it and also prayed to recall said memorandum. Immediately thereafter on 08.12.2007, the appellate authority enhanced the penalty to: "**reduction to lower stage in time scale of pay by two stages for a period of three years and six months and after expiry of said period this will have effect of postponing the future increments of pay**".

Being aggrieved, a revision petition was preferred on 11/21.01.2008 and

since there had been no decision thereon, reminder was also issued on 03.10.2008. Immediately thereafter O.A.02/2009 was preferred before this Tribunal, which was disposed of at the threshold vide order dated 12.01.2009 requiring the revisional authority, Chief Commercial Manager, N.F.Railway, Maligaon to consider aforesaid revision petition by passing a reasoned and speaking order within the time limit prescribed therein. Said time limit had been extended on the request of the respondents vide M.P.47/2009, which was disposed of on 25.05.2009. In purported compliance thereto, Sr.DCM, Lumding rejected the revision petition/appeal against the imposition of penalty vide order dated 28.07.2009 holding that applicant has failed to produce any new material or evidence having the effect of changing the nature of the case and the punishment imposed was fair and meets the ends of justice.

3. The aforesaid disciplinary proceedings which led to passing of order dated 09.06.2007, which penalty had been enhanced vide order dated 08.12.2007 and in turn upheld by the revisional authority on 28.07.2009 is questioned by the applicant on diverse grounds, namely:-

- (i) When penalty had been imposed upon the applicant vide disciplinary authority on 09.06.2007, it became functus officio. It has no power, jurisdiction and authority under the law to issue note of disagreement on 23.11.2007, subsequently.
- (ii) No notice was issued by the appellate authority while enhancing the punishment vide order dated 08.12.2007.



(iii) The disciplinary authority is justified in recording disagreement only "before taking final decision on the enquiry report". Whereas, in present case it had imposed the penalty vide order dated 09.06.2007, subsequently it cannot resile from said stand and resort to issue "note of disagreement".

(iv) The revisional authority while rejecting his appeal against said enhanced penalty has failed to apply its mind and rejected his contentions in a routine manner. No cogent and justified reasons were assigned while passing the said order.

Strong reliance was placed in **Punjab National Bank & Others vs. Kunj Behari Misra, (1998) 7 SCC 84**, relevant excerpts of para 19, which read as under:-

"The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

(emphasis supplied)

Reliance was also placed in **Yoginath D. Bagde vs. State of Maharashtra & Anotehr, (1999) 7 SCC 739**, wherein aforesaid dictum had been applied and reiterated. Lastly, reliance was placed in **Makeshwari Nath Srivastava vs. State of Bihar and Others, AIR 1971 SC 1106** to contend that revisional authority in absence of any provision of law or rule conferring on such authority to enhance a penalty in the facts and circumstances of present case is precluded from enhancing the punishment or imposing some other punishment as has been done in present case. Thus, it was forcefully suggested by Mr.P.Sarmah, learned counsel for the applicant that orders

passed by the appellate authority as well as revisional authority are unjust, arbitrary, unreasonable and contrary to principles of natural justice.

4. By filing reply, the respondents stated that there has been no negligence or violation in observing the procedures to ensure due justice in the case. The O.A. has been filed with misconception as if this Tribunal is an appellate forum. The disciplinary authority disagreed with the findings of the Enquiry Officer even while imposing penalty vide order dated 09.06.2007. Applicant vide his statutory appeal did not point out any factual aspect, rather he raised technical objection. Despite the fact that he was given an opportunity to make representation against the so-called disagreement, which in fact had already been highlighted vide order dated 09.06.2007, he failed to avail said opportunity. It was pointed out that appeal is routed through the disciplinary authority and decided by the appellate authority. No injustice has been caused to him. When required to make a representation against the note of disagreement, he took flimsy grounds in his appeal, which highlighted the fact that applicant has nothing to submit against it. Principle of waiver and estoppel is squarely attracted in present case, strongly emphasized Dr.J.L.Sarkar, learned counsel for the respondents. The revision petition has been decided by the Chief Commercial Manager, who is higher in rank than Addl. Divisional Railway Manager, who passed the order by enhancing the penalty vide order dated 08.12.2007. Rules of natural justice were complied with and there is no illegality either in law or in facts, while imposing aforesaid penalty, strongly contended learned counsel for the respondents.



In the above backdrop, it was prayed that O.A. deserves dismissal.

5. We have heard learned counsel for the parties at length, perused the pleadings and other material placed on record, besides the judgments and orders cited at the Bar, as noticed hereinabove. We have also given our careful and thoughtful consideration to various issues raised in present case, which are highlighted hereinabove.

6. It is not in dispute that enquiry report was submitted on 17.11.2004, endorsed to him on 07.12.2004, and the applicant was required to make representation, if any, against the same, which opportunity he indeed availed by submitting representation dated 16.12.2004. Thereafter, penalty was imposed vide order dated 09.06.2007, copy of which had been forwarded only on 05.07.2007. Before proceeding further, it would be expedient to notice penalty order dated 09.06.2007, relevant excerpts of which read as follow:-

"After careful examination of enquiry report, tally book, delivery book, gate pass register attached in the case file, statement of Sri M.K.Barman and Vigilance remarks it is found that (a) the non-establishment of Charge of article-I by E.O. not found true as because the gate pass for 180 and 170 bags were issued at 9:20 hrs and 11:30 hrs respectively on 1.12.2001 before 12:00 hrs and C.O. permitted the party to put fictitious remarks as A.D. of 177 packets onion kept for A.D. in the delivery book. When the consignment was kept for A.D. how gate pass issued by the C.O. Considering all the facts in mind article-I established.

Article-II established in enquiry report itself. It is proved beyond doubt that C.O. did not follow the proper procedure to verify the genuineness of the representatives and allowed delivery to the men who produced the R.Rs. Without proper verification and party was allowed to put fictitious remarks in delivery book for A.D.

Keeping all factors into consideration I imposed the penalty of reduction to the lower stage in the time scale of pay by one stage lower for a period of three years. On the expiry of such period the reduction will not have the effect of postponing the future increments of pay of the C.O."

(emphasis supplied)

Careful perusal of the same would reveal that the disciplinary authority in fact disagreed with the findings of the Enquiry Officer with regard to article-I. Though the Enquiry Officer had held that said charge was not proved, said findings were overturned by the disciplinary authority holding that "article-I established". At this stage we would be justified to notice even the findings recorded by the Enquiry Officer in respect of article-II. As per the Enquiry Officer's report dated 17.11.2004, though the findings were returned that said charge was "**partially proved**", but while undertaking the assessment of evidence the Inquiry authority observed that: "From the above discussion and also from the **documents it cannot be concluded that CO committed wrong to deliver the Consignment to the representatives without verifying the genuineness of the party** and the same is unbecoming on the part of a Railway Servant.". When said findings are read in the context of the charges leveled against him in said article that: "he delivered the onion consignment from NGC/Goods office on 1/12/01 without verifying the genuineness of the party who took delivery. Thus he facilitated fictitious parties who were neither consignee nor endorsee to take fictitious A/D.", the ultimate findings recorded for said charge were –"partially proved" is totally unjust, illegal and based on conjecture. Said finding of the Enquiry is totally against the record and the assessment of evidence made by him. Enquiry Officer very conveniently recorded that article-II was "partially" proved, without highlighting the

fact as to which element of article-II had been proved. The finding that the charge is partially proved can be recorded only in the eventuality when the charge could be split and not otherwise. When article-II, as extracted hereinabove is read in whole, one would come to the conclusion that the same could not have been split at all. As such, the finding of the Enquiry Officer that the same was partially proved is nothing but an attempt to mislead the authorities and to pacify them as if something has been proved against the applicant. Without realizing the fact that the Enquiry Officer himself concluded that the action of the applicant in delivering the consignment without verifying the genuineness of the party, was not "wrong", as noticed hereinabove, the findings recorded by the disciplinary authority virtually amounts to disagreeing with the conclusion arrived at by the Enquiry Officer. It is an admitted aspect that at stage, the disciplinary authority had not disclosed or conveyed to applicant that it intends to disagree with the findings of Enquiry Officer

7. Another issue which arises for consideration is whether the disciplinary authority could issue a note of disagreement after passing punishment order and the delinquent has already preferred a statutory appeal. At the cost of repetition, we may note that penalty order was passed on 09.06.2007, a statutory appeal was preferred on 21.09.2007 and pending such appeal a disagreement note was issued on 23.11.2007. No rule or law has been brought to our notice by the respondents enabling the disciplinary authority to take such course of law. On the other hand, law is trite that though the disciplinary authority has power, jurisdiction to disagree with the findings of the Enquiry Officer, but the stage at which it



can be done is, "**before the disciplinary authority records its findings on the charges framed against the officer**". In other words, the stage at which it can be concluded is before the disciplinary authority passes an order in the disciplinary proceedings, as held in **Kunj Behari Misra** (supra). The disciplinary authority is acting as a quasi-judicial authority. Once it passes the order imposing penalty or exonerating the delinquent, it cannot review its own order unless the rule enables and empowers said authority to review its own order. No rule or law has been brought to our notice on aforesaid aspect.

8. Another important aspect, which arises for consideration is whether the appellate authority was justified in the given facts and circumstances to "**enhance**" the punishment imposed. We are not oblivious of the fact that under Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 the appellate authority while dealing with the appeal, has power to enhance the punishment imposed, but it can be done only after fulfilling the conditions prescribed therein. Under Rule 22(v), no order imposing an enhanced penalty shall be made unless the appellant has been given reasonable opportunity of being heard. We may note in present case that the appellate authority, at no stage, had afforded an opportunity of hearing and required the applicant herein to make a representation. In fact at no stage, the appellate authority even conveyed him that it wishes/intends to enhance the punishment imposed by the disciplinary authority. We are amused with the manner in which the appellate authority exercised its power and enhanced the punishment. Power and authority of the appellate authority to enhance the penalty is

not in question, but what is in question is the manner in which the said power has been exercised.

9. There is yet another aspect of the case, namely, the role played by the revisional authority while passing the order dated 28.07.2009, which was termed as an appeal against the order of enhanced penalty. Bare perusal of the order passed by it on 28.07.2009 would reveal that it observed that:- *"Review is not an employee's right however he can request for a review in case he is able to produce an evidence that was lost sight of in the past and that this new evidence can prove him not guilty."*. Emphasis was made that the applicant did not make any fruitful effort to prove his innocence by producing any new material or evidence. This in itself would reveal that the concept of proving the charge by the management has been shifted to delinquent official. Further, provision of Railway Servants (Discipline & Appeal) Rules, 1968, which indeed provides a review under Rule 25 and revision and 25A as review to proceeding would be rendered nugatory and otiose if the plea raised by said authority is indeed accepted by the judicial authorities.

The basic reason for rejecting applicant's appeal as well as revision, as advanced by the respondents is that opportunity was given to him vide disagreement note dated 23.11.2007, which he failed to avail, and therefore, principle of waiver and estoppel gets attracted. On examination of the entire conspectus, as discussed hereinabove, we are of the considered opinion that said memorandum had no legal sanctity as it had been issued after imposing the punishment. Furthermore, we may note that said memorandum cleverly stated that: *"Till such time the*

decision is taken on receipt of representation, the penalty imposed vide this office NIPC/VIG/GHY-NGC/04/04 dated 09.06.2007 is kept aside.". In order to appreciate the entire aspect, it would be expedient to notice the entire facts of said memorandum, which reads as under:-

"Sub:- Memorandum of Disagreement

A copy of the Memorandum of disagreement is sending herewith. You may submit your representation if any, against the above Memorandum of disagreement within 15 (fifteen) days from the date of receipt of this Memorandum.

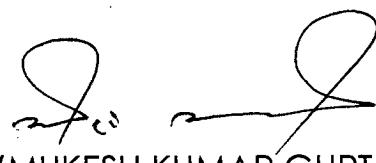
Till such time the decision is taken on receipt of representation, the penalty imposed vide this office NIPC/VIG/GHY-NGC/04/04 dated 09.06.2007 is kept aside."

When we required the learned counsel for the respondents to point out under which provisions and rule, a penalty already imposed can either be kept aside or its operation can be suspended, as parallel to powers of Court/Tribunal to pass an interim order and staying operation of certain order, no specific answer came forth. In fact, no such power exists under any law or rules, where a disciplinary authority can suspend or stay its own order. We notice with concern the manner in which the disciplinary authority has taken recourse to the action, which is totally alien to the rules, regulation or law on the subject. In our considered opinion, the disciplinary authority adopted very abnormal way to state that till the time a decision is taken on the representation made against the memorandum of disagreement, penalty already imposed "is kept aside". In our considered view, said order of the disciplinary authority reflects total non application of mind while passing such order.



10. In the light of discussions made hereinabove, we do not find any justification in the contentions raised by the respondents. Their action suffers from non application of mind and not supported by any rules or regulation besides law. In the result, O.A. is allowed. Orders dated 09.06.2007, 23.11.2007, 08.12.2007 as well as 28.07.2009 being contrary to law, principles of natural justice are held to be illegal and quashed with all consequential benefits. No costs.

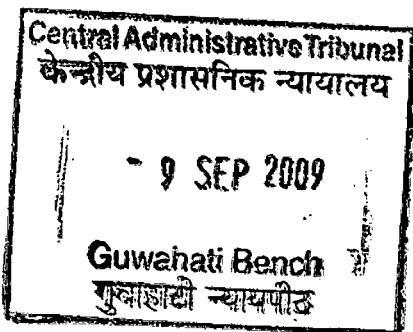
Quashed
(MADAN KUMAR CHATURVEDI)
MEMBER (A)


(MUKESH KUMAR GUPTA)
MEMBER (J)

/BB/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI
BENCH : GUWAHATI

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



O.A. No. of 2009

Sri Manoj Kumar Barman Applicant

- Vs -

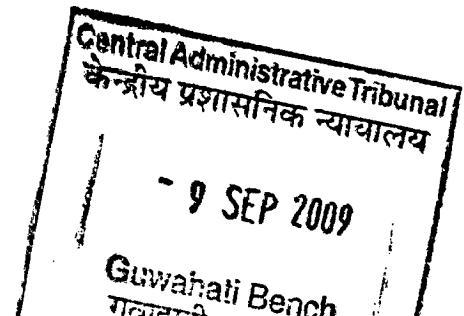
Union of India and Others Respondents

S Y N O P S I S

The applicant joined the N.F. Railway on 29.01.1975 and posted at New Guwahati. While he was working at Guwahati as Head Goods Clerk, he received office memorandum dated 10.05.2004 issued by the respondent No. 4 directing him to submit his written statement in defence against two charges levelled against him vide Annexure-I. Accordingly, the applicant submitted his reply on 15.07.2004. Thereafter one Sri A.K. Sen was appointed as Enquiry Officer to conduct the enquiry against the applicant who on 08.09.2004 made a preliminary enquiry and then made regular enquiry on 20.09.2004 and 21.09.2004. The applicant duly attended in the enquiry with his defence assistant. Thereafter the Enquiry Officer submitted his enquiry report before the Disciplinary Authority holding the charge No. 1 was not proved and charge No. 2 as partially proved. The said enquiry report was forwarded to the applicant on 07.12.2004 directing him to submit his representation within 10 days. The applicant on 16.12.2004 submitted his representation stating that he accepted the findings of the Enquiry Officer in respect of charge No. 1 and that the finding in respect of charge No. 2 suffers from surmises and conjectures and that there is no place of finding of "partially proved" in a departmental proceeding. Thereafter the Disciplinary Authority (respondent No. 5) issued notice of imposition of penalty dated 09.06.2007 thereby imposing major penalty of reduction to the lower stage in the time scale of pay by one stage lower for a period of three years (without losing the benefit of future increment). The Disciplinary Authority imposed the said punishment holding both

Contd.....

Filed by the Applicant
For Cash
Date 03/03/2008



the charges against the applicant were proved without issuing any disagreement letter with the findings of the Enquiry Officer's report in respect of charge No. 1. The above NIP was communicated to the applicant on 05.07.2007 with a further information that his pay was fixed at the lower stage. The applicant having received the above NIP, submitted his statutory appeal before the Appellate Authority on 21.09.2007. When the said appeal was pending before the Appellate Authority for consideration, the respondent No. 5 issued Memorandum of Disagreement dated 23.11.2007 in respect of charge No. 1 directing the applicant to submit his representation. Since the appeal was pending before the Appellate Authority, the applicant on 07.12.2007 informed the Disciplinary Authority that during the pendency of the appeal he is not in a position to submit any representation/reply to the said disagreement letter. Then the respondent No. 5 issued letter dated 08.12.2007 purportedly on the order passed by the Appellate Authority (respondent No. 3) thereby enhancing the penalty on the applicant on the statutory appeal submitted by him. The said order was passed in violation of Rule 22 (v) of the Railway Servants (Discipline and Appeal) Rules, 1968. Thereafter the applicant on 21.01.2008 submitted a revision petition under Rule 25 of the Rules against the above orders of penalty dated 09.06.2007 and 08.12.2007 before the respondent No. 2. Since there was no response from the authorities to consider the revision petition, the applicant approached this Hon'ble Court by filing O.A. No. 02/2009. This Hon'ble Tribunal by order dated 12.01.2009 disposed of the said Original Application directing the respondent No. 2 authorities to consider the revision petition of the applicant within a period of 60 (sixty) days from the date of receipt of the order. However, the said time limit was extended by this Hon'ble Tribunal by order dated 25.05.2009 passed in Misc. Petition No. 47/2009 till 12.08.2009. The respondent No. 2 then, by his impugned order rejected the revision petition of the applicant which has been communicated to him by the respondent No. 5 on 28.07.2009.

As such, the applicant is approaching this Hon'ble Tribunal again by filing this application for appropriate relief.

Filed by

Prakash Jhume¹
Advocate
08/09/2009

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI
BENCH : GUWAHATI

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

O.A. No. _____ of 2009

Sri Manoj Kumar Barman	Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय	Applicant
- Vs -	9 SEP 2009	
Union of India and Others	Guwahati Bench গুৱাহাটী ন্যায়পীঠ	Respondents

L I S T O F D A T E S

10.05.2004 : Respondent No. 4 issued charge memorandum No. C/VIG/GHY-NGC/4/04 directing the applicant to submit his written statements within 10 days.
Para- 3 , Page- 4 .
Annexure-I, Page - 22 .

15.07.2004 : The applicant submitted his defence against the above charge memorandum dated 10.05.2004.
Para - 4 , Page- 4 .
Annexure-II, Page- 28 .

20.08.2004 : The Enquiry Officer issued letter No. Z/CON/VIG/08/04(2) informing the applicant that a preliminary hearing in connection with the charges would be held on 08.09.2004 in his office chamber at Maligaon.
Para - 5 , Page- 5 .
Annexure-III, Page- 29 .

Contd.....

Filed by the applicant
Through : Prakash Singh
Date : 08/09/2009

08.09.2004 : The Enquiry Officer issued another letter No. Z/CON/VIG/08/04(2) informing the applicant that the regular hearing of the case would be held on 20.09.2004 and 21.09.2004 in his office chamber at Maligaon.

Para- 6 , Page- 5 .
Annexure-IV, Page- 30 .

07.12.2004 : The Divisional Commercial Manager, Guwahati vide his letter No. C/VIG/GHY-NGC/4/04 forwarded a copy of the Enquiry Report to the applicant directing him to submit his representation.

Para- 7 , Page- 5 .
Annexure-V, Page- 3 .

16.12.2004 : The applicant submitted his representation against the Enquiry Officer's report dated 17.11.2008.

Para- 8 , Page- 6 .
Annexure-VI, Page- 41 .

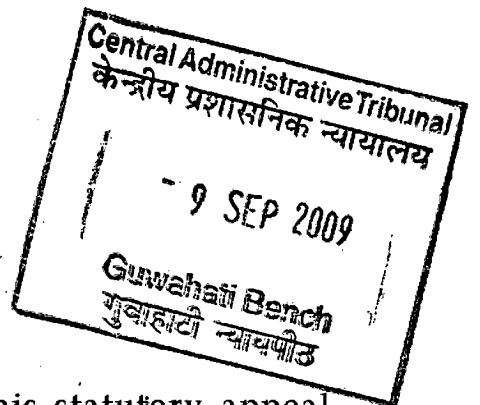
09.06.2007 : The Disciplinary Authority imposed punishment on the applicant of reduction to the lower stage in the times scale of pay by one stage lower for a period of three years (without lossing the benefit of future increment).

Para- 9 , Page- 6 .
Annexure-VIII, Page- 45 .

05.07.2007 : The Office of the Sr. DCM/LMG forwarded the above punishment order dated 09.06.2007 to the applicant with further information that the above NIP was given effect to.

Para- 9 , Page- 6 .
Annexure-VII, Page- 43 .

Contd.....



21.09.2007 : The applicant submitted his statutory appeal before the Appellate Authority.

Para- 10 , Page- 7 .

Annexure-IX, Page- 48 .

23.11.2007 : The respondent No. 5 issued letter No. C/VIG/GHY-ONC/4/04 enclosing a copy of Memorandum of Disagreement to the article of charge No. 1 against the applicant.

Para- 11 , Page- 8 .

Annexure-X, Page- 81 .

07.12.2007 : The applicant submitted his reply to the above memorandum dated 23.11.2007.

Para- 11 , Page- 8 .

Annexure-XI, Page- 84 .

08.12.2007 : The respondent No. 5 issued the impugned appellate order though he was not authorised to do so on the statutory appeal of the applicant thereby enhancing the penalty without giving any opportunity to file representation to the applicant against such enhancement of penalty.

Para- 12 , Page- 9 .

Annexure-XII, Page- 86 .

21.01.2008 : The applicant submitted a revision petition before the respondent No. 2 against the impugned orders of penalty dated 09.06.2007 and 08.12.2007.

Para- 14 , Page- 10 .

03.10.2008 : Since there was no response from the respondent No. 2 authority for disposing the revision petition dated 21.01.2008, the applicant submitted a remainder representation before the respondent No. 2 but without any reason.

Para- 14 , Page- 10 .

Annexure-XIII, Page- 89 .

Contd.....

9 SEP 2009

Guwahati Bench
গুৱাহাটী বৰ্ষাপুরো

-4-

09.01.2009 : The applicant filed the Original Application No. 02/2009 before this Hon'ble Tribunal.

Para - 15 , Page- 10 ,

12.01.2009 : This Hon'ble Tribunal passed order in O.A. No. 02/2009 thereby disposing of the said application with a direction to the authority to dispose of the revision petition of the applicant within a period of 60 (sixty) days from the date of receipt of the order.

Para - 15 , Page- 10 ,
Annexure-XIV, Page- 91 .

15.05.2009 : The respondent No. 5 filed Miscellaneous Petition No. 47/2009 in O.A. No. 02/2009 seeking extension of time for consideration of the revision petition of the applicant.

Para - 16 , Page- 11 ,
Annexure-XV, Page- 95 .

25.05.2009 : This Hon'ble Tribunal passed order in the above M.P. No. 47/2009 thereby granting extension till 12.08.2009.

Para - 16 , Page- 11 ,
Annexure-XVI, Page- 105 .

22.07.2009 : The applicant submitted a reminder application before the respondent No. 2 with a copy to the respondent No. 5 in respect of his pending revision petition and the orders passed by this Hon'ble Tribunal in the matter.

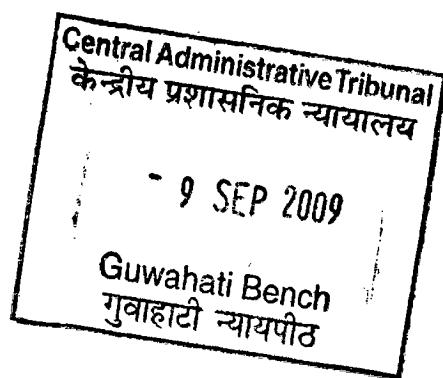
Para - 17 , Page- 11 ,
Annexure-XVII, Page- 108 .

28.07.2009 : The respondent No. 5 communicated the order passed by the respondent No. 2 to the applicant whereby his revision petition has been rejected.

Para - 18 , Page- 12 ,
Annexure-XVIII, Page- 110 .

28.07.2009 : The applicant received the above impugned order dated 28.07.2009.

Para - 18 , Page- 12 ,



Filed by

Prakash Sarmah
Advocate
08/09/2009

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI
BENCH : GUWAHATI

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

O.A. No. _____ of 2009

Sri Manoj Kumar Barman Applicant

- Vs -

Union of India and Others 9 SEP 2009. Respondents

I N D E Guwahati Bench
गुवाहाटी न्यायपीठ

<u>Sl. No.</u>	<u>Particulars</u>	<u>Page No.</u>
1.	Application	1 - 20
2.	Verification	21
3.	Annexure- I	22 - 27
4.	Annexure- II	28
5.	Annexure- III	29
6.	Annexure- IV	30
7.	Annexure- V	31 - 40
8.	Annexure- VI	41 - 42
9.	Annexure- VII	43 - 44
10.	Annexure- VIII	45 - 47
11.	Annexure- IX	48 - 80
12.	Annexure- X	81 - 83
13.	Annexure- XI	84 - 85
14.	Annexure- XII	86 - 88
15.	Annexure- XIII	89 - 90
16.	Annexure- XIV	91 - 94
17.	Annexure- XV	95 - 104
18.	Annexure- XVI	105 - 107
19.	Annexure- XVII	108 - 109
20.	Annexure- XVIII	110 - 113
	W/ S	114 - 118

Filed by

Prasenjeet Dass
Advocate
08/09/2009

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI
BENCH : GUWAHATI

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

O.A. No. 182 of 2009

SRI MANOJ KUMAR BARMAN,
Son of Late Mangala Barman,
Resident of No. 2 Mathgharia,
Guwahati-20, P.O. Noonmati,
District- Kamrup (M), Assam.

..... Applicant

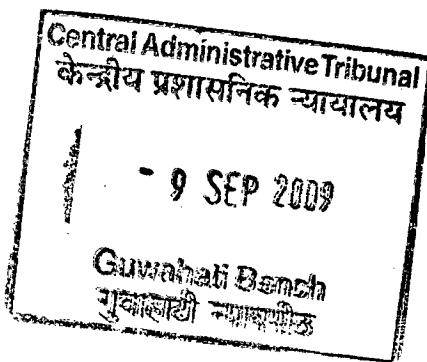
- Vs -

1. Union of India,
Represented by the General Manager,
N.F. Railway
Maligaon, Guwahati - 1
District- Kamrup, Assam.

2. Chief Commercial Manager,
N.F. Railway Maligaon,
Guwahati - 1
District- Kamrup(M), Assam.

3. Additional Divisional Railway Manager,
N.F. Railway, Lumding, PIN - 782447
District- Nagaon, Assam.

Contd.....



Filed by the Applicant
Manoj Barman
Through: Pranach Barman
08/09/2009

4. Divisional Commercial Manager,
N.F. Railway, Guwahati Station Road,
Guwahati-1,
District- Kamrup (Metro), Assam.

5. Senior Divisional Commercial
Manager,
N.F. Railway, Lumding, PIN - 782447
District - Nagaon, Assam.

.... Respondents

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

- i) Order No. C/VIG/GHY-NGC/4/04 dated 28.07.2009 passed by the Chief Commercial Manager, N.F. Railway, Maligaon (Respondent No. 2) and Communicated by the Senior Divisional Commercial Manager, N.F. Railway, Lumding (Respondent No. 5) thereby rejecting the revision petition dated 21.01.2008 filed by the applicant.
- ii) Notice of imposition of penalty (N.I.P. in short) No. C/VIG/GHY-NGC/04/04 dated 09.06.2007 passed by the respondent No. 5 hereby imposing major penalty of reduction to the lower stage in the time scale of pay by one stage lower for a period of three years (without losing the benefit of future increment) on the applicant.
- iii) Order No. C/VIG/GHY-NGC/4/04 dated 08.12.2007 issued by the respondent No. 5 purportedly on the order passed by the respondent No. 3 on the appeal preferred by the applicant against the order of penalty dated 09.06.2007 thereby enhancing the penalty to reduction to lower stage in time scale of pay by two stages for a period of three years and six months and after expiry of the said period the same

Contd.....

Manoj Kr. Barman

would have effect of postponing the future increments of pay and that the said enhancement order was passed without hearing the applicant in violation of prescribed law.

2. JURISDICTION OF THE TRIBUNAL

The applicant declares that the subject matter of the orders against which he wants redressal/relief is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION

The applicant further declares that the application is within limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985 (as amended by Act of 2006).

4. FACTS OF THE CASE :

1. That the applicant is a citizen of India by birth and permanent resident of Guwahati in Kamrup District of Assam. After rendering more than 30 years of loyal and faithful service in the N.F. Railway Department, the applicant has been subjected to major punishment by the respondent No. 5 being the disciplinary authority in a most illegal manner. As directed in the N.I.P., the applicant preferred an appeal before the respondent No. 3 under the provisions of Railway Servants (Discipline and Appeal) Rules, 1968. The appeal so filed has also been dismissed in a most illegal manner and enhanced the penalty without giving the applicant any opportunity to represent against such action in violation of the prescribed law in this respect. Then the applicant filed a revision petition before the respondent No. 2 under the Rules which has also been disposed of in most perfunctory manner. As such, the applicant is approaching this Hon'ble Tribunal challenging the above impugned orders and for appropriate reliefs.

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Memoj Kr. Barman.



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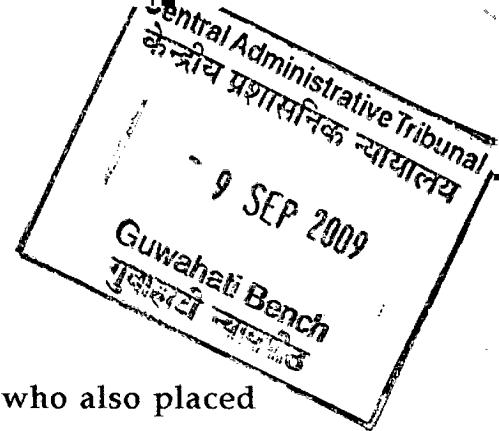
2. That the applicant joined the N.F. Railway on 29.01.1975 as Releving Goods Clerk and posted at New Guwahati. Thereafter he was promoted to the rank of Senior Goods Clerk in the department on 11.10.1986. Subsequently on 01.03.1993 the applicant was promoted to the post of Head Goods Clerk. In the year 2004 the applicant was transferred to Dharmanagar in the same capacity and he joined there on 30.10.2004. Then, the applicant again transferred to Dimapur wherein he joined on 29.01.2007 as Head Goods Clerk. Since then, the applicant has been discharging his duties at Dimapur under Lumding Division of the Department.
3. That, while the applicant was working at Guwahati, the Divisional Commercial Manager, Guwahati (Respondent No. 4), issued office memorandum dated 10.05.2004 thereby directing the applicant to submit his written statements in defence within 10 days from the date of the receipt of the memorandum against two charges levelled against him vide Annexure-I to the said memorandum. With the memorandum a statement of imputation of misconduct and misbehaviour, a list of documents were also annexed as Annexure-I & II respectively.

A copy of the above office memorandum dated 10.05.2004 is annexed herewith as
ANNEXURE-I.

4. That after completing the inspection of documents and other formalities as allowed in the above office memorandum dated 10.05.2004, the applicant on 15.07.2004 submitted his defence against the above charge memorandum dated 10.05.2004 received by him on 06.07.2004. The applicant, in his defence denied the charges levelled against him. The applicant also mentioned in his defence that if the authority decides to hold an enquiry, he may be given the reasonable opportunity to defend himself and also mentioned the names of two persons nominating as his

Contd.....

Manoj Kr. Barman



- 5 -

defence assistant during the course of enquiry who also placed their consents in this respect.

A copy of the above defence of the applicant dated 15.07.2004 is annexed herewith as ANNEXURE-II.

5. That thereafter the authorities appointed one A.K. Sen as the Enquiry Officer to conduct the enquiry against the applicant. Then the enquiry officer vide his letter No. Z/CON/VIG/08/04 (2) dated 20.08.2004 informed the applicant that a preliminary hearing in connection with the charges against him would be held on 08.09.2004 in his office chamber at Maligaon/HQ. Accordingly, the applicant was advised to attend the hearing with his nominated defence counsel, Sri M. Chakraborty, which the applicant duly followed.

A copy of the above letter dated 20.08.2004 is annexed herewith as ANNEXURE-III.

6. That the Enquiry Officer, thereafter vide his another letter no. Z/CON/VIG/08/04(2) dated 08.09.2004 informed the applicant that after holding the preliminary enquiry on 08.09.2004, he decided to conduct the regular hearing of the case on 20.09.2004 & 21.09.2004 in his office chamber at Maligaon. Accordingly, the applicant was advised to attend the hearing with his defence counsel, Sri M. Chakraborty. The applicant duly attended the hearing before the Enquiry Officer.

A copy of the above letter dated 08.09.2004 is annexed herewith as ANNEXURE-IV.

7. That the Enquiry Officer, after holding the regular enquiry, on 20.09.2004 and 21.09.2004 against the applicant, submitted his enquiry reported dated 17.11.2004 before the disciplinary authority. The enquiry officer after discussing the evidence on

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Mamuj Kr. Barman

record and the documents came to the findings that Article of charge No. I not proved and the Article of charge No. II partially proved. Thereafter, the Divisional Commercial Manager, Guwahati vide his office letter No. C/VIG/GHY-NGC/4/04 dated 07.12.2004 forwarded a copy of the enquiry report to the applicant directing him to submit his representation if any against the enquiry report within 10 days from the date of receipt of the letter.

A copy of the above letter dated 07.12.2004 along with the Enquiry Report dated 17.11.2004 is annexed herewith as ANNEXURE-V.

8. That as directed, the applicant on 16.12.2004 submitted his representation against the Enquiry Officer's Report dated 17.11.2004. In the representation the applicant accepted the findings of the Enquiry Officer on Article of Charge No. I. In connection to Article of charge No. II which the Enquiry Officer held to be partially proved, it was specifically stated that the said findings suffers from surmises and conjectures which have no place in the D & A Rules. Accordingly after citing various settled laws in this respect the applicant prayed to exonerate him from the charges.

A copy of the above representation dated 16.12.2004 is annexed herewith as **ANNEXURE-VI.**

9. That the applicant begs to state that after submitting his representation dated 16.12.2004 he was in the hope that the authorities would consider his representation in a favourable manner and he shall be exonerated from the charge. Contrarily, the applicant was shocked and surprised to receive the office letter No. ES/96-M(T) dated 05.07.2007 issued by the DRM (P)LMG, N.F. Railway and received by the applicant on 10.08.2007

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Manoj Kr. Sarmah



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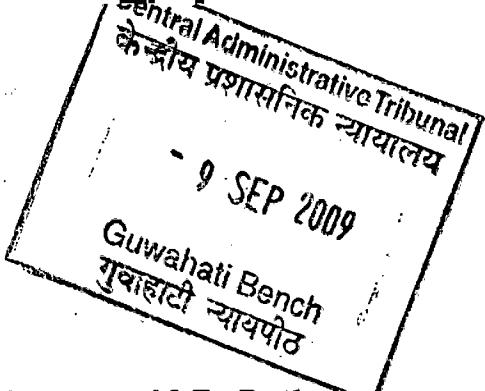
whereby the applicant was informed that the Sr. DCM/LMG has imposed the penalty of reduction to the lower stage in the time scale of pay by one stage lower for a period of three years (without losing the benefit of future increment). Accordingly his pay has been fixed at lower scale of pay w.e.f. 09.06.2007 to 08.06.2010. With the said letter copies of Notice of imposition of penalties dated 09.06.2007 and the observation of the Sr. DCM/LMG were also enclosed. From perusal of the observation of the Sr. DCM/LMG it is apparent that he had disagreed with the report of the Enquiry Officer in connection with Article of charge No. I and held that the said charge has been established and accordingly imposed the major penalty on the appellant without giving an opportunity to the applicant in connection with his disagreement with the findings of the Enquiry Officer. Moreover from the very beginning of issuing the charge memorandum on 10.05.2004 the Sr. D.C.M. was not involved with the proceedings against the applicant. It may also be mentioned here that though in the order it was mentioned that the applicant may file an appeal against the penalty so imposed before the appellate authority, the disciplinary authority has already materialized the N.I.P. and started pay cut from the month of July, 2007 without considering the fact that the applicant received the said N.I.P. only on 10.08.2007. The punishment has been imposed on the applicant in a pre-determined motive and in violation of the settled laws in this respect vis-a-vis the principles of natural justice.

A copy of the letter dated 05.07.2007 and the order of penalty dated 09.06.2007 are annexed herewith as ANNEXURE-VII & VIII.

10. That the applicant begs to state that being highly aggrieved by the said notice of imposition of penalty dated 09.06.2007, the applicant on 21.09.2007 submitted an appeal under Rule 18 of the Railway Servants (Discipline and Appeal) Rules, 1968 before

Contd.....

Manoj Kr. Barman



- 8 -

the Additional Divisional Railway Manager, N.F. Railway, Lumding enclosing all the relevant documents. In the appeal among others the applicant raised grounds that no prior notice was served on him in respect of disagreement of the disciplinary authority with the findings of the Enquiry Office regarding the article of charge No. I and the applicant was not given opportunity to submit his representation against the proposed penalty to be imposed on him. Accordingly, the applicant prayed before the appellate authority to quash and set aside the order or penalty dated 09.06.2007.

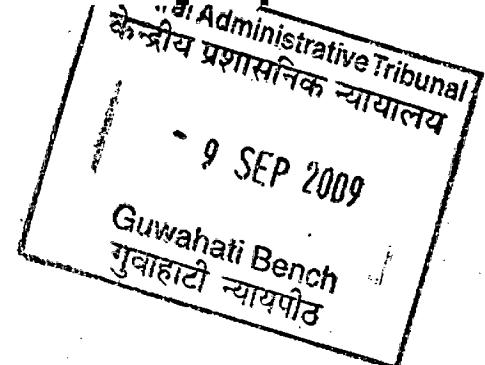
A copy of the above appeal dated 21.09.2007 is annexed herewith as ANNEXURE-IX.

11. That while the above mentioned appeal was pending before the appellate authority the applicant on 23.11.2007 received letter No. C/VIG/GHY-NGC/4/04 dated 23.11.2007 issued by the Senior DCM/LMG enclosing a copy of memorandum of disagreement to the article of charge No. I against the applicant. By the said letter the applicant was directed to submit his representation against the said memorandum of disagreement within 15 days from the date of receipt of the memorandum. Since at that time the appeal was pending before the appellate authority, the Senior DCM/LMG could not have been issued the memorandum of disagreement to the applicant. As such, the applicant on 07.12.2007 submitted his reply to the said memorandum of disagreement dated 23.11.2007 stating inter-alia that until the appeal is disposed of by the appellate authority; he is not in a position to submit any representation against the said memorandum of disagreement.

Copies of the above letter dated 23.11.2007 and reply dated 23.11.2007 and reply dated 07.12.2007 are annexed herewith and marked as ANNEXURE-X & XI.

Contd.....

Mangal Kr. Barman



- 9 -

12. That, thereafter, the applicant was shocked and surprised to receive on 08.12.2007 the impugned order No. C/VIG/GHY-NGC/4/04 dated 08.12.2007 issued by the Senior DCM/LMG thereby enhancing the penalty to reduction to a lower stage in time scale of pay by two stages for a period of 3 years and 6 months and after expiry of said period the same would have effect of postponing the future increments of pay. Though the said order was issued by the Senior DCM/LMG, he was not the appellate authority. Moreover, in the said order it was also mentioned that the authority also considered the reply to memorandum of disagreement vide letter date 05.12.2007 (07.12.2007). If the order was passed by the appellate authority, he could not have been given effect of the said reply of the applicant against the memorandum of disagreement without applying its judicial mind.

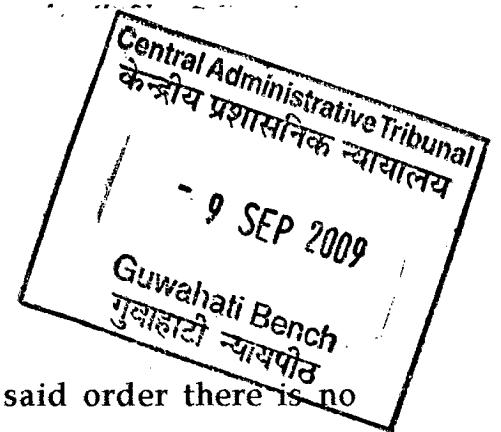
It is further stated that though by the said appellate order the penalty was enhanced, the applicant was not given reasonable opportunity of making a representation against such enhancement of penalty which is violative of Rule 22 (v) of the Railway Servants (Discipline and Appeal) Rules, 1968.

A copy of the above order dated 08.12.2007 is annexed herewith as
ANNEXURE-XII.

13. That the applicant begs to state that he had filed the appeal before the Additional Divisional Railway Manager, N.F. Railway, Lumding being the appellate authority. Unfortunately and in violation of the prescribed norms, the order dated 08.12.2007 has been signed by the Senior DCM/LMG who was the disciplinary authority of the applicant. Though it has been mentioned that the order was passed by the appellate authority (ADRM/LMG), he has not signed the order served on the applicant. As per prescribed norms the disciplinary authority can forward the order passed by the appellate authority, but he has no authority to sign

Contd.....

Mangal Kr. Barman



- 10 -

the order. Moreover, while passing the said order there is no explanation on the point raised by the applicant in his reply to the memorandum of disagreement dated 23.11.2007. The impugned order dated 08.12.2007 has been passed without applying the mind and in violation of the provisions of Railway Servants (Disciplinary and Appeal) Rules, 1968 by the authority.

14. That being aggrieved by the above mentioned order dated 08.12.2007 passed by the appellate authority, the applicant filed a revision petition under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 before the respondent No. 2 through proper channel on 21.01.2008 and the same was duly received by the authority. Since, for a long period of time there was no response from the respondent No. 2, the applicant on 03.10.2008 again submitted a reminder representation before him but there was absolutely no response from the respondent No. 2 authorities for consideration of the revision petition of the applicant.

A copy of the above reminder dated 03.10.2008 is annexed herewith as ANNEXURE-XIII.

(The applicant craves leave of this Hon'ble Tribunal to produce and rely upon the above revision petition dated 21.01.2008 as and when directed)

15. That the applicant begs to state that as the respondent No. 2 authorities did not take any steps for consideration of the revision petition filed by the applicant, he approached this Hon'ble Tribunal by filing an Original Application which was registered and numbered as Original Application No. 02/2009. This Hon'ble Tribunal by order dated 12.01.2009 disposed of the said application with a direction to the revisional authority

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Manoj Kr. Salman



- 11 -

(Respondent No. 2) to consider the revision petition of the application dated 21.01.2008 and pass a reasoned order thereon and the said process was directed to be completed within a period of 60 (sixty) days from the date of receipt of a copy of the said order.

A copy of the above order dated 12.01.2009 is annexed herewith and marked as ANNEXURE-XIV.

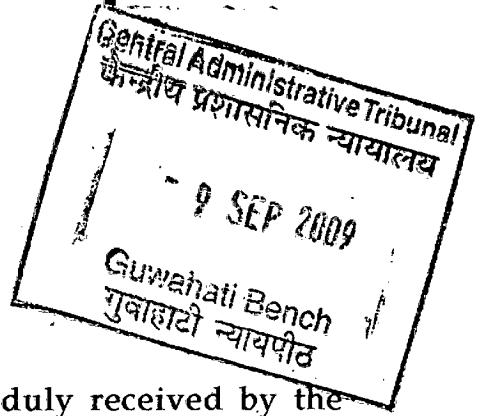
16. That the applicant begs to state that as the authorities failed to comply the order dated 12.01.2009 passed to comply the order dated 12.01.2009 passed by this Hon'ble Tribunal within stipulated period of time of 60 (sixty) days, the respondent No. 5, thereafter, filed a Miscellaneous Petition No. 47 of 2009 in O.A. No. 02/2009 seeking extension of another 3 (three) months time for implementation of the order dated 12.01.2009 passed by this Hon'ble Tribunal in O.A. No. 02/2009. This Hon'ble Tribunal by order (oral) dated 25.05.2009 allowed the said miscellaneous application giving extension of time to the authorities till 12.08.2009 to comply the above order dated 12.01.2009.

Copies of the above miscellaneous application dated 15.05.2009 and order dated 25.05.2009 are annexed herewith and marked as ANNEXURE-XV & XVI respectively.

17. That, thereafter, the earlier incumbent holding the post of Chief Commercial Manager, N.F. Railway, Maligaon, Guwahati-11 (Respondent No. 2) had transferred and in his place one new incumbent has joined on 13.07.2009. As such with a view to getting the knowledge of the revision petition of the applicant dated 21.01.2008 and also the orders passed by this Hon'ble Tribunal dated 12.01.2009 in O.A. No. 02/2009 and 25.05.2009 in Misc. Petition No. 47/2009, the applicant on 22.07.2009 submitted an application before the new incumbent holding the post of

Contd.....

Manoj Kr. Barman



- 12 -

respondent No. 2. The said application duly received by the authorities.

A copy of the above application dated 22.07.2009 is annexed herewith and marked as ANNEXURE-XVII.

18. That, thereafter, the applicant on 28.07.2009 received the impugned order No. C/VIG/GHY-NGC/4/04 dated 28.07.2009 issued by the respondent No. 5 purportedly on the basis of order passed by the CCM, N.F. Railway, Maligaon rejecting the revision petition filed by the applicant before him.

A copy of the above order dated 28.07.2009 is annexed herewith and marked as ANNEXURE-XVIII.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

- i. For that from the observation as depicted at "Annexure-A" of the NIP, it is evident that the Senior DCM/LMG has never served the copy of his disagreement to the article of charge No. I on the applicant before passing the NIP and as such the order of imposition of penalty dated 09.06.2007 is illegal and the same is liable to be quashed and set aside.
- ii. For that the disciplinary authority while disagreeing with the findings of the Enquiry Officer regarding the article of charge No. I, failed to appreciate the evidence on record and without consulting the evidence in this respect held that the article of charge No. I established against the applicant in a most illegal manner and as such the order of imposition of major penalty dated 09.06.2007 is not sustainable in law and is liable to be quashed and set aside.
- iii. For that while the statutory appeal of the applicant dated 21.09.2007 was pending before the appellate authority, the

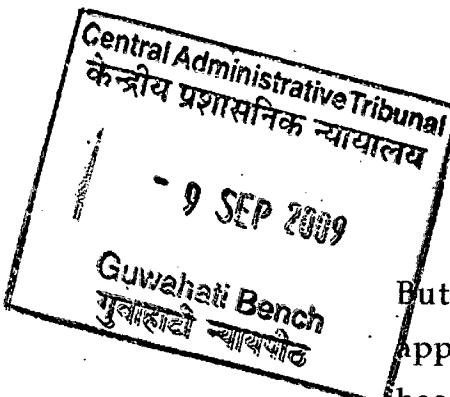
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Manoj Kr. Barman

disciplinary authority after going through the grounds raised by the applicant that the disciplinary authority passed the impugned order of penalty dated 09.06.2007 without serving any memorandum of disagreement on the applicant, the memorandum of disagreement was served on the applicant on 23.11.2007 directing him to submit his representation. Since the disciplinary authority had no power to issue such memorandum of disagreement while the matter was pending before the appellate authority, the applicant submitted his reply stating his inability to file any representation in respect of such disagreement. Though in the order dated 08.12.2007 passed on the appeal it has been stated that the appellate authority has considered the same in its true perspectives but the same could not have been done. As such, the order dated 08.12.2007 is bad in law and is liable to be quashed and set aside.

iv. For that Rule 22 (v) of the Rules provides that

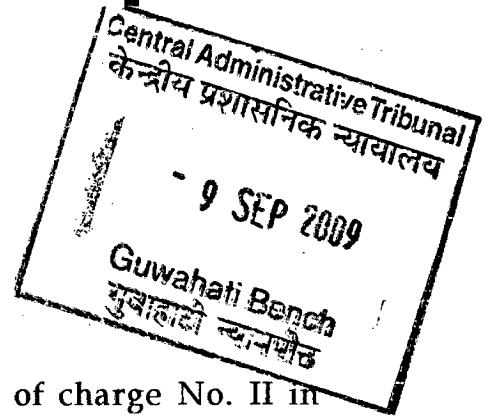
"no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 11 of making a representation against such enhanced penalty."


But from perusal of order dated 08.12.2007 passed on the appeal filed by the applicant, it is apparent that the penalty has been enhanced without affording any opportunity to the applicant to make a representation against such enhancement of penalty. As such, the impugned order dated 08.12.2007 is liable to be quashed and set aside on this ground alone.

v. For that the enquiry officer while submitting his enquiry report before the disciplinary authority failed to appreciate

Contd.....

Manoj Kr. Baidya

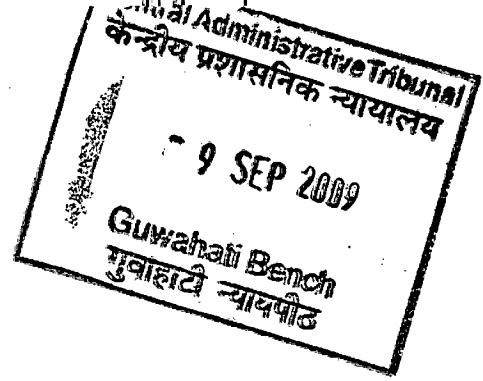


the evidence in regards to the article of charge No. II in proper manner and held that the charge was partially provided. It is a settle law that an allegation/charge can be "proved" or "not proved" but it cannot be held to be partially proved which has no meaning whatsoever and as such the disciplinary authority ought to have exonerated the applicant from the charges which were not proved but that not having been done and the Sr. DCM/LMG passed the order of penalty arbitrarily, the same is not sustainable in law and is liable to be quashed and set aside.

- vi. For that from perusal of both the order of penalty dated 09.06.2007 and 08.12.2007, it is apparent that both the orders have been passed arbitrarily without following the due procedure of law and in violation of the principles of natural justice and as such both the impugned orders are liable to be quashed and set aside.
- vii. For that the disciplinary authority issued the memorandum of disagreement while the appeal was pending before the appellate authority. The disciplinary authority without having the power to issue the disagreement letter, had issued the same. In the order passed on the appeal of the applicant dated 08.12.2007, the said disagreement letter and the reply of the applicant were also considered in a most perfunctory manner and enhanced the penalty arbitrarily. As such both the impugned orders of penalty dated 09.06.2007 and 08.12.2007 are liable to be quashed and set aside.
- viii. For that though the applicant submitted his representation on 16.12.2004 against the findings of the enquiry officer, the disciplinary authority failed to consider that representation while passing the impugned order of penalty dated 09.06.2007. Moreover, the applicant was not given the

Contd.....

Manoj Kr. Barman



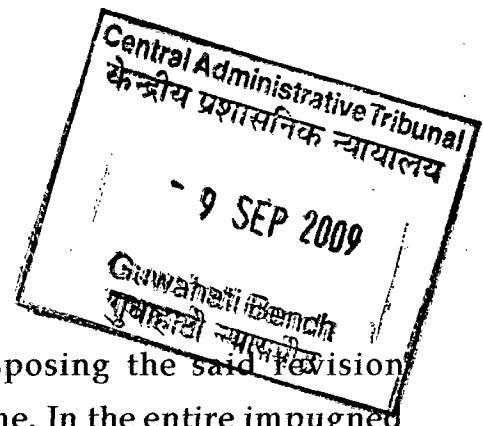
- 15 -

opportunity to file his representation against the proposed penalty by the disciplinary authority as well as the appellate authority. The said actions are violative of the principles of natural justice. As such both the orders of penalty are not sustainable in law and are liable to be quashed and set aside.

- ix. For that the Sr. DCM/LMG has issued the impugned order dated 08.12.2007 enhancing the penalty on the applicant without having jurisdiction and as such the said order is not sustainable in law and is liable to be quashed and set aside.
- x. For that the applicant filed a revision petition before the respondent No. 2 on 21.01.2008 highlighting the entire anomalies adopted by the disciplinary authority and the appellate authority while imposing the penalties. Though initially there was no response from the respondent No. 2 authorities; ultimately the said revision petition has been rejected in a most perfunctory manner and uphold the punishment imposed already by the authorities and as such the said impugned revisional order dated 28.07.2009 is bad in law and is liable to be quashed and set aside.
- xi. For that the respondent No. 2 authority passed the impugned order dated 28.07.2009 in a most perfunctory manner without considering the grounds raised by the applicant in the revision petition dated 21.01.2008 and as such the said impugned order dated 28.07.2009 is bad in law and is liable to be quashed and set aside.
- xii. For that in the revision petition dated 21.01.2008, the applicant, among others, raised the question that the appellate authority enhanced the punishment in violation of Rule 22(v) of the Railway Servant (D&A) Rules, 1968 but

Contd.....

Manoj K. Barman



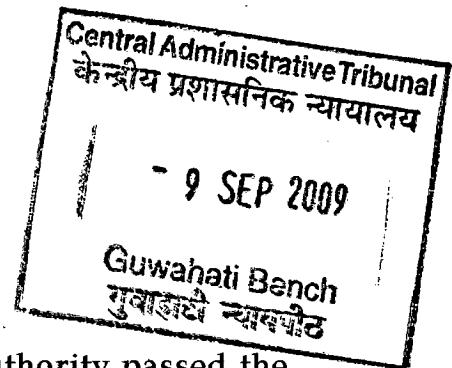
- 16 -

the respondent No. 2 while disposing the said Revision petition failed to consider the same. In the entire impugned order dated 28.07.2009 nothing has been mentioned about the said violation of law by the appellate authority and held that punishment imposed already is fair and meets the ends of justice. The said observation of the respondent No. 2 is total non application of mind and as such the said impugned order dated 28.07.2009 is liable to be quashed and set aside on this ground alone.

- xiii. For that in the impugned order dated 28.07.2009, the respondent No. 2 held that the authorities serve the disagreement letter on the applicant but he failed to file his representation to it but he failed to consider the legality and validity of the said disagreement letter and as such the conclusion arrived at by the respondent No. 2 is erroneous and is not sustainable in law.
- xiv. For that the appellate authority while passing the impugned appellate order dated 08.12.2007 stated that revision petition, if any, may be filed by the applicant to Chief Commercial Manager/N.F. Railway/MLG within a period of 45 (forty five) days. In the impugned revision order dated 28.07.2009 the respondent No. 2 most perfunctorily and without application of mind held that according to Rules 18 (iii) of the Railway Servants (D & A), Rules, 1968 where penalty imposed by D.A is enhanced by appellate or reviewing authority, the second appeal shall lie against the enhanced penalty and that the applicant did not availed that opportunity and filed the revision petition before him. The said observation of the respondent No. 2 are absolutely baseless and the impugned order has been passed without considering the materials of record and as such the impugned order dated 28.07.2009 is not sustainable in law and is liable to be quashed and set aside.

Contd.....

Manoj Kr. Barman



- 17 -

xv. For that as and when the disciplinary authority passed the final order in a domestic enquiry thereby exonerating the delinquent from the charges or imposing punishment on him, he ceases all the rights to pass any further orders in the matter and if any such order is passed that would be beyond jurisdiction of the said authority. But in the cash in hand the disciplinary authority issued the disagreement letter when the appeal was pending before the appellate authority. This vital fact of the case is failed to consider by the appellate authority as well as the revisional authority and passed their impugned orders. As such all the impugned orders passed by the disciplinary authority dated 09.06.2007, appellate authority dated 08.12.2007 and the revisional authority dated 28.07.2009 are bad in law and are liable to be quashed and set aside.

xvi. For that the disciplinary authority while issuing the disagreement letter dated 23.11.2007 kept the order of penalty dated 09.06.2007 aside. The appellate authority while passing the impugned appellate order dated 08.12.2007 enhanced the penalty without appreciating the fact that no subsequent order of penalty reviving the earlier order or otherwise passed by the disciplinary authority and as such the appellate order dated 08.12.2007 is not sustainable in law and is liable to be quashed and set aside.

xvii. For that in any view of the matter the orders of penalty dated 09.06.2007, 08.12.2007 and 28.07.2009 are bad in law and are liable to be quashed and set aside.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant on 21.01.2008 has submitted a revision petition before the respondent No. 2 under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 against the order of penalty

Contd.....

Manoj Kr. Barman

- 9 SEP 2009

Guwahati Bench
গুৱাহাটী বৰ্ষাকৰ্ত্তৃত

- 18 -

dated 09.06.2007 passed by the respondent No. 5 (Annexure- VIII) and the appellate order dated 08.12.2007 issued by the respondent No. 5 (Annexure- XII) through proper channel. The respondent No. 2 by its order which was communicated by the respondent No. 5 by order No. C/VIG/GHY-NGC/4/04 dated 28.07.2009, has rejected the revision petition filed by the applicant and uphold the penalty imposed by the disciplinary authority as well as appellate authority. As such the appellate has exhausted all the remedies under the departmental Rules in respect of the matter.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT :

The applicant further declares that when his revision petition dated 21.01.2008 was pending before the respondent No. 2 authorities and no steps to consider the said revision petition for a long period of time, the applicant approached this Hon'ble Tribunal by filing O.A. No. 02/2009. This Hon'bl Tribunal by order dated 12.01.2009 disposed of the said O.A. No. 02/2009 directing the authorities to consider the revision petition of the applicant dated 21.01.2008 within a period of 60 (sixty) days from the date of receipt of a copy of the said order. Thereafter, the respondent No. 2 authorities disposed of the revision petition of the applicant. Against the above order the applicant has not approached any other court and as such no proceeding was pending in any other Court.

8. PRAYER :

In the aforesaid premises, it is, therefore, prayed that Your Lordships would be pleased to admit this application, call for the entire records of the case, ask the respondents to show cause as to why the impugned orders of

Contd.....

Manoj Kr. Borkan

- 19 -

penalty dated 09.06.2007 (Annexure-VIII), 08.12.2007 (Annexure-XII) and 28.07.2009 (Annexure-XVIII) shall not be quashed and set aside and as to why a direction shall not be issued to release the entire service benefits to the applicant to which he is entitled and after perusing the causes shown, if any and upon hearing the parties be pleased to quashed and set aside the impugned orders of penalty dated 09.06.2007 (Annexure-VIII), 08.12.2007 (Annexure-XII) and 28.07.2009 (Annexure-XVIII) with a further direction to release the entire service benefits to the applicant to which he is entitled and/or pass such other order/orders as Your Lordships may deem fit and proper.

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

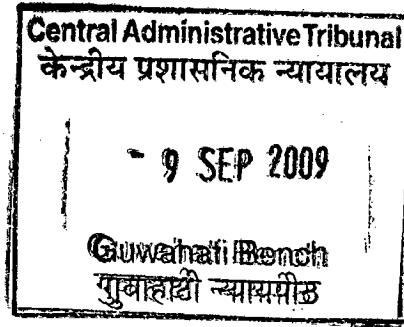
9. INTERIM ORDER :

In the interim it is prayed that pending disposal of the application Your Lordships would be pleased to suspend the operation of the impugned orders dated 09.06.2007 (Annexure-VIII), 08.12.2007 (Annexure-XII) and 28.07.2009 (Annexure-XVIII) with a further direction not to continue in deducting the pay of the applicant and/or pass such other order/orders as Your Lordships may deem fit and proper.

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

Contd.....

Mamuj Kr. Balman.



- 20 -

10. DOES NOT ARISE:

**11. PARTICULARS OF BANK DRAFT/POSTAL ORDER IN
RESPECT OF THE APPLICATION FEE :**

i) I.P.O. No. : 72 E-121855, 72 E-121856, 72 E-121857, 72 E-121858,
72 E-121859 for Rs. 10/- each.
ii) Date : 08-09-2009
iii) Issued by Guwahati Post Office. - GPO, Keeghdoor Bhawan, Ghy-1
iv) Payable at Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

Manoj Kr. Basumatary

VERIFICATION

I, SHRI MANOJ KUMAR BARMAN, aged about 58 years, son of Late Mangala Barman, resident of No.2 Mathgharia, Guwahati-20, P.O. Noonmati, in the district of Kamrup (Metro), Assam, do hereby verify that the statements made in paragraphs No. 4 (1, 2, 3, 4, 6, 8, 10, 11, 12, 13, 14, 15, 16 and 17) are true to my personal knowledge and the statements made in paragraphs No. 4 (5, 7, 9 and 18) are believed to be true on legal advice and that I have not suppressed any material fact.

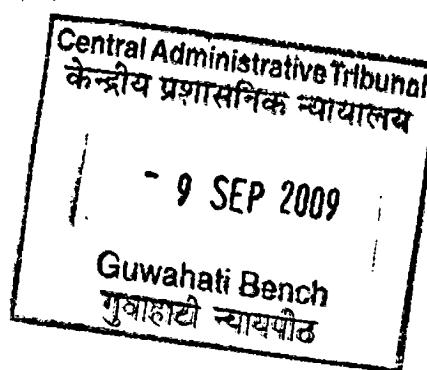
And I sign this verification on this the 8th day of September, 2009 at Guwahati.

Place : Guwahati

Date : 08/09/2009

Manoj K. Barman

S I G N A T U R E



FORM OF CHARGE SHEET

rule 9 of the Railway servants Discipline and appeal rules 1957

10-CPK19/344-NGC/4/01

JCM/GRM (Name of Railway Administration)

(Place of issue)

(Name of Railway Administration)

Da-Ed 10-5-04

MEMORANDUM

8. * Shri M.K. Pandian is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure III) at any time for during five hours within 10(Ten) days of receipt of this Memorandum. For this purpose he should contact ** Devy/GM - immediately on receipt of this Memorandum.

is hereby directed to submit to
the undersigned (through General Manager C.S.(S) / W.C.) within the said General Manager) within 10 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

desires to inspect documents.

(a) To state whether he wishes to be heard in person and
(b) To furnish the names and addresses of the witness if any whom he
wishes to call in support of his defense.

Conditions

Certified to be true Copy

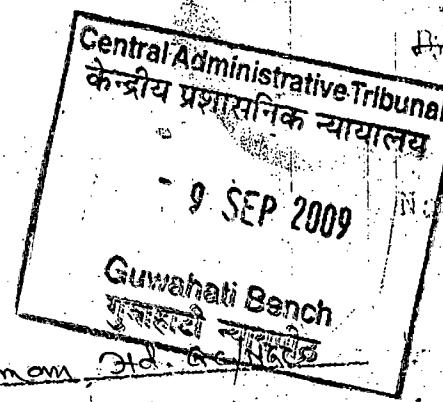
Prakash Sardar,
Advocate

is informed that an inquiry will be held in respect of those articles of charge as are not admitted, therefore, specifically admit or/ each articles of charge. It 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 inquiry authority or otherwise fails or refuses to comply with the provisions of rules 9 of the railway servants (Discipline and Appeal) Rules 1968 or the order/directions issued in pursuance of the said rule the inquiring authority may hold the inquiry ex parte.

The attention of Shri M.K. Baruam is invited to rule 20 of the railway services (conduct) Rules 1968, under which no Railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceeding, it will be presumed that Shri M.K. Baruam 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 Rly. services (conduct) Rules 1968.

8. The receipt of this memorandum may be acknowledged.

Encl:-4 (font)



By order and in the name of the
President

Signature (A. Horain)

Name and designation of the
competent authority. DCMG

To
Shri M.K. Baruam Std. No. 100

Designation

(Name and designation of

9 Copy to Shri _____ the leading authority for information.

4 Strike out which ever is 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 investigating authority or any authority who are in the custody of the listed document or who would be arranging for inspection of the documents to enable this authority being mentioned in the draft memorandum.

3 Where the President is the disciplinary authority.

2 To be retained wherever President or the Rly. Board is the competent authority.

1 To be used where ever applicable See Rule 16(1) of the Rly. Rules 1968. Not to be inserted in the copy sent to the Rly. servant.

10/19593

Received on
10/10/2014

-25-

ARTICLE OF CHARGES FRAMED AGAINST SWHRI M.K.BARMAN, HD.GC/NGC

ANNEXURE-I

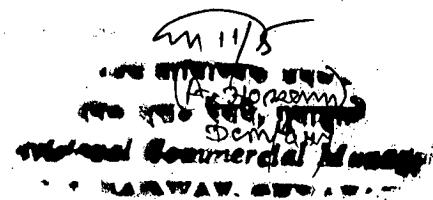
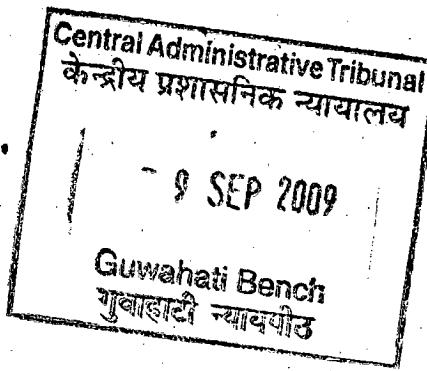
ARTICLE-I

Shri M.K.Barman Hd.GC/NGC while functioning as delivery clerk of NGC goods office, during the month of November and December /2001 committed a serious negligence in his duty in as much as he permitted the parties to put fictitious remarks in the delivery book regarding packets left for A/D. During the delivery of the onion consignment on 1.12.01 and the remarks were without signature of the person who took delivery.

ARTICLE-II

Shri M.K.Barman, Hd.GC/NGC while functioning as delivery clerk of NGC/Goods office during the month of November and December/2001 committed a serious misconduct in as much as he delivered the onion consignment from NGC/Goods office on 1/12/01 without verifying the genuineness of the party who took delivery. Thus he facilitated fictitious parties who were neither consignee nor endorsee to take fictitious A/D.

Thus by the above acts said Shri M.K.Barman Hd.GC/NGC exhibited lack of integrity and devotion to duty and acted in a manner unbecoming of a Railway servant and thereby contravened the provisions of para 3.1(i)(ii) and (iii) of Railway Service Conduct Rules, 1966.





STATEMENT OF IMPUTATION OF MISCONDUCT AND
MISBEHAVIOUR FRAMED AGAINST SHRI M.K.BARMAN HD.GC/NGC.

ARTICLE-I

ANNEXURE-II

Shri M.K.Barman, Hd.GC/NGC while performing his duty as delivery clerk on 1.12.01 committed a serious negligence in his duty in as much as he delivered onion consignment obtaining fictitious remark from the parties in the delivery register. There were no signatures of the agent against these remarks which was admitted by him in his statement in reply to Q.7. Further the documents revealed that the number of onion bags which were already removed had been shown as bags left for AD in the remarks without signature of the party with the intention to make false claims, Shri Barman had permitted such remarks by the party to give undue benefit to the party.

As per invoice no. 220/351 bags and invoice no. 251/361 bags i.e. total of 712 bags of onion were booked from RJT. On 1.12.01 as per tally book the consignments were tallied and unloaded at 15 hrs. and 14 hrs. respectively but actually 712 bags of onion were delivered and removed from the Railway premises at 10 hrs. 12.45 hrs, 10 hrs. and 10 hrs. by trucks bearing numbers as AMK 6384/153, AMZ- 1143/199, AMH- 432/180 and NLA-1898/180 as revealed from records of gate pass registers maintained by RPF/NGC and by the NGC/Goods office. This had resulted in the grant of fictitious AD of the consignment on 01.12.2001.

Further the on duty goods clerk Shri Barman allowed the party to write the false remarks as 223 bags onion kept for A/D and 291 bags onion kept for A/D without obtaining any signature against this remarks.

ARTICLE-II

Shri M.K.Barman Hd.GC/NGC while performing his duty as delivery clerk on 1.12.01 committed a serious negligence in his duty in as much as he delivered onion consignment to persons without verifying the genuineness of the party. This was also admitted by Shri Barman vide Q.9 in his statement. Even he failed to take signature of party who took delivery of onion consignment under invoice No. 256 RR No. 140248 dated 13-14/11/2001. Thus he facilitated party who neither consignee nor endorse to take fictitious A/D.

W.M.S
A. 27th May
D.G.M.
Guwahati
R.R. Barman, G.G.O.A.

9 SEP 2009

**Guwahati Bench
JALALI & SONS
NEXPIRE LTD.**

ANNEXURE II

LIST OF RELIED UPON DOCUMENTS.

1. Statement of Shri M.K.Barman Hd.GC/NGC recorded on 26.09.03.
2. Statement of Shri D.Brahma, Hd. Cons/RPF/NGC recorded on 08.09.2003.
3. DDM register from Sl. No. 505 to 515.
4. Tally Book containing pages for the date of 01.12.01.
5. Gate pass khata of NGC/Goods office containing pages for the date 01.12.2001.
6. Gate pass Khata of RPF/NGC containing pages for the date 01.12.2001.
7. Applications for A/D (25 Nos.)
8. Delivery Book containing pages for the date 01.12.2001.
9. RRs (32Nos.)

ANNEXURE-IV

LIST OF WITNESS

1. Shri D. Brahma, Hd, Const./RPF/NGC under IPF/NGC

~~14~~ - ~~23~~

me, by the above acts said Shri M.L. Bhurmi IId (Ex-Sgt) exhibited lack of integrity, devotion to duty and acted in a manner sub-decoping of a Police personnel and thereby alienated the provision of para 3 (b) (i) (no. and (ii) of Article 19 (c) under Article 3700.

original of this document
itself is not legible.

Francesca Sarmay
Associate

ANNEXURE-II

To
The Divisional Commercial Manager,
N.F.Railway, Guwahati Station Road,
Guwahati - 781001.

Sir,

Sub - Defence against your Charge Memorandum No. C/VIG/GHY-
NGC/4/04 dated, 10.5.04 received on 6.7.2004.

-o(O)o-

In obedience to your subject-noted Charge Memorandum, I do beseech your profound look to the following submissions as my defence for favour of your kind perusal and sympathetic consideration and esteemed judicious orders please :-

That sir, I deny the charge labeled against me and in this connection, I would like to submit that I may be given a chance to rebut/disprove the allegation during enquiry stage in the form of "AUDI ALTERAM PARTEM" so that reasonable opportunity under Article 311 of the Constitution of India analogous to the principles of "NATURAL JUSTICE" & "REASONABLE OPPORTUNITIES" is not denied to me.

In this connection, the following persons are nominated to assist me during the course of enquiry in the capacity of Defence Counsels :-

1. Shri G. G. Das, Supdt. (T)/Claims/Maligaon & Office Secretary, AISCTREA/GHY Branch.
2. Shri M. Chakraborty, Retd. Sr. SO(A) & Ex. CVI(A)/MLG.

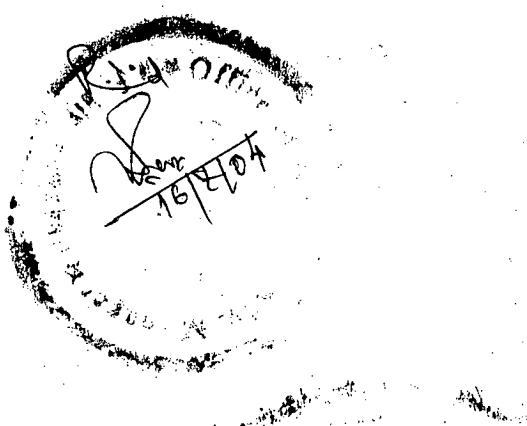
The consent letters of the above named two individuals are enclosed herewith for your kind perusal and disposal please. The arrangement may kindly be done for their sparing during enquiry.

With regards,

Encl - 4 (four) Sheets
as above.

Yours faithfully,

Manoj Kr. Barman
(M. K. Barman) 15/7/04
Hd. GC/BG/NGC.



Certified to be true Copy
Prakash Jyoti
Barman



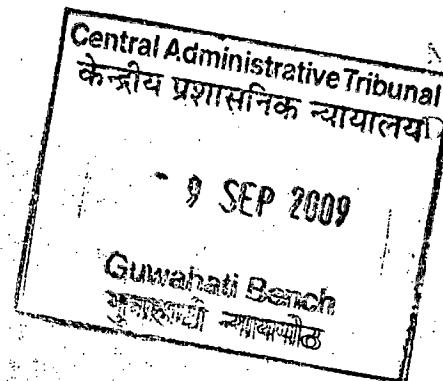
NORTHEAST FRONTIER RAILWAY

NO. Z/CON/VIG/08/04(2)

Office of the
Enquiry Officer (E)
Maligaon, Guwahati - 781 011

Dated: - 20/08/2004

To
✓ Shri M. K. Barman
Hd. GC/NGC
N. F. Railway



Sub: - Departmental enquiry into the charges framed against you vide
Memorandum of Charge Sheet No. C/VIG/GHY - NGC/4/04
dated 10/05/2004 issued by DCM/Guwahati.

Under Order No. C/VIG/GHY - NGC/4/04 dated 03/08/2004, a copy of which
has also been endorsed to you, the undersigned has been appointed as Enquiry Officer to
conduct the above DAR enquiry.

It has now been decided to conduct the Preliminary Hearing of the above case on
08/09/2004 at 10:00 hrs in the chamber of the undersigned at Maligaon/HQ.

You are, therefore, advised to attend the hearing as per above programme along
with your nominated Defence Counsel Shri M. Chakraborty, Reid. Sr. SO/FA &
CAO/Maligaon. Please note that no adjournment will be granted for absence of yourself
and your nominated Defence Counsel.

1/5/2004
(A. K. Sen)
Enquiry Officer

Copy forwarded for kind information and necessary action to:-

- 1) DCM/Guwahati. He is requested to spare and direct Shri M. K. Barman, Hd. GC/NGC as per above mentioned programme to attend the hearing.
- 2) Shri M. Chakraborty, Reid. Sr. SO/FA & CAO/Maligaon (DC). He is advised to attend the hearing as per above mentioned programme.
- 3) Dy. CVO (T) Maligaon.

1/5/2004
(A. K. Sen)
Enquiry Officer (E)

Certified to be true Copy

Pranash Sarma
Advocate



-30-

ANNEXURE IV

NORTHEAST FRONTIER RAILWAY

Office of the
Enquiry Officer/HQ
Maligaon, Guwahati - 11

Dated: - 08/09/2004

NO Z/CON/VIG/08/04(2)

To,
Shri M. K. Barman
Hd. GC/NGC
N. F. Railway

Sub: - Departmental enquiry into the charges framed against you vide
Memorandum of Charge Sheet No. C/VIG/GHY - NGC/4/04
dated 10/05/2004 issued by DCM/Guwahati.

Under Order No. C/VIG/GHY - NGC/4/04 dated 03/08/2004, a copy of which has also been endorsed to you, the undersigned has been appointed as Enquiry Officer to conduct the above DAR enquiry.

The Preliminary Hearing of the above case was conducted on 08/09/2004 at 10.00 hrs in the chamber of the undersigned at Maligaon/HQ.

It has now been decided to conduct the Regular Hearing of the above case on 20/09/2004 & 21/09/2004 in the chamber of the undersigned at Maligaon/HQ at 10.00 hrs.

You are, therefore, advised to attend the hearing as per above programme along with your nominated Defence Counsel Shri M. Chakraborty, Retd. Sr. SO/FA & CAO/Maligaon. Please note that no adjournment will be granted for absence of yourself and your nominated Defence Counsel.

17/09/2004
(A. K. Sen)
Enquiry Officer

Copy forwarded for kind information and necessary action to: -

- 1) DCM/Guwahati. He is requested to spare and direct Shri M. K. Barman, Hd. GC/NGC as per above mentioned programme to attend the Regular Hearing.
- 2) Shri M. Chakraborty, Retd. Sr. SO/FA & CAO/Maligaon (DC). He is advised to attend the Regular Hearing as per above mentioned programme.
- 3) Dy. CVO (T)/Maligaon.
- 4) Shri D. Brahma, Hd. Constable/RPF/NGC. He is advised to attend the Regular Hearing as per above mentioned programme.
- 5) IPF/NGC. He is requested to spare and direct Shri D. Brahma, Hd. Constable/RPF/NGC as per above mentioned programme to attend the Regular Hearing.
- 6) Shri S. Sengupta, CVI (T)/Maligaon. He is advised to attend the Regular Hearing as per above mentioned programme.

(A. K. Sen)
Enquiry Officer/HQ

Certified to be true copy
Prakash Samanta
Directorate

0352710

ANNEXURE- V

(Typed Copy)

N.F. Rly.

Office of the Sr. ARM/Guwahati

No. C/Vig/GHY-NGC/4/04

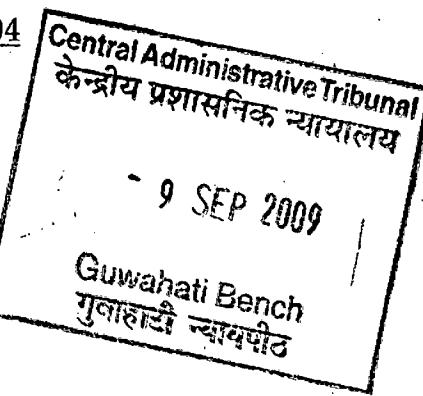
Dt. 7.12.04

To

Shri M.K. Barman

Hd. GC/NGC

Through : CGS/BG/NGC



Sub : Final enquiry report of departmental enquiry of DAR
Case into the charged memorandum No. C/Vig/GHY-
NGC/4/04 dated 10.5.04.

The final enquiry report of above subject DAR case received from
Enquiry Officer (A.K. Sen) is sent herewith.

Please submit your representation if any in this connection within
10 (ten) days from the date of receipt of this letter.

Enclose 8 (eight)

Sd/- Illegible
Divisional Commercial Manager,
Guwahati
7.12.04

Copy to - CGS/BG/NGC for information please

Sd/- Illegible
Divisional Commercial Manager,
Guwahati

Rd.

8.12.04

Certified to be true copy
Prakash Sarma
Advocate

~~23-27/11~~

ANNEXURE - V

N.F. Rly.

S. P. Roy

No. of Regd/ Bhy-NAC/4/04.

Office of the
S/o. ARY/Guarantor
dt. 7-12-04.

Sir M. K. Bowman

Hd. L/C/NAC
Enclosure - C GS/BG/NAC

Sub:- Final enquiry report of departmental
enquiry of DAR case into the charged
memorandum No. Regd/ Bhy-NAC/4/04
dt. 10-5-04.

The final enquiry report of above subject
DAR case received from Enquiry Officer (A.K.Sen)
is sent herewith.

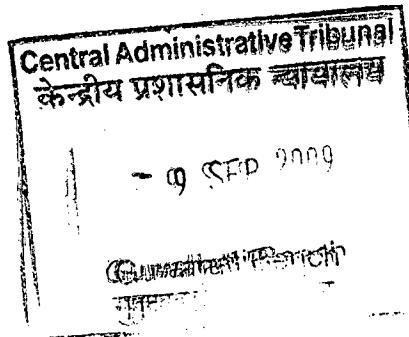
Please submit your representation if
any in this connection within 10 (ten) days from
the date of receipt of this letter.

Enclos - 8 (eight)

Sir,
Civil Control Manager
Guwahati
D.D. B.

Copy to - cgs/BG/NAC for information please.

Civil Control Manager
Guwahati
D.D. B.



For C.O. Shri M. K. Barman, Hd GC/NGC



RECORD OF THE DEPARTMENTAL ENQUIRY INTO THE CHARGES
PROMPTED AGAINST SHRI M. K. BARMAN, HD. GC. NGC/N. F.
RAILWAY VIDE MEMORANDUM OF CHARGE SHEET NO. C/VIG/GHY -
7956
NGC/4/04 DATED 10/05/2004 ISSUED BY DCM/GUWAHATI.

INTRODUCTION

I was appointed as Enquiry Officer by DCM/Guahati in exercise of powers of a Disciplinary Authority to inquire into the charges leveled against Shri M. K. Barman, Hd. GC/NGC vide Memorandum of Charge Sheet No. C/VIG/GHY - NGC/4/04 dated 10/05/2004. The case was received for enquiry on 04/08/2004 and the Preliminary Hearing was held on 08/09/2004. The Regular Hearing of the above case was conducted on 20/09/2004 & 21/09/2004 at Maligaon/HQ and enquiry completed. The DA proposed to substantiate the charges on the basis of 09(Nine) Relied Upon Documents (RUDs) listed vide Annexure - III and one oral evidence listed vide Annexure - IV of the Charge Memorandum. Charged Official appointed Shri M. Chakraborty, Retd. Sr. SO/ FA & CAO's/Maligaon as his Defence Counsel to assist him during enquiry. Charged Official Shri Barman was generally examined on the basis of circumstances appearing against him in the form of clarification. Disciplinary Authority appointed Shri S. Sengupta, CVI (T)/Maligaon as Presenting Officer with the above case. Charged Official submitted his Defence Brief on 26/12/2004. Other details are in the Daily Order Sheets.

THE ARTICLE OF CHARGE

1. The DA has framed Two (02) Article of Charges against Shri M. K. Barman, Hd. GC/NGC, which are mentioned below:

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

9 SEP 2009

Article - I

Shri M. K. Barman, Hd. GC/NGC while functioning as Delivery Clerk of NGC Goods Office, during the month of November and December 2001 committed a serious negligence in his duty in as much as he permitted the parties to put fictitious remarks in the Delivery Book regarding Packets left for A/D. During the delivery of the Onion Consignment on 01/12/2001 and the remarks were without signature of the person who took delivery.

Guwahati Bench

Article - II

Shri M. K. Barman, Hd. GC/NGC while functioning as Delivery Clerk of NGC Goods Office during the month of November and December 2001

033892

(2)



committed a serious misconduct in as much as he delivered the Onion
document from NGC Goods Office on 01/12/2001 without verifying
the genuineness of the party who took delivery. Thus, he facilitated
fictitious parties who were neither Consignee nor endorsee to take
fictitious A/D.

Thus, by the above acts said Shri M. K. Barman, Hd. GC/NGC
exhibited lack of integrity and devotion do duty and acted in a manner
unbecoming of a Railway Servant and thereby Contravened the
Provisions of Para 3.1 (i), (ii) & (iii) of Railway Services (Conduct)
Rules'1966.

THE CASE ON BEHALF OF THE DISCIPLINARY AUTHORITY

The DA has proposed to substantiate the charges framed against Shri M. K. Barman, Hd. GC/NGC on the basis of 09 (Nine) nos of documentary evidences which were exhibited /authenticated during the course of enquiry and the documents were marked as PD - 1 to PD - 09.

PD - 1 is the copy of the statement of Shri M. K. Barman, Hd. GC/NGC recorded at CVO/Maligaon's Office on 26/09/2003.

PD - 2 is the copy of the statement of Shri D. Bramha, Hd. Constable/RPF/NGC recorded on 08/09/2003 at CVO/Maligaon's Office.

PD - 3 is the copy of the DDM Register from Sl. No. 505 to 515.

PD - 4 is the copy of the Tally Book containing pages for the date of 01/12/2001.

PD - 5 is the copy of the Gate Pass Khata of NGC/Goods Office containing pages for the date of 01/12/2001.

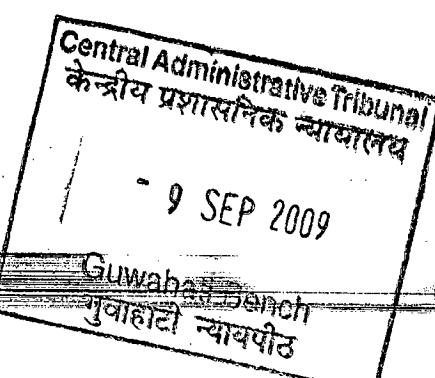
PD - 6 is the copy of the Gate Pass Khata of RPF/NGC containing pages for the date of 01/12/2001.

PD - 7 is the copy of the applications for A/D (25 nos).

PD - 8 is the copy of the Delivery Book containing pages for the date of 01/12/2001.

PD - 9 is the copy of the Railway Receipt's (32 nos).

Presenting Officer in his brief submitted on 28/09/2004 mentioned that Shri M. K. Barman on 01/12/2001 commenced his duty as Delivery



033892

9 SEP 2009

Guwahati Bench
गुवाहाटी न्यायालय



06.30 hrs & started delivery of Onion Consignments. Consignments under Invoice Nos. 220 & 251 were removed from the Railway Premises at 10.00 hrs which clearly proves that the said Consignments were delivered otherwise it is not possible to remove the Consignment and thus the statement of CO vide Q* No. 2 of EO is not correct. The remarks of damage as made in the Delivery Register obviously made by the party itself without signature and in presence of Delivery Clerk as Shri Barman was the custodian of the delivery book and his duty was up to 13.30 hrs and surely he allowed the party to put such fictitious remarks. Hence, the charge against CO on Article - I stands established.

In regard to Article - II of the Charge, it has been mentioned that as per delivery book, Consignment under Invoice No. 140248/256 was delivered without obtaining the signature of the party i.e. without verifying the genuineness of the party and the same of delivering the Consignment was admitted by Shri Barman in reply to Q* No. 9 is his statement.

Further, three cases including the above Invoice No. 256 were cited by PO where it has been shown that the Consignee against three invoices were someone & endorsed to one Party whereas the deliveries were made to other than the endorsee or there are some discrepancies & thus from the above it is clear that Shri Barman delivered the Onion Consignment without verifying the genuineness of the Party and also he did not obtain the signature of the Party in the Delivery Book & without observing the general formalities.

Therefore, the charge against Article -II is also stands established.

THE DEFENCE OF THE CHARGED OFFICIAL

1. Charged Official in his Defence Brief received on 26/10/2004 mentioned that the Charge against Article - I is far from the fact as the CO was on duty at the Delivery Counter on the day from 06.30 hrs to 13.30 hrs and he left the Counter at 14.30 hrs on completion of his duty and it cannot be denied that CO did not effect the Book Delivery since the Consignment started lifting from 09.15 hrs and completed unloading at 15.00 hrs indicates that the party was allowed by the CGS/NGC to remove the good portion of the Consignment from the Railway premises and the damaged portion was kept for A/D and after granting A/D by DCM/GHY, the Consignment was finally removed at 18.40 hrs which did not fall within the duty hours of the CO.

2. The unloading of the said Consignment completed at 15.00 hrs as revealed from the Tally Book & very correctly the damage portion of the Consignment could be ascertained by 15.00 hrs and thereafter as a rule,

033892

(9)



the remarks in the Goods Delivery Book as the nos of bags
A/D.

CO left the Counter at 14.30 hrs on being released from duty at 13.30 hrs, so the CO is in complete dark about the remarks recorded in the Delivery Book and as such the allegation must not be attributed on the CO & CO very correctly pointed out that he was not aware when the particulars marks were written because he effected only Book Delivery but not physical delivery and the Tally Clerk recorded the Tally Register. On the basis of the Tally, the remarks were put by the Party.

Since the Party did not put remarks within CO's duty hours, no comments can be offered on the last three lines of Article - I.

In regard to Article - II of Annexure - I wherein it has been mentioned that CO delivered the Onion Consignment without verifying the genuineness of the Party who took delivery and facilitated fictitious Parties who were neither Consignee nor endorsee.

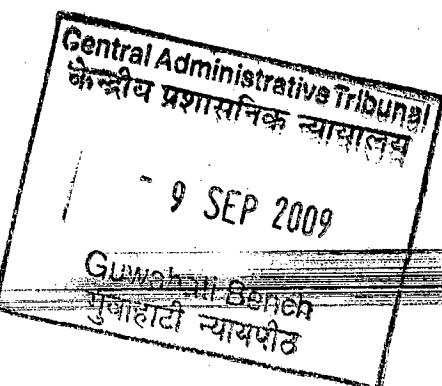
In this connection, it is submitted by CO that the question of delivery of the Consignment of the Party without verifying the genuineness does not arise at all. There are limited known Parties who deals in Wagon/rake load Consignment and take the delivery through their representatives and due to working in NGC Goods Shed for a long period, the representatives are very much known. In this instant case, the delivery was affected to the representatives of the Party and so the non - verifying the genuineness of the Party is not correct.

Further, as per provision of Section 80 of Railway Act' 1989 where delivery of the Consignment has been permitted to the person who produces the Railway Receipt, it shall not be responsible for any wrong delivery on the ground that such person is not entitled or that the endorsement on the Railway Receipt is forged or otherwise defective.

3. In this connection, it has been clarified that CO never admitted rather he stated that that since the agent/representative of the Parties are all known & delivery was effected on good faith & as per Provision of Section 80, the Consignment was delivered to the known representative and the RR in question bears the endorsement on the backside of the RR.

4. In regard to allegation for non - obtaining the signature of the person who took delivery, the allegation is not correct & delivery book clearly indicates the existence of Parties signature in the column.

5. Thus, from the above discussion, it is clear that delivery was granted to the proper representation and hence, the question to facilitate fictitious



03389

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

9 SEP 2009

Gauhati Bench

take fictitious A/D does not arise. It is further submitted that claim against any fictitious delivery has been arisen & hence article in question is not substantiated.

While discussing on the points mentioned in his brief by PO, it has been mentioned that there is no doubt that removal of Consignment against ~~Invoice~~ No. 220/251 might have started at 10.00 hrs but according to Gate Register, the Consignments removed in several spells & finally completed at 18.40 hrs, so the observation of PO in regard to removal of Consignment within 10.00 hrs is not true. It appears from the Tally Book that the unloading was completed at 15.00 hrs & hence after removing the damaged bags, the remarks to that effect must have been put after 15.00 hrs which is obviously after the duty hours of CO.

In regard to PO's contention under result of enquiry of Article - II in respect to Invoice No. 140248/256 under which the Consignment was received without signature of the party & also without verification of the genuineness of the Party, it has been mentioned that details on the above has already been elaborated.

Invoice Nos. 140213/221 & 140236/240, which have been mentioned by PO were not incorporated in charge Memorandum & the said two invoices have not been elaborated.

ASSESSMENT OF EVIDENCES

The charge against the CO Shri M. K. Barman, Hd. GC/NGC under Article - I is that while functioning as Delivery Clerk of NGC Goods Office during the month of November and December 2001 he committed a serious negligence in his duty as he permitted the Parties to put fictitious entries in the Delivery Book regarding packets left for A/D.

The imputation cite that Shri Barman (CO) while performing his duty as Delivery Clerk on 01/12/2001, he delivered the Onion Consignment putting fictitious remarks in the Delivery Register & there was no signature of the agent/representatives against the remarks. Further, from the documents it revealed that the nos of Onion bags which were directly removed had been shown as bags left for A/D & there was no signature & the same was done with the intention to make false claim & thus CO permitted the party to put such remarks to give undue benefit to the Party.

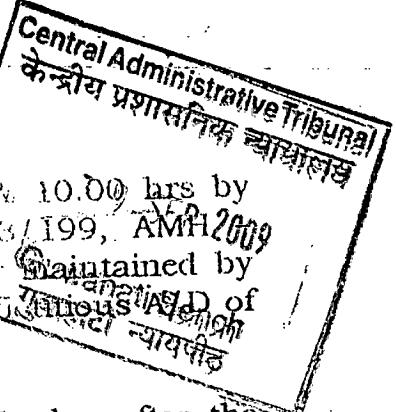
Suppose Invoice No. 220, 351 bags & against Invoice No. 251, 361 bags of which 712 bags of Onion were booked. As per tally, the consignments were tallied & unloaded at 15.00 hrs & 14.00 hrs respectively but 712 bags of Onion were delivered & removed from

0338918

- 24 - 23 - (6)



remises at 10.00 hrs, 17.45 hrs, 10.00 hrs & 10.00 hrs by
bearing Nos. AMX - 6384/153, AMZ - 1143/199, AMI 2609
180 & NLA - 1898/180 as per Gate Pass Register maintained by
RPF Personnel & Goods Office/NGC which resulted the fictitious A/D of
the Consignment on 01/12/2001.



As per the procedure, Book Delivery is to be given first & thereafter the Consignment is to be unloaded, tallied by Tally Clerk & after unloading the Consignment, the damaged portion are required to be segregated & details of the damaged received are highlighted through the tally and after finalization of tally, the damaged bags are kept for physical verification for granting A/D if any applied by the Competent Authority.

In this case, the Book Delivery was granted by the CO Shri Barman as he was working in the Delivery Counter from 06.30 hrs to 13.30 hrs on 01/12/2001 and after granting Book delivery, tally was started & primarily 513 bags of Onion against Invoice Nos. 220 & 251 were removed by the Party against the total of 712 bags at 10.00 hrs as are evident from the Gate Pass Register & the remaining 199 bags were lifted at 17.45 hrs.

While claiming A/D, the same was claimed for 514 bags as per tally and after finalization of A/D, the damaged bags must have been lifted/removed from the Railway premises.

As most of the bags were removed at 10.00 hrs (513 bags) at 10.00 hrs & 199 bags were lifted at 17.45 hrs, it is very much clear that the sound bags were transported earlier & the damaged bags were removed later (i.e. at 17.45 hrs).

- 8 Thus, the claim for A/D were fictitious and in regard to permitting the Parties to put fictitious remarks in the Delivery Register by CO could not be established as the remarks in the Delivery Register must have been put in after completion of tally as well as A/D i.e. after 15.00 hrs. As CO was on duty up to 13.30 hrs, he cannot be held responsible for permitting to put such remarks in the Delivery Register and also for not putting initial against the remarks.
- 9 In regard to Article - II of the Charge where it has been alleged that CO delivered the Onion Consignment on 01/12/2001 without verifying the genuineness of the Party who took delivery & thus he facilitated fictitious parties who were neither Consignee nor endorsee to take fictitious A/D.
- 10 As per the imputation, CO delivered the Onion Consignment to persons without verifying the genuineness of the Party. Even CO failed to obtain signature of the Party who took delivery under Invoice No. 256.

(7)

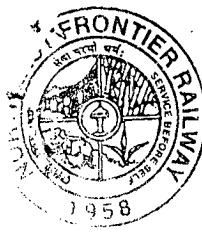


34 - The details furnished under Annexure - II of the statement of witness where particulars of violation made were mentioned, it is seen that against Invoice No. 221 (PD - 9/17) Consignee was U. C. Lakhani & the same was endorsed to Sunrise Trader and delivery was taken by Sunrise Trader but the signature of the endorsee was not authenticated and moreover, the Consignment was drawn by someone who even did not sign. In regard to Invoice No. 240 (PD - 9/29) the Consignment was Hari Vallav & Company and the same were endorsed to Sudhir Trader but the Consignment was received by Himachal Trader and the signature of the Party was not authenticated. The details in regard to other three Invoices i.e. Invoice nos. 256, 257 & 258 are mentioned below: -

SL. No.	Invoice No.	Consignee	Endorsed to	Delivery taken by
1	256	Jalaram Onion	Shanti Kumar, Kamal Kumar	Only Signature 9 SEP 2009 Jalaram Onion
2	257	Do	-----	Received by one on behalf of Jalaram Onion but signature are different.
3	258	Do	Kailash Trader	The signature of the representatives not authenticated by party.

As CO had agreed during General Examination as well as in his Defence brief to grant delivery to the known representatives of the party on good faith and also as per the strength of the provision as provided under Section 80 of Railway Act 1989, it can be deemed that he did not follow the procedure to verify the genuineness of the representatives and allow delivery to the men who produced the RR.

In regard to facilitation to claim the fictitious AD, it is seem that the AD against invoice No. 240, 256 and 221 were claimed by M/S K. Trader (PD - 7/11), Jagannath Ramesh Warle (PD - 7/16) and Mahendra Kumar Manoj Kunar (PD - 7/19) and the claims were preferred to CGS/NGC and CO being a delivery clerk on 01/12/2001 had no role to play to



(8)

accept or arrange acceptance though they were not the endorsee in the RR and thus the allegation of facilitation by CO could not be established.

12 From the above discussion and also from the documents it cannot be concluded that CO committed wrong to deliver the Consignment to the representatives without verifying the genuineness of the party and the same is unbecoming on the part of a Railway Servant.

FINDINGS

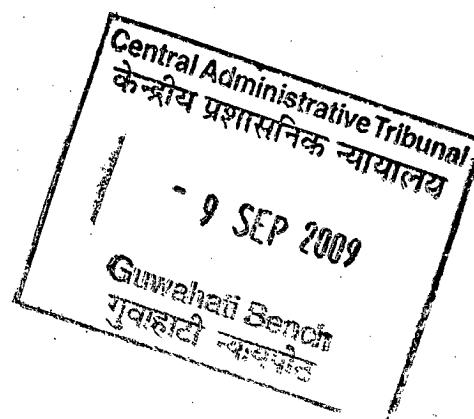
6.1 Thus, from the above discussions and the evidences taken on record, it is concluded that the Article of Charge framed against the CO Shri M. K. Barman, Hd. GC/NGC vide Memorandum of Charge Sheet No. C/VIG/GHY - NGC/4/04 dated 10/05/2004 issued by DCM/Guwahati are as under:-

ARTICLE - I
ARTICLE - II

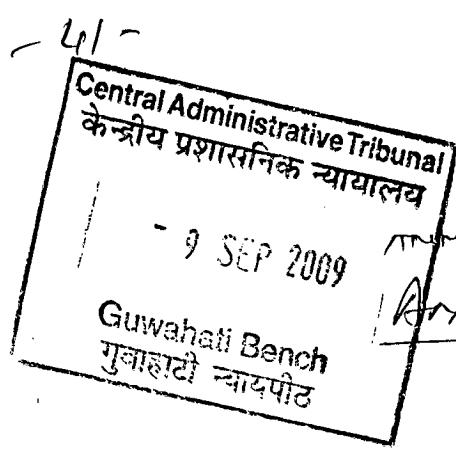
NOT PROVED
PARTIALLY PROVED

17/11/2004
(A. K. Sen)
Enquiry Officer/HO/MLG

Dated: - 17/11/2004



033891



The Divisional Commercial Manager,
N.F. Railway, Guwahati-781001.

Dated: 16/12/2004.

Sir,

Sub- Final Representation on the Hon'ble EO's report dated 17/11/2004 vide Charge Memorandum No. C/VIG/GHY-NGC/4/04 dated 10.5.2004 issued by DCM/GHY,

Ref- Your letter No. C/VIG/GHY-NGC/4/04 dated 7.12.2004 received by me on 8/12/04.

In obedience to your instructions laid down in your letter cited under reference, I do beseech your profound look to the following submissions for your sympathetic consideration, prudent and judicious decision please.

1.0 That sir, regarding findings of the Hon'ble EO on Article-I (one), I would like to submit that I accept the findings fully; but I totally disagree with the findings on Article-II (two), for the reasons submitted below:-

1.1.0 The Hon'ble EO vide 4th line of the Para below the chart depicted at page -7 of the report had drawn an inference, "It can be deemed that he did not follow the procedure to verify the genuineness of the representatives and allow delivery to the men who produced the RR."

1.1.1 So it is proved from the above lines that the Hon'ble EO restrain from applying his free and judicious mind in this case. Therefore, the findings were drawn on surmises and Conjectures which have no place in D&A Rules.

1.1.2 Besides as per procedure, the delivery clerk is bound to deliver the consignment to the person who produce the RR covered by the provision of section 80 of Railway Act.1989 and this practice has been followed at NGC Goods since long to avoid complaints from the Traders/Rly. Users; being satisfied himself (Goods Clerk/ Delivery Clerk).

1.1.3 But, the Hon'ble EO reached to such decision which which is a result of caprice whim or fancy or reached on the ground of policy of expedience ignoring Railway Boards letter No. E(D&A) 86 RG-6-1 dated 20.1.86, which states, "The supreme Court in case of Mahavir Prasad Vs. State of AP.(AIR 1970 SC 1302) observed that recording of reasons in support of a decision by a decision by a quasi-judicial authority is obligatory as it can show that the decision is reached according to the law and is not a result of caprice whim or fancy or reached on ground of policy of expedience. It has been further held that the necessity to record reason is greater if the order is subject to appeal." Thus CO was deprived of Natural justice under Article - 311 of the Constitution of India.

*Certified to be true Copy
Prasash Debnath
Advocate*

- 33 - 34 -

1.1.4 So, the Para Nos.5.11, 5.12 & 6.1 (findings on article-II) of the Enquiry Report which were drawn on surmises and conjectures are far from the practical feasibility and provisions laid down in Section 80 of Railway Act 1989. And is not acceptable to the CO. since this practice is prevailing even to-day.

1.1.5 Therefore the law is very much specific that even if a findings is based partly on evidence and partly on surmises and Conjectures it would stand vitiated (Dhiraj Lal Versus. Commissioner of Income Tax, 26 ITR 736).

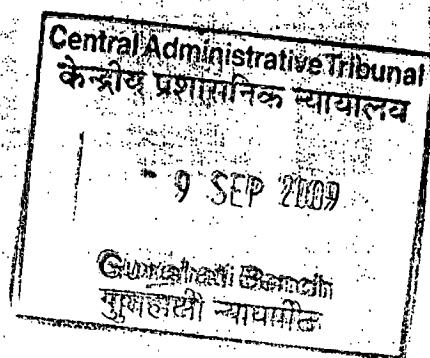
In view of the circumstantial evidence and facts, it is fervently prayed that your benign-self would be kind enough to exonerate the CO. from such un-judicious decision of the Hon'ble EO against Article-II (Partially Proved) based on surmises & conjectures as discussed above. So that the CO. may not be deprived of the judicious decision from a commercial officer like you and Natural Justice is not denied to the CO to enable him to render more devoted services to the administration with an anxiety free mind and for which act of your kindness, I shall remain ever grateful to your honour, Sir,

With regards,

Yours Faithfully,

Mangal Kr. Barman
(M.K. Barman)
(Charged Official)
Ex.Hd.Gc/NGC now
Hd.Gc at Dharmanagar.

R
M.K.
16/12/04
Sh. 05/c



ANNEXURE- VII

(Typed Copy)

N.F. Rly.

Office of the
DRM(P)LMG

No. ES/96-M(T)

Dt. 5.7.07

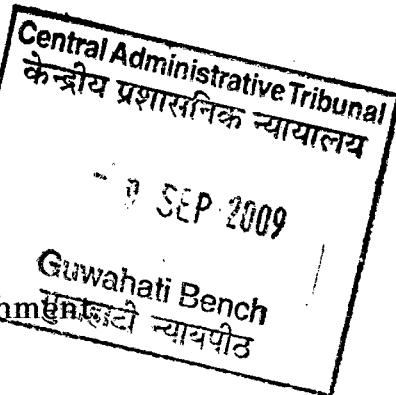
To

Shri Manoj Kumar Barman

HCC (Goods) DMV

Through :- SS/DMV

Sub : Implementation of punishment



Ref. : Sr. DRM/LMG's NIP No. C/VIG/GHY-NGC/04/04 dt.
9.6.07.

In terms of Sr. DRM/LMG's NIP No. under reference it is to inform you that the penalty of reduction to the lower stage in the time scale of pay by one stage lower for a period of 3 (three) years (without lossing the benefit of future increment) has been imposed upon you. Accordingly your pay has been fixed at Rs. 6800/- w.e.f. 09.6.07 to 8.6.2010.

Sd/- Illegible
for DRM (P) LMG

N.F. Rly
5.7.07

Copy to OS/ET bill at office to draw the salary of the staff accordingly.

Sd/- Illegible
for DRM (P) LMG
N.F. Rly

Received on 10.8.07

Sd/- M.K. Barman
10.8.07

*Certified to be true copy
Prakash Sarma
Advocate*

1
100-ES/96-M/T)

~~BB(A)~~ - K. F. Ray

OFFICE OF THE
DAM (P) LTD
Dt. 5/7/07

ANNEXURE - VII

✓ To Shri Manoj Kumar Barman.
HCC (Goods) DMR.
Trn. - 531 DMR.

Sub:- Implementation of punishment.
Ref:- Sr. Dam/Ltd's KIP on. C/MG/LT/2007-N/4
04/04 dt. 9-6-07.

In terms of sr. Dam/Ltd's KIP on. Under ref. reference it is to inform you that the penalty of reduction to the lower stage in the time scale & pay by one stage lower for a period of 3 (Three) years (without losing the benefit of future increment) has been imposed upon you. Accordingly your pay has been fixed at Rs. 6800/- w.e.f. 09-6-07 to 8-6-2010.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
- 9 SEP 2009

Dam/Ltd
K. F. Ray

COPY to OS/ET/ET/ET at GHEC to draw the salary of the staff accordingly.

DAM (P) LTD
K. F. Ray

Received dt. 10/8/07
Barman
10/8/07

Received
dt. 10.8.07
Barman

39

ANNEXURE - VIII

Northeast Frontier Railway

Notice of imposition of penalty of reduction to lower service, grade or post or in a lower time scale, or in a lower stage in a time scale for specified period.

(Ref: - SR-21 under rule - 1715 -RI).

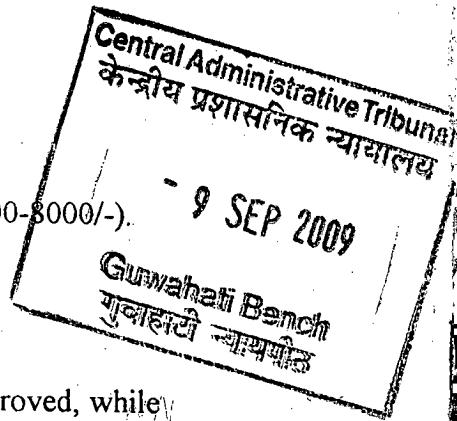
No.C/VIG/GHY-NGC/04/04

Dated 09.06.2007

To,

Sri M.K.Barman,
Hd.CC/Goods/NGC now at DMV

Designation	- Hd.CC/Goods/DMV
Date of birth	- 01-11-1951
Date of Appointment	- 29-01-1975
Present pay and scale	- Rs. 6950/- in scale of Rs (5000-8000/-).
Date of superannuation/Retirement	- 31-10-2011



- 1). The following charges were brought against you. Article- I, is not proved, while charge under article-II has been partially proved in the DAR enquiry.

Charges (s)

2) Sri M.K.Barman, Hd.GC/NGC while functioning as delivery clerk of NGC goods office, during the month of November and December/2001 committed a serious negligence in his duty in as much as he permitted the parties to put fictitious remarks in the delivery book regarding packets left for A/D. During the delivery of the onion consignment on 1.12.2001 and the remarks were without signature of the person who took delivery.

Sri M.K.Barman, Hd.GC/NGC while functioning as delivery clerk of NGC/Goods office during the month of November and December/2001 committed a serious misconduct in as much as he delivered the onion consignment from NGC/Goods office on 1.12.01 without verifying the genuineness of the party who took delivery. Thus he facilitated fictitious parties who were neither consignee nor endorsee to take fictitious A/D.

3) You are hereby informed that in accordance with the orders passed by Sr.DCM/Lumding (observation of Sr.DCM/Lumding in Annexure 'A') you are

Certified to be true Copy
Prakash Jammal
Advocate

imposed the penalty of reduction to the lower stage in the time scale of pay by one stage lower for a period of three years. On the expiry of such period the reduction will not have the effect of postponing the future increments of pay of the C.O. The penalty shall take with immediate effect.

Enclo:-Observation of Sr.DCM/LMG (in Annexure 'A')

केन्द्रीय प्रशासनिक न्यायालय
Central Administrative Tribunal

9 SEP 2009

Guwahati Bench

S. C. Kumar
Sr DCM/LMG
Name and Designation of
the Disciplinary Authority

Copy to:- 1. DRM (P)/LMG (OS/ET/Cadre) and (OS/ET/Bill) for information and necessary action please.

2. Dy.CVO/T/Maligaon for kind information in reference to letter No.Z/VIG/94/1/19/2004 dated 05-02-2007
3. SM/DMV for information. He is advised to hand over this NIP to the staff concerned obtaining acknowledgement and send the same to this office.

(S. C. Kumar)
Sr DCM/LMG

Please note the instructions below:-

- 1 An appeal against this order lies to ADRM/LMG (Next immediate superior to the authority passing the orders) within 45 days time.
2. The appeal may be withheld by an authority not lower than the authority from whose order it is preferred.

If:-

- a. it is a case in which no appeal lies under the rules.
- b. it is not preferred within the stipulated time on which the appellant was informed of the order appealed against no reasonable cause is shown for the delay.
- c. it does not comply with the various provisions and limitations stipulated in the rules.

Contd---3

- 47 -

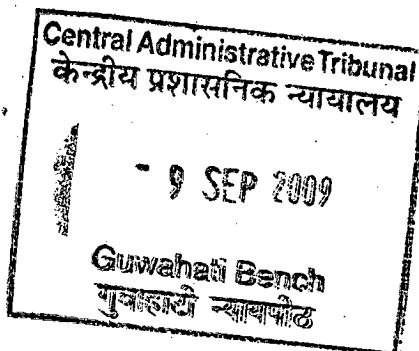
O B S E R V A T I O N

Annexure 'A'

~~A~~ After careful examination of enquiry report, tally book, delivery book, gate pass register attached in the case file, statement of Sri M.K. Barman and Vigilance remarks it is found that (a) the non-establishment of Charge of article -I by E.O. not found true as because the gate pass for 180 and 170 bags were issued at 9:20 hrs and 11:30 hrs respectively on 1-12-2001 before 12:00 hrs and C.O. permitted the party to put fictitious remarks as A.D. of 177 packets onion kept for A.D. in the delivery book. When the consignment was kept for A.D. how gate pass issued by C.O. Considering all the facts in mind article -I established.

Article -II established in enquiry report itself. It is proved beyond doubt that C.O. did not follow the proper procedure to verify the genuineness of the representatives and allowed delivery to the men who produced the R.Rs. Without proper verification and party was allowed to put fictitious remarks in delivery book for A.D.

Keeping all factors into consideration I imposed the penalty of reduction to the lower stage in the time scale of pay by one stage lower for a period of three years. On the expiry of such period the reduction will not have the effect of postponing the future increments of pay of the C.O.




(S. C. Kumar)
Sr. DCM/LMG

To

The Additional Divisional Railway Manager,
N.F. RAILWAY, LUMDING.

ANNEXURE - IX

In the matter of :

AN APPEAL under Rule-18
of the Railway Servants Discipline
and Appeal) Rules, 1968.

-: AND :-

In the matter of

Notice of imposition of penalty
N: C/VIG/GHY-NGC/04/04, dated
09.06.2007 passed by the Sr. DCM/
LMG thereby imposing major penalty
of reduction to the lower stage
in the time scale of pay by one
stage lower for a period of three
years on the appellant.

-: AND :-

In the matter of

Sri Manoj Kumar Barman
HGC/DMV, Dimapur Goods Office
N.F.Railway
and resident of
N: 2 Mathgheria,
Sri Nagar L.P. School Road,
Guwahati - 20
Dist: Kamrup, Assam

Appellant

Certified to be true copy
Prakash Jarmah
Advocate

- 27 -
/p/2/

- 48 -

The appellant above named

9 SEP 2009

Guwahati Bench
Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

MOST RESPECTFULLY BEGS TO STATE:

1. That the appellant joined the N.F. Railway in the year 1975 and since the date of joining he has been discharging his duties sincerely and to the satisfaction of all concerned. After rendering more than 30 years of service, he has been subjected to major punishment by the Sr. D.C.M/LMG cum disciplinary authority in a most illegal manner. As directed in the Notice of Imposition of Penalty dated 09.06.2007, the (a) preferring this appeal before your goodself being the appellate authority under the Rules of the Railway Servants (Discipline and Appeal) Rules 1968.

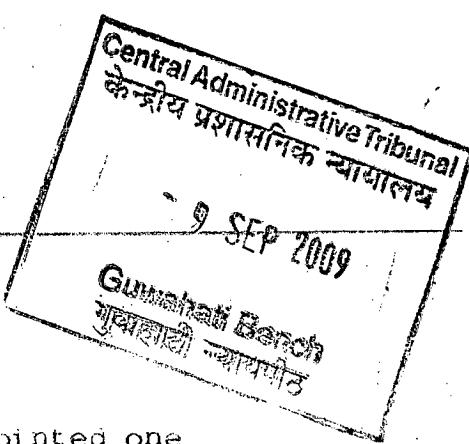
2. That the Divisional Commercial Manager, Guwahati, issued Office memorandum dated 10.05.2004 thereby directing the appellant to submit his written statements in defence within 10 days from the date of the receipt of the memorandum against two charges levelled against him vide Annexure-1 to the said memorandum with the memorandum a statement of imputation of misconduct and mis-behaviour a list of documents were also annexed as Annexures 2 & 3 respectively.

A copy of the Office Memorandum dated 10.05.2004 is annexed herewith and marked as Annexure-1.

3. That after completing the inspection of documents and other formalities as allowed by the above office memorandum dated 10.05.2004 ^{the appellant on 15/7/2004} submitted his defence against the above charge memorandum dated 10.05.07 received by him on 06.7.2004. The appellant, in his defence denied the charges levelled against him. The appellant also mentioned in his defence that if the authorities decided to hold the enquiry, he may be given the reasonable opportunity to defend himself and also mentioned the names of two persons nominating as his defence assistant during the course of enquiry who also placed their consents in this respect.

A copy of the above defence of the appellant dated 15.07.2004 Annexure-II.

Contd. on p/3



124 /p/3/

4. That thereafter the authorities appointed one A.K. Sen as the Enquiry Officer to conduct the enquiry against the appellant. Then the enquiry Officer vide his letter N:Z/CON/VIG/08/04(2) dated 20.08.2004 informed the appellant that a preliminary hearing in connection with the charges against him would be held on 08.9.2004 in his office chamber at Maligaon/HQ. Accordingly, the appellant was advised to attend the hearing with his nominated defence counsel, Sri M. Chakraborty, which the appellant duly followed.

A copy of the above letter dated 20.08.2004

.....Annexure-III

5. That the Enquiry Officer, thereafter vide his another letter N:Z/CON/VIG/08/04(2) dated 08.9.2004 informed the appellant that after holding the preliminary enquiry on 08.09.2004, he decided to conduct the regular hearing of the case on 20.09.2004 & 21.09.2004 in his office chamber at Maligaon. Accordingly, the appellant was advised to attend the hearing with his defence counsel, Sri M. Chakraborty. The appellant duly attended the hearing before the Enquiry officer.

A copy of the above letter
dated 08.09.2004. Annexure-IV.

6. That the Enquiry Officer, After holding the regular enquiry, on 20.09.2004 and 21.09.2004 against the appellant in a surmises and conjecture manner, submitted his enquiry report dated 17.11.2004 before the disciplinary authority. The enquiry officer after discussing the evidence on record and the documents came to the findings that Article of charge No: I not proved and the Article of charge N:II partially proved against the appellant. Thereafter the Divisional Commercial Manager, Guwahati vide his office letter N:C/VIG/GHY-NGC/4/04 dated 07.12.2004 forwarded a copy of the enquiry report to the appellant directing him to submit his representation if any against the enquiry report within 10 days from the date of receipt of the letter.

Contd...p/4

9 SEP 2009

Guwahati Bench
গুৱাহাটী বার্ধাৰ

A copy of the above letter dated 07.12.2004 along with the Enquiry report dated 17.11.2004. Annexure-V.

7. That as directed the appellant on 16.12.2004 submitted his representation against the Enquiry Officer's Report dated 17.11.2004. In the representation the appellant accepted the findings of the Enquiry Officer on Article of Charge No: 1. In connection to the charge of Article No: II which the Enquiry officer to be partially proved, it was specifically stated that the said findings suffers from surmises and conjectures which have no place in the D&A Rules. Accordingly after citing various settled laws in this respect the appellant prayed to exonerate him from the charges.

A copy of the above representation dated 16.12.2004 Annexure-VI.

8. That the appellant begs to state that after submitting his representation dated 16.12.2004 he was in the hope that the authorities would consider his representation in a favourable manner and he shall be exonerated from the charges. More so, there was no response from the authorities for a long time. Contrarily, the appellant was shocked and surprised having received the office letter No: ES/96-M(1) dated 05.07.2007 issued by the DRM(P)LMG,N.F. Railway on 10.08.2007 whereby the appellant was informed that the Sr.DCM/LMG has imposed the penalty of reduction to the lower stage in the time scale of pay by one stage lower for a period of three years (without losing the benefit of future increment). Accordingly, his pay has been fixed at lower scale of pay w.e.f. 09.6.2007 to 08.06.2010. With the said letter copies of Notice of imposition of penalties dated 09.06.2007 and the observation of the Sr.DCM/LMG were also enclosed. From the perusal of the Sr.DCM/LMG it is apparent that he had disagreed with the report of the Enquiry Officer in connection with Articles of charge No: 1 and held that the said charge has been established and accordingly imposed the major penalty on the appellant without giving an opportunity to the appellant in connection with his disagreement with the findings of the Enquiry Officer. Moreover from the very beginning of issuing the charge Memorandum

Contd. on p/5

9 SEP 2009

Guwahati Bench
Administrative Tribunal
Assam Legislative Assembly

- 102 -

- 48 -

/p/5/

10.05.2004 the Sr.D.C.M was not involved with the proceedings against the appellant. It may also be mentioned here that though it was informed that the pay of the appellant has been fixed at lower scale of Rs.6800/- with effect from 09.6.07 to 18.06.2010 and the appellant may file an appeal against the imposition of penalty before the appellate authority, the authorities has already materialised the N.I.P from & started pay cut from the Month of July, 2007, August, 2007 though the appellant received the N.I.P. only on 10.08.2007 which itself shows that the punishment has been imposed on the appellant in a pre-determined motive and in violation of the settled laws in this respect vis-a-vis the principles of natural justice.

A copy of the letter dated 05.07.07 and the order of penalty dated 09.06.07 ...Annexures-VII and VIII respectively.

Being highly aggrieved by the above order of penalty dated 09.06.07 and the letter dated 05.07.07 the (a) in preferring this statutory appeal with grounds inter alia the following.

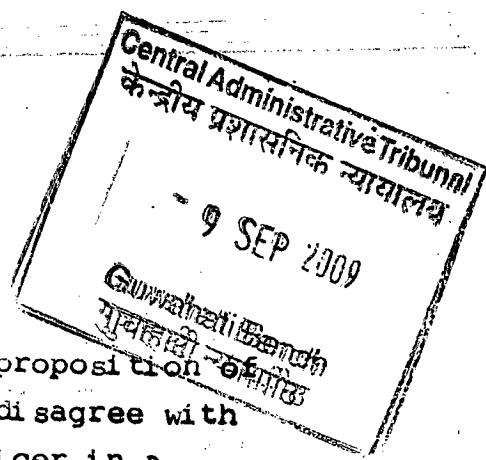
- G R O U N D S -

i) For that from the 'Observation' as depicted at Annexure 'A' of the NIP it is evident that the Sr.DCM/LMG has never been issued a charge sheet against the appellant as his disciplinary authority and as such the 'Observation' as attained by the Sr.DCM/LMG and consequent order of imposition of penalty dated 09.06.07 is illegal and as such the same is liable to be quashed and set aside.

ii) For that, the Sr.DCM/LMG while disagreeing with the findings of the Enquiry officer(s) regarding the Articles of charge No: 1 failed to appreciate the evidence on record and without consulting the evidence in this respect held that the Article of charge No: 1 established against the appellant in a most illegal manner and as such the order of imposition of major penalty dated 06.06.07 is not sustainable in law and is liable to be quashed and set aside.

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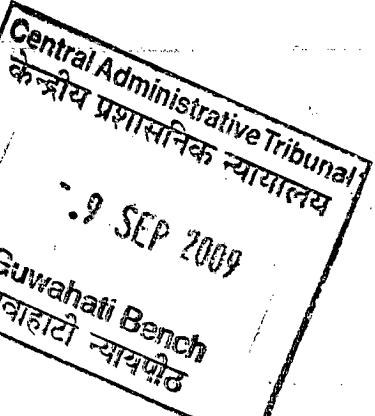


iii) For that, it is a settled proposition of law that the disciplinary authority may disagree with the findings recorded by the Enquiry officer in a domestic enquiry against the delinquent only after taking into consideration the evidence on record before the enquiry officer and he must give the reasonable opportunity to the delinquent to defend him against his disagreement contrary to which is the violation of the principles of natural justice vis-a-vis the provisions of Article 311 of the constitution of India. In the case in hand the Sr. DCM/LMG while disagreeing with the findings of the Enquiry Officer regarding the Article of charge №:1 failed to follow the above settled proposition of law and imposed the major penalty of reduction to the lower state in the time scale of pay by one stage lower for a period of 3 yrs in a most illegal and pre-determined manner and as such the order of penalty is liable to be quashed and set aside on this ground alone.

iv) For that, the Enquiry officer while submitting his enquiry report before the Disciplinary Authority failed to appreciate the evidence in regard to the Article of charge №:II in its proper manner and held that the charge was partially proved. It is a settled law that an allegation / charge can be proved "or 'not proved' but it can not be held to be 'partially proved' which has no meaning whatsoever, in a departmental proceeding. As such the disciplinary authority ought to have exonerated the appellant from the charges which were not proved, but that not having been done and the Sr. DCM/LMG passed the order of penalty arbitrarily and as such the same is not sustainable in law and is liable to be quashed and set aside.

v) For that, the Sr. DCM/LMG passed the order of penalty in a most illegal manner which is a departure from his 'observation' at Annexure 'A' of the Enquiry Officer in his finding regarding the Article of charge №:II held it to be partially proved. Sr. DCM in his 'observation' in this respect has

Contd.... p/



were proved beyond doubt and as such the order of penalty suffers from arbitrariness and is liable to be quashed and set aside.

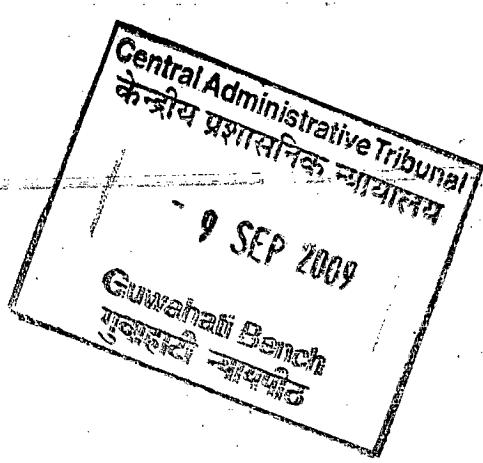
vi) For that, though the appellant submitted his representation on 16.12.2004 against the findings of the Enquiry Officer, the Sr.DCM/LMG failed to consider that representation while passing the impugned order of penalty. Moreover neither the observation of the Sr.DCM/LMG nor the order of penalty reflect any thing about the evidence recorded by the Enquiry Officer during the Enquiry and passed the impugned order of penalty without applying its judicious mind and as such the order of penalty dated 09.06.07 is bad in law and is liable to be quashed and set aside.

vii) For that, since there is provisions for preferring statutory appeal against the impugned order of penalty, the authorities ought not to have given effect of the impugned order of penalty, but contrarily they have given effect of the same and started pay cut of the appellant behind his knowledge from the month of July/2007 and as such the said impugned action is bad in law and liable to be set aside immediately.

viii) For that, the Hon'ble Apex Court in a recent case has settled the law in respect of the view of the disciplinary authority to the matter of disagreement with the findings recorded by the Enquiry Officer in a departmental Enquiry holding that while disciplinary Authority take view different to the one taken by the enquiry Officer, procedure to be followed by the Disciplinary authority in such a case and hearing must be given to the delinquent. In this respect the Disciplinary Authority is bound to give a notice setting out his tentative conclusions to the charged employee. It is only after hearing the delinquent the Disciplinary Authority can arrive at a final

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49
/p/8/



finding of guilt. There after ,the delinquent would again have to be served with ~~an~~ a notice relating to the punishment proposed.In the case of the appellant the Sr.DCM/LMG issued the order of penalty dated 09.06.07 without following the above procedures and law and as such the impugned order of penalty is not sustainable in law and is liable to be quashed and set aside.

ix) For that, the Enquiry Officer while arriving at his findings in respect of Article of charge №:II failed to appreciate the evidence on record including the statements of the appellant in its true perspectives and held the charges were partially proved to the reasons based on to him which have no meaning whatsoever, and presumption may be drawn that the charge was not proved. The Sr.DCM/LMG also failed to apply its independent mind in this respect and held the same is proved beyond doubts .As such the Enquiry report so far it relates to the Article of charge №:II and the order of penalty are not sustainable in ~~an~~ law and are liable to be set aside.

X) For that, the charges levelled against the appellant and the findings recorded by the Enquiry Officer does not call for a major punishment on the appellant and the Sr.DCM/LMG imposed the major penalty of reduction to the lower stage in the time scale of pay by one stage lower for a period of three years arbitrarily and as such the same is liable to be quashed and set aside.

xi) For that in any view of the matter the order of penalty dated 09.06.2007 is bad in law and is liable to be quashed and set aside.

It is therefore prayed that your honour would be pleased to admit this appeal, Call for the records of the case and after perusal thereof and hearing the appellant be pleased to quash and set aside the impugned order of penalty dt d.09.06.2007 (Annexure-VIII) and/or pass such other order/orders as your honour may deem fit and proper.

Contd. on p/9

- 46 - - 50 -

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It is further prayed that pending final disposal of the appeal your Honour would be pleased to stay the operation of the impugned order dated 9.6.07 directing not to continue in deducting the pay scale of the appellant.

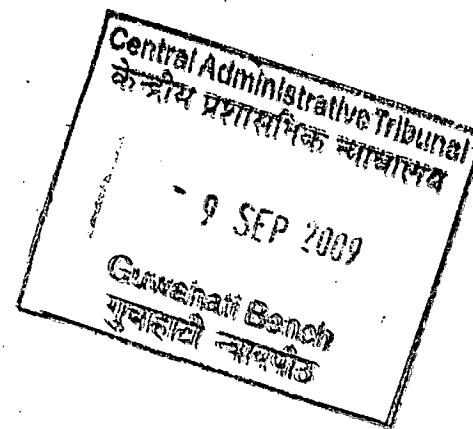
AND for which act of kindness, the appellant, as in duty bound, shall ever pray .

Yours faithfully,

Dated:-

Mangal Kr. Barman
HSC/SMV

dt. 21.09.2007



ANNEXURE = I

FORM OF CHARGESHEET

(STANDARD FORM NO.5)

Rule 9 of the Railway servants(Discipline and appeal rules 1968)

NO.C/RM/Gen/4/04

Deputy (Name of Railway Administration)
(Place of issue) GAY Dated 10-5-04

MEMORANDUM

The President/Railway Board/undersigned propose(s) to hold an inquiry against Shri M.K. PARMAN, ~~2nd Class~~ under rule-9 of the Railway servants(Discipline and appeal)Rules 1968. The substance of the imputations of misconduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure:I). A statement of the imputations of misconduct or mis-behaviour in support of each articles of charge is enclosed (Annexure:II). A list of documents by which and a list of documents by whom, the articles of the charge are proposed to be established are also enclosed (Annexure:III and IV). Further copies of documents mentioned in the list of documents as per Annexure:III are enclosed.

2. * Shri M.K. PARMAN is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure:III) at any time ~~any~~ during office hours within 10(Ten) days of receipt of this Memorandum.

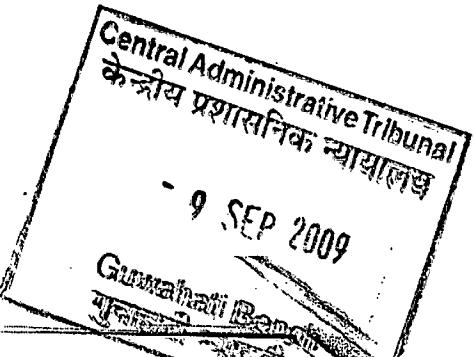
For this purpose he should contact ** Deputy
immediately on receipt of this Memorandum.

3. Shri M.K. PARMAN is further informed that he may, if he so desired, take the assistance of any other Rly/servant or official or Rly/Trade Union (who satisfies the requirements of rule 3(13) of the Railway servants(Discipline and Appeal)Rules:1968 and Note 1 and / or Note 2 as far 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), the Railway Trade Union official(s) Shri M.K. PARMAN should obtain an undertaking from the nominee(s) that he (they) is (are) willing to assist him during the disciplinary proceeding. 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 ~~Deputy~~ ~~Deputy~~ along with the nomination.

4. Shri M.K. PARMAN is hereby directed to submit to the undersigned (through General Manager ~~CS(SG)/MC~~ Railway) and a written statement of his defence (which should reach the said General Manager) within 10 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-

- To state whether he wishes to be heard in person and
- To furnish the names and addresses of the witness if any whom he wishes to call in support of his defence.

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5. Shri M.K. Paunam is informed that an inquiry will be held in respect of those articles of chapter 16 which are not admissible, therefore, specifically admit only such articles of chapter 16.

6. Shri M.K. Paunam 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 inquiry authority or otherwise fails or refuses to comply with the provisions of Rules 9 of the Railway Servants (Discipline and Appeal) Rules 1968 or the order/directions issued in pursuance of the said rule the inquiring authority may hold the inquiry ex parte.

7. Shri M.K. Paunam is invited to Rule 20 of the Railway Service (conduct) Rules 1968, under which no Rly. servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceeding, it will be presumed that

Shri M.K. Paunam 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 Rly. Service (conduct) Rules 1968.

8. The receipt of this memorandum may be acknowledged.

Encl:-4 (form)

to order and in the name of the
President

Amrit

Signature
(A. Bhosam)
Name and designation of the
competent authority (Dow. G.H.)

To
Shri M.K. Paunam, Ad. G.C./NCC
Name: C.G.S.(BG) / NCC
Designation and place:

① Copy to Shri _____ (Name and designation of the leading authority) for information.

② Strike out which ever is not applicable.

③ 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 investigating authority or any authority who are in the custody of the listed document or who would be arranging for inspection of the documents to enable this authority being mentioned in the draft memorandum.)

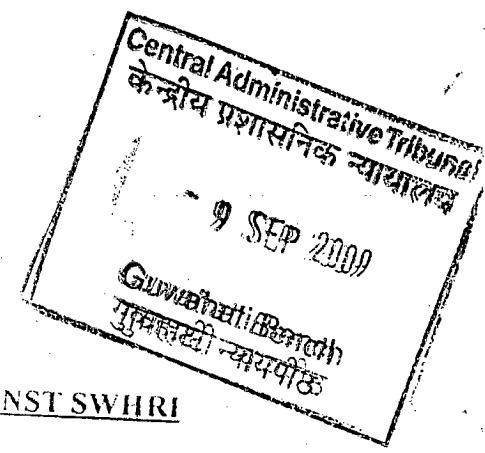
④ Where the President is the Disciplinary authority.

⑤ To be retained wherever President or the Rly. Board is the competent authority.

⑥ To be used where ever applicable See Rule 16(1) of the Rly.(DA)Rules 1968. Not to be inserted in the copy sent to the Rly. servant.

Ad19593

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ARTICLE OF CHARGES FRAMED AGAINST SWHRI
M.K.BARMAN, Hd.GC/NGC

ANNEXURE-I

ARTICLE-I

Shri M.K.Barman Hd.GC/NGC while functioning as delivery clerk of NGC goods office, during the month of November and December /2001 committed a serious negligence in his duty in as much as he permitted the parties to put fictitious remarks in the delivery book regarding packets left for A/D. During the delivery of the onion consignment on 1.12.01 and the remarks were without signature of the person who took delivery.

ARTICLE-II

Shri M.K.Barman, Hd.GC/NGC while functioning as delivery clerk of NGC/Goods office during the month of November and December/2001 committed a serious misconduct in as much as he delivered the onion consignment from NGC/Goods office on 1/12/01 without verifying the genuineness of the party who took delivery. Thus he facilitated fictitious parties who were neither consignee nor endorsee to take fictitious A/D.

Thus by the above acts said Shri M.K.Barman Hd.Gc/NGC exhibited lack of integrity and devotion to duty and acted in a manner unbecoming of a Railway servant and thereby contravened the provisions of para 3.1(i)(ii) and (iii) of Railway Service Conduct Rules,1966.

21/15
A. Horaon
10/12/01
Dm/aw
General

~~SD~~ - ~~ST~~

MISE

**STATEMENT OF IMPUTATION OF MISCONDUCT AND
OUR FRAMED AGAINST SHRI M.K.BARMAN HD.GC/NGC.**

ARTICLE

My completed
15 hrs

ANNEXURE-II

ANNEXURE-II

Shri M.K.Barman, Hd.GC/NGC while performing his duty as delivery clerk on 1.12.01 committed a serious negligence in his duty in as much as he delivered onion consignment obtaining fictitious remark from the parties in the delivery register. There were no signatures of the agent against these remarks which was admitted by him in his statement in reply to Q.7. Further the documents revealed that the number of onion bags which were already removed had been shown as bags left for AD in the remarks without signature of the party with the intention to make false claims. Shri Barman had permitted such remarks by the party to give undue benefit to the party.

As per invoice no. 220/351, bags of 100

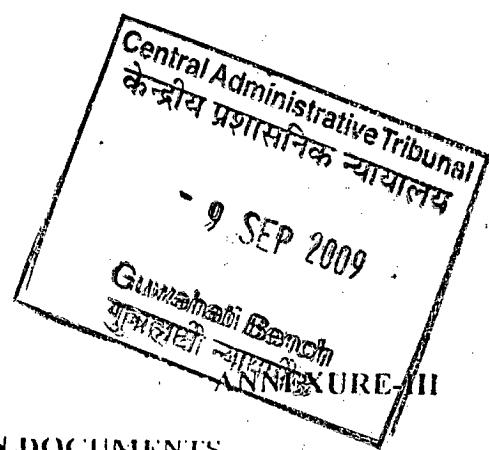
As per invoice no. 220/351 bags and invoice no. 251/361 bags i.e. total of 712 bags of onion were booked from RTJ. On 1.12.01 as per tally book the consignments were tallied and unloaded at 15 hrs. and 14 hrs. respectively but actually 712 bags of onion were delivered and removed from the Railway premises at 10 hrs. 12.45 hrs, 10 hrs. and 10 hrs. by trucks bearing numbers as AMK 6384/153, AMZ- 1143/199, AMH- 432/180 and NLA 1898/180 as revealed from records of gate pass registers maintained by RPF/NGC and by the NGC/Goods office. This had resulted in the grant of fictitious AD of the consignment on 01.12.2001.

Further the on duty goods clerk Shri Barman allowed the party to write the false remarks as 223 bags onion kept for A/D and 291 bags onion kept for A/D without obtaining any signature against this remarks.

ARTICLE-II

Shri M.K.Barman Hd.GC/NGC while performing his duty as delivery clerk on 1.12.01 committed a serious negligence in his duty in as much as he delivered onion consignment to persons without verifying the genuineness of the party. This was also admitted by Shri Barman vide Q.9 in his statement. Even he failed to take signature of party who took delivery of onion consignment under invoice No. 256 RR No. 140248 dated 13-14/11/2001. Thus he facilitated party/who neither consignee nor endorsee to take fictitious A/D.

11/15
At 7:00 a.m.
Dewy Air



LIST OF RELIED UPON DOCUMENTS.

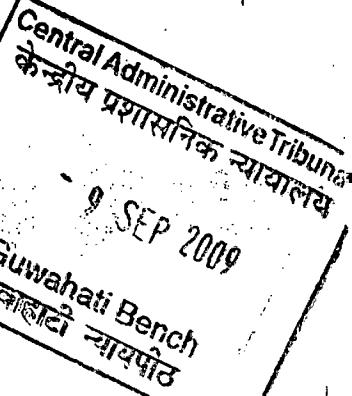
1. Statement of Shri M.K.Barmen Hd.GC/NGC recorded on 26.09.03.
2. Statement of Shri D.Brahma, Hd. Cons/RPF/NGC recorded on 08.09.2003.
3. DDM register from Sl. No. 505 to 515.
4. Tally Book containing pages for the date of 01.12.01.
5. Gate pass khata of NGC/Goods office containing pages for the date 01.12.2001.
6. Gate pass Khata of RPF/NGC containing pages for the date 01.12.2001.
7. Applications for A/D (25 Nos.)
8. Delivery Book containing pages for the date 01.12.2001.
9. RRs (32Nos.)

ANNEXURE-IV

LIST OF WITNESS

1. Shri D. Brahma, Hd. Const./RPF/NGC under IPF/NGC.

ANNEXURE - 11



To
The Divisional Commercial Manager,
N.F.Railway, Guwahati Station Road,
Guwahati - 781001.

Dated, 15th July 2001.

Sir,

Sub - Defence against your Charge Memorandum No. C/IV/C/GHY-
NCC/4/04 dated, 10.5.04 received on 6.7.2004

-o(O)o-

In obedience to your subject-noted Charge Memorandum, I do beseech your profound look to the following submissions as my defense for favour of your kind perusal and sympathetic consideration and esteemed judicious orders please :

That sir, I deny the charge leveled against me and in this connection, I would like to submit that I may be given a chance to rebut/disprove the allegation during enquiry stage in the form of "AUDI ALITERAM PARTIUM" so that reasonable opportunity under Article 311 of the Constitution of India analogous to the principles of "NATURAL JUSTICE" & "REASONABLE OPPORTUNITIES" is not denied to me.

In this connection, the following persons are nominated to assist me during the course of enquiry in the capacity of Defence Counsel :-

1. Shri G. G. Das, Supdt. (T)/Claims/Maligaon & Office Secretary, AISCTREA/GHY Branch.
2. Shri M. Chakraborty, Retd. St. SO(A) & Ex. CVI(A)/MLG.

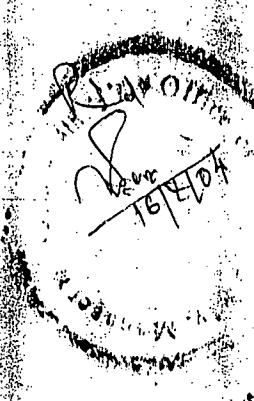
The consent letters of the above named two individuals are enclosed herewith for your kind perusal and disposal please. The arrangement may kindly be done for their sparing during enquiry.

With regards,

Enc] - 4 (four) Sheets
as above.

Yours faithfully,

Manoj Kr. Barman
(M. K. Barman) 15/7/04
Hd. GC/BG/NCC.



- 58 -

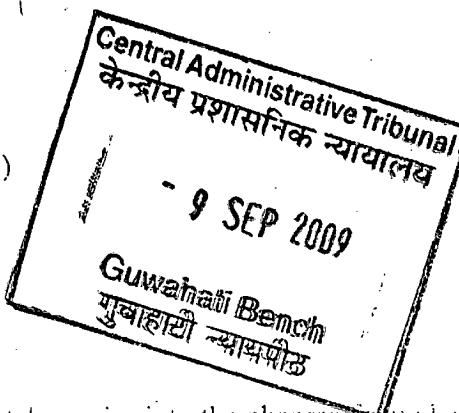
ANNEXURE = III



NORTHEAST FRONTIER RAILWAY

NO. Z/CON/VIG/08/04(2)

To
✓ Shri M. K. Barman
Dd. CC/NGC
N. f. Railway



Office of the
Enquiry Officer/HQ
Maligaon, Guwahati - 781014

Dated: - 20/08/2004

Sub: - Departmental enquiry into the charges framed against you vide
Memorandum of Charge Sheet No. C/VIG/GHY - NGC/4/04
dated 10/05/2004 issued by DCM/Guwahati.

Under Order No. C/VIG/GHY - NGC/4/04 dated 03/08/2004, a copy of which
has also been endorsed to you, the undersigned has been appointed as Enquiry Officer to
conduct the above DAR enquiry.

It has now been decided to conduct the Preliminary Hearing of the above case on
08/09/2004 at 10.00 hrs in the chamber of the undersigned at Maligaon HQ.

You are, therefore, advised to attend the hearing as per above programme along
with your nominated Defence Counsel Shri M. Chakraborty, Retd. Sr. SO/FA &
CAO/Maligaon. Please note that no adjournment will be granted for absence of yourself
and your nominated Defence Counsel.

1/2
A. K. Sen
Enquiry Officer

Copy forwarded for kind information and necessary action to:

- 1) DCM/Guwahati. He is requested to spare and direct Shri M. K. Barman, Dd. CC/NGC as per above mentioned programme to attend the hearing.
- 2) Shri M. Chakraborty, Retd. Sr. SO/FA & CAO/Maligaon (DC). He is advised to attend the hearing as per above mentioned programme.
- 3) Dy. CVO (T)/Maligaon.

1/2
(A. K. Sen)
Enquiry Officer/HQ

ANNUAL - 11



NORTHEAST FRONTIER RAILWAY

Office of the
Enquiry Officer/HQ
Maligaon, Guwahati - 781001

Dated: - 08/09/2004

0. 2/CON/VIG/08/04(2)

Shri M. K. Barman
Hd. SC/NGC
N.F.Railway

Sub: - Departmental enquiry into the charges framed against you vide
Memorandum of Charge Sheet No. C/VIG/GHY - NGC/4/04
dated 10/05/2004 issued by DCM/Guwahati.

Under Order No. C/VIG/GHY - NGC/4/04 dated 03/08/2004, a copy of which has also
been endorsed to you, the undersigned has been appointed as Enquiry Officer to conduct the
above DAR enquiry.

The Preliminary Hearing of the above case was conducted on 08/09/2004 at 10.00 hrs in
the chamber of the undersigned at Maligaon/HQ.

It has now been decided to conduct the Regular Hearing of the above case on 20/09/2004
& 21/09/2004 in the chamber of the undersigned at Maligaon/HQ at 10.00 hrs.

You are, therefore, advised to attend the hearing as per above programme along with your
nominated Defence Counsel Shri M. Chakraborty, Retd. Sr. SO/FA & CAO/Maligaon. Please
note that no adjournment will be granted for absence of yourself and your nominated Defence
Counsel.

(A. K. Sen)
Enquiry Officer

Copy forwarded for kind information and necessary action to -

- 1) DCM/Guwahati. He is requested to spare and direct Shri M. K. Barman, Hd. SC/NGC
as per above mentioned programme to attend the Regular Hearing.
- 2) Shri M. Chakraborty, Retd. Sr. SO/FA & CAO/Maligaon (DC). He is advised to attend
the Regular Hearing as per above mentioned programme.
- 3) Dy. CVO (I)/Maligaon.
- 4) Shri D. Brahma, Hd. Constable/RPF/NGC. He is advised to attend the Regular Hearing
as per above mentioned programme.
- 5) IPF/NGC. He is requested to spare and direct Shri D. Brahma, Hd. Constable/RPF/NGC
as per above mentioned programme to attend the Regular Hearing.
- 6) Shri S. Sengupta, CVI (I)/Maligaon. He is advised to attend the Regular Hearing as per
above mentioned programme.

(A. K. Sen)
Enquiry Officer/HQ

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W.T. Rly.

Sp/12/04

Ann Exub = 2

Copy/ City-NCC/4/04.

Office of the
Govt. Army General
S.H. & H.Q. of.

M.R. Bowman,

Ad. Ac/NCC
Copy/ City-NCC/4/04.

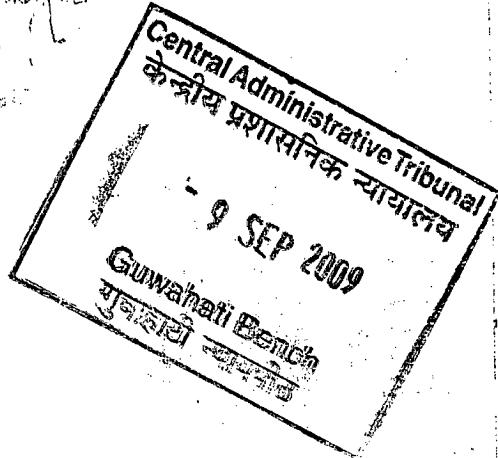
Subject: Formal enquiry required of representative
engineer of DAR case into the development
implementation NCC/City-NCC/4/04
dt. 10-5-04.

The formal enquiry report of above subject
in case of Civil Engineering by Mr. (A.K.Sen)
is sent herewith.
Please submit your representation of
own in this connection within 10 (ten) days from
the date of receipt of this letter.

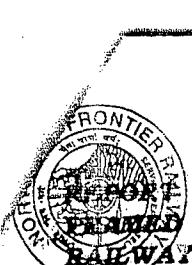
Copy 8 (eight)

Copy 8 - CAS/BG/NCC for information

D.W.L. Comml. Officer
S. C. Chakraborty
Comml. Officer
G. B. B. Chakraborty



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For CO. Shri M. K. Barman, Hd. GC/NGC

REPORT OF THE DEPARTMENTAL ENQUIRY INTO THE CHARGES
FRAMED AGAINST SHRI M. K. BARMAN, HD. GC. NGC/N. F.
RAILWAY VIDE MEMORANDUM OF CHARGE SHEET NO. C/VIG/GHY -
NGC/4/04 DATED 10/05/2004 ISSUED BY DCM/GUWAHATI.

1.0. INTRODUCTION

1.1. I was appointed as Enquiry Officer by DCM/Guwaahati in exercise of powers of a Disciplinary Authority to inquire into the charges leveled against Shri M. K. Barman, Hd. GC/NGC vide Memorandum of Charge Sheet No. C/VIG/GHY - NGC/4/04 dated 10/05/2004. The case was received for enquiry on 04/08/2004 and the Preliminary Hearing was held on 08/09/2004. The Regular Hearing of the above case was conducted on 20/09/2004 & 21/09/2004 at Maligaon/HQ and enquiry completed. The DA proposed to substantiate the charges on the basis of 09(Nine) Relied Upon Documents (RUDs) listed vide Annexure - III and one oral evidence listed vide Annexure - IV of the Charge Memorandum. Charged Official appointed Shri M. Chakraborty, Retd. Sr. SO/ FA & CAO's/ Maligaon as his Defence Counsel to assist him during enquiry. Charged Official Shri Barman was generally examined on the basis of circumstances appearing against him in the form of clarification. Disciplinary Authority appointed Shri S. Sengupta, CVI (T)/ Maligaon as Presenting Officer with the above case. Charged Official submitted his Defence Brief on 26/12/2004. Other details are in the Daily Order Sheets.

2.0. THE ARTICLE OF CHARGE

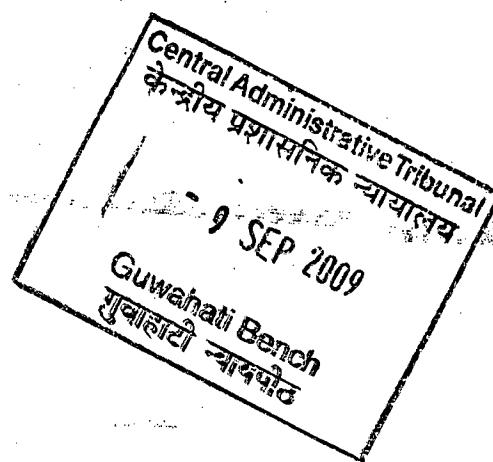
2.1. The DA has framed Two (02) Article of Charges against Shri M. K. Barman, Hd. GC/NGC, which are mentioned below: -

Article - I

Shri M. K. Barman, Hd. GC/NGC while functioning as Delivery Clerk of NGC Goods Office, during the month of November and December' 2001 committed a serious negligence in his duty in as much as he permitted the parties to put fictitious remarks in the Delivery Book regarding Packets left for A/D. During the delivery of the Onion Consignment on 01/12/2001 and the remarks were without signature of the person who took delivery.

Article - II

Shri M. K. Barman, Hd. GC/NGC while functioning as Delivery Clerk of NGC Goods Office during the month of November and December 2001



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committing a serious misconduct in as much as he delivered the Onion
consignment from NGC Goods Office on 01/12/2001 without verifying
the genuineness of the party who took delivery. Thus, he facilitated
fictitious parties who were neither Consignee nor endorsee to take
fictitious A/D.

Thus, by the above acts said Shri M. K. Barman, Hd. GC/NGC
exhibited lack of integrity and devotion do duty and acted in a manner
unbecoming of a Railway Servant and thereby Contravened the
Provisions of Para 3.1 (i), (ii) & (iii) of Railway Services (Conduct)
Rules 1966.

THE CASE ON BEHALF OF THE DISCIPLINARY AUTHORITY

3.1 The DA has proposed to substantiate the charges framed against Shri M. K. Barman, Hd. GC/NGC on the basis of 09 (Nine) nos of documentary evidences which were exhibited /authenticated during the course of enquiry and the documents were marked as PD - 1 to PD - 09.

3.2 PD - 1 is the copy of the statement of Shri M. K. Barman, Hd. GC/NGC recorded at CVO/Maligaon's Office on 26/09/2003.

3.3 PD - 2 is the copy of the statement of Shri D. Brahma, Hd. Constable/RPF/NGC recorded on 08/09/2003 at CVO/Maligaon's Office.

3.4 PD - 3 is the copy of the DDM Register from SI. No. 503 to 515.

3.5 PD - 4 is the copy of the Tally Book containing pages for the date of 01/12/2001.

3.6 PD - 5 is the copy of the Gate Pass Khata of NGC/Goods Office containing pages for the date of 01/12/2001.

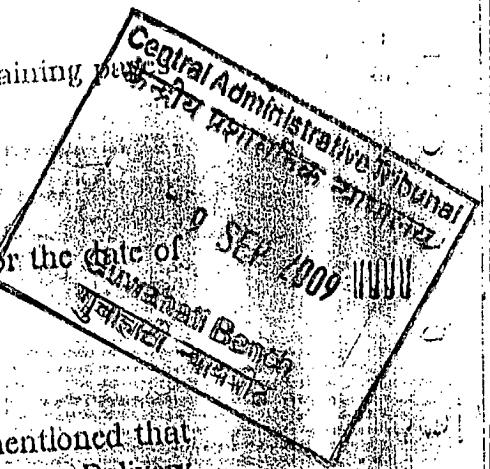
3.7 PD - 6 is the copy of the Gate Pass Khata of RPF/NGC containing pages for the date of 01/12/2001.

3.8 PD - 7 is the copy of the applications for A/D (25 nos).

3.9 PD - 8 is the copy of the Delivery Book containing pages for the date of 01/12/2001.

3.10 PD - 9 is the copy of the Railway Receipts (32 nos).

3.11 Presenting Officer in his brief submitted on 28/09/2004 mentioned that Shri M. K. Barman on 01/12/2001 commenced his duty as Delivery



(3) - 63 -



06.30 hrs & started delivery of Onion Consignments & Consignments under Invoice Nos. 220 & 251 were removed from the Railway Premises at 10.00 hrs which clearly proves that the said Consignments were delivered otherwise it is not possible to remove the Consignment and thus the statement of CO vide Q. No. 2 of EO is not correct. The remarks of damage as made in the Delivery Register obviously made by the party itself without signature and in presence of Delivery Clerk as Shri Barman was the custodian of the delivery book and his duty was up to 13.30 hrs and surely he allowed the party to put such fictitious remarks. Hence, the charge against CO on Article - I stands established.

In regard to Article - II of the Charge it has been mentioned that as per delivery book, Consignment under Invoice No. 140248/256 was delivered without obtaining the signature of the party i.e. without verifying the genuineness of the party and the same of delivering the Consignment was admitted by Shri Barman in reply to Q. No. 9 is his statement.

Further, three cases including the above Invoice No. 256 were cited by PO where it has been shown that the Consignee against three invoices were someone & endorsed to one Party whereas the deliveries were made to other than the endorsee or there are some discrepancies & thus from the above it is clear that Shri Barman delivered the Onion Consignment without verifying the genuineness of the Party and also he did not obtain the signature of the Party in the Delivery Book & without observing the general formalities.

Therefore, the charge against Article -II is also stands established.

THE DEFENCE OF THE CHARGED OFFICIAL

4.1 Charged Official in his Defence Brief received on 26/10/2004 mentioned that the Charge against Article - I is far from the fact as the CO was on duty at the Delivery Counter on the day from 06.30 hrs to 13.30 hrs and he left the Counter at 14.30 hrs on completion of his duty and it cannot be denied that CO did not effect the Book Delivery since the Consignment started lifting from 09.15 hrs and completed unloading at 15.00 hrs indicates that the party was allowed by the CGS/NGC to remove the good portion of the Consignment from the Railway premises and the damaged portion was kept for A/D and after granting A/D by DCM/GHY the Consignment was finally removed at 13.10 hrs which did not fall within the duty hours of the CO.

4.2 The unloading of the said Consignment completed at 15.00 hrs as revealed from the Tally Book & very correctly the damage portion of the Consignment could be ascertained by 15.00 hrs and thereafter as a rule,

Central Administrative Tribunal
26 दिसंबर 2004
9 SEP 2009

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the remarks in the Goods Delivery Book as the nos of bags
D.

1.3 CO left the Counter at 14.30 hrs on being released from duty at 13.30 hrs, so the CO is in complete dark about the remarks recorded in the Delivery Book and as such the allegation must not be attributed on the CO & CO very correctly pointed out that he was not aware when the particulars marks were written because he effected only Book Delivery but not physical delivery and the Tally Clerk recorded the Tally Register. On the basis of the Tally, the remarks were put by the Party.

1.4 Since the Party did not put remarks within CO's duty hours, no comments can be offered on the last three lines of Article - I.

In regard to Article - II of Annexure - I wherein it has been mentioned that CO delivered the Onion Consignment without verifying the genuineness of the Party who took delivery and facilitated fictitious Parties who were neither Consignee nor endorsee.

1.6 In this connection, it is submitted by CO that the question of delivery of the Consignment of the Party without verifying the genuineness does not arise at all. There are limited known Parties who deals in Wagon/rake load Consignment and take the delivery through their representatives and due to working in NGC Goods Shed for a long period, the representatives are very much known. In this instant case, the delivery was effected to the representatives of the Party and so the non - verifying the genuineness of the Party is not correct.

1.7 Further as per provision of Section 80 of Railway Act 1989 whereby delivery of the Consignment has been permitted to the person who produces the Railway Receipt, it shall not be responsible for any wrong delivery on the ground that such person is not entitled or that the endorsement on the Railway Receipt is forged or otherwise defective.

1.8 In this connection, it has been clarified that CO never admitted rather he stated that that since the agent/representative of the Parties are all known & delivery was effected on good faith & as per Provision of Section 80, the Consignment was delivered to the known representative and the RR in question bears the endorsement on the backside of the RR.

1.9 In regard to allegation for non - obtaining the signature of the person who took delivery, the allegation is not correct & delivery book clearly indicates the existence of Parties signature in the column.

1.10 Thus, from the above discussion, it is clear that delivery was granted to the proper representation and hence, the question to facilitate fictitious

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take fictitious A/D does not arise. It is further submitted that claim against any fictitious delivery has been arisen & hence the article in question is not substantiated.

4.11 While discussing on the points mentioned in his brief by PO, it has been mentioned that there is no doubt that removal of Consignment against Invoice No. 220/251 might have started at 10.00 hrs but according to Gate Register, the Consignments removed in several spells & finally completed at 18.40 hrs, so the observation of PO in regard to removal of Consignment within 10.00 hrs is not true. It appears from the Tally Book that the unloading was completed at 15.00 hrs & hence after ascertaining the damaged bags, the remarks to that effect must have been put after 15.00 hrs which is obviously after the duty hours of CO.

4.12 In regard to PO's contention under result of enquiry of Article - II in regard to Invoice No. 140248/256 under which the Consignment was delivered without signature of the party & also without verification of the genuineness of the Party, it has been mentioned that details on the above have already been elaborated.

4.13 Invoice Nos. 140213/221 & 140236/210, which have been mentioned by PO, were not incorporated in charge Memorandum & the said two invoices have not been elaborated.

ASSESSMENT OF EVIDENCES

1 The Charge against the CO Shri M. K. Barman, Ho. GC/NGC under Article - I is that while functioning as Delivery Clerk of NGC Goods Office during the month of November and December 2001 he committed a serious negligence in his duty as he permitted the Parties to put fictitious remarks in the Delivery Book regarding packets left for A/D.

2 The imputation is to that Shri Barman (CO) while performing his duty as Delivery Clerk on 01/12/2001, he delivered the Onion Consignment obtained fictitious remarks in the Delivery Register & there was no signature of the agent/representatives against the remarks. Further, from the documents it revealed that the nos of Onion bags which were already removed had been shown as bags left for A/D & there was no signature & the same was done with the intention to make false claims & thus CO permitted the party to put such remarks to give undue benefit to the Party.

3 As per Invoice No. 220) 351 bags & against Invoice No. 251, 361 bags total of which 712 bags of Onion were booked. As per tally, the Consignments were tallied & unloaded at 15.00 hrs & 14.00 hrs respectively but 712 bags of Onion were delivered & removed from

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(6) - 56 -



premises at 10.00 hrs, 17.45 hrs, 10.00 hrs & 10.00 hrs by
Books bearing Nos. AMX - 6384/153, AMZ - 1143/199, AMH -
180 & NLA - 1898/180 as per Gate Pass Register maintained by
RPF Personnel & Goods Office/NGC which resulted the fictitious A/D of
the Consignment on 01/12/2001.

5.1 As per the procedure, Book Delivery is to be given first & thereafter the Consignment is to be unloaded, tallied by Tally Clerk & after unloading the Consignment, the damaged portion are required to be segregated & details of the damaged received are highlighted through the tally and after finalization of tally, the damaged bags are kept for physical verification for granting A/D if any applied by the Competent Authority.

5.2 In this case, the Book Delivery was granted by the CO Smti Barnam as he was working in the Delivery Counter from 06.30 hrs to 13.30 hrs on 01/12/2001 and after granting Book Delivery, tally was started & primarily 513 bags of Onion against Invoice Nos. 220 & 231 were removed by the Party against the total of 712 bags at 10.00 hrs as are evident from the Gate Pass Register & the remaining 199 bags were listed at 17.45 hrs.

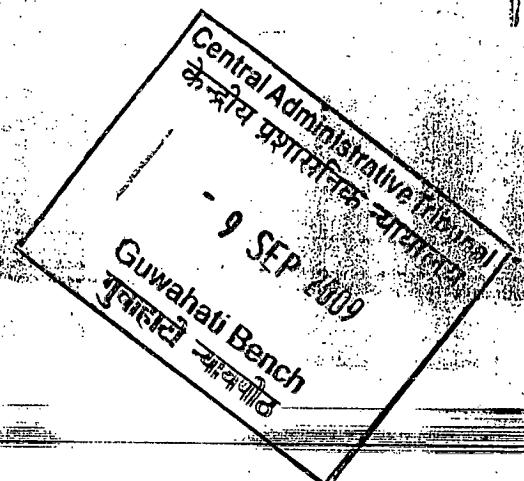
5.3 While claiming A/D, the same was claimed for 514 bags as per tally and after finalization of A/D, the damaged bags must have been listed/removed from the Railway premises.

5.4 As most of the bags were removed at 10.00 hrs (513 bags) at 10.00 hrs & 199 bags were listed at 17.45 hrs, it is very much clear that the sound bags were transported earlier & the damaged bags were removed later (i.e. at 17.45 hrs).

5.5 Thus, the claim for A/D were fictitious and in regard to permitting the Parties to put fictitious remarks in the Delivery Register by CO could not be established as the remarks in the Delivery Register must have been put in after completion of tally as well as A/D i.e. after 15.00 hrs. As CO was on duty up to 13.30 hrs, he cannot be held responsible for permitting to put such remarks in the Delivery Register and also for not putting initial against the remarks.

5.6 In regard to Article - II of the Charge where it has been alleged that CO delivered the Onion Consignment on 01/12/2001 without verifying the genuineness of the Party who took delivery & thus he facilitated fictitious parties who were neither Consignee nor endorsed to take fictitious A/D.

5.7 As per the imputation, CO delivered the Onion Consignment to persons without verifying the genuineness of the Party. Even CO failed to obtain signature of the Party who took delivery under Invoice No. 236.



(7) - 67 -

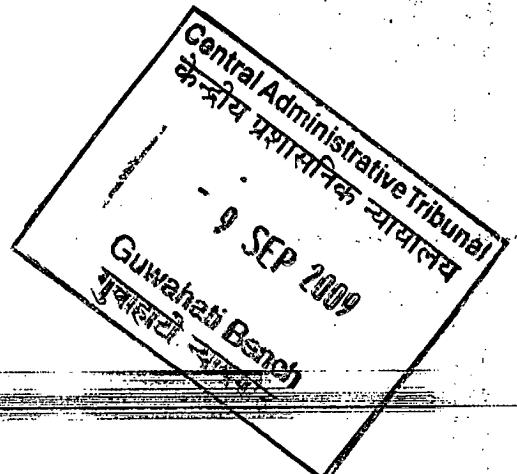


The details furnished under Annexure - II of the statement of CO where particulars of violation made were mentioned, it is seen that against Invoice No. 221 (PD - 9/17) Consignee was U. C. Lakhani & the same was endorsed to Sunrise Trader and delivery was taken by Sunrise Trader but the signature of the end user was not authenticated and moreover, the Consignment was drawn by someone who even did not sign. In regard to Invoice No. 240 (PD - 9/29) the Consignment was Hari Vallav & Company and the same were endorsed to Sudhir Trader but the Consignment was received by B. Machal Trader and the signature of the Party was not authenticated. The details in regard to other three invoices i.e. Invoice nos. 256, 257 & 258 are mentioned below:-

SL. No.	Invoice No.	Consignee	Endorsed to	Delivery taken Or / Signature
1	256	Jalaram Onion	Shanti Kumar, Kamal Kumar	
2	257	Do.		Received by one on behalf of Jalaram Onion but signature are different.
3	258	Do	Kallash Trader	The signature of the representatives not authenticated by party.

As CO had agreed during General Examination as well as in his Defence brief to grant delivery to the known representatives of the party on good faith and also as per the strength of the provision is provided under Section 80 of Railway Act 1989, it can be deemed that he did not follow the procedure to verify the genuineness of the representatives and allow delivery to the men who produced the RR.

In regard to facilitation to claim the fictitious AD, it is seen that the AD against invoice No. 240, 256 and 221 were claimed by M/S K. Trader (PD - 7/11), Jagannath Ramesh Warle (PD - 7/16) and Mahendra Kumar Manoj Kumar (PD - 7/19) and the claims were preferred to CGS/NQC and CO being a delivery clerk on 01/12/2001 had no role to play to





accept or arrange acceptance though they were not the enforcer in the RR and thus the allegation of facilitation by CO could not be established.

From the above discussion and also from the documents it cannot be concluded that CO committed wrong to deliver the Consignment to the representatives without verifying the genuineness of the party and the same is unbecoming on the part of a Railway Servants.

FINDINGS

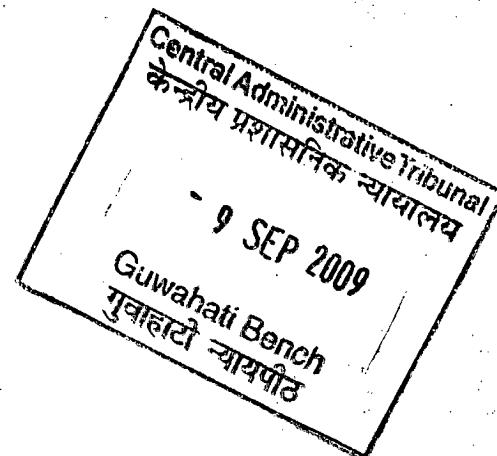
Thus, from the above discussions and the evidences taken on record, it is concluded that the Article of Charge framed against the CO Shri M. K. Baruia, ID: GC/NCC vide Memorandum of Charge Sheet No. C/V/G/GHY - NGC/4/04 dated 10/05/2004 issued by M. G. Bhattacharya as under:

ARTICLE - I
ARTICLE - II

NOT PROVED
PARTIALLY PROVED

Enquiry Officer/HQ/BIA
(A. K. Sen)

Dated: 17/11/2004



0338912

16.

The Divisional Commercial Manager,
N.E. Railway, Guwahati-781001.

Dated 16/12/2004.

Sir,

Sub- Final Representation on the Hon'ble EO's report dated 17/ 1/2004 vide
Charge Memorandum No. C/VIG/GHY-NGC/4/04 dated 10.5.2004 issued
by DCM/GHY,

Ref- Your letter No. C/VIG/GHY-NGC/4/04 dated 7.12.2004 received by me
on 8/12/04.

In obedience to your instructions laid down in your letter cited under reference, I
do beseech your profound look to the following submissions for your sympathetic
consideration, prudent and judicious decision please.

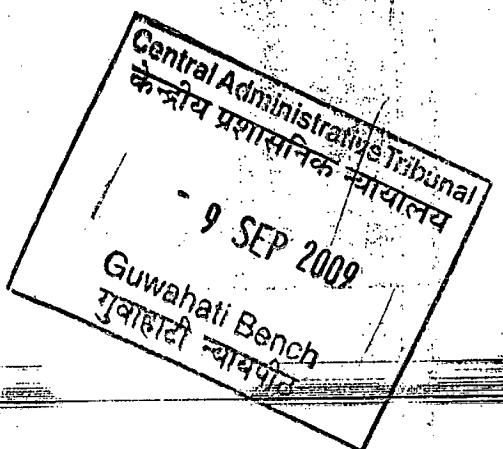
1.0 That sir, regarding findings of the Hon'ble EO on Article-I (one) I would like to
submit that I accept the findings fully; but I totally disagree with the findings on Article-
II (two), for the reasons submitted below:-

1.1.0 The Hon'ble EO vide 4th line of the Para below the chart depicted at page -7 of
the report had drawn an inference, "It can be deemed that he did not follow the procedure
to verify the genuineness of the representatives and allow delivery to the men who
produced the RR."

1.1.1 So it is proved from the above lines that the Hon'ble EO restrain from applying his
free and judicious mind in this case. Therefore, the findings were drawn on surmises and
Conjectures which have no place in D&A Rules.

1.1.2 Besides as per procedure, the delivery clerk is bound to deliver the consignment
to the person who produce the RR covered by the provision of section 80 of Railway
Act.1989 and this practice has been followed at NGC Goods since long to avoid
complaints from the Traders/Rly. Users; being satisfied himself (Goods Clerk/ Delivery
Clerk).

1.1.3 But, the Hon'ble EO reached to such decision which which is a result of caprice
whim or fancy or reached on the ground of policy of expedience ignoring Railway
Boards letter No. E(D&A) 86 RG-6-1 dated 20.1.86,which states, "The Supreme Court in
case of Mahavir Prasad Vs. State of AP.(AIR 1970 SC 1302) observed that recording of
reasons in support of a decision by a decision by a quasi-judicial authority is obligatory
as it can show that the decision is reached according to the law and is not a result of
caprice whim or fancy or reached on ground of policy of expedience. It has been further
held that the necessity to record reason is greater if the order is subject to appeal." Thus
CO was deprived of Natural justice under Article - 311 of the Constitution of India.



1.1.4 So, the Para Nos.5.11, 5.12 & 6.1 (findings on article-II) of the Enquiry Report which were drawn on surmises and conjectures are far from the practical feasibility and provisions laid down in Section 80 of Railway Act 1989. And is not acceptable to the CO. since this practice is prevailing even to-day.

1.1.5 Therefore the law is very much specific that even if a finding is based partly on evidence and partly on surmises and Conjectures it would stand vitiated (Dhiraj Lal Versus. Commisioner of Income Tax, 26 ITR 736).

In view of the circumstantial evidence and facts, it is fervently prayed that your benign-self would be kind enough to exonerate the CO. from such un-judicious decision of the Hon'ble EO against Article -II (Partially Proved) based on surmises & conjectures as discussed above. So that the CO. may not be deprived of the judicious decision from a commercial officer like you and Natural Justice is not denied to the CO to enable him to render more devoted services to the administration with an anxiety free mind and for which act of your kindness, I shall remain ever grateful to your honour, Sir ,

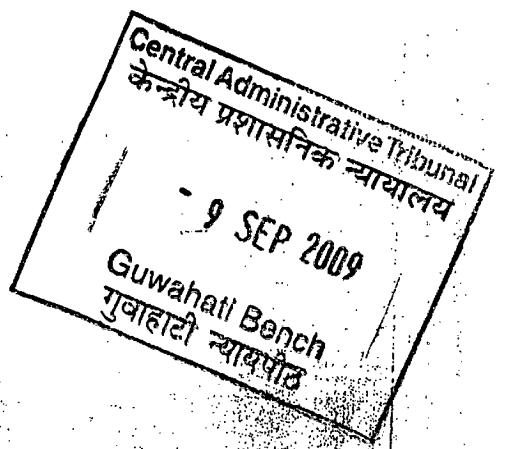
With regards,

Yours Faithfully,

Mangal K. Barnan
(M.K. Barnan)
(Charged Official)
Ex.Hd.Gc/NGC now
Hd.Gc at Dhamanagar.

R. K. Barnan

M.K.
16/12/04
Ch. 08/c



OFFICE OF THE
DAM (P) LTD
D. 5/7/07

ANNEXURE - VII

ES/96-M/T

N.F.R.L.

To Shri Manoj Kumar Barman
HCC (Good) DMV
DMV - 38/DMV

Sub - Implementation of Punishment
Refi - G.DDM/196/110 P.2/16/167/ No. 1
D. 5/10/07/ M. 9-6-07

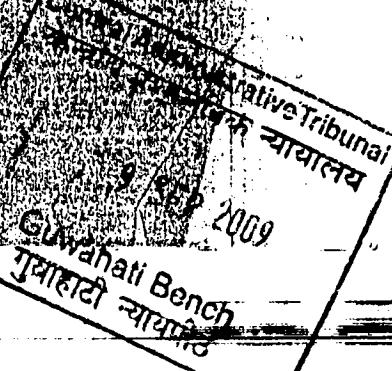
In terms of G.DDM/196/110 P.2/16/167/ under ref
reference it is to inform you that the penalty of
reduction to the lower stage in the time scale
3 pay by one stage lower for a period of 3 (Three)
years without loss of the benefit of future increments
has been imposed upon you. Accordingly your pay
has been fixed at Rs. 6800/- W. 09-6-07 to 8-6-
2010.

ANNEXURE
D.D.M. (P) LTD
N.F.R.L.

COPY to OS/ET/11/1/196/110 P.2/16/167/
9/11/07/ according to
the staff account 9/11/07

D.D.M. (P) LTD
N.F.R.L.

Received 10/8/07
By
D. 10/8/07



Received
dt: 10.8.07
Barman

ANMBAUR = 1001

Northeast Frontier Railway

Notice of imposition of penalty of reduction to lower service, grade or post or in a lower time scale, or in a lower stage in a time scale for specified period.

(Ref. - SR-21 under rule - 1715-RJ)

No.C/VIG/GHY-NGC/04/04

Dated 09.06.2007

To

Sri M.K.Barman,
Hd.CC/Goods/NGC now at DMV

Designation	Hd.CC/Goods/DMV
Date of birth	01-11-1951
Date of Appointment	29-01-1975
Present pay and scale	Rs. 6950/- in scale of Rs (. 000-8000/-).
Date of superannuation/Retirement	31-10-2011

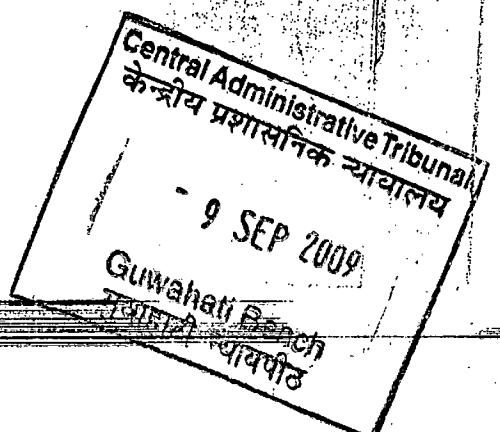
1). The following charges were brought against you. Article- I is not proved, while charge under article-II has been partially proved in the DAR enquiry.

Charges (s)

2) Sri M.K.Barman, Hd.GC/NGC while functioning as delivery clerk of NGC goods office, during the month of November and December/2001 committed a serious negligence in his duty in as much as he permitted the parties to put fictitious remarks in the delivery book regarding packets left for A/D. During the delivery of the onion consignment on 1.12.2001 and the remarks were without signature of the person who took delivery.

Sri M.K.Barman, Hd.GC/NGC while functioning as delivery clerk of NGC/Goods office during the month of November and December/2001 committed a serious misconduct in as much as he delivered the onion consignment from NGC/Goods office on 1.12.01 without verifying the genuineness of the party who took delivery. Thus he facilitated fictitious parties who were neither consignee nor endorsee to take fictitious A/D.

3) You are hereby informed that in accordance with the orders passed by Sr.DCM/Lumding (observation of Sr.DCM/Lumding in Annexure 'A') you are



imposed the penalty of reduction to the lower stage in the time scale of pay by one stage lower for a period of three years. On the expiry of such period the reduction will not have the effect of postponing the future increments of pay of the C.O. The penalty shall take with immediate effect.

Enclo:-Observation of Sr.DCM/Lumding (in Annexure 'A')

(S. C. Kumar)
Sr. DCM/LMG
Name and Designation of
the Disciplinary Authority

Copy to:- 1. DDM (P)/LMG (OS/ET/Cadre,) and (OS/ET/Bill) for information and necessary action please.

2. Dy.CVO/T/Maligaon for kind information in reference to letter No.Z/VIG/94/1/19/2004 dated 05-02-2007
3. SM/DMV for information. He is advised to hand over his NIP to the staff concerned obtaining acknowledgement and send the same to this office.

(S. C. Kumar)
Sr DCM/LMG

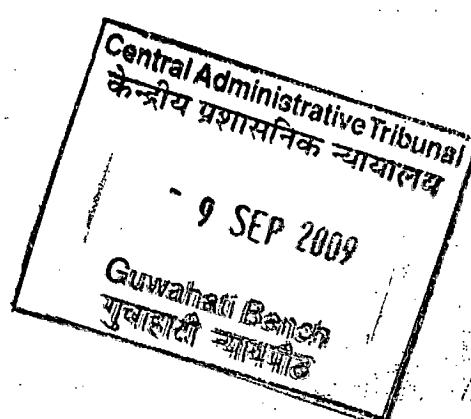
Please note the instructions below:-

- 1 An appeal against this order lies to ADRM/LMG (Next immediate superior to the authority passing the orders) within 45 days time.
2. The appeal may be withheld by an authority not lower than the authority from whose order it is preferred.

If:-

- a. it is a case in which no appeal lies under the rules.
- b. it is not preferred within the stipulated time on which the appellant was informed of the order appealed against no reasonable cause is shown for the delay.
- c. it does not comply with the various provisions and limitations stipulated in the rules.

Contd---3



OBSERVATION

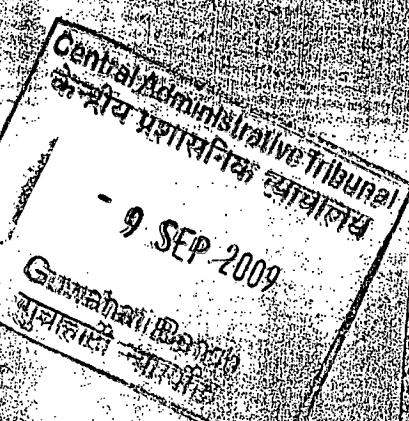
Annexure 'A'

After careful examination of enquiry report, tally book, delivery book, gate pass register attached in the case file, statement of Sri M. K. Barman and Vigilance remarks it is found that (a) the non-establishment of Charge of article - I by E.O. not found true as because the gate pass for 180 and 170 bags were issued at 9:20 hrs and 11:30 hrs respectively on 1.12.2001 before 12:00 hrs and C.O. permitted the party to put fictitious remarks as A.D. for A.D. how gate pass issued by C.O? Considering all the facts in mind article - I

Article -II established in enquiry report itself. It is proved beyond doubt that C.O. did not follow the proper procedure to verify the genuineness of the representatives and allowed delivery to the men who produced the R.Rs. Without proper verification and party was allowed to put fictitious remarks in delivery book for A.D.

Keeping all factors into consideration I imposed the penalty of reduction to the lower stage in the time scale of pay by one stage lower for a period of three years. On the expiry of such period the reduction will not have the effect of postponing the future increments of pay of the C.O.

(S. C. Kumar)
S. DCM/LMG



~~SECRET~~ ANNEXURE - X



No. C/VIG/GHY-NGC/4/04

N.F.Railway

Office of the
Divl. Railway Manager &
Lumding
Dated 23-11-2007

To,

Sri M.K.Barman,
Hd.CC/G/DMV

Sub: - Memorandum of Disagreement.

A copy of Memorandum of disagreement is sending herewith, you may submit your representation if any, against the above Memorandum of disagreement within 15 (fifteen) days from the date of receipt of this Memorandum.

Till such time the decision is taken on receipt of representation, the penalty imposed vide this office NIP No. C/VIG/GHY-NGC/04/04 dated 09.05.2007 is kept aside.

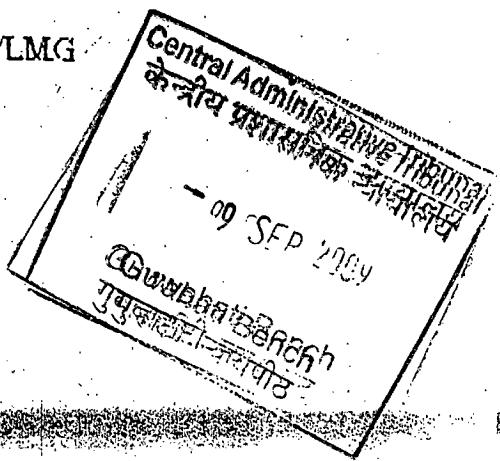
(S. C. Kumar)
Sr.DCM/LMG

Copy to:- 1) SM/DMV for information. He is advised to hand over this letter to the staff concerned obtaining acknowledgement and send the same to this office.
2) OS/ET/Cadre & OS/ET/Bill of DBM/P/LMG for information and necessary action please.

Sr.DCM/LMG

Received on 23/11/07
(Barman)

Certified to be true Copy
Parash Sharma
Advocate





Memorandum of Disagreement

Whereas, disciplinary proceedings were initiated against Sri Mouaj Kr Barman, Hd.GC/NGC now at DMV vide memorandum No C/VIG/GHY-NGC/4/04 dated 10.05.04 for the charges as mentioned in the annexure to the said charge memorandum.

And whereas, the Inquiry Officer Sri A.K.Sen, EO/HQ/Maligaon in his inquiry report held the article of charge (s) as mentioned in the Annexure's to the above said charge memorandum Article -I as not proved against the said Sri M.K.Barman, Hd.GC/NGC now at DMV.

After carefully considering the Inquiry Officer's report, it has been decided to disagree with the findings of the enquiry officer in respect of the charges under article -I holding the charge as proved tentatively against the I.O's findings that the said charges not proved against Sri M.K.Barman. Accordingly a memorandum of disagreement (Annexure-I) containing brief reasons of tentative disagreement with the findings of the IO in respect of the said charges is enclosed herewith.

Sri M.K.Barman, Hd.GC/NGC at DMV is required to submit his representation against the tentative disagreement with the IO's findings in respect of the article -I of the charge within a period of 15 days failing which the case will be proceeded further without affording any opportunity to Sri Barman.

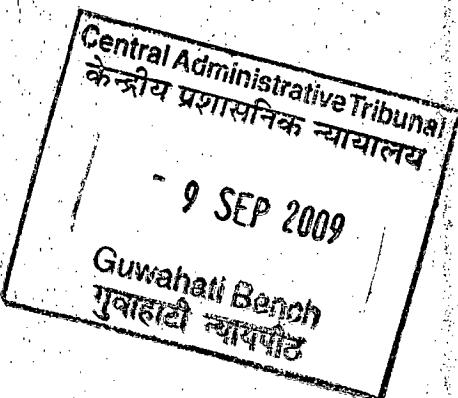
Sri M.K.Barman, Hd.GC/NGC at DMV is required to acknowledge receipt of the memorandum of disagreement (Annexure -I).

23.11.04
(S.C.Kumar)

Sr.DCM/LMG
(DISCIPLINARY AUTHORITY)

To

Sri M.K.Barman,
Hd.GC/DMV

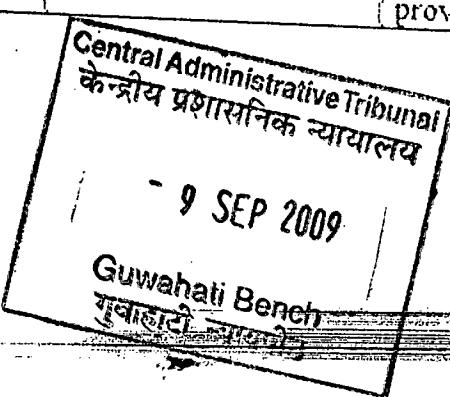




ANNEXURE -1

Memorandum of disagreement containing brief reasons for intended disagreement with the inquiry officers findings in respect of the article of charge of Sri M.K.Barmen, Hd CC/G/DMV

<u>Charge*</u> <u>DA's</u>	<u>IO's findings</u>	<u>DA's tentative findings</u>	<u>Reason for tentative findings</u>
Article-I Sri M.K.Barmen, Hd GC/NGC while functioning as delivery clerk of NGC Goods Office during the month of November and December/2001 committed a serious negligence in his duty in as much as he permitted the parties to put fictitious remarks in the Delivery Book regarding packets left for Assessment Delivery. During the delivery of onion consignment on 1.12.01 and the remarks were without signature of the person who took delivery.	<p>As most of the bags were removed at 10.00 hrs (513 Bags) at 10.00 hrs and 199 bags were lifted at 17.45 hrs, it is very much clear that the sound bags were transported earlier and the damage bags were removed later i.e. at 17.45 hrs.</p> <p>Thus the claims for A/D were fictitious and in regard to permitting the parties to put fictitious remarks in the delivery Register by C.O. could not be established. as the remarks in the delivery Register must have been put in after completion of tally as well as A/D. i.e. after 15.00 hrs. As C.O. was on duty upto 13.30 hrs, he can not be held responsible to put such remarks in the delivery Register and also for not putting initial against the remarks.</p>	<p>The remarks of damage as made in the Delivery Register by the party itself without signature and in presence of Delivery clerk Sri M.K. Barmen who was custodian of the delivery Book and his duty was up to 13.30 hrs, it implied that Sri Barmen, allowed the party to put fictitious remarks in Delivery Book. Hence the charges against C.O. under article -I stands proved.</p>	<p>After careful examination of Enquiry report, tally book, delivery book, gate pass Register attached in the case file, statement of Sri M.K.Barmen, I find that the non establishment of charge under article -I by Enquiry officer not true as because the gate pass for 180 and 170 bags were issued at 9.20 hrs and 11.30 hrs respectively on 1.12.2001 before 12.00 hrs and C.O. permitted the party to put fictitious remarks as A/D of 177 packets onions kept for A/D in the Delivery Book. When the consignment was kept for A/D how gate pass issued by C.O. within his duty hrs. Therefore, I take a different view and hold the charge under article -I is established</p>



St.DCM/LMG

ANNEXURE- XI

(Typed Copy)

To

The Senior Divisional Commercial Manager
Cum Disciplinary Authority,
N.F. Rly, Lumding.

Ref. : Office letter No. C/VIG/GHY-NGC/4/04 dtd.
23.11.2007.

Sir,

I am in receipt of the above referred letter issued by your goodself and received by me on 23.10.07 whereby a copy of Memorandum of Disagreement was sent and directed me to submit my representation against the said Memorandum of Disagreement within 10 days from the date of receipt of the letter, I beg to state that I already on 21.09.07 submitted my statutory appeal before the Honourable Additional Divisional Railway Manager, N.F. Raly, Lumding against the notice of imposition of penalty No. C/VIG/GHY-NGC/4/04 dtd. 09.06.07. By the said NIP dtd. 09.06.07 your goodself had imposed major penalty of reduction to the lower stage in the time scale of pay by one stage lower for a period of three years. My above mentioned statutory appeal is still pending for consideration before the Appellate Authority. Until the said appeal is disposed of by the appellate authority, I am not in a position to submit any representation against the Memorandum of Disagreement as directed by your goodself by letter under reference.

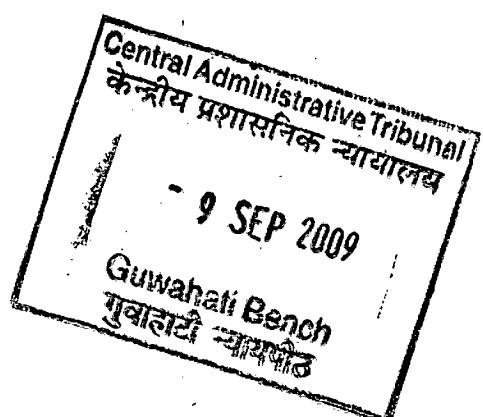
I therefore request your goodself to kindly consider the above in its true perspective and re-call the Memorandum of Disagreement and for which act of your kindness, I shall remain ever grateful to you.

Dated : 05.12.07

Yours faithfully

Sd/- Manoj Kumar Barman
HGC/DMV

R.
Sd/- Illegible
07.12.07
Ch. 03(c)



Certified to be true Copy
Prakash Jumash
Advocate

ANNEXURE - XI

To,

The Senior Divisional Commercial Manager
Cum Disciplinary Authority,
N.E. Rly., Lumding.

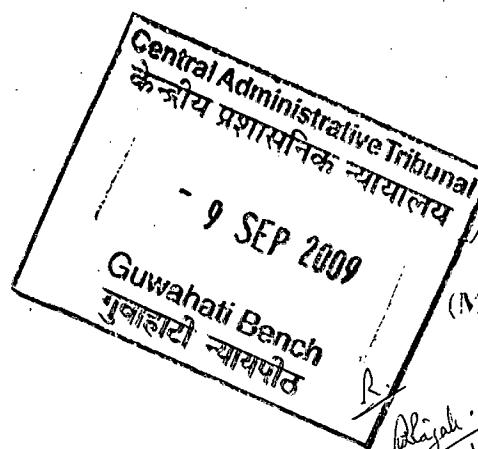
Ref: Office letter No. C/VIG/GHY-NGC/4/04 dtd. 23-11-2007.

Sir,

I am in receipt of the above referred letter issued by your goodself and received by me on 23-11-07 whereby a copy of Memorandum of Disagreement was sent and directed me to submit my representation against the said Memorandum of Disagreement within 15 days from the date of receipt of the letter, I beg to state that I already on 21-09-07 submitted my statutory appeal before the Honourable Additional Divisional Railway Manager, N.E. Rly., Lumding against the notice of imposition of penalty No. C/VIG/GHY-NGC/4/04 dtd. 09-06-07. By the said NIP dtd. 09-06-07 your goodself had imposed a major penalty of reduction to the lower stage in the time scale of pay by one stage lower for a period of three years. My above-mentioned statutory appeal is still pending for consideration before the Appellate Authority. Until the said appeal is disposed of by the Appellate Authority, I am not in a position to submit any representation against the Memorandum of Disagreement as directed by your goodself by the letter under reference.

I, therefore, request your goodself to kindly consider the above in its true perspective and re-call the Memorandum of Disagreement and for which act of your kindness I shall remain ever grateful to you.

Dated: 05-12-07



Yours faithfully,

Manoj Kr. Barman
(MANOJ KR. BARMAN)
HGC/DMV.

Aljali
21/12/07
Ch. 05 (2)

(1)
N.F.Railway

Office of the
Divl Railway Manager(C)
Lumding
Dated 08-12-2007

NO.C/VIG/GHY-NGC/4/04

To,
Sri Manoj Kr. Barman,
Hd.CC/G/DMV

(Through:- SM/DMV)

Sub: - Order of Appellate authority.
Ref: - Your appeal dated 21.09.07 and
Reply to memorandum of
disagreement No. C/VIG/GHY-
NGC/4/04 dated 23.11.2007

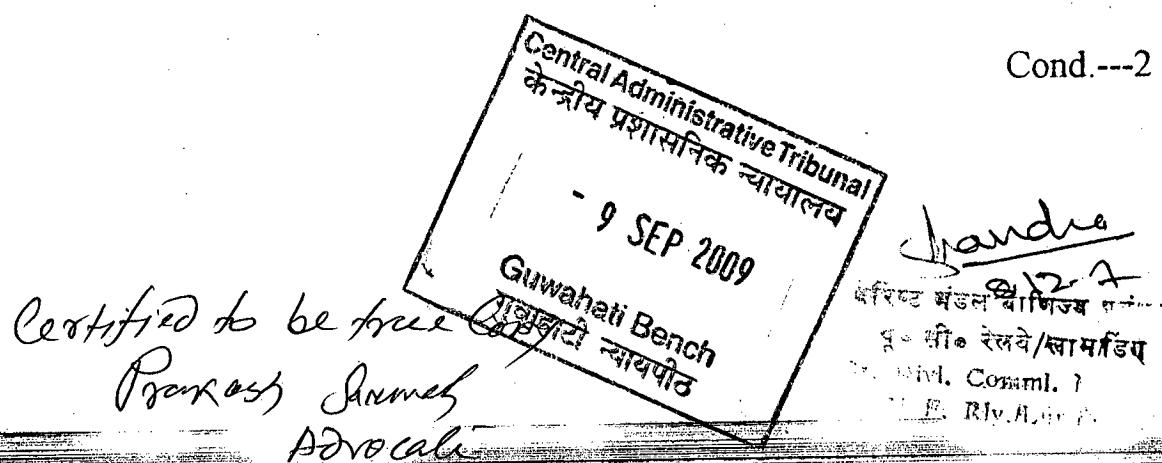
Your appeal under reference was put up to the Appellate Authority (ADRM/LMG) who has considered your appeal and passed the following orders :-

Order of Appellate authority

"I have examined the entire DAR proceedings and also appeal dated 21.09.2007 and reply to memorandum of disagreement vide letter dated 05.12.07 submitted by Shri M.K. Barman (C.O). The following points raised by C.O. in his appeal requires to be examined-

- Whether the findings arrived at by E.O. under Article-II suffers from surmise and conjecture?
- Whether penalty imposed by Sr.DCM/LMG was with a pre-determined motive and in violation of existing rules

Cond.---2



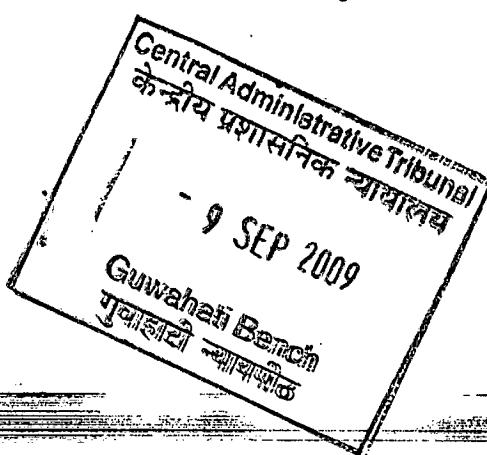
(2)

a) For item (i), it has been found that inquiry was properly held and full opportunity was extended to the Charged Official (C.O) to counter the allegations leveled against him. There is no grievance of C.O in this respect. He was served with "memorandum of disagreement" to refute the decision of the Disciplinary Authority (D.A) which he refused to avail. In a departmental enquiry, if the enquiry has been properly held, the adequacy and reliability of evidence can not be canvassed. The standard of prove required is that of preponderance of probability and not prove beyond reasonable doubt. Therefore, the contention made by C.O that the findings of E.O on Article-II suffers from surmise and conjecture is frivolous and beyond truth and can not be accepted.

b) In respect of item (ii), I find that the case was transferred from DCM/GHY to Sr.DCM/LMG due to transfer of C.O at Dharanagar and then to Dimapur under Sr.DCM/LMG. In terms of Railway Board's directives when an employee is transferred under control of another Disciplinary authority, the new Disciplinary authority need not start de-novo proceedings and can carry on from the point where the transfer was affected. Therefore, there is no predetermination or violation of rule by Sr.DCM/LMG in this case.

However, the contention made by C.O. that the Sr.DCM/LMG disagreed with the enquiry report on Article-I of the charge holding the charge as proved without giving any opportunity to the C.O. is not agreed and the fact remains that the C.O. was given an opportunity to file his representation against the disagreement of E.O's report by Disciplinary Authority through memorandum of disagreement vide letter dated 23.11.07. Moreover, C.O. was given only a Minor penalty on a Major DAR proceedings against him which is not commensurate with the gravity of the offence. C.O. admitted during general examination that he granted delivery of the consignment to a person on good faith which is a serious offence being a Head Goods clerk. Therefore, I am of the opinion that an enhanced penalty shall have to be imposed commensurate with the gravity of the offence committed by C.O.

Cond---3



Dhande
राज्य विभाग वाणिज्य प्रबंधक
पू. सी. रेलवे/सार्विदेश
P. C. Com. Manager
N. P. R. V. P. R. D.

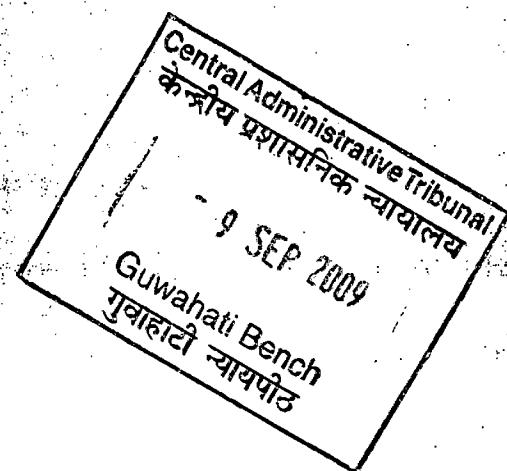
(3)

Taking all the facts into consideration, I enhance the penalty to "reduction to lower stage in time scale of pay by two stages for a period of three years and six months and after expiry of said period this will have effect of postponing the future increments of pay".

Revision petition, if any, may be filed to Chief Commercial Manager/N.F.Railway/MLG within a period of 45 days time.

Shinde
8/12/09
(S.C. Kumar)
Sr.DCM/LMG

परिषद अड्डे द्वारा दिया
पू. सी. रेजिस्ट्रार/सामाजिक
Divl. Comml. Manager
N.F. Rly. B.



ANNEXURE-XIII

(Typed Copy)

To

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

Sub : Reminder representation.

Ref. : My revision petition dtd. 11.1.2008 submitted through proper channel.

Sir

With reference to the above referred matter, I beg to state that being highly aggrieved by the impugned order penalty No. C/VIG/GHY-NGC/04/04 dated 9.6.07 passed by the Sr. DCM/LMG imposing major penalty of reduction to the lower stage in the time scale of pay by one stage lower for a period of three years, I had submitted an appeal before the D.R.M./LMG being my appellate authority. The said appeal was rejected by order No. C/VIG/GHY-NGC/4/04 dated 8.12.07 issued by the Sr.DCM/LMG. Thereafter, being aggrieved by the said appellate order dated 8.12.07, I submitted a revision petition under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 addressing your goodself through proper channel (i.e. S.S./DMV) for quashing and setting aside the above impugned orders dtd. 9.6.07 and 8.12.07. The said revision petition was duly received by the office of the Station Superintendent, N.F. Railway, Dimapur on 21.1.08 for further transmission. Though more than 7 (seven) month have been elapsed, no response to my said revision petition has been received by me.

I, therefore, request your goodself once again kindly to look into the matter so that I am not deprived from justice otherwise due to me more so I am in the fag end of my service in the department and for which act of your kindness I, as in duty bound, shall ever pray.

Yours faithfully,
Sd/- Manoj Kr. Barman
3.10.08

(MANOJ KR. BARMAN)
HGC/DMV
N.F. Railway, Dimapur.

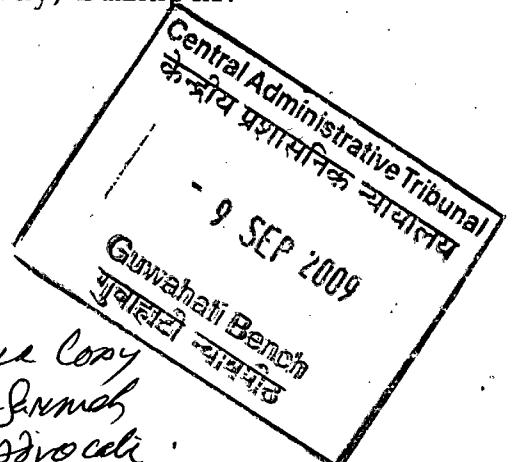
Enclosed :

A copy of the above mentioned revision petition signed by me on 11.01.2008 with its annexures.

Copy to :

S.S./DMV for information

Certified to be true copy
Rakash Jinnah
Advocate



- 82 (A)

ANNEXURE - XII

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

Sub : Reminder representation.

Ref : My revision petition dtd. 21.1.2008 submitted through proper channel.

Sir

With reference to the above referred matter, I beg to state that being highly aggrieved by the impugned order of penalty No. C/VIG/GHY-NGC/04/04 dated 9.6.07 passed by the Sr. DCM/LMG imposing major penalty of reduction to the lower stage in the time scale of pay by one stage lower for a period of three years, I had submitted an appeal before the D.R.M./LMG being my appellate authority. The said appeal was rejected by order No. C/VIG/GHY-NGC/4/04 dated 8.12.07 issued by the Sr. DCM/LMG. Thereafter, being aggrieved by the said appellate order dated 8.12.07, I submitted a revision petition under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 addressing your goodself through proper channel (i.e. S.S./DMV) for quashing and setting aside the above impugned orders dtd. 9.6.07 and 8.12.07. The said revision petition was duly received by the office of the Station Superintendent, N.F. Railway, Dimapur on 21.1.08 for further transmission. Though more than 7(seven) months have been elapsed, no response to my said revision petition has been received by me.

I, therefore, request your goodself once again kindly to look into the matter so that I am not deprived from justice otherwise due to me more so I am in the fag end of my service in the department and for which act of your kindness I, as in duty bound, shall ever pray.

Yours faithfully,

Monoj Kr. Barman
3/10/08.

(MONOJ KR. BARMAN)

H.G.C./DMV

N.F. Railway, Dimapur.

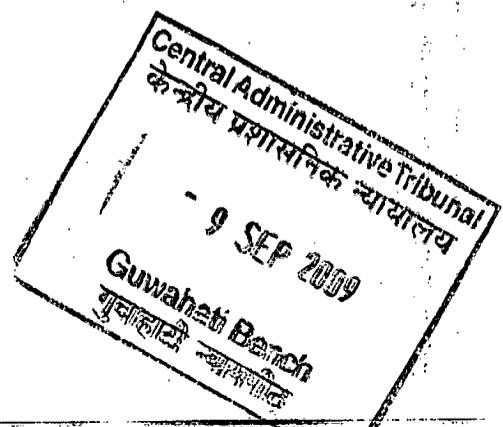
Enclosed :

A copy of the above mentioned revision petition signed by me on 21-01-2008 with its annexures.

Copy to :

S.S./DMV for information.

03/10/08



- 91 -

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.02 of 2009

Date of Order: This the 12th day of January 2009

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

Shri Manoj Kumar Barman,
S/o Lagte Mangala Barman,
Resident of No.2 Mathgharia,
Guwahati-20, P.O. Noonmati,
District - Kamrup (M), Assam.

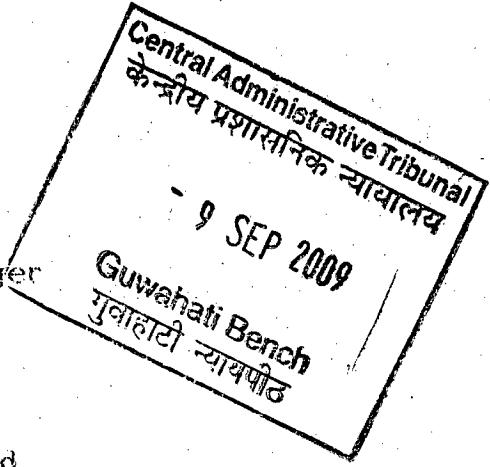
.....Applicant

By Advocates Shri P. Sarmah and
Ms B. Chakraborty.

- versus -

1. Union of India, represented by the General Manager, N.F. Railway, Maligaon, Guwahati-11, District- Kamrup, Assam.
2. Chief Commercial Manager N.F. Railway, Maligaon, Guwahati-11, District-Kamrup (M), Assam.
3. Additional Divisional Railway Manager N.F. Railway, Lumding-782447, District-Nagaon, Assam.
4. Divisional Commercial Manager N.F. Railway, Guwahati Station Road, Guwahati-1, District- Kamrup (Metro), Assam.
5. Senior Divisional Commercial Manager N.F. Railway, Lumding-782447, District- Nagaon, Assam. Respondents

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



Certified to be true copy
Prakash Jadhav
Dovale

O.A.No.02/2009

ORDER (ORAL)

12.01.2009

M.R. MOHANTY, VICE-CHAIRMAN

Heard Mr P. Sarmah, learned Counsel appearing for the Applicant, and Dr J.L. Sarker, learned Standing Counsel appearing for the Respondents/Railways (to whom a copy of this O.A. has already been supplied), and perused the materials placed on record.

2. The Applicant was charge sheeted on 10.05.2004 in a departmental proceeding. He submitted his written statement of defence on 15.07.2004 and, Inquiry Officer having been appointed, enquiries were held and the enquiry report was submitted on 17.11.2004. The Enquiry Report having been supplied to the Applicant (under forwarding letter dated 07.12.2004) the Applicant submitted a representation on 16.12.2004. The Disciplinary Authority imposed a punishment on 09.06.2007. The said punishment order dated 09.06.2007 was forwarded to the Applicant on 05.07.2007. The Applicant submitted his statutory appeal on 21.09.2007 through proper channel. During pendency of the said Appeal, the Disciplinary Authority issued a disagreement note (to the Applicant) on 23.11.2007. On receipt of the same, the Applicant intimated the Disciplinary Authority about the pendency of the Appeal vide his communication dated 07.12.2007. It appears the Applicant did not answer to the disagreement note but only pointed out to the Disciplinary Authority about the pendency of the Appeal. On the very next day (08.12.2007) the Disciplinary Authority communicated the

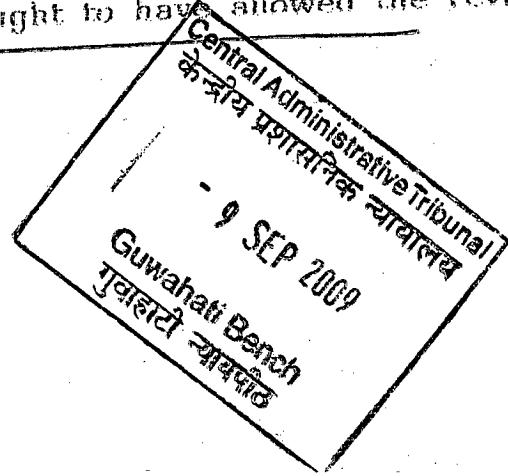
Guwahati Bench
গুৱাহাটী চান্দেলি

9 SEP 2009

Central Administrative Tribunal
কেন্দ্ৰীয় পৰিবেশ বিভূতি বৰ্ষাৰ চান্দেলি

order (of the Appellate Authority) to the Applicant; whereio the Appellate Authority enhanced the penalty. Before enhancing the penalty, as it appears, no opportunity was given to the Applicant to have his say in the matter of enhancement of the penalty. It was never suggested (to the Applicant) by the Appellate Authority proposing enhancement of the penalty. The Applicant submitted a representation on 21.01.2008 and a reminder on 03.10.2008. Without hearing from the Revisional Authority, the Applicant has approached this Tribunal with the present O.A. filed under Section 19 of the Administrative Tribunals Act, 1985.

3. It is submitted by Mr. P. Sarmah, learned Counsel appearing for the Applicant, that no disagreement note having been drawn by the Disciplinary Authority (and the same having not been confronted to the Applicant) before imposition of the penalty by the Disciplinary Authority, the penalty imposed by the Disciplinary Authority was/is not sustainable. He submitted further that drawal of the disagreement note and supply of a copy thereof by the Disciplinary Authority (during the pendency of the appeal) itself is a ground to set aside the penalty order that was passed by the Disciplinary Authority. It is also argued by Mr P. Sarmah, learned counsel appearing for the Applicant, that the Appellate Authority having not given notice of enhancement (of penalty) to the Applicant (before passing the Appellate Order), the Appellate Order is also not sustainable. He has stated further that, on the aforesaid two grounds alone, the Revisional Authority ought to have allowed the revision without any waste of time.



4. Dr. J.L. Sarkar, learned Counsel appearing for the Respondents/Railways, vehemently opposed the stand of the Applicant and submitted that in all fairness of things the matter should be remanded back to the Revisional Authority for passing of the orders on the revision petition of the Applicant.

5. In the aforesaid premises, this case is hereby disposed of with direction to the Revisional Authority (Respondent No.2) to consider the revision petition of the Applicant (dated 21.01.2008) and pass a reasoned order thereon (within a period of 60 days from the date of receipt of a copy of this order) unless the same has been disposed of in the meantime and intimate the position to the Applicant within the time specified herein.

6. With the aforesaid observations and direction this O.A. stands disposed of.

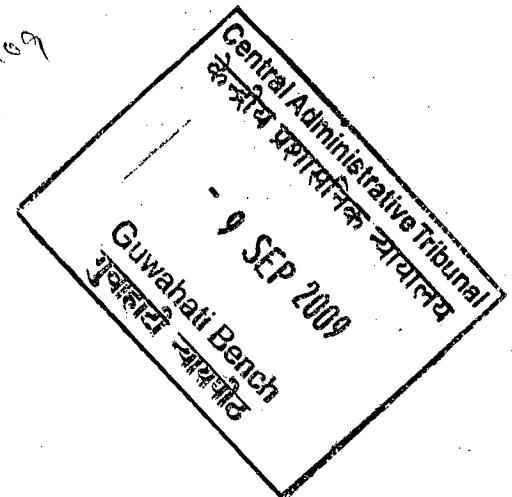
7. Send copies of this order to the Applicant and to all the Respondents (alongwith copies of the O.A.) in the addresses given in the O.A. and free copies of this order be supplied to the learned Counsel of both parties.

C.D. no 5

Sd/-

M.R. Mohanty
Vice-Chairman

DATE 2009
21/2/09
M. R. Mohanty
Chairman
Central Administrative Tribunal
Guwahati Bench
JALIKA APPEAL



-95- Next Date : 25.5.09.

Annexure - XV

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

GUWAHATI BENCH, GUWAHATI

Received on
19.5.09
From - Mr. Barai Dwarika
C 1150 A.M.

29
File No
15.5.09

M.P. No. 47 of 2009

In

O.A. NO. 2 of 2009

The Sr. Divisional Commercial Manager

.....Petitioner/Respondent

-Vs-

Sri Manoj Kumar Barman

.....Applicant/Opp. Party

INDEX

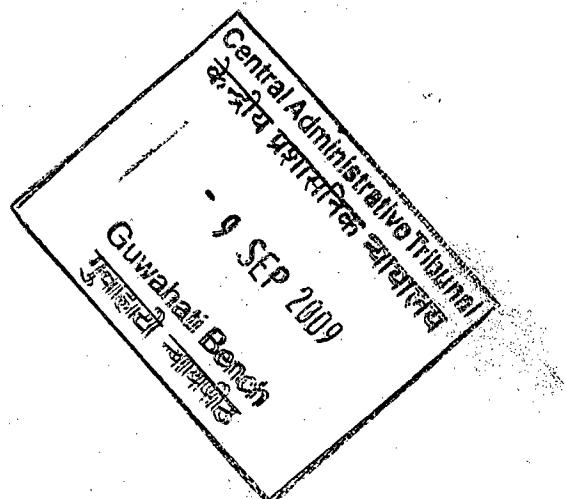
<u>SL.NO.</u>	<u>PARTICULARS</u>	<u>PAGE NO.</u>
1.	Petition	1-3
2.	Verification	4
3.	Annexure-A	5-8
4.	Annexure-B	9

Filed by

D. Devi.

Advocate, Guwahati.

Certified to be true Copy
Prakash Jyoti
Advocate



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH : GUWAHATI

M.P. No. 47 of 2009

In

O.A. NO. 2 of 2009

Sri Manoj Kumar Barman

..... *Applicant*

-Vs-

The Union of India & others

..... *Respondents*

IN THE MATTER OF :

A petition praying for extension of time limit
For implementation of the Hon'ble Tribunal's
Order passed on 12.01.09 in OA No. 2/09.

- AND -

IN THE MATTER OF :

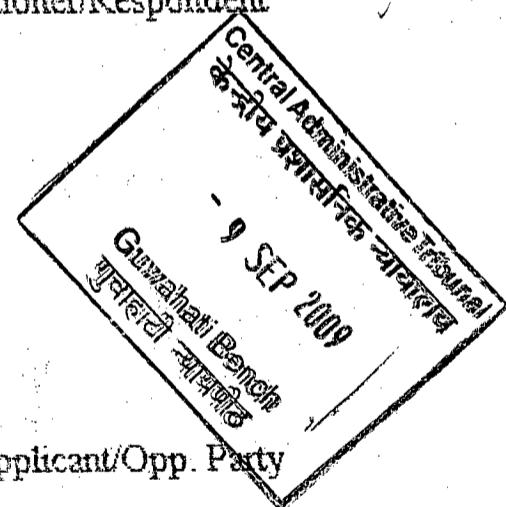
The Sr. Divisional Commercial Manager
N.F. Railways, Lumding.
District-Nagaon, Assam

..... *Petitioner/Respondent*

-Vs-

Sri Manoj Kumar Barman
S/O Lt. Mangala Barman
Resident of No.2 Mathgharia
P.O -Noonmati, Guwahati-20
Dist. Kamrup (M), Assam.

..... *Applicant/Opp. Party*



The petitioner named above begs to state as follows:-

- That the applicant filed the aforementioned OA No.2/09, challenging the legality of the orders of penalty impugned before the Hon'ble Tribunal dated 9.6.2007 vide Annexure VIII to the OA No.2/09 and 8.12.07 vide Annexure XII to the OA No.2/09 and to set aside and quash the said orders. The applicant's further contention was that the applicant on

21.01.08 submitted a revision petition under Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968, against the above orders of penalty dated 9.6.2007 (penalty of reduction in rank) and 8.12.2007 (enhancement of penalty). Again he submitted a reminder on 3.10.08 before the Respondent No.2 Chief Commercial Manager (CCM/NF/Maligaon) as it appears but there was no response till date.

2. That the Hon'ble Tribunal after hearing both the parties disposed of the application on 12.1.09 with an observation directing the Revisional Authority to consider the revision petition of the applicant (21.1.08) and pass a reasoned order thereon within a period of 60 (sixty) days from the date of the receipt of a copy of this order unless the same has been disposed of in the meantime.

A copy of the aforesaid order of the Tribunal dated 12.1.09 passed in O.A. No.2/09 is enclosed herewith and marked as Annexure-A.

3. That the Registry dispatched the order on 27.2.09, which was received in the office of Senior Divisional Commercial Manager, NF Railway/ LMG on 12.3.09 and accordingly the relevant case file was processed and sent to Respondent No.2 (CCM/NF/MLG), Revisional Authority for compliance of the Hon'ble Tribunal's order within the time specified in the order.

A copy of the dispatched letter issued from the Registry of the Tribunal dated 27.3.09 is enclosed herewith and marked as Annexure-B.

4. That your petitioner begs to state the Chief Commercial Manager (CCM/NF/Maligaon) is on sick leave with effect from 4.4.09 and presently he has been under treatment at Kolkata.

5. That due to the above facts and circumstances the department sought extension of another 3(three) months (i.e. another 90 days) from the date of expiry of 60 days i.e. as specified in the order i.e. w.e.f 12.5.09 to carry out the Hon'ble Tribunal order and for the ends of justice.

6. That it is stated that the Senior Divisional Commercial Manager, NF, LMG in this regard issued a letter dated 29.4.09 to the Counsel for Railways requesting her to place the matter before the Hon'ble Tribunal for extension of time limit highlighting the Department's

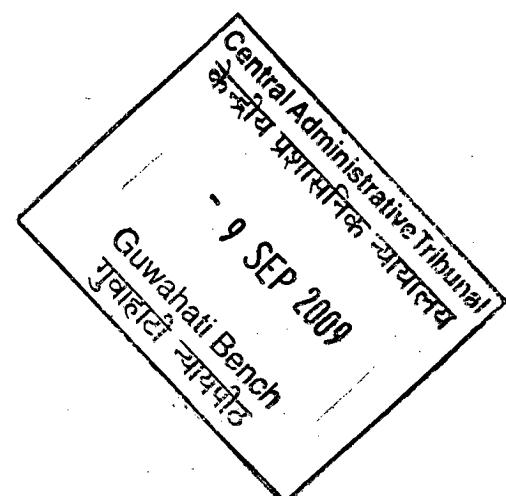
Central Administrative Tribunal
संघ संचालन आयोग
9 SEP 2009
Gauhati Bench
Chairman
Bench
Bench

inconveniences for speedy disposal of the matter the order of which was received on 1.5.09 after expiry of the time fixed in the order dated 12.01.09 in O.A. No. 2/09.

7. That this petition is made bonafide and for the ends of justice.

In the premised aforesaid, it is, therefore, humbly prayed that the Hon'ble Tribunal would be pleased to admit this Misc Petition filed in O.A. No. 2/09(since disposed of) and considering the facts and circumstances be pleased to extend the time limit for another period of three (3) months with effect from the date of receipt of the order dated 12.1.09 passed by the Hon'ble Tribunal in O.A. NO. 2/09 received on 12.3.09; for implementation of the said order and for the ends of justice. And pass such other order/orders as to the Hon'ble Tribunal may deem fit and proper.

And for this act of kindness the petitioner as in duty bound shall ever pray.



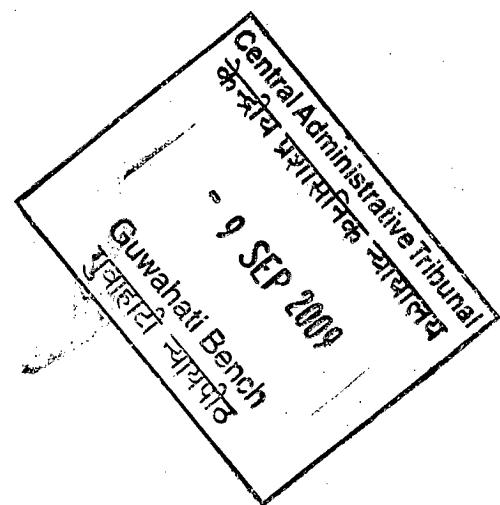
VERIFICATION

VERIFICATION

I, Shri Rajneesh Kumar Son of
Sh. Ram Chaud resident of Runding, Distt.
Wagao at present working as the Sr. Divisional
Commercial Manager, Runding Division, N.F.Rly, being competent and
duly authorized to sign this verification on behalf of all the
Respondents do hereby solemnly affirm and state that the
statements made in paragraph 1,4,5,6,7 are true to my knowledge
and belief, and the statements made in paragraph 2,3 are true to my
information derived from records which I believe to be true and the
rests are my humble submission before this Hon'ble Tribunal. I
have not suppressed any material fact.

And I sign this verification on this 14th day of
May 2009 at Runding.

DEPONENT



CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.02 of 2009

Date of Order: This the 12th day of January 2009

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

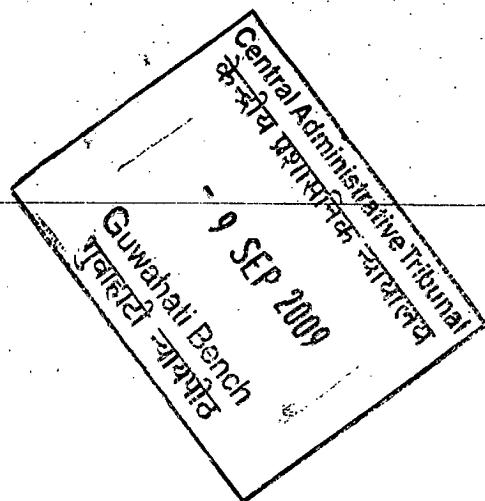
Shri Manoj Kumar Barman,
S/o Lagte Mangale Barman,
Resident of No.2 Mathgharia,
Guwahati-20, P.O. Noonmati,
District - Kamrup (M), Assam.Applicant

By Advocates Shri P. Sarmah and
Ms B. Chakraborty.

- versus -

1. Union of India, represented by the
General Manager,
N.F. Railway,
Maligaon, Guwahati-11,
District- Kamrup, Assam.
2. Chief Commercial Manager
N.F. Railway, Maligaon,
Guwahati-11,
District-Kamrup (M), Assam.
3. Additional Divisional Railway Manager
N.F. Railway, Lumding-782447,
District-Nagaon, Assam.
4. Divisional Commercial Manager
N.F. Railway, Guwahati Station Road,
Guwahati-1,
District- Kamrup (Metro), Assam.
5. Senior Divisional Commercial Manager
N.F. Railway, Lumding-782447,
District- Nagaon, Assam. Respondents

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



O.A.No.02/2009
ORDER (ORAL)

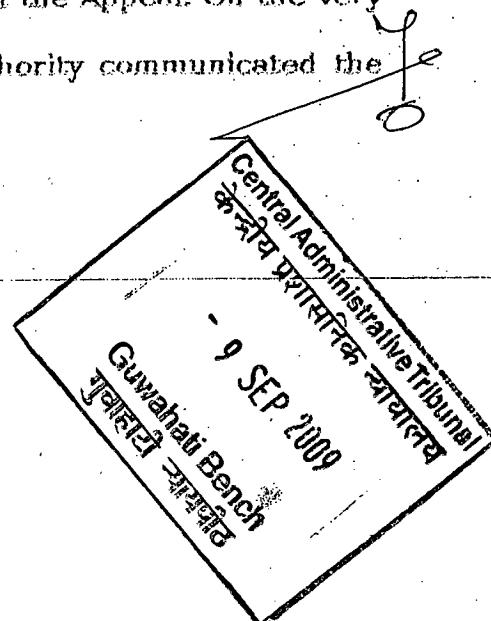
12.01.2009

(6)

M.R. MOHANTY, VICE-CHAIRMAN

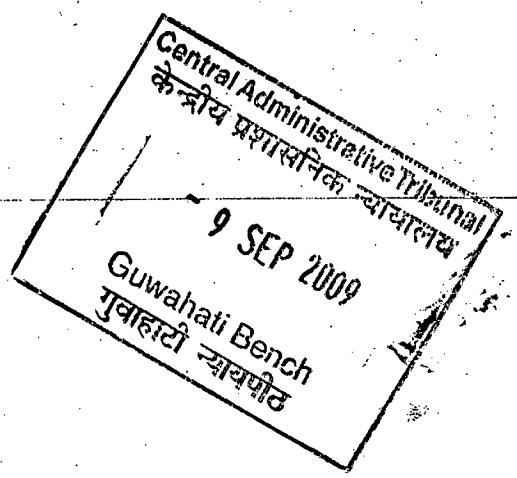
Heard Mr P. Sarmah, learned Counsel appearing for the Applicant, and Dr J.L. Sarkar, learned Standing Counsel appearing for the Respondents/Railways (to whom a copy of this O.A. has already been supplied), and perused the materials placed on record.

2. The Applicant was charge-sheeted on 10.05.2004 in a departmental proceeding. He submitted his written statement of defence on 15.07.2004 and, Inquiry Officer having been appointed, enquiries were held and the enquiry report was submitted on 17.11.2004. The Enquiry Report having been supplied to the Applicant (under forwarding letter dated 07.12.2004) the Applicant submitted a representation on 16.12.2004. The Disciplinary Authority imposed a punishment on 09.06.2007. The said punishment order dated 09.06.2007 was forwarded to the Applicant on 05.07.2007. The Applicant submitted his statutory appeal on 21.09.2007 through proper channel. During pendency of the said Appeal, the Disciplinary Authority issued a disagreement note (to the Applicant) on 23.11.2007. On receipt of the same, the Applicant intimated the Disciplinary Authority about the pendency of the Appeal vide his communication dated 07.12.2007. It appears the Applicant did not answer to the disagreement note but only pointed out to the Disciplinary Authority about the pendency of the Appeal. On the very next day (08.12.2007) the Disciplinary Authority communicated the



order (of the Appellate Authority) to the Applicant; wherein the Appellate Authority enhanced the penalty. Before enhancing the penalty, as it appears, no opportunity was given to the Applicant to have his say in the matter of enhancement of the penalty. It was never suggested (to the Applicant) by the Appellate Authority proposing enhancement of the penalty. The Applicant submitted a representation on 21.01.2008 and a reminder on 03.10.2008. Without hearing from the Revisional Authority, the Applicant has approached this Tribunal with the present O.A. filed under Section 19 of the Administrative Tribunals Act, 1985.

3. It is submitted by Mr P. Sarmah, learned Counsel appearing for the Applicant, that no disagreement note having been drawn by the Disciplinary Authority (and the same having not been confronted to the Applicant) before imposition of the penalty by the Disciplinary Authority, the penalty imposed by the Disciplinary Authority was/is not sustainable. He submitted further that drawal of the disagreement note and supply of a copy thereof by the Disciplinary Authority (during the pendency of the appeal) itself is a ground to set aside the penalty order that was passed by the Disciplinary Authority. It is also argued by Mr P. Sarmah, learned counsel appearing for the Applicant, that the Appellate Authority having not given notice of enhancement (of penalty) to the Applicant (before passing the Appellate Order), the Appellate Order is also not sustainable. He has stated further that, on the aforesaid two grounds alone, the Revisional Authority ought to have allowed the revision without any waste of time.



4. Dr. J.L. Sarkar, learned Counsel appearing for the Respondents/Railways, vehemently opposed the stand of the Applicant and submitted that in all fairness of things the matter should be remanded back to the Revisional Authority for passing of the orders on the revision petition of the Applicant.

5. In the aforesaid premises, this case is hereby disposed of with direction to the Revisional Authority (Respondent No.2) to consider the revision petition of the Applicant (dated 21.01.2008) and pass a reasoned order thereon (within a period of 60 days from the date of receipt of a copy of this order) unless the same has been disposed of in the meantime and intimate the position to the Applicant within the time specified herein.

6. With the aforesaid observations and direction this O.A. stands disposed of.

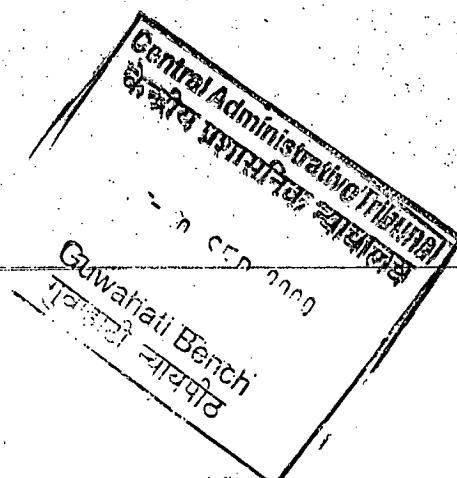
7. Send copies of this order to the Applicant and to all the Respondents (alongwith copies of the O.A.) in the addresses given in the O.A. and free copies of this order be supplied to the learned Counsel of both parties.

Sd/-
M.R. MOHANTY
VICE CHAIRMAN

TRUE COPY

12/1/08

Section Officer
Central Administrative Tribunal
Guwahati Bench
Date 12/1/08



ANNEXURE-B 104

CA

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

RESPONS

DESPATCH NO. CAT/GHY/JUDL

827

DATED

27-2-09

✓ ORIGINAL APPLICATION

2/2009

MISC. PETITION NO.

200

CONTEMPT PETITION

200

REVIEW APPLICATION NO

200

Shri M.K. Barman

APPLICATION(S)

VERSUS

U.O.I. v. OPS

RESPONDENT(S)

TO

The Senior Divisional Commercial Manager,
 N.F. Railway,
 Lumding - 782447,
 Dist. Nagaland, Assam.

Please find herewith a copy of Judgment/Order dated
12-1-2009 passed by the Bench of this Hon'ble Tribunal
 comprising of Hon'ble Shri M.R. Mohanty
 Vice-Chairman and Hon'ble Shri _____
 Member (Admin) in the above noted case for information and
 necessary action if any.
 Please acknowledge the receipt of the same
 By Order

Enclo : As above

(Copy of Original Application No. 2/09

SECTION OFFICER (J.)

H/12/2

Dated

Memo. No.

Copy for information :

1. Mr. Mrs. Ms. Dr. _____

Advocate, Gauhati High Court.

Sr. CGSC/ Addl. CGSC.

2. Mr. Mrs. Ms. _____

Rly. Standing Counsel.

3. Mr. Mrs. Ms. DR. _____

Govt. Advocate, Assam, Meghalaya/ Manipur/ Nagaland/ Tripura/ Arunachal Pradesh.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

9 SEP 2009

Guwahati Bench
गुवाहाटी न्यायालय

Annexure - XVI

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Misc. Petition No.47 of 2009

(In Original Application No.02 of 2009 ;
disposed of on 12.01.2009)

Date of Order: This the 25th day of May 2009

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

The Hon'ble Shri N.D. Dayal, Administrative Member

The Sr. Divisional Commercial Manager
N.F. Railway, Lumding,
District- Nagaon, Assam

.....Petitioner/
Respondent

By Advocate Mrs Bharati Devi, Railway Standing Counsel

- vs -

Shri Manoj Kumar Barman,
S/o Lae Mangala Barman,
Resident of No.2 Mathgharia,
P.O.-Noonmati, Guwahati-20,
District- Kamrup (M), Assam.

.....Applicant/Opposite
Party

By Advocates Mr P. Sarma and
Ms B. Chakraborty.

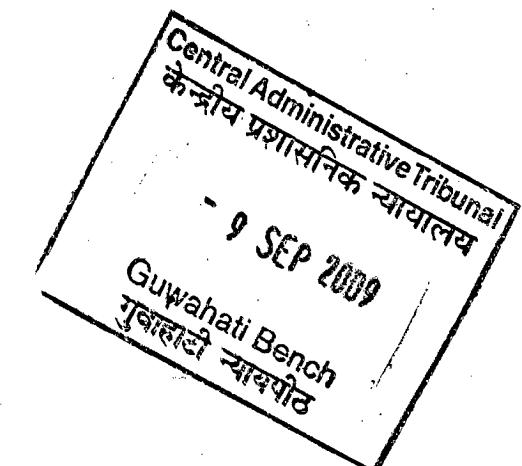


ORDER (ORAL)

M.R. MOHANTY, VICE-CHAIRMAN

Original Application No.02 of 2009 was disposed of on
12.01.2009, with direction to the Revisional Authority of the Applicant
(i.e., Original Respondent No.2) to consider the Revision Petition dated
21.01.2008 of the Applicant and pass a reasoned order thereon within a
period of 60 days from the date of receipt of a copy of the said order
dated 12.01.2009.

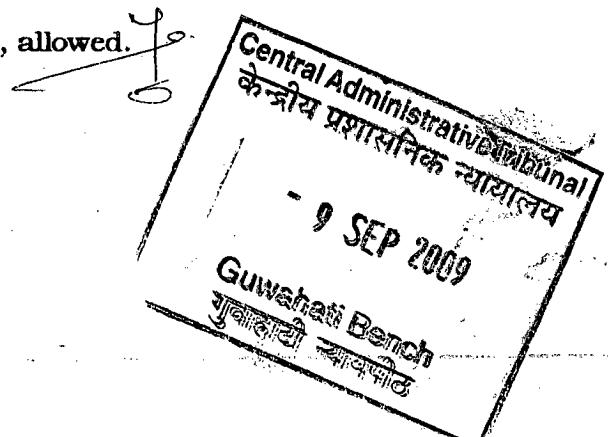
*Certified to be true copy
Prakash Jyoti
Advocate*



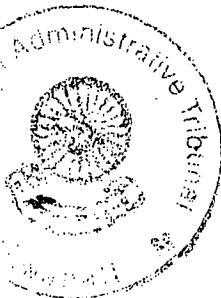
2. It appears, the copy of the above order dated 12.01.2009 was prepared on 12.02.2009 and dispatched to the Respondents on 27.02.2009. By way of filing the present M.P.No.47 of 2009, it has been pointed out by the Respondent No.5 (Senior Divisional Commercial Manager of N.F. Railways at Lumding, District- Nagaon, Assam) that a copy of the order dated 12.01.2009 was received in the Office of the Senior Divisional Commercial Manager/Lumding on 12.03.2009; whereafter the matter was processed and sent to Respondent No.2/Chief Commercial Manager of N.F. Railway at Maligaon/the Revisional Authority for compliance of the order dated 12.01.2009 of this Tribunal. It has also been pointed out, in M.P.No.47/2009 that has been filed on 15.05.2009 that the Chief Commercial Manager/N.F. Railway/Maligaon has proceeded on sick leave with effect from 04.04.2009 and that the said officer is under treatment of his sickness at Kolkata.

3. The Order dated 12.02.2009 was to be complied by 12.05.2009. In this M.P.No.47/2009, it has been prayed to grant extension of 90 days further time. Thus, it has been prayed to grant extension of time till 12.08.2009.

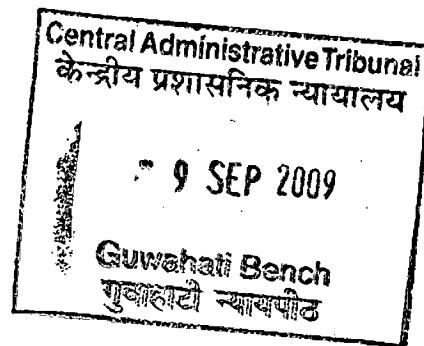
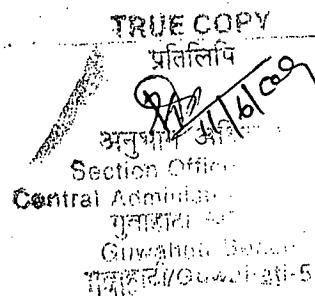
4. Having heard Mrs. Bharati Devi, learned Counsel appearing for the Respondents/Railways, and Mr P. Sarma, learned Counsel appearing for the Applicant (to whom a copy of this M.P.No.47/2009 has already been supplied) and on perusal of the materials placed on record, extension of time (to comply the order dated 12.01.2009 of this Tribunal, rendered in O.A.No.02/2009) till 12.08.2009 is hereby granted to the Respondents M.P.No.47/2009 is, accordingly, allowed.



5. Send copies of this Order to the Applicant and to all the Respondents of O.A.No.2 of 2009 and free copies of this order be also supplied to the Advocates appearing for both parties.



Sd/-
M.R. Mohanty
Vice-Chairman
Sd/-
N.D. Dayal
Member(A)



To

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

Sub : Departmental Revision Petition.

Ref. : (i) Order (oral) dated 12.01.2009 passed by the Central Administrative Tribunal, Guwahati Bench in Original Application No. 02/2009.

(ii) Order dated 25.05.2009 passed by the Central Administrative Tribunal, Guwahati Bench in M.P. No. 47/2009 in O.A. No. 02/2009.

Sir,

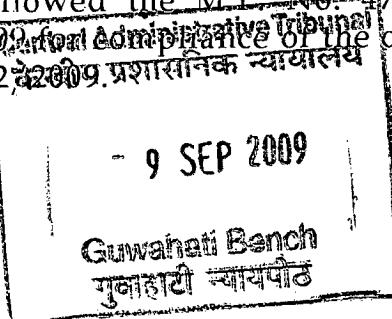
With reference to the above subject cited matter, I beg to state that being highly aggrieved by the impugned order of penalty No. C/VIG/GHY-NGC/04/04 dated 09.06.2007 passed by the Sr.DCM/LMG imposing penalty of reduction to the lower stage in the time scale of pay by one stage lower for a period of three years, I had submitted an appeal before the ADRM/LMG being the appellate authority. The said appeal was rejected by order No. C/VIG/GHY-NGC/4/04 dated 08.12.2007 and enhanced the penalty without affording me any opportunity of filing my representation.

Then, I submitted a revision petition under Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 addressing your goodself through proper channel (i.e. S.S./DMV) for quashing and setting aside the above impugned orders of penalty dated 09.06.2007 and 08.12.2007. The said revision petition was duly received by the office of the Station Superintendent, N.F. Railway, Dimapur on 21.01.2008 for upward transmission. Since, there was no response for about 7 (seven) months I on 03.10.2008 submitted another reminder representation in respect of the matter which was duly received by your good office but without any result.

Having no other alternative, I approached the Central Administrative Tribunal, Guwahati Bench with an Original Application which was registered and numbered as O.A. No. 02/2009. The Hon'ble Tribunal by order dated 12.01.2009 while disposing of the said original application, directed your goodself to consider my revision petition dated 21.01.2008 and to pass a reasoned order thereon. The said exercise is directed to be completed within a period of 60 (sixty) days from the date of receipt of a copy of the order. A copy of the said order was duly furnished by me to this office on 04.02.2009.

Thereafter, the Sr. Divisional Commercial Manager, N.F. Railway, Lumding filed M.P. No. 47/2009 in O.A. No. 2/2009 thereby seeking an extension of another 3 (three) months time (i.e. another 90 days) from the date of expiry of 60 days. The Hon'ble Tribunal after hearing the parties has allowed the M.P. No. 47/2009 and extended the period till 12.08.2009 for compliance of the order dated 12.01.2009 passed in O.A. No. 2/2009. प्रशासनिक न्यायालय

Certified to be true Copy
Prakash JAMES
Advocate



Contd.....2

- 2 -

Now from a reliable source, I have come to know that your goodself has taken over the charge of the post of Chief Commercial Manager, N.F. Railway recently (i.e. on 13.07.2009) and the authority concerned may not report the above facts to the knowledge of your goodself. As such I am submitting this representation placing the entire facts of my grievances and the orders passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench. Copies of the order dated 12.01.2009 and 25.05.2009 are annexed herewith for your kind perusal. I further state that failing to comply the order of the Hon'ble Tribunal would amount to a contempt under the law.

In the aforesaid premises, I therefore, prayed before your goodself kindly to consider my revision petition dated 21.01.2008 in compliance with the orders passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench and set aside the impugned orders of penalty dated 09.06.2007 and 08.12.2007 allowing me all consequential benefits and for which act of your kindness, I as in duty bound shall ever pray.

Yours faithfully

Manoj Kr. Barman
22/7/09.

(MANOJ KR. BARMAN)
HGC/DMV
N.F. Railway, Dimapur

Copy to :

The Sr. Divisional Commercial Manager,
N.F. Railway, Lumding.

Manoj Kr. Barman
22/7/09.

(MANOJ KR. BARMAN)
HGC/DMV
N.F. Railway, Dimapur

Recd
22.07.09

Recd
22/7/09

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

- 9 SEP 2009

Guwahati Bench
गुवाहाटी न्यायालय

Annexure - XVIII

N.F. Railway

Office of the
Divl Railway Manager ©
Lumding
Dated 28. 07 2009

No. C/VIG/GHY-NGC/4/04

To
Sri Manoj Kumar Barman,
Hd CC/G/DMV

(Through: - SS/DMV)

Sub: - Appeal against imposition of penalty

Ref: - Your appeal addressed to CCM/N.F.Railway/Maligaon

The Appellate Authority (CCM/N.F.Railway/Maligaon) having gone through your appeal has passed the following orders: -

"On going through the file, I find the following points to be noted: -

1.0 : - Memorandum under major penalty was served to the petitioner Sri M.K. Barman, Hd CC/G/NGC now Hd CC/G/DMV on the basis of vigilance report. Two charges were leveled vide article - I & article - II against Sri Barman. As per findings of the enquiry report dated 17.11.04 article I was not proved and article II was proved partially.

1.1: - After submission of final representation Sr DCM/LMG has imposed the penalty of "Reduction to a lower stage in the time scale of pay by one stage lower for a period of three years. On expiry of such period the reduction will not have the effect of postponing the future increment of pay of the C.O." Charged official was communicated about the imposition of penalty vide NIP dated 09.06.07.

2.0 : - C.O. submitted his appeal to ADRM/LMG (Appellate authority on 21.09.07)

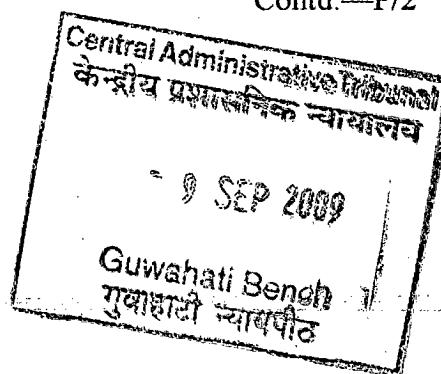
2.1: - D.A. issued memorandum of disagreement to C.O. dt 23.11.07 advising him to submit his representation. C.O. did not submit any representation stating that he is not in a position to submit representation, as appeal is pending.

2.2: - Appellate authority has disposed of the appeal considering all aspect of the case including the memorandum of disagreement & C.O.'s reply to it imposing enhanced penalty of "reduction to lower stage in time scale of pay by two stages for a period of three years six months and after expiry of said period this will have effect of postponing the future increment of pay."

3.0 : - C.O. filed revision petition before reviewing authority on 11.01.08. The revision petition is disposed off as under.

Contd.—P/2

Certified to be true copy
Prakash Jarmah
Advocate



(2)

3.1: - The plea taken by C.O. vide Para -1 of the revision petition is not tenable. The punishment imposed by D.A. was enhanced by appellate authority considering gravity of offence, which commensurate with the offence of the C.O. Memorandum of disagreement was served by D.A. to C.O. before finalization of the appeal in which C.O. was asked to submit his representation. C.O. replied vide his letter dated 5.12.07 that he is not in a position to file representation on the ground that his appeal is pending. Thus C.O. does not avail the scope of representation against possible enhanced penalty.

Moreover according to rule 18 (iii) of R.S. (D.A.) Rules, 1968, where penalty imposed by D.A. is enhanced by appellate or reviewing authority, the 2nd appeal shall lie against the enhanced penalty in such cases. In such cases authority who enhanced the penalty becomes D.A. and the Railway employee will have an opportunity to appeal to the appellate authority and also to make revision petition to the reviewing authority. C.O. did not avail this opportunity also & filed the revision petition alleging that reasonable opportunity was not given to him.

3.2 :- Statement made in this para are agreed.

3.3 :- do

3.4 :- do

3.5 :- do

3.6 :- do

3.7: - The plea taken vide Para - 7 of the revision petition is not tenable D.A. issued memorandum of disagreement and was served to the C.O. C.O did not submit any representation against memorandum of disagreement stating in his reply that appeal is pending.

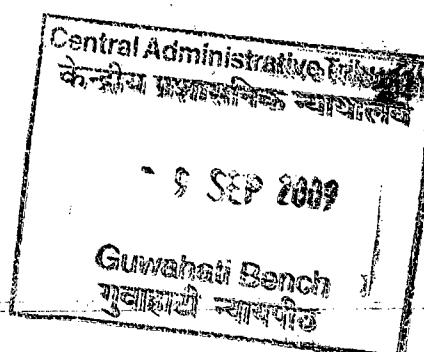
3.8: - Vide para 8 of the revision petition, the petitioner alleged that punishment has been imposed upon him in a predetermined motive & in violation to settled laws & he was not given a reasonable opportunity in connection with the disagreement. This plea is not tenable, as he did not take the opportunity to file representation against the Memorandum of disagreement served upon him by the D.A.

3.9: - The plea taken vides Para -9 of the petition is also not tenable as because appeal was disposed off after taking into account his reply to memorandum of disagreement among others. All reasonable opportunity was given to the petitioner before enhancement of penalty by Appellate authority.

3.10: - The petitioner vide Para - 10 of his petition submitted that he received memorandum of disagreement on 23.11.07 while his appeal was pending. It is an admitted fact.

3.11: - In reference to the statement made vide Para - 11 it is stated that appellate order was not signed by D.A. it was only communicated by D.A. Appellate authority disposed off the appeal by examining all aspect including memorandum of disagreement & C.O.'s letter dated 05.12.07 & enhanced penalty. It is not true that opportunity was not given.

Contd. P/3

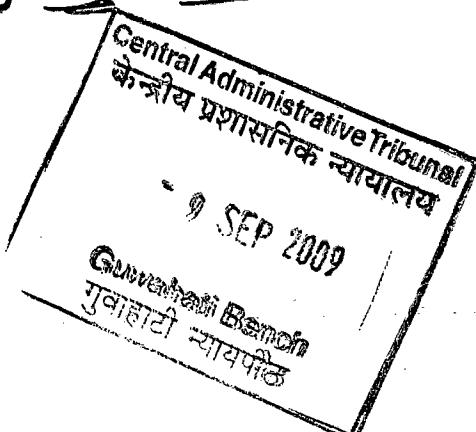


(3)

3.12: -Appeal of the C.O. was disposed by ADRM/LMG, the appellate authority with reasoned order. Appellate authority considered all aspects and also considered memorandum of disagreement & C.O.'s reply to it. Appellate order was communicated by D.A. to C.O. Appellate authority passed his order in file & signed it. Therefore the plea is not tenable.

D The petitioner has cited some grounds to consider his revision petition, which is discussed below.

- i) Speaking order was passed by D.A., which was marked as Annexure- "A" in the N.I.P. dated 09.06.07. D.A. disposed the case with reasoned order. Memorandum of disagreement was served after issuing of NIP & before disposal of the Appeal.
- ii) D.A. after verifying all evidences & and carefully considering all aspects passed the reasoned order. It is not true that D.A. failed to appreciate the evidence on record while disagreeing with the findings of enquiry officer in respect of article of charge No.-I
- iii) It is not true that Appellate Authority has passed the order in a most illegal manner. Memorandum of Disagreement was issued on 23.11.07 i.e after issue of NIP dated 9.6.07 & before finalization of appeal. C.O. was given opportunity to file representation on the views of the D.A. but C.O. failed to take this opportunity to defend himself. Thereafter, after examining his appeal and all evidences of the case Appellate Authority enhanced the penalty.
- iv) Before finalization of the appeal Memorandum of disagreement was issued advising C.O. to file his representation. It is not true that reasonable opportunity was not given to him before finalization of appeal.
- v) It is not true that D.A. has passed the order of penalty arbitrarily. Report of enquiry officer was not acceptable to D.A. D.A. has passed reasoned order & imposed penalty.
- vi) Penalty imposed by D.A. & Appellate authority was justified as per D.A.R Rules & not arbitrary. It was not issued in violation of principles of natural justice.
- vii) Memorandum of disagreement was issued to C.O. during the pendency of the appeal with the advice to C.O. to submit his representation. C.O. vide his letter-dated 5.12.07 informed D.A. that he is not in a position to submit representation. Thereafter D.A. after examining all aspect of the case including memorandum of disagreement dated 23.11.07 & C.O.'s reply to it dt 5.12.07 passed the order of enhanced penalty.
- viii) It is not a fact that C.O.'s representation against the findings of E.O. was not considered. After giving all reasonable opportunities N.I.P. was issued. Therefore, violation of natural justice is denied.
- ix) D.A. Sr DCM/LMG has communicated the appellate authority's order vide No.C/VIG/GHY-NGC/4/04 dated 8.12.07 to charged official & it is not without jurisdiction as alleged by C.O.
- x) That order of penalty dt 9.6.07 & 8.12.07 are justified. Penalty was imposed considering gravity of the offence.



(4)

The president may at any time either on his own motion or otherwise review any order when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case has come or has been brought to his notice.

Review is not an employees' right however he can request for a review in case he is able to produce an evidence that was lost sight of in the past and that this new evidence can prove him not guilty.

In the entire revision petition the petitioner did not make any fruitful effort to prove his innocence by producing new material or evidence which could not be produced or was not available at the time of passing the order under review & which has the effect of changing the nature of the case has come or has been brought to my notice rather he devoted himself to find fault in every stages of DAR Enquiry.

In view of the above, I find there is no reason for me to change the penalty, which has been imposed, and I feel the punishment imposed already is fair and meets the ends of Justice. "

3/11/2009
(Rajneesh Kumar)
Sr DCM/LMG

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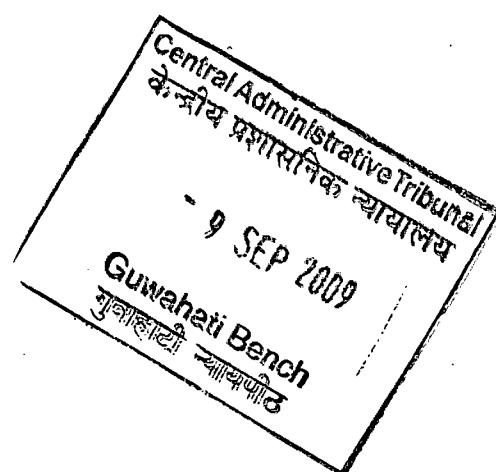
1) DRM/P/LMG (ET/Cadre & ET/Bill) for information and necessary action

please

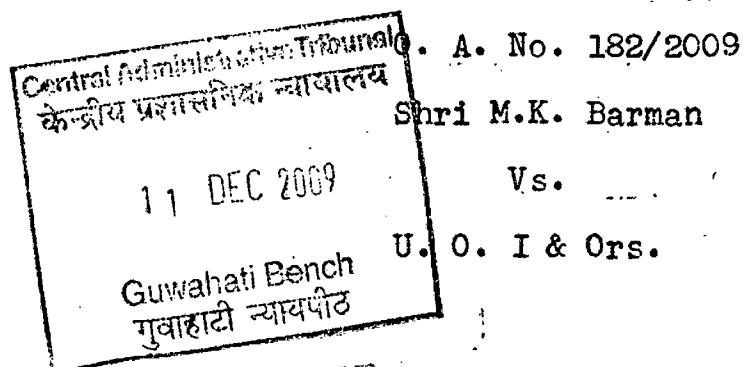
2) SS/DMV for information and necessary action please

3) CCM/N.F.Railway/Maligaon for kind information please

3/11/2009
(Rajneesh Kumar)
Sr DCM/LMG



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH,
GUWAHATI.



Written statement filed by the Respondents.

Filed by the respondents
through Dr. J.L. Sankar
S.C. Railways
Div. Comm. Manager/C
N.E. Ry. Lmding
Sankar
मुख्य वायिन्य प्रबन्धक/प्रभारी
प्रो. सी.ओ.रेलवे/लम्डिंग

1. The respondents have gone through the O.A. and understood the contents thereof.
2. That the subject matter of the O.A. relates to disciplinary action. The main subject is delivery of consignments and which have not been done properly causing loss of properties booked ^{through} to Railways having adverse effects on the daily usable commodities, in the instant case onion. Respondents have taken up the matter following procedure laid down in the Railway servants (D & A) Rules, 1968. All the formalities have been correctly followed and the applicant has been given all scopes to defend his case. There has not been any negligence or violation in observing the procedures to ensure due justice in the case and also looking to the needs of discipline in the matter of goods booked and ensuring proper delivery for public consumption. The O.A. has been filed with misconception as if this Hon'ble Tribunal is an

Guwahati Bench

appellate forum. No. irregularities ~~कठोर व्यापक~~ have been there in the process nor the applicant has shown any ground calling for interference by the Hon'ble Tribunal.

Sonker
नगर विभाग
सिंहलेले/लक्ष्मिनारायण
Div. Commr. Manager/C
N.F. Ry. Lumding

3. That, in reply to para 4.1 to 4.8 it is stated that memorandum of chargesheet was issued formally and the enquiry officer, defence counsel for the applicant, presenting officer were appointed and the inquiry was conducted following procedure giving full scope to the applicant also represented by his defence counsel. The inquiry report was submitted with the finding that Article-I not proved, Article-II partially proved. The applicant ^{was} given copy of the Inquiry Report and was asked to submit representation against the same. Applicant submitted his defence on 16.12.04 (Annexure VI of the O.A.)

4. That, in reply to statements in para 4.9 to 4.11 it is stated that notice of imposition of penalty was issued imposing penalty of reduction to the lower stage in the time scale of pay for three years not affecting future increment. With this NIP an observation of the Disciplinary Authority was enclosed explaining disagreement of the Disciplinary Authority with the Report of the Inquiry Officer. It is stated that the N.I.P. dated 9.6.07 (Annexure VIII of the O.A.) categorically mentioned that (under the head please note the instructions below) An appeal against this order lies to ADRM, Lumding. The applicant submitted his appeal dated 21.9.07 (Annexure IX of the O.A.). No infirmity in the procedure has been pointed out. This appeal shows that the applicant has understood the contents of the disagreement in the observations. He has not pointed out any factual position against such disagreement but has raised only a

11 DEC 2009

-: 3 :-

Guwahati Bench
गुवाहाटी न्यायपीठ

Sanctioned
प्रमाणित
प्रत्येक प्रश्नात
के लिए
D.M. Comm. Manager/C
D.M. N.F. Ry. Lumding

technical objection that he was not given the disagreement note before issue of the order of penalty. It is humbly submitted that the NIP enclose the disagreement note with the instruction that appeal lies to be ADRM, Lumding but the applicant himself has not availed of the scope of submitting his say regarding the disagreement to the appellate authority.

In this connection it is stated that the appeal is routed through the Disciplinary Authority and decided by the Appellate Authority. Applicant himself neglected to offer his remarks/objection if any through the disciplinary authority to the Appellate Authority. It is humbly submitted that no injustice has been caused to the applicant in this respect. It is further stated that letter dated 23.11.07 was issued to the applicant by the Sr. DCM, Lumding enclosing a copy of the Disagreement asking him to submit representation if any within 15 days (Annexure-X of the O.A.). But the applicant declined to submit representation against the disagreement on the ground that appeal was pending. Such a flimsy ground when the Rule provides that that decision of the D.A. shall go to the Appellate Authority and the appellate order will prevail, only demonstrates the factual position that the applicant had nothing to submit against the disagreement. It is mentioned that the observation with the NIP indicating the disagreement and also the further details enclosed with the letter dated 23.11.07 gave full opportunity to the applicant to submit his say on the disagreement but he did not avail the opportunity and waived his right to such objections and is also barred by the law of estoppel. Moreover the factual position narrated by the DA in the detailed disagreement note demonstrates the correct position

in respect of the commodities and the mischief done against public interest.

5. That, in reply to statements in para 4.12 to 4.18 it is stated that ~~the~~ on prayer of the respondents the Hon'ble Tribunal was pleased to grant extension of time and the reply to the applicant dated 28.7.2009 (Annexure-XVIII of the O.A.) was given ^{with} detail reasons. It is stated that the order communicated by letter dated 28.7.2009 is the order of Chief Commercial Manager/N.F.Railway, who is higher authority of Addl. Divisional Railway Manager/Lumding, who passed the order enhancing the penalty, order dated 8.12.2007 (Annexure-XII of O.A.). As per rule the higher authority has considered the matter of enhanced penalty considering all the aspects. In fact the applicant has got full consideration by the higher authority as an appellate authority. This order dated 28.7.2009 is a detailed reasoned order. The respondents humbly submits that the Hon'ble Tribunal would not like to interfere in the penalty, which has been imposed following rules and procedure and considering the gravity of the case.

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

118

VERIFICATION

Central Administration
केन्द्रीय प्रशासनिक न्यायालय

11 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

I, Sri/Smt ...Hira Lal Senkar... son/wife of Late H.M. Senkar aged about 57 years, resident of ...Lumding..., P.O. ...Lumding District ...Nexga... and working as ~~D.C.M./I.C.~~..... solemnly affirm and verify that the statements made in para 1 to Of this.....are true to my knowledge and belief and I have not suppressed any material facts.

AND I sign this verification on this17....th day of ...Nov..... 2009 at Guwahati.


Signature

मंडल वाणिज्य प्रबंधक/ज़मारी
पूँ सी० रेलवे/लामडिंग
Divl. Comml. Manager/IC
N.F. Rly. Lumding