

8

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI - 5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./TA/ NO..... 46..... 2009
R.A./CP/NO..... 2015

E.P./M.P./NO..... 46..... 2010

RA 8/2010

1. Order Sheets..... 4..... page..... 1..... to..... 7✓

MP. do - 1 PG - 1
RA 8/2010 P/01✓

2. Judgment/ order dtd. 01.9.2010 page..... 1..... to..... 10✓

MP. do - 16.03.2010 PG - 1 to 02.09 -
09.06.2010 RA 8/2010 P/31 (in Part file A)

3. Judgment & Order dtd. 17.5.2015 received from H.C. / Supreme Court.

4. O.A. 46 PG page..... 1..... to..... 75 ✓

5. E.P/M.P. 46/ 2010 page..... 1..... to..... 2 ✓

6. R.A./E.P. 8/2010 page..... 01 to..... 16✓

7. W.S. Bl.ect Page..... 1 to..... 04✓

8. Rejoinder, Reply Statement page..... 1 to..... 9✓
Rejoinder the W.S R. No. 4

9. Reply page..... to.....

10. Any other papers Rule (S.C) AIR page..... 1 to..... 4.....

do 2008 (4) GLT 623 pg (6) 14/12/02 pg 5 to 35
Empted Done

11. MP 44 of 2010 - (Judgement Photocopy 09 Pages)

13/7/2015
SECTION OFFICER (JUDL.)

13/7/2015
13/7/2015

ORDERSHEET

1. Original Application No: 46 / 2009

2. Misc Petition No /

3. Contempt Petition No /

4. Review Application No /

Applicant(s) Mrinal Kanti Das II

Respondent(s) M. O. T. G. only

Advocate for the Applicant(s): J. P. Das

Advocate for the Respondent(s): Fastway advocate

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed on 17.03.2009 and deposited vide IP/20 No 396 956832.</p> <p>Dated 25.9.08</p> <p>By, Registrar</p> <p>17-3-09</p> <p>Steps taken with envelope. No welfare stamp and extra charge as 10/- deposited.</p> <p>Copy servd.</p> <p>13.8.09</p> <p>The OA filed on 17.3.09 at office The personal probly the Advocate for the Applicant case was not listed for 17.3.09. The OA was filed with an application for leave to file the OA in the case. The OA was filed on 17.3.09</p>	17.08.2009	<p>Applicant was charge-sheeted in a Departmental Proceeding on 03.09.2002. He submitted a Written Statement on 08.01.2003. After enquiry, he faced the punishment on 16.11.2005. He carried the matter in Appeal (dated 29.12.2005) and in Revision (dated 06.07.2006) unsuccessfully. Appellate Order was communicated on 15.05.2006 and Revisional Order was communicated on 28.09.2007 and, again, 19.03.2008. Thereafter, the Applicant has approached this Tribunal with the present Original Application filed (on 17.03.2009) under section 19 of the Administrative Tribunals Act, 1985; wherein he has pointed out that, during pendency of the Departmental Proceeding in question, an order dated 03.08.2004 was issued disclosing not to promote him (Applicant) for the reason of pendency of the DAR.</p>

Contd/-
17.08.2009

2. Heard Mr. J.P. Das, learned counsel appearing for the Applicant and Dr. J.L. Sarkar, learned Standing Counsel for the Railways and perused the materials placed on record. "Non supply of the enquiry report to the Applicant, before imposition of the penalty" is the main ground of attack in this case. In fact that point was raised by him (Applicant) in his Appeal; as is seen from Annexure-17 to the O.A. Appellate Order (as extracted in Annexure-18) goes to show that the Appellate Authority did not consider the point of "non supply of enquiry report (and decenting note of the Disciplinary Authority) to the Applicant, before imposition of penalty" and the point about "the prejudice caused to the Applicant as a result thereof". Thus, the Applicant has made out a *prima-facie* case. Dr. Sarkar, learned Standing Counsel for the Railways has raised the point of limitation.

3. Notices be issued to the Respondents, subject to question of limitation, requiring them to file their written statement by 01.10.2009.

4. Respondents are directed to cause production of the connected (a) Departmental Proceeding file; (b) Enquiry Proceeding file; (c) Appeal File and (d)

Contd/

Contd/-
17.08.2009K. Das

Send copies of this order to the Applicant and the Respondents alongwith notices and also free copies to the advocates of both the parties.

18/8/09

Revision File (through their Counsel) for perusal of this Tribunal on the date of hearing.

5. Send copies of this order to the Applicant and to the Respondents (along with notices) in the address given in the O.A. and free copies of this order be supplied to the Advocates of both parties.

(M.K. Chaturvedi)
Member (A)

(M.R. Mohanty)
Vice-Chairman

/BB/

On the prayer of Dr.J.L.Sarkar, learned Standing counsel for the Railways, call this matter on 20.11.2009 awaiting written statement from the Railways/ Respondents.

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

(M.R.Mohanty)
Vice-Chairman

Copies of notices along with order dated 17/8/09 send to D/Sec. Box issuing to respondents by regd. A/D post.

Free copies of this order issuing to the applicant and 1/ counsel for both the parties.

20.11.2009

No written statement has yet been filed by the Respondents.

Call this matter on 15.12.2009 awaiting written statement from the Respondent.

(Madan Kumar Chaturvedi)
Member (A)

Cars D/No - 9698-9704
19/8/09 - Dt - 24/8/09
16/9/09 /bb/

Service duly served for Reqs Nos 1, 2, 4, 5, 27

16/9/09 Now its filed.

A/D forwarded from
Reqs Nos 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 580, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 660, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 680, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 700, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 720, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 740, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 760, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 780, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 800, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 820, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 840, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 860, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 880, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 960, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 980, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 10010, 10011, 10012, 10013, 10014, 10015, 10016, 10017, 10018, 10019, 10020, 10021, 10022, 10023, 10024, 10025, 10026, 10027, 10028, 10029, 10030, 10031, 10032, 10033, 10034, 10035, 10036, 10037, 10038, 10039, 10040, 10041, 10042, 10043, 10044, 10045, 10046, 10047, 10048, 10049, 10040, 10051, 10052, 10053, 10054, 10055, 10056, 10057, 10058, 10059, 10060, 10061, 10062, 10063, 10064, 10065, 10066, 10067, 10068, 10069, 10060, 10071, 10072, 10073, 10074, 10075, 10076, 10077, 10078, 10079, 10080, 10081, 10082, 10083, 10084, 10085, 10086, 10087, 10088, 10089, 10080, 10091, 10092, 10093, 10094, 10095, 10096, 10097, 10098, 10099, 100100, 100101, 100102, 100103, 100104, 100105, 100106, 100107, 100108, 100109, 100110, 100111, 100112, 100113, 100114, 100115, 100116, 100117, 100118, 100119, 100110, 100121, 100122, 100123, 100124, 100125, 100126, 100127, 100128, 100129, 100130, 100131, 100132, 100133, 100134, 100135, 100136, 100137, 100138, 100139, 100140, 100141, 100142, 100143, 100144, 100145, 100146, 100147, 100148, 100149, 100140, 100151, 100152, 100153, 100154, 100155, 100156, 100157, 100158, 100159, 100160, 100161, 100162, 100163, 100164, 100165, 100166, 100167, 100168, 100169, 100160, 100171, 100172, 100173, 100174, 100175, 100176, 100177, 100178, 100179, 100180, 100181, 100182, 100183, 100184, 100185, 100186, 100187, 100188, 100189, 100180, 100191, 100192, 100193, 100194, 100195, 100196, 100197, 100198, 100199, 1001100, 1001101, 1001102, 1001103, 1001104, 1001105, 1001106, 1001107, 1001108, 1001109, 1001110, 1001111, 1001112, 1001113, 1001114, 1001115, 1001116, 1001117, 1001118, 1001119, 1001110, 1001121, 1001122, 1001123, 1001124, 1001125, 1001126, 1001127, 1001128, 1001129, 1001130, 1001131, 1001132, 1001133, 1001134, 1001135, 1001136, 1001137, 1001138, 1001139, 1001140, 1001141, 1001142, 1001143, 1001144, 1001145, 1001146, 1001147, 1001148, 1001149, 1001140, 1001151, 1001152, 1001153, 1001154, 1001155, 1001156, 1001157, 1001158, 1001159, 1001160, 1001161, 1001162, 1001163, 1001164, 1001165, 1001166, 1001167, 1001168, 1001169, 1001160, 1001171, 1001172, 1001173, 1001174, 1001175, 1001176, 1001177, 1001178, 1001179, 1001180, 1001181, 1001182, 1001183, 1001184, 1001185, 1001186, 1001187, 1001188, 1001189, 1001180, 1001191, 1001192, 1001193, 1001194, 1001195, 1001196, 1001197, 1001198, 1001199, 10011100, 10011101, 10011102, 10011103, 10011104, 10011105, 10011106, 10011107, 10011108, 10011109, 10011110, 10011111, 10011112, 10011113, 10011114, 10011115, 10011116, 10011117, 10011118, 10011119, 10011110, 10011121, 10011122, 10011123, 10011124, 10011125, 10011126, 10011127, 10011128, 10011129, 10011130, 10011131, 10011132, 10011133, 10011134, 10011135, 10011136, 10011137, 10011138, 10011139, 10011140, 10011141, 10011142, 10011143, 10011144, 10011145, 10011146, 10011147, 10011148, 10011149, 10011140, 10011151, 10011152, 10011153, 10011154, 10011155, 10011156, 10011157, 10011158, 10011159, 10011160, 10011161, 10011162, 10011163, 10011164, 10011165, 10011166, 10011167, 10011168, 10011169, 10011160, 10011171, 10011172, 10011173, 10011174, 10011175, 10011176, 10011177, 10011178, 10011179, 10011180, 10011181, 10011182, 10011183, 10011184, 10011185, 10011186, 10011187, 10011188, 10011189, 10011180, 10011191, 10011192, 10011193, 10011194, 10011195, 10011196, 10011197, 10011198, 10011199, 100111100, 100111101, 100111102, 100111103, 100111104, 100111105, 100111106, 100111107, 100111108, 100111109, 100111110, 100111111, 100111112, 100111113, 100111114, 100111115, 100111116, 100111117, 100111118, 100111119, 100111110, 100111121, 100111122, 100111123, 100111124, 100111125, 100111126, 100111127, 100111128, 100111129, 100111130, 100111131, 100111132, 100111133, 100111134, 100111135, 100111136, 100111137, 100111138, 100111139, 100111140, 100111141, 100111142, 100111143, 100111144, 100111145, 100111146, 100111147, 100111148, 100111149, 100111140, 100111151, 100111152, 100111153, 100111154, 100111155, 100111156, 100111157, 100111158, 100111159, 100111160, 100111161, 100111162, 100111163, 100111164, 100111165, 100111166, 100111167, 100111168, 100111169, 100111160, 10011117

K. Das

14-
07/16/09

Send copies of this
order to the Respondents
O.A. 46 of 09.

6/10/09

Copies of order
dated 5/10/2009.
Send to D/Sec.
for signing to
respondents by
post.

D/No - 11772 to 11778
Copy D/ 16.10.09
12/10/09.

15.12.2009 On the prayer of Mr. J. L. Sarkar,
learned counsel for the Respondents last
and final opportunity is granted to file reply.

List on 19.01.2010.

JK
(Madan Kumar Chaturvedi)
Member (A)

MK
(Mukesh Kumar Gupta)
Member (J)

/lm/

19.1.2010 Learned counsel for the
Respondents seeks further time to file reply
and proper instruction on the subject.

List the matter on 12.2.2010.

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

No w/s filed.

JK
14.12.09

/lm/

No w/s filed.

JK
18.1.2010

12.02.2010

On 15.12.2009, last and final
opportunity was granted to the Respondents,
to file reply. Learned counsel for the
Respondents, prayed for further time for
seeking appropriate instructions on the
subject. Litigation should not be protracted
otherwise great oppression might be done
under colour pretence of law. Delay defeats
equity. It appears that the respondents are
not inclined to file written statement. Be that
as it may list the case for hearing on
09.03.2010.

JK
(Madan Kumar Chaturvedi)
Member (A)

/lm/

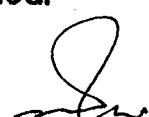
No w/s filed.

JK
8.3.2010

O.A.46 of 2009

09.03.2010

Reply has not been filed despite last and final opportunity ~~was~~ granted vide order dated 15.12.2009. Dr.J.L.Sarkar, learned standing counsel for Railways states that M.A. is being filed by respondents seeking liberty to pass appropriate orders on the disciplinary proceeding pending in as much as enquiry report has not been furnished to applicant. List as and when said M.A. is filed.



(Mukesh Kumar Gupta)
Member (J)

/bb/

16.03.2010

For the reasons recorded separately, O.A. stands disposed of. No costs.


(Madan K. Chaturvedi)
Member (A)

In terms of order dated 17.05.2010 passed in W.P.(C) No.2814/2010, O.A. is restored to its number. Dr.J.L.Sarkar, learned counsel appearing for respondents seeks and allowed four weeks time to file reply to main O.A.. List the matter on 19.07.2010.


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

/bb/

18.06.2010

Enabling the Applicant to file rejoinder, as prayed for, case is adjourned to 2nd August 2010.



(Mukesh Kumar Gupta)
Member (J)

Notice duly served /PB/
n R-A.1, 3

02.08.2010 Rejoinder has been filed. Thus, pleadings are complete. Admit, subject to legal exceptions, if any.

Written statement
filed on behalf of
the respondents.

List on 30.08.2010 for hearing.

3/1
12/7/2010

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

nkm

Rejoinder filed
on behalf of
the applicant.
Copy served.

2/1
28/7/2010

O.A.223-225/2010

30.08.2010

Judgment pronounced in open court,
kept in separate sheets. OA is dismissed in
terms of common order.

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

/bb/

O.A.198/2010

30.08.2010

Enabling the respondents to file reply, as
prayed for, list on 21.09.2010.

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

/bb/

MP.129/2010

30.08.2010

List on 21.09.2010 along with
O.A.198/2010.

B/1

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

2

O.A.46-09

30.08.2010

Registry is directed to list this matter on

01.09.2010 under the title "hearing" and not
"order" in terms of earlier order dated 2.8.2010.

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

/bb/

01.09.2010 Heard Mr J.P. Das, learned counsel
for applicant and Dr J.L. Sarkar, learned
counsel for the respondents.

For the reasons recorded separately,
O.A. is allowed with all consequential
benefits.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

nkm

8/11/10

Final order dated 1/9/10
prepared and sent to the
Jf Section for issuing to
all the respondents by
Post ride No 2453 to 2458

dated 08-11-2010

93
28

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 46 of 2009 & M.A. 44 of 2010

DATE OF DECISION: 16.03.2010

Sri Mrinal Kanti Das-II

.....Applicant/s.

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

- Versus -

U.O.I. & Ors

.....Respondent/s

Dr.J.L.Sarkar, Railway Standing counsel

.....Advocate for the
Respondents

CORAM

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

Madan Kumar Chaturvedi
Hon'ble Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 46 of 2009

And

Misc. Application No.44 of 2010

Date of Decision: This, the 16th day of March, 2010.

HON'BLE SHRI MADAN KUMAR CHATURVEDI, ADMINISTRATIVE MEMBER

Sri Mrinal Kanti Das-II
S/O Late Nakul Chandra Das
R/o 146/A, Adarsha Colony
Maligaon, Guwahati-781 011.
Dist: Kamrup (Assam).

...Applicant

By Advocate: Mr.J.P.Das

-Versus-

1. The Union of India represented by
The General Manager
Northeast Frontier Railway
Maligaon, Guwahati-781 011
Dist: Kamrup (Assam).
2. The Chief Commercial Manager
Northeast Frontier Railway
Maligaon, Guwahati-781 011
Dist: Kamrup (Assam).
3. The Addl. Divisional Railway Manager
Northeast Frontier Railway
P.O: Lumding, PIN: 782 447
District: Nagaon (Assam).
4. The Senior Divisional Commercial Manager
Northeast Frontier Railway
P.O: Lumding, PIN: 782 447
District: Nagaon (Assam).
5. The Divisional Commercial Manager (Ticket Checking)
Northeast Frontier Railway
P.O: Lumding, PIN: 782 447
District: Nagaon (Assam).
6. The Divisional Commercial Manager
Northeast Frontier Railway

Station Road, Guwahati-781 001
Dist: Kamrup (Assam).

7. The Asstt. Commercial Manager
Northeast Frontier Railway
P.O: Lumding, PIN: 782 447
Dist: Nagaon (Assam).

.. Respondents

By Advocate: Dr.J.L.Sarkar, Railway Standing counsel

ORDER (ORAL)

MADAN KUMAR CHATURVEDI, MEMBER (A):

This O.A. and M.P are fixed for hearing today. I find that notice was duly served on the concerned parties. Despite none appeared for applicant. I, therefore, proceed to decide the aforesaid O.A. and M.P. ex parte, qua, the applicant.

2. Adverting to the M.P. I find that respondents made a request to grant permission to review the matter under revisional power by the General Manager, N.F.Railway.

3. In the O.A. applicant assailed the imposition of major penalty. Dr.J.L.Sarkar, learned Standing counsel for the Railways submitted that as all factual details were not taken into consideration while imposing major penalty as such in the interest of justice respondents may be permitted to review the order.

4. Having regard to the facts and taking into consideration the entire conspectus of the case, I find that the review of the order would meet the ends of justice as in the impugned order all the facts were not



appreciated. I, therefore, permit the respondents to review the matter under revisional power of the General Manager, N.F.Railway. Further, I direct the General Manager, N.F.Railway to adjudicate the issue as early as possible not later than three months from the date of the receipt of this order.

5. O.A. and M.P. stand disposed of accordingly. No costs.


(MADAN KUMAR CHATURVEDI)
MEMBER (A)

/BB/

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 46 of 2009

DATE OF DECISION: 01.09.2010

Shri Mrinal Kanti Das-II

APPLICANT(S)

Mr. J.P. Das

ADVOCATE(S) FOR THE
APPLICANT(S)

- versus -

Union of India & Ors.

RESPONDENT(S)

Dr. J.L. Sarkar, Railway Counsel

ADVOCATE(S) FOR THE
RESPONDENT (S)

CORAM:

The Hon'ble Shri Mukesh Kumar Gupta, Member (J)

The Hon'ble Shri Madan Kumar Chaturvedi, Member (A)

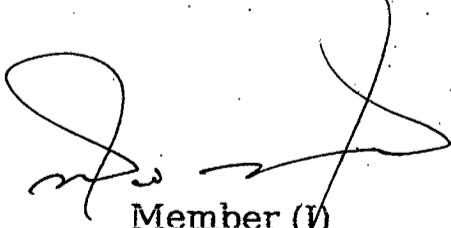
1. Whether reporters of local newspapers may be allowed to see the Judgment ?
2. Whether to be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment ?

Yes/No

Yes/No

Yes/No

Judgment delivered by


Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 46 of 2009

Date of Decision: 01.09.2010

HON'BLE SHRI MUKESH KUMAR GUPTA, JUDICIAL MEMBER

HON'BLE SHRI MADAN KUMAR CHATURVEDI, ADMINISTRATIVE MEMBER

Sri Mrinal Kanti Das-II
S/O Late Nakul Chandra Das
R/o 146/A, Adarsha Colony
Maligaon, Guwahati-781 011.
Dist: Kamrup (Assam).

...Applicant

By Advocate: Mr.J.P.Das

-Versus-

1. The Union of India represented by
The General Manager
Northeast Frontier Railway
Maligaon, Guwahati-781 011
Dist: Kamrup (Assam).
2. The Chief Commercial Manager
Northeast Frontier Railway
Maligaon, Guwahati-781 011
Dist: Kamrup (Assam).
3. The Addl. Divisional Railway Manager
Northeast Frontier Railway
P.O: Lumding, PIN: 782 447
District: Nagaon (Assam).
4. The Senior Divisional Commercial Manager
Northeast Frontier Railway
P.O: Lumding, PIN: 782 447
District: Nagaon (Assam).
5. The Divisional Commercial Manager (Ticket Checking)
Northeast Frontier Railway
P.O: Lumding, PIN: 782 447
District: Nagaon (Assam).
6. The Divisional Commercial Manager
Northeast Frontier Railway
Station Road, Guwahati-781 001
Dist: Kamrup (Assam).

7. The Asstt. Commercial Manager
Northeast Frontier Railway
P.O: Lumding, PIN: 782 447
Dist: Nagaon (Assam).

Respondents

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

ORDER (ORAL)

HON'BLE MUKESH KUMAR GUPTA, MEMBER (J):

Sri Mrinal Kanti Das-II, Head Ticket Collector, in this application, challenges validity of penalty inflicted vide order dated 16.11.2005 by Sr. Divisional Commercial Manager, N.F. Railway, Lumding, reducing his pay to lower stage in the time-scale for two years with cumulative effect, as upheld by Appellate Authority vide order dated 15.05.2006 (Annexure - 18) and Revisional Authority order dated 28th September 2007 (Annexure - 20). He seeks declaration that disciplinary proceedings initiated against him is illegal, invalid and improper.

2. Admitted facts are: vide charge memorandum, dated 3rd September 2002 (Annexure - 2) issued under Rule 9 of the Railway Servants (Discipline and Appeals) Rules, 1968, it was alleged that he failed to maintain absolute integrity and devotion to duty inasmuch as on 20.11.2001, he demanded and accepted illegal gratification of Rs. 100/- from a passenger for providing him a sleeper class berth up to New Jalpaiguri Railway Station in Train No. 5621 (N.E. Express) leaving Guwahati on 21.11.2001. Said charge had been denied and therefore, an oral enquiry was held. Based on enquiry report, Sr. Divisional Commercial Manager, Lumding, vide order dated 16.11.2005 inflicted the aforesigned penalty. Statutory appeal

preferred as well as revision petition filed were rejected. Hence present application.

3. Number of grounds were raised before us namely PW-1, PW-13 & PW-14 had not attended the enquiry for more than one year. PW-1 was the complainant. Since he (PW-1) had not been examined. Applicant was denied opportunity to cross-examine the complainant and there is no evidence to prove his guilt. (ii) Enquiry had not been conducted within stipulated period of 470 days in terms of N.F. Railway Circular dated 08.08.2001 (Annexure-7), whereby model time schedule for finalisation of disciplinary proceedings had been prescribed. (iii) Various illegalities were committed and procedural requirements were not adhered to. Enquiry report had not been supplied before inflicting the penalty. There had been violation of Rule 10 of the Railway Servants (Discipline and Appeals) Rules, 1968, as amended in the year 2002. Disciplinary Authority disagreed with the findings of enquiry officer without any justification and without providing him any opportunity of hearing.

4. By filing reply, Respondents raised the following pleas:

- (i) O.A. is time bared and therefore, deserves to be dismissed;
- (ii) Disciplinary proceedings were initiated against Applicant on receipt of complaint from a passenger, CBI tapped Applicant and he was found guilty for demanding and accepting illegal gratification;
- (iii) Absence of complainant did not cause any prejudice;
- (iv) Disciplinary proceedings had been conducted according to Rules & procedure. Penalty order, Appellate Authority's order, as well as Revisional

Authority's order were passed by competent authority;

- (v) The model time prescribed by Railway Board is only recommendatory and not mandatory;
- (vi) Non-supply of the Enquiry report did not cause him any prejudice and reason for disagreement were duly recorded by disciplinary authority vide penalty order dated 16.11.2005.

The word "Appeal" was erroneously stated vide Revisional Authority order dated 28th September 2007, instead of Revision Petition. The applicant informed the office over telephone after about 11 (eleven) months that he had not received the decision of the Revisional Authority and therefore, vide communication dated 19th March 2008, he was again sent a copy of letter dated 28.09.2007.

5. Dr. J.L. Sarkar, learned counsel appearing for Respondents strenuously urged that non-supply of enquiry report would not vitiate the disciplinary proceedings initiated and concluded against him. Placing reliance on AIR 1991 SC 471 **Union of India Vs. Mohd. Ramzan Khan & AIR 1994 SC 1074 Managing Director, ECIL, Hyderabad etc. Vs. B. Karunakar**, it was suggested that mere non supply of enquiry report should not resulted in quashing the penalty order. Rather the matter should be remitted back to the concerned authority for proceeding further from the stage where illegality in procedure had crept in.

6. We have heard Mr. J.P. Das, learned counsel appearing for Applicant and Dr. J.L. Sarkar, learned counsel appearing for Respondents, perused the pleading and documents very minutely.

7. Only legal question which arises for consideration is whether in case when disciplinary Authority disagrees with the enquiry officer on certain Article of charges, then before it record its finding on such charge, is it duty bound to record its tentative reasons for such disagreement and give the same to delinquent officer an opportunity to represent before it ultimately records its finding?

8. At the outset it would also be expedient to notice the complete text of disciplinary authority order, which reads thus:

"To
Sri M.K. Das-II
Hd. TC/GHY

Father's Name	:- Sri Nakul Ch. Das
Designation	:- Hd. TC/GHY
Date of birth	:- 08.04.1953
Date of Appointment	:- 15.09.1986
Present pay and scale	:- Rs.6650/- in scale of Rs. 5000-8000/-
Date of superannuation /Retirement	:- 31.05.2013

1. The following charge was brought against you.

Charges (s)

2. Shri M.K. Das - II, Hd. TC/GHY while remained posted as Head Ticket Collector, N.F. Railway, Guwahati Railway Station, Guwahati. During the year 2001 failed to maintain absolute integrity and devotion to duty is as much as on 20.11.2001, he demanded and accepted illegal gratification of Rs. 100/- from Sri Manoj Agarwal of Bajoria market, S.R.C.B. Road, Fancy Bazar, Guwahati for providing him a sleeper class berth upto New Jalpaiguri Railway Station, in train No.5621 (N.E. Express) leaving GHY on 21.11.2001 and by the aforesaid act Sri M.K. Das-II, contravened the provision of rule 3.1(i) (ii) and (iii) of Railway service (Conduct) rules of 1996.
3. You are hereby informed that in accordance with the orders passed by Sr. DCM/LMG (observation of Sr. DCM/LMG in Annexure 'A') you are reduced to lower time scale of pay for 2 (two) years with cumulative effect.
4. The above penalty shall operate to postpone your future increment on restoration to your formal stage in the existing pay & scale.
5. The above penalty shall take with immediate effect.

Enclo:-Observation of Sr. DCM/LMG/
In Annexure 'A'.

O B S E R V A T I O N

Annexure 'A'

I have gone through the charges, define of C.O., enquiry proceedings and all other aspect of the case carefully. I do not fully agree with the findings of the inquiry officer. Journey ticket was handed over by C.O. to RT clerk for making reservation ticket depriving queue passengers. C.O. along with said passenger entered the Booking Office for own benefit which is most irregular on the part of TC staff.

As per remarks given by Dy. CVO/T vide letter No.Z/Vig/94/2/3/02, dated 22.03.2005, clearly highlighted the vital points which was over looked by I.O., these points could lead to establish the charges against C.O. After going through the case and remarks of vig. Organization, it is implied that the I.O. has failed to delve into all the important vital points. So, I am not accepting the findings of I.O. which seems to be bias. Having examining all the aspects, I am of the opinion that the end of justice will be met if Sri M.K. Das-II, Hd. TC/GHY is reduced to lower time scale of pay for 2 years with cumulative effect."

(emphasis supplied)

9. Similarly, Appellate Authority's order dated 15.05.2006 as well as Revisional Authority's order dated 28th September 2007 reads as follows:

"The Appellate Authority (ADRM/Lumding) having gone through the appeal has passed the following orders:-

I have read the Charge, the representation, the enquiry proceedings, the remarks of the Disciplinary authority including NIP and the appeal of the employee, including defence official remarks.

This is a trap case and the employee has been caught red-handed. There can be no found for excuse by the employee to exonerate him. I stand by the punishment that has been awarded to the employee by the Disciplinary authority which is deemed adequate to meet natural justice in this case considering all factors and circumstances of the case. There was no reason for the employee to collect reservation charges from passengers.

Revision petition, if any, may be filed to CCM/MLG within a period of 45 days time."

Revisional Authority's Order:

"The appellate authority, (CCM/MLG) having gone through your appeal has passed the following orders:

"I have gone through the case and find no reason to reduce the penalty, already imposed on the staff. The same thus, stands good."

(emphasis supplied)

10. Before proceeding on merits, it would be expedient to adjudicate on the objection raised by Respondents namely that O.A. is barred by limitation. We may note that this contentions of the Respondents had been stoutly contested by Applicant stating that Revisional Authority order dated 28th September 2007 was delivered and served upon him along with subsequent letter dated 19th March 2008 as enclosure and same was not delivered to him "**prior to 19.03.2008**". We further note that present O.A. was instituted on 17th March 2009. Contentions of Respondents precisely is that limitation would begin from 28th September 2007 when Revisional Authority had passed said order and not from 19th March 2008 when he was served copy of Revisional Authority's order once again.

11. Mr. J.P. Das, learned counsel appearing for Applicant drew our attention to the provisions of Section 21(1)(a) of the Administrative Tribunals Act, 1985 and contended that as per said provisions, present application is well within time i.e. 1(one) year from the date of final order i.e. 19th March 2008, when he was communicated the Revisional Authority order i.e. 28th September 2007. Applicant, as noticed hereinabove, in his rejoinder had specifically averred & asserted that, order dated 28th September 2007

was delivered along with subsequent letter dated 19th March 2008 as enclosure and the same was not delivered to him prior to 19th March 2008, which remains uncontroverted/unchallenged. No affidavit has been filed by Respondents to contest the said averments. If, Respondent's contention was that the same was delivered to him on 28th September 2007, they ought to have produce some documents establishing it acknowledgement, but no such steps were taken. Therefore, we have no hesitation to conclude that the Revisional Order dated 28th September 2007 was delivered to Applicant along with letter dated 19th March 2008, and the application had been filed present O.A. within one year from said date. Thus, objection raised by Respondents on the ground of limitation, is overruled.

12. As far as merits of the case is concerned, we may note that bare perusal of disciplinary authority's letter dated 16.11.2005, would reveal that said authority disagreed with the findings of enquiry officer, based on bias.

13. Contentions raised by Applicant that neither findings of enquiry officer was supplied nor he was afforded an opportunity of leaving prior to recording of disagreement, has not been contested by Respondents. Rule 10 of The Railway Servants (Discipline and Appeals) Rules 1968, as amended in the year 2002, in specific requires, disciplinary authority shall forward or cause to be forwarded a copy of the report of inquiring authority "***together with its own tentative reasons for disagreement, if any***", irrespective of whether the report is favourable or not to the Railway Servant. Admittedly, it is not the case of Respondents that either of such procedure had been observed. In other words, neither record of

enquiry officer was made available to him nor tentative reasons for disagreement were communicated to Applicant, before recording the findings by the disciplinary authority.

14. Law laid down by Hon'ble Supreme Court in AIR 1998 SC

2713: (1998) 7 SC 84 Punjab National Bank & ors. Vs. Kunj

Behari Misra in specific held: "*whenever disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry*". Not only the Rule position, namely Rule 10 (2) of The Railway Servants (Discipline and Appeals) Rules, 1968 prescribed such requirement, even the law on said subject as laid down by Hon'ble Supreme Court in the case of Kunj Behari Misra (Sup) has been grossly violated. In such circumstances, we have no hesitation to conclude that there has been serious illegality committed, which goes to the root of case.

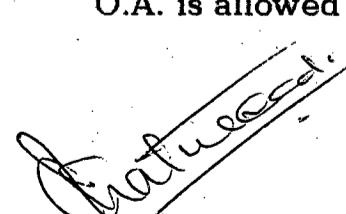
15. Contention raised by Respondents that, keeping in view, the law laid down in B. Karunakar (Sup), matter should be remanded to disciplinary authority to rectify the mistake committed at particular stage, we may also note that said judgment of B. Karunakar had been taken into consideration by Hon'ble Supreme Court in Kunj Behari Misra (Sup) vide para 16. It was explained that the disciplinary proceedings break into two stages. The first stage ends when the

disciplinary authority arrives at its conclusion on the basis of the evidence, the inquiry officer's report and delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions.

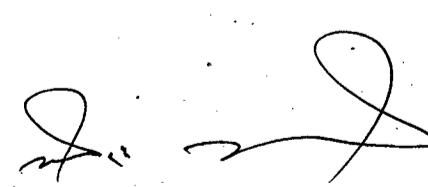
16. In our considered view, after noticing the case of B. Karunakar, when findings are recorded by disciplinary authority before it disagrees with the findings of inquiry officer, on any article of charge then before it records, its own findings on such charge, it must record its tentative reasons for such disagreement and provide opportunity to delinquent officer to represent before it record its findings. In this view of the matter, we are of the considered view that there is no substance in the contentions raised by Respondents on this aspect.

Taking a cumulative view of the matter and holding that there has been gross illegality committed by Respondents in not only holding the findings of the inquiry officer as bias but even disagreeing with the same without providing any opportunity to delinquent officer, the penalty order, as upheld by Appellate, as well as Revisional Authority, cannot be sustained in law. Accordingly orders dated 16.11.2005, 15.05.2006 and 28th September 2007 passed by Disciplinary, Appellate and Revisional Authorities respectively are quashed and set aside.

O.A. is allowed with all consequential benefits. No costs.


(MADAN KUMAR CHATURVEDI)
Member (A)

/PB/


(MUKESH KUMAR GUPTA)
Member (J)

IN THE GAUHATI HIGH COURT
(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)
CIVIL APPELLATE SIDE

Appeal from
Civil Rule

W. P. (5) No. 2814 on 22/10

Shri Mainal Kanti Day-II

Appellant
Petitioner

versus
the Union of India. 303

Respondent
Composite Party

Appellant MR. J.P. Sagar, M.R. K.K. Gopal
For MR. A. S. D.

Pétitioner MR. A. Talukdar & Sons
Respondent M/s. S. & S. Das.

**Respondent
law**

For _____

Opposite Party

S. C. & N. F. Railway.

Noting by Officer or Advocate	Serial No.	Date	Office notes, report, orders or pro cures with signature
1	2	3	4

Nature of Office or Activity	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			WP(C) No.2814/2010

BEFORE
HON'BLE THE CHIEF JUSTICE MR RS GARG
HON'BLE MR JUSTICE HRISHIKESH ROY

17-05-2010

(RS Garg, CJ)

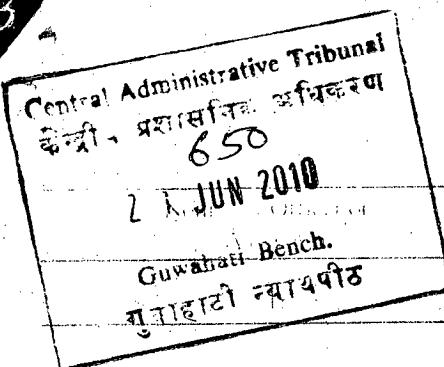
With the consent of the parties the matter is finally disposed of.

Heard Mr JP Das, learned counsel for the petitioner and Mr J Singh, learned counsel for the respondents.

At the very outset the learned counsel for the respondents submitted that the impugned order dated 16-03-2010 has been passed by a single Member of the Central Administrative Tribunal, Guwahati Bench, while in accordance with the jurisdictional roster, the matter should have been heard and decided by a Division Bench of the Central Administrative Tribunal. His submission is that because of the jurisdictional flaw the order impugned may be set aside and the matter may be remanded to the Tribunal to decide the same in accordance with law. The learned counsel for the petitioner concedes to the position.

In accordance with the submissions jointly made by the parties, the order impugned is hereby set aside and the matter is remanded back to the Central Administrative Tribunal to decide the matter afresh in accordance with law, by a Bench which is competent to hear the matter.





By special des 32

Serial No.	Date	Office notes, reports, orders or proceedings with signature
2	3	4
<p>The parties present before us shall appear before the Tribunal on 07-06-2010 and shall file a copy of this order before the Tribunal enabling the Tribunal to decide the matter in accordance with law, preferably within three months from the date of appearance of the parties.</p>		

Sd/- HRISHIKESH ROY
JUDGE

Sd/- R.S. GARG
CHIEF JUSTICE

Memo No.HC.XXI..... 11, 524 - 82 R.M.Dtd. 31/5/10

Copy forwarded for information and necessary action to: -

1. The Union of India, represented by the General Manager, Northeast Frontier Railway, Maligaon, Guwahati-781011, Dist.- Kamrup, Assam.
2. The Chief Commercial Manager, Northeast Frontier Railway, Maligaon, Guwahati-781011, Dist.- Kamrup, Assam.
3. The Addl. Divisional Railway Manager, Northeast Frontier Railway, P.O.- Lumding-782447, Dist.- Nagaon, Assam.
4. The Sr. Divisional Commercial Manager, Northeast Frontier Railway, P.O.- Lumding-782447, Dist.- Nagaon, Assam.
5. The Divisional Commercial Manager (Ticket Checking), P.O.- Lumding-782447, Dist.- Nagaon, Assam.
6. The Divisional Commercial Manager, Northeast Frontier Railway, Station Road, Guwahati, PIN-781001, Dist.- Kamrup, Assam.
7. The Asstt. Commercial Manager, Northeast Frontier Railway, P.O.- Lumding-782447, Dist.- Nagaon, Assam.
8. The Central Administrative Tribunal, Guwahati Bench, Guwahati, Assam.
9. Sri Mrinal Kanti Das-II, S/o Late Nakul Chandra Das, R/o 146/A, Adarsha Colony, Maligaon, Guwahati-781011, Dist.- Kamrup, Assam.

By order

Deputy Registrar
Gauhati High Court, Guwahati.

25/5/10

33

An application has been filed by the Advocate for the Applicant in OA No. 46/09 with an order dated 17.5.2010 passed by the Hon'ble High Court in NP(C) No. 2814/2010 which may kindly be seen at flag 'A'.

The Applicant Sri M.K. Das has filed the above mentioned NP(C) before the Hon'ble Gauhati High Court against the order dtd 16.3.2010 passed in OA 46/2009 and NP. 44/10 by the Single Bench of this Hon'ble Tribunal. The Hon'ble High Court allowed the NP(C) and the matter is remanded back to this Tribunal to decide the matter afresh and the parties are directed to appear before on 7.6.2010.

The matter may be placed before the Hon'ble Member (J) and Hon'ble Member (CA) for their Lordships' kind perusal and orders.

85/6/2010

Laid before the Hon'ble Member (J)
and Hon'ble Member (CA) for favour
of kind orders.

SKM
3.6.2010

Hon'ble Member (J)

list it before DB on
9th June 2010

SKM

31/6/2010

SO (J)

This Review application has been filed by the applicant through L/Advocate DR. J.L. Sarkar Rly. S.C. for reviewing of the Judgment and order dated- 9-6-2010 passed in M.P. No- 44/2010 (in OA. 46/2009). The Review application has not been registered before circulation of the same.

So, The Review application may be placed before The Hon'ble Member (J) and Hon'ble Member (Admin) for their Lordships kind perusal and orders.

Submitted for favour of order.

My
21.7.2010

SOL(J)

Laid before The Hon'ble Member (J) for His Lordships' kind orders.

SOL(J)
21.7.2010

HON'BLE MEMBER (J)

List it before DB on

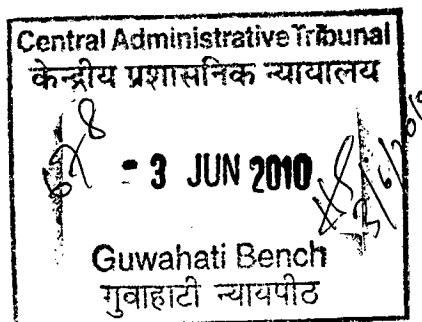
31.8.2010

SOL(J)

JW
21.7.2010

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL::
GUWAHATI BENCH:: GUWAHATI.

32
Filed by : Mrinal Kanti Das, II
the applicant
through Advocate
Sri Mrinal Kanti Das, II
03.06.10



ORIGINAL APPLICATION No. 46/2009

Sri Mrinal Kanti Das -II,

..... Applicant.

-Vs-

The Union of India & Others / N.F. Railway

..... Respondents.

The humble petition on behalf of the applicant
above named.

MOST RESPECTFULLY SHEWETH:

(1) That, the above named applicant, Sri Mrinal Kanti Das - II filed an O.A.No.46/2009 before the Hon'ble Tribunal, Guwahati Bench on 17.03.2009.

(2) That, the Hon'ble Tribunal, Guwahati Bench, the respondent no. 4 of the said O.A. before the Hon'ble Tribunal, Guwahati Bench filed a Misc petition No. 44/10 in O.A. No. 46/09 praying for allowing the respondents of the said O.A. to pass appropriate orders under revisional power by the appropriate authority i.e. General Manager, N.F.Railway which was allowed by the Hon'ble Tribunal, Guwahati Bench (Single Bench) & thus, the same Misc. petition was disposed of.

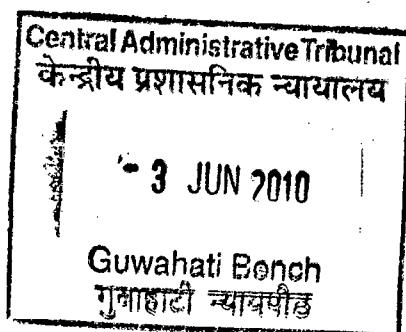
(3) That, the matter of the above mentioned O.A being the matter of the Division Bench of the Hon'ble Tribunal, Guwahati Bench had been disposed of on 16.03.2010 by the Hon'ble Tribunal, (Single Bench), Guwahati Bench.

(4) That, the above mentioned applicant filed a W.P.(C) No. 2814/2010 before the Hon'ble Guwahati High Court (Division Bench).

(5) That, the Judgment & Orders dtd. 17.05.2010 passed by the Hon'ble Guwahati High Court (Division Bench) in W.P.(C) No. 2814/2010 wherein the impugned order dated 16.03.2010 passed by the Hon'ble Central Administrative Tribunal (Single Bench) has been set aside and the matter is remanded back to the Hon'ble Central Administrative Tribunal, Guwahati Bench to decide the matter afresh in accordance with law, by a Bench which is competent to hear the matter.

Certified Copy of the Judgment & Orders dtd.
17.05.2010 is annexed herewith.

(6) That, this petition is made bonafide for the ends of justice and equity.



It is, therefore, prayed before Your Lordship would be pleased to admit this petition and further be pleased to decide the matter of the said O.A. No. 46/09 and Misc. Petition no. 44/10 in O.A. No. 46/09 afresh in accordance with law by a bench which is competent to hear the matter as per the Judgment and order passed by the Hon'ble Guwahati High Court (Division Bench) in W.P.(C) No. 2814/2010 dated 17.05.2010 and / or pass such order/orders as this Hon'ble Tribunal may deem fit and proper.

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



THE GAUHATI HIGH COURT AT GUWAHATI

(The High Court Of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Page No. 1

CASE NO : WP(C) 2814/2010

District : Kamrup

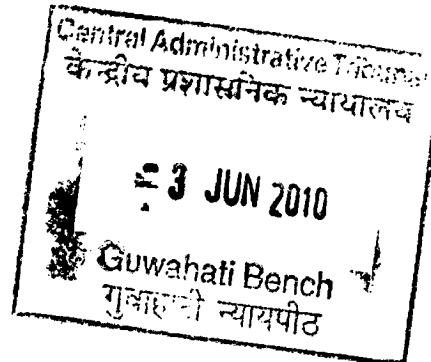
Category : 10057 (Order of the Appellate or Revisional authority.)

1 MRINAL KANTI DAS - II
S/O LT.NAKUL CH.DAS,
R/O 146/A, ADARSHA COLONY, MALIGAON, GHY-11,
DIST KAMRUP, ASSAM

Petitioner/appellant/applicant

Versus

1 THE UNION OF INDIA & ORS
REP. BY THE GENERAL MANAGER, NORTHEAST
FRONTIER RAILWAY, MALIGAON, GHY-11, DIST
KAMRUP, ASSAM
2 THE CHIEF COMMERCIAL MANAGER,
N.F.RAILWAY, MALIGAON, GHY-11, DIST
KAMRUP, ASSAM
3 THE ADDL. DIVISIONAL RAILWAY MANAGER,
N.F. RAIL WAY, P.O. LUMDING-782447, DIST
NAGAON, ASSAM
4 THE SR. DIVISIONAL COMMERCIAL MANAGER,
N.F.RAILWAY, P.O.LUMDING-782447, DIST NAGAON,
ASSAM
5 THE DIVISIONAL COMMERCIAL MANAGER,
(TICKET CHECKING) P.O. LUMDING-782447, DIST
NAGAON, ASSAM
6 THE DIVISIONAL COMMERCIAL MANAGER,
N.F.RAILWAY, STATION ROAD, GHY, PIN-1, DIST
KAMRUP, ASSAM
7 THE ASSTT. COMMERCIAL MANAGER,
N.F.RAILWAY, P.O.LUMDING-782447, DIST NAGAON



Respondent/Opp. Party

Advocates for Petitioner/appellant

1 J P DAS
2 A TALUKDAR
3 D DAS
4 K KALITA
5 S A AHMED

Advocates for Respondents

1 SC, NF RLY

Summary Of Case And Prayer In Brief

CERTIFIED COPY OF JUDGEMENT / ORDER

DATE OF FILING APPLICATION	DATE WHEN COPY WAS READY	DATE OF DELIVERY
18/05/2010	18/05/2010	18/05/2010

[Handwritten signatures]

BEFORE
HON'BLE THE CHIEF JUSTICE MR RS GARG
HON'BLE MR JUSTICE HRISHIKESH ROY

DATE OF ORDER : 17/05/2010

With the consent of the parties the matter is finally disposed of.

Heard Mr JP Das, learned counsel for the petitioner and Mr J Singh, learned counsel for the respondents.

At the very outset the learned counsel for the respondents submitted that the impugned order dated 16-03-2010 has been passed by a single Member of the Central Administrative Tribunal, Guwahati Bench, while in accordance with the jurisdictional roster, the matter should have been heard and decided by a Division Bench of the Central Administrative Tribunal. His submission is that because of the jurisdictional flaw the order impugned may be set aside and the matter may be remanded to the Tribunal to decide the same in accordance with law. The learned counsel for the petitioner concedes to the position.

In accordance with the submissions jointly made by the parties, the order impugned is hereby set aside and the matter is remanded back to the Central Administrative Tribunal to decide the matter afresh in accordance with law, by a Bench which is competent to hear the matter.

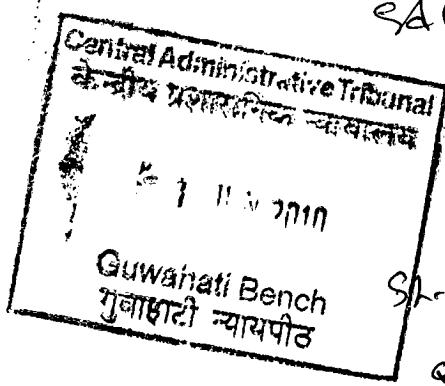
The parties present before us shall appear before the Tribunal on 07-06-2010 and shall file a copy of this order before the Tribunal enabling the Tribunal to decide the matter in accordance with law, preferably within three months from the date of appearance of the parties.

Sd/- R S Garg

Chief Justice

Sd/- Hrshikesh Roy

Judge



Slr. No. 140973

dt. 18/5/10

CERTIFIED TO BE TRUE COPY
Ranjeet Gopal Roy
 Date: 18/5/2010
 Superintendent (Copying Section)
 Gauhati High Court
 Authorised P.U.S. Act 1, 1972

Abbas
 18/5/10

29/4/09

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

17 MAR 2009

गुवाहाटी न्यायघीठ
Guwahati Bench

DISTRICT : KAMRUP

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:: GUWAHATI

Filed by the applicant
through Mr. Kanti Das
Advocate, on 17.03.09.

(An application under section 19 of the Administrative Tribunals Act, 1985.)

Original Application No. 46 /2009

Sri Mrinal Kanti Das - II

..... Applicant.

-Vs-

The Union of India & others/N.F.Railway

..... Respondents.

S Y N O P S I S

By this application, the applicant, Sri Mrinal Kanti Das-II, Head Ticket Collector is putting out his grievances against the procedural lapses as the Sr.DCM/ N.F. Railway/Lumding being the Appellate Authority and not being the Disciplinary Authority, imposed punishment arbitrarily and illegally without supplying the Enquiry Report to the said applicant prior to imposition of penalty vide N.I.P. dated 16.11.2005. But the Charge Sheet dated 03-09-2002 was signed by the DCM/ TC/Lumding, being the Disciplinary Authority as per Schedule of Power (SOP) on Railway Servant (Discipline & Appeal) Rules, 1968. So, the Sr. DCM/N.F. Railway/Lumding disregarded the Railway Board's Instructions/Orders as well as Schedule Of Power on Railway Servant (Discipline & Appeal) Rules, 1968. Thus, the humble applicant solicits the interference of the Hon'ble Administrative Tribunal considering the following facts and circumstances.

Mrinal Kanti Das II

17 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

The brief fact of the case is that the said applicant has been working as Head' Ticket Collector at Guwahati Railway Station. On 03-09-2002, a Charge Sheet for imposing of Major Penalty (S.F.-5) was served upon the applicant by the DCM/TC/N.F. Railway/Lumding alleging that during 2001, the applicant failed to maintain absolute integrity and devotion to duty as much as on 20.11.2001, the applicant demanded and accepted illegal gratification of Rs. 100/- from Sri Monoj Agarwal, the complainant for providing a sleeper class berth upto N.J.P. Railway Station in Train No. 5621 N.E Express leaving Guwahati on 21.11.2001 and thus the applicant contravened the provision of Rule 3.1(i), (ii) & (iii) of Railway Service (Conduct) Rules, 1966. On 08.01.2003, the applicant submitted his defence statement denying the allegations labelled against him. Accordingly, Enquiry Officer was appointed to enquiry about the case.

During the enquiry stage, the prosecution could not produce the aforesaid complaint for examination -in chief and cross-examination who was the key witness of the case. In addition, no prosecution witness deposed in favour of the prosecution. Thus, the allegation regarding the demand & the acceptance remained not substantiated during the course of quasi-judicial enquiry. As it is a CBI case, the total quasi-judicial process could not be completed within the target limit of 470 days i.e from the date of issue of charge-sheet i.e 03-09-2002 to the date of issue of N.I.P (Notice of Imposition of Penalty) i.e 16.11.2005 and the total time taken comes to 1170 days. Since the DCM/TC/Lumding signed the said charge sheet, the DCM/TC/N.F.Rly/ Lumding is the Disciplinary Authority in the instant case and competent enough to award the punishment to a Head Ticket Collector in scale of Rs. 5000-8000/- as per Schedule of Power (SOP). While the post of

Contd...P/3

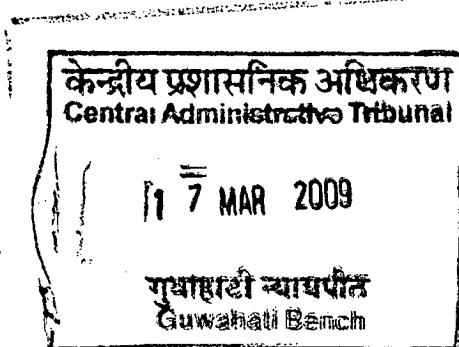
C-1
Date
Mrinal Kanti

DCM/TC/Lumding was in existence on the date of awarding the punishment, the Sr. DCM/NF Rly/Lumding, who did not sign the said Charge- Sheet acted as Disciplinary Authority arbitrarily and imposed the punishment in the form of reduction to lower time scale of pay for 2 (two) years with cumulative effect through N.I.P. dated 16.11.2005 without supplying the Enquiry Officer's Report to the applicant prior to imposition of such penalty, keeping the applicant behind the screen. Moreover, the punishment so awarded is not in accordance with Rule 6(V) of Rly Servants (D& A) Rules, 1968. Besides, the Sr. DCM/N.F. Rly/Lumding cited the remarks and guide line of the Dy. CVO (T)/Maligaon in the said N.I.P. and the applicant was directed to submit his appeal to the DRM/LMG within 45 days. On receipt of the said N.I.P., the applicant requested the Sr. Divisional Commercial Manager/Lumding on 21.11.2005 to supply the Dy. CVO(T)/Maligaon's letter cited in the said N.I.P. as the same was not supplied to the applicant.

But instead of supplying the same, the Sr.DCM/N.F. Rly/Lumding further directed the applicant on 09.12.2005 to submit his appeal to the DRM/N.F.Rly/Lumding. Accordingly, the applicant submitted his appeal to the DRM/N.F.Rly/Lumding on 29.12.2005. But on 15.05.2006, the Sr. DCM/N.F. Rly/Lumding communicated the decision of the ADRM/N.F. Rly/Lumding to the applicant regarding upholding the punishment despite the complainant could not be produced by the prosecution for more than one year during the enquiry stage. Further, on 15.05.2006, the applicant was directed by the ADRM/N.F. Rly/Lumding to submit his revision petition to the CCM/N.F. Railway/Maligaon within 45 days. Accordingly, the applicant submitted his revision petition on 06.07.2006 to the CCM//N.F. Railway/Maligaon. On 28.09.2007, the Sr. DCM/N.F. Rly/Lumding issued a letter wherein the

decision of the CCM/N.F.Rly./MLG regarding upholding the punishment was communicated to the applicant and again the said decision of the CCM/N.F. Rly/Maligaon was communicated to the applicant by the ACM/N.F. Rly/Lumding on 19.03.2008. Consequent on which, the promotion of the applicant has been affected.

Minal Karmakar



FILED BY:

Jyoti Prakash
17.03.09

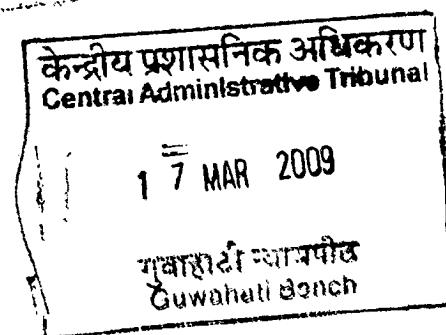
ADVOCATE, GUWAHATI

X

DISTRICT : KAMRUP

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:; GUWAHATI

(An application under section 19 of the Administrative Tribunals Act, 1985.)



Original Application No. 46 /2009

Sri Mrinal Kanti Das - II

..... Applicant.

-Vs-

The Union of India & others/N.F.Railway

..... Respondents.

LIST OF DATES

<u>SL NO</u>	<u>ANNEXURE</u>	<u>PARTICULARS</u>	<u>DATE</u>	<u>PAGE NO.</u>
1.	Annexure -1	Initial Appointment Letter	13.09.1986	15-
2	Annexure -2	Charge-sheet	03.09.2002	16 - 20.
3.	Annexure -3	Defence statement	08.01.2003	21.
4.	Annexure -4	Appointment letter of E.O.	20.03.2003	22.
5.	Annexure -5	Appointment letter of E.O.	11.11.2003	23.
6.	Annexure -6	Daily Order Sheet No.7	18.09.2004	24-25.
7.	Annexure -7	GM(P)/MLG's Circular/ Time Schedule	08.08.2001	26 - 27.
8.	Annexure -8	GM(P)/MLG's Circular/ Speedy finalization	23.08.2001	28.
9.	Annexure -9.	GM(P)/MLG's Circular/ SOP	31.03.2003	29- 33.
10.	Annexure -10.	N.I.P	16.11.2005	34 - 36.
11	Annexure -11	Rule 6(V) of RS(D & A) Rules 1968		37 - 38.
12.	Annexure -12	GM(P)/MLG's Circular (Supply of Enquiry Report)	11.9.2002	39 - 40.
13.	Annexure -13	CPO/MLG's Circular/Rule 10 (Supply of Enquiry Report)	26.04.1991	41- 44.
14	Annexure -14	Rule 22 (2), (c) (i) (ii) of RS(D&A) Rule 1968 (Powers of App. Authority).		45- 47.
15.	Annexure -15.	Prayer for supply of Dy. CVO (T)/MLG's letter	21.11.2005	48.
16.	Annexure -16.	Sr. DCM/N.F.Rly/LMG's letter (non-supply of V- Letter)	09.12.2005	49.

Contd..... p/2.

17.	Annexure -17	Appeal to DRM/N.F.Rly/ LMG against NIP	29.12.2005	50-57.
18	Annexure -18	Sr. DCM/LMG's Letter reg: ADRM's letter	15.05.2006	58.
19.	Annexure -19	Revision Petition against ADRM's Order	06.07.2006	59-72.
20.	Annexure -20	Sr. DCM/LMG's letter/reg:CCM's Order	28.09.2007	73.
21.	Annexure -21	ACM/LMG's letter/ reg: CCM's order	19.03.2008	74.
22	Annexure -22	DRM(P)/LMG's Office Order	03.08.2004	75-76.

23.

MP. 44/2010 —

77-78

24

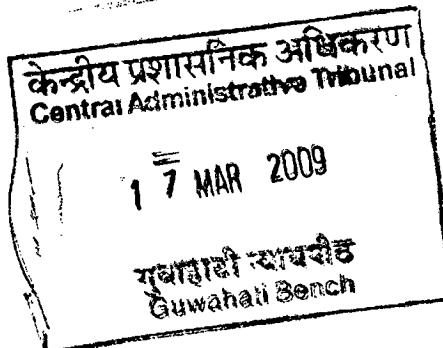
Typed Copy of Annexures —

79-141

FILED BY:

Jyoti Debnath Das
17-03-09

ADVOCATE, GUWAHATI

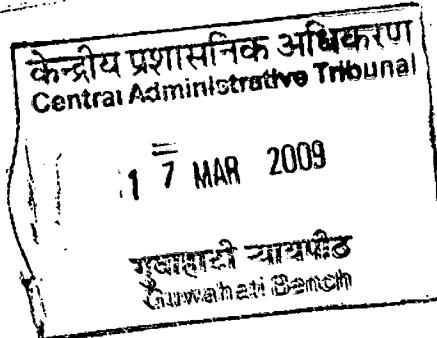


DISTRICT : KAMRUP

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:: GUWAHATI

(An application under section 19 of the Administrative Tribunals Act, 1985.)

Original Application No. 46 /2009



Sri Mrinal Kanti Das - II

..... Applicant.

-Vs-

The Union of India & others/N.F.Railway

..... Respondents.

I N D E X

<u>SL. NO</u>	<u>PARTICULARS</u>	<u>PAGE NO</u>
1.	Application	1 - 12 .
2.	Verification	13 .
3.	Affidavit	14 .
4.	Annexure -1	15 .
5	Annexure -2	16 - 20 .
6	Annexure -3	21 .
7	Annexure -4	22 .
8	Annexure -5	23 .
9	Annexure -6	24-25 .
10	Annexure -7	26-27 .
11	Annexure -8	28 .
12	Annexure -9.	29-33 .
13	Annexure -10.	34-36 .
14	Annexure -11	37-38 .
15	Annexure -12	39-40 .
16	Annexure -13	41-44 .
17	Annexure -14	45-47 .
18	Annexure -15.	48 .
19	Annexure -16.	49 .
20	Annexure -17	50 - 57 .
21	Annexure -18	58 .
22	Annexure -19	59 - 72 .
21	Annexure -20	73 .
24	Annexure -21	74 .
25	Annexure -22	75 - 76 .
26	MP- No. 44/2010.	77 - 78

FILED ON MARCH ' 2009:

FILED BY

Jyoti Prakash Das
17.03.09

SIGNATURE

FOR OFFICE USE

Advocate

DISTRICT : KAMRUP

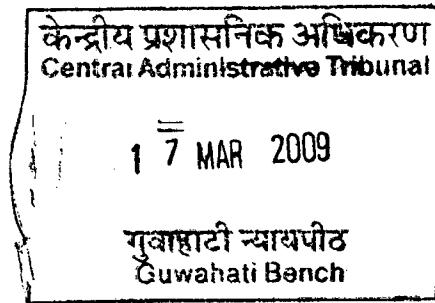
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:: GUWAHATI

(An application under section 19 of the Administrative Tribunals Act, 1985.)

Original Application No. 46 /2009

I. Particulars of the applicant

Sri Mrinal Kanti Das -II
S/O. Late Nakul Chandra Das,
R/O. 146/A, Adarsha Colony,
Maligaon, Guwahati-781011,
Dist. Kamrup (Assam).



II. Particulars of Respondents:

1. The Union of India represented by

The General Manager,
Northeast Frontier Railway,
Maligaon, Guwahati – 781011,
Dist. Kamrup (Assam).

2. The Chief Commercial Manager,

Northeast Frontier Railway,
Maligaon, Guwahati – 781011,
Dist. Kamrup (Assam).

3. ^{The} Addl. Divisional Railway Manager,

Northeast Frontier Railway,
P.O. Lumding, PIN- 782447,
Dist. Nagaon (Assam).

58
Filed by the applicant
through Advocate
17/03/09
Advocate, Juris Doctor.

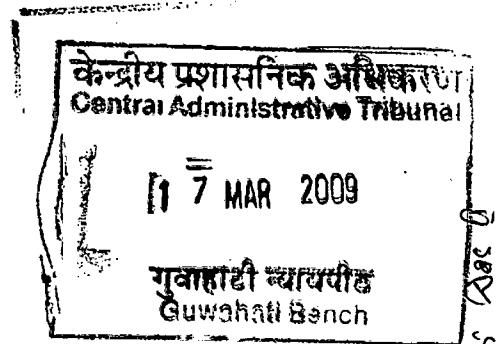
Mrinal Kanti Das

4. The Senior Divisional Commercial Manager,
Northeast Frontier Railway,
P.O. Lumding, PIN- 782447,
Dist. Nagaon (Assam).

5. The Divisional Commercial Manager (Ticket checking.),
Northeast Frontier Railway,
P.O. Lumding, PIN- 782447,
Dist. Nagaon (Assam).

6. The Divisional Commercial Manager,
Northeast Frontier Railway,
Station Road, Guwahati, PIN- 781001,
Dist. Kamrup (Assam).

The
7. Asstt. Commercial Manager
Northeast Frontier Railway,
P.O. Lumding, PIN- 782447,
Dist. Nagaon (Assam).



III. Particulars against which the application is made:

The applicant, on receipt of the N.I.P. on 16.11.2005, requested the Sr. Divisional Commercial Manager/N.F. Railway/Lumding on 21.11.2005 to supply the Dy. CVO(T)/MLG's letter referred in the N.I.P. dated 16.11.2005. On 09.12.2005, the Sr. Divisional Commercial Manager/N.F. Railway/Lumding directed the applicant to submit his appeal to the Divisional Railway Manager/ N.F. Railway/Lumding without supplying the said Dy. CVO(T)/MLG's letter. Accordingly, on 29.12.2005, the applicant submitted his appeal to the Divisional Railway Manager/N.F. Railway/Lumding. But on 15.05.2006, the Sr. Divisional Commercial Manager/N.F. Railway/Lumding

communicated the decision of the Addl. Divisional Railway Manager/N.F. Railway/Lumding to the applicant. The Addl. Divisional Railway Manager/N.F. Railway/Lumding upheld the punishment and the applicant was directed to submit revision petition to the Chief Commercial Manager/N.F. Railway/Maligaon. The applicant accordingly submitted his revision petition on 06.07.2006 to the Chief Commercial Manager/N.F. Railway/Maligaon. On 28.09.2007, the Sr. Divisional Commercial Manager/N.F. Railway/Lumding issued a letter wherein the decision of the Chief Commercial Manager/Maligaon regarding upholding the punishment without speaking orders/reasoning orders has been communicated to the applicant and the said decision was also communicated to the aggrieved applicant by the Asstt. Commercial Manager/N.F. Railway/Lumding on 19.03.2008.

IV. Jurisdiction of the Tribunal:

The applicant declares that the subject-matter of the present applicant is within the jurisdiction of this Hon'ble Tribunal.

V. Facts of the case:

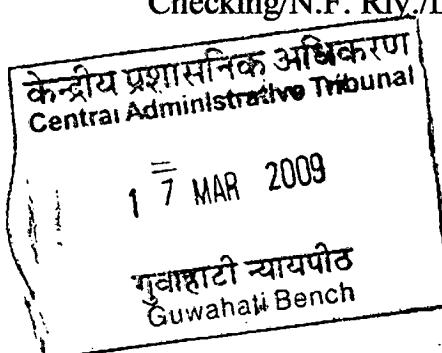
1. The applicant is a citizen of India and a permanent resident of Dist. Kamrup in the State of Assam. As such he is entitled to enjoy all the rights and privileges guaranteed to a citizen of India under the Constitution and other laws of the land.

2. The applicant was appointed as Ticket Collector at Guwahati Railway Station on 13.09.1986 and now is working as Head Ticket Collector in scale Rs. 5000-8000/- at Guwahati Railway Station.

Copy of the appointment letter dated 13.09.1986 is annexed herewith and marked as Annexure -1.

मुख्यमंत्री काल्पनिक आयोजना

3. The applicant begs to state that while he was discharging his duties as Head Ticket Collector at Guwahati Railway Station, N.F. Railway, on 03.09.2002, a Charge-sheet for imposing major penalty (S.F.-5) was served upon the applicant by the Divisional Commercial Manager/Ticket Checking/N.F. Rly./Lumding.



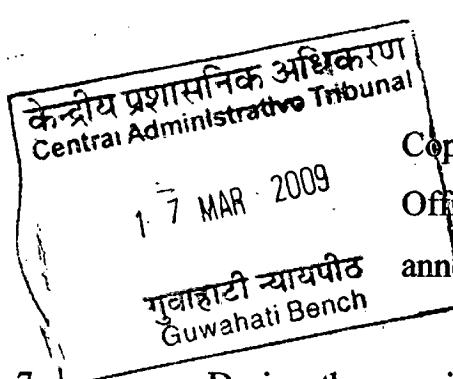
Copy of the Charge-sheet dated 03.09.2002 is annexed herewith and marked as Annexure -2.

4. The applicant begs to state that the allegation cited in Article -I of Annexure -1 at page -3 of the said Charge-sheet was that Sri M.K. Das-II while remained posted as Head Ticket Collector/N.F.Rly./Guwahati Railway Station, Guwahati during the year 2001 failed to maintain absolute integrity and devotion to duty is as much as on 20.11.2001, he demanded and accepted illegal gratification of Rs. 100/- from Sri Monoj Agarwal of Bajoria market, SRCB Road, Fance Bazar, Guwahati for providing him a sleeper class berth upto New Jalpaiguri Railway Station in Train No. 5621 (N.E. Express) leaving Guwahati on 21.11.2001 and by the aforesaid act, Sri M.K. Das-II contravened the provision of Rule 3.1 (i), (ii) and (iii) of Railway Service (Conduct) Rule, 1966.

5. The applicant submitted his defence statement on 08.01.2003 in response to the said Charge-sheet dated 03.09.2002 denying the allegation labelled against him

Copy of the Defence statement dated 08.01.2003 is annexed herewith and marked as Annexure -3.

6. On receipt of the said Defence statement from the applicant, the Enquiry officer was appointed on 20.03.2003 and 11.11.2003 to enquire about the case by the Divisional Commercial Manager/Ticket Checking/ N.F.Rly/ Lumding in the capacity of Disciplinary Authority.



Copies of the Appointment letter of the Enquiry Officer dated 20.03.2003 and 11.11.2003 are annexed herewith and marked as Annexure-4 & 5.

7. During the enquiry stage, the complainant Sri Monoj Agarwal, the key witness could not be produced by the prosecution right from commencing to closing of the enquiry. In Addition, no Prosecution Witness deposed in favour of the prosecution. Thus, the demand and the acceptance remained not substantiated during the enquiry stage i.e. during the course of quasi-judicial enquiry.

Copy of the Daily Order Sheet No.7 dated 18.09.2004 is annexed herewith and marked as Annexure -6.

8. As it is a CBI case, the total quasi-judicial process could not be completed within the target limit of 470 days from the date of issue of the Charge-sheet i.e. 03.09.2002 to the date of issue of N.I.P. i.e 16.11.2005. So, the total time taken for the said quasi-judicial enquiry comes to 1170 days which exceeded the target limit of 470 days and thus it is a violation of Rly Board's Instruction dated 08.09.1994 circulated by GM (P)/N.F. Rly/MLG's

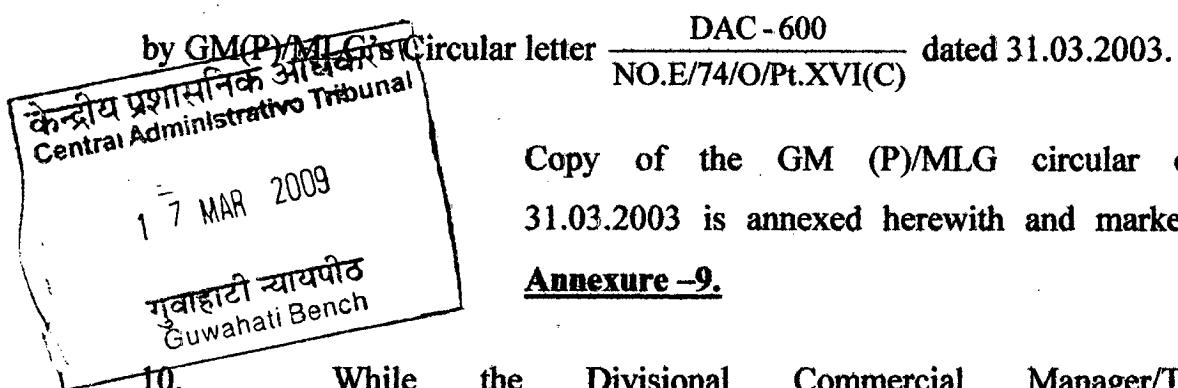
circular letter DAC-587
NO.E/74/O/Pt.XVI(C) dated 08.08.2001 and

DAC-588
NO.E/74/O/Pt.XVI(C) dated 23.08.2001.

Copies of GM (P) /MLG's Circulars dated 08.08.2001 and 23.08.2001 are annexed herewith and marked as Annexure -7 & 8 respectively.

9. Since the Divisional Commercial Manager/Ticket Checking/N.F. Rly/Lumding holding the senior scale, signed the said Charge sheet, so he is

competent enough to award the punishment to a Head Ticket Collector in Scale Rs. 5000-8000/- as per (SOP) Schedule of Power vide Schedule -II circulated



Copy of the GM (P)/MLG circular dated 31.03.2003 is annexed herewith and marked as Annexure -9.

10. While the Divisional Commercial Manager/Ticket Checking/N.F.Rly/Lumding was holding the said post and issued the said Charge Sheet, the Sr. Divisional Commercial Manager/N.F.Rly/ Lumding, the next higher authority of the former one, became the Appellate Authority as he did not sign the said Charge-Sheet. But in the instant case, the Sr. Divisional Commercial Manager/N.F. RLY/Lumding being the Appellate Authority acted as Disciplinary Authority arbitrarily and imposed the punishment in the form of reduction to lower time scale of pay for 2 (two) years with cumulative effect through N.I.P issued on 16.11.2005 which is not in accordance with Rule 6 (V) of Rly Servant (D&A) Rules 1968 and kept the applicant behind the screen due to non-supply of Enquiry Officer's report to the applicant prior to imposition of penalty which caused violation of GM(P)/MLG's Circular letter

DAC - 591
 No.E/74/O/Pt.XVI(C) dated 11.9.2002 and CPO/MLG's Circular letter

DAC - 480
 No.E/74/O/Pt.XIV(C) dated 26.04.1991 and thus denial of reasonable opportunity and natural justice to the applicant under Art. 311(2) of the Constitution of India.

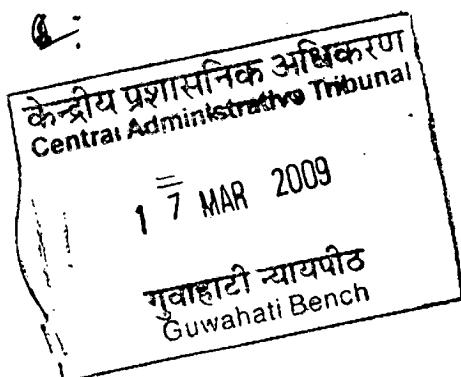
Copies of N.I.P dated 16.11.2005, Rule 6(V) of R.S. (D&A) Rules 1968, GM(P)/MLG's Circular letter dated 11.9.2002 and CPO/MLG's Circular

Contd...P/7

CS
 285
 Mizanul Kayes

letter dated 26.04.1991 are annexed herewith and marked as Annexure-10,11, 12 & 13 respectively.

11. Since the said Charge-sheet was signed by the Divisional Commercial Manager/Ticket Checking/N.F.Rly/Lumding in the capacity of Disciplinary Authority, the Sr. Divisional Commercial Manager/ N.F.Rly/Lumding possessed the power to act as Appellate Authority who has imposed punishment in this case arbitrarily acting as Disciplinary Authority at his own whims disregarding the Rule 22 (2), (c) (i),(ii) of R.S. (D&A) 1968 which deprived the applicant of his right to appeal to the appropriate Appellate Authority. Further, the Sr. Divisional Commercial Manager/ N.F.Rly/Lumding cited the remarks and guide line of the Dy. CVO(T)/MLG vide his letter in Annexure -A of the said N.I.P. at page-3 without supplying the Dy. CVO(T)/MLG's letter to the applicant. Since it is a quasi-judicial process, no action can be initiated against the applicant keeping him in dark.



Copy of Rule 22 (2), (c) (i),(ii) of R.S. (D&A) 1968 is annexed herewith and marked as Annexure-14.

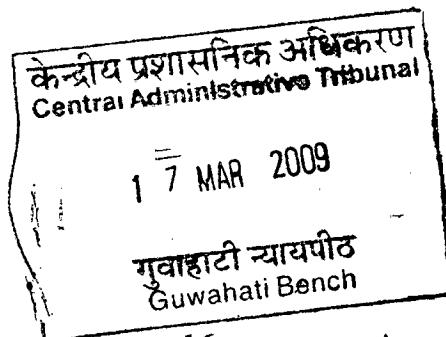
12. The Dy. Chief Vigilance Officer (T)/Maligaon guided and diverted the Sr. Divisional Commercial Manager/ N.F.Rly/Lumding in exercising his free and judicious mind which leads the Sr. Divisional Commercial Manager/ N.F.Rly/Lumding to award such punishment in a pedantic manner keeping the applicant behind the screen; otherwise the said procedural lapses could have attracted the notice of the Sr. Divisional Commercial Manager/ N.F.Rly/Lumding.

13. The applicant was directed through the said N.I.P on 16.11.2005 by the Sr. Divisional Commercial Manager/ N.F.Rly/Lumding to submit his appeal to the Divisional Railway Manager/Lumding within 45 days.

14. On receipt of the said N.I.P., the applicant requested the Sr. Divisional Commercial Manager/ N.F.Rly/Lumding on 21.11.2005 to supply the Dy. CVO(T)/MLG's letter cited in the said N.I.P because as and when any document was referred to either in the enquiry stage or in the decision stage by any of the Authorities, instantly the applicant acquired the right to have or obtain the copy of the same; otherwise it will tantamount to denial of reasonable opportunity and natural justice under Art. 311(2) of the Constitution of India.

Copy of the prayer dated 21.11.2005 is annexed
herewith and marked as Annexure -15.

15. But on 09.12.2005, the Sr. Divisional Commercial Manager/ N.F.Rly/Lumding again directed the applicant to submit his appeal to the Appellate Authority without supplying the said Dy. CVO(T)/MLG's letter.



Copy of the Sr. DCM/LMG's letter dated
09.12.2005 is annexed herewith and marked as
Annexure -16.

16. Accordingly, the applicant submitted his appeal to Divisional Railway Manager/N.F. Rly/Lumding on 29.12.2005.

Copy of the appeal dated 29.12.2005 is annexed
herewith and marked as Annexure -17.

17. But on 15.05.2006, the Sr. Divisional Railway Manager/N.F. Rly/Lumding communicated to the applicant the decision of the Addl. Divisional Railway Manager/N.F. Rly/Lumding who acted as Appellate Authority and upheld the punishment & the applicant was directed by the Addl. Divisional Railway Manager/N.F. Rly/Lumding to submit his revision petition to the Chief Commercial Manager/N.F.Rly/Maligaon within 45 days.

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

17 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

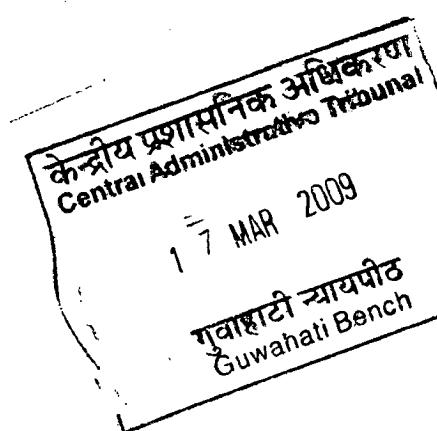
Copy of Sr. DCM/LMG's letter dated 15.05.2006 containing ADRM/LMG's decision is annexed herewith and marked as Annexure -18.

18. Accordingly, on 06.07.2006, the applicant submitted his revision petition to the Chief Commercial Manager/N.F.Rly/Maligaon.

Copy of the revision petition dated 06.07.2006 is annexed herewith and marked as Annexure -19.

19. On 28.09.2007, the Sr. Divisional Commercial Manager/N.F. Rly/ Lumding issued the letter wherein the decision of the Chief Commercial Manager/N.F.Rly/Maligaon mentioning as Appellate Authority erroneously regarding upholding the punishment without speaking orders/ reasoned orders was communicated to the applicant and again the said decision of the Chief Commercial Manager/N.F.Rly/Maligaon mentioning as Appellate Authority erroneously was also communicated to the applicant by the Asstt. Commercial Manager/N.F.Rly /Lumding on 19.03.2008. Consequent on which the promotion of the applicant to the post of CTI/II in scale of Rs. 5500-9000/- has been affected as per remarks cited against Sl No. 10 of DRM (P)/LMG's Office Order dated 03.08.2004.

Mininal Karyan अप्पेल



Copies of the Sr. DCM/LMG's letter dated 28.09.07 & ACM/LMG's letter dated 19.03.08, DRM(P)/LMG's Office Order dated 03.08.2004 are annexed herewith and marked as Annexure -20, 21 & 22 respectively.

20. For the applicant, there is no other alternative and efficacious remedy available to him except filing this application under section 19 of the Administrative Tribunal Act, 1985.

21. The relief and remedy prayed by the applicant herein if granted by this Hon'ble Lordship would be just, proper and adequate. This application is made bonafide and for the ends of justice and equity.

VI

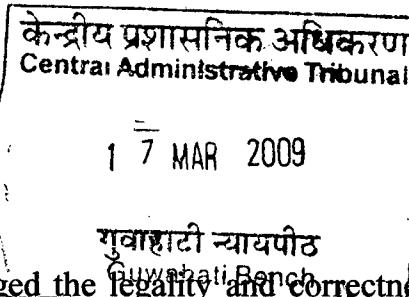
G R O U N D S

1. For that, the act of the Respondent Authorities for imposing major penalty through N.I.P dated 16.11.2005 computing hypothetical and cryptic orders; and without supplying the Enquiry Report to the applicant prior to imposition of penalty is bad in law and hence, the same (N.I.P) is liable to be set aside and quashed. As such this Hon'ble Tribunal be pleased to interfere into the matter and direct the Respondent Authorities to set aside the major penalty dated 16.11.2005 and quash the punishment in the form of reduction to lower time scale of Rs. 5000-8000/- for 2 (two) years with cumulative effect.
2. For that, during enquiry stage, the Prosecution failed to produce the complainant who was the vital and key witness in the instant case. Therefore, the demand and acceptance remained not substantiated

Mrinal Kanti Deka

during the course of quasi-judicial enquiry and thus, the act of the Prosecution is bad in law. As such this Hon'ble Tribunal be pleased to interfere into the matter and direct the Respondent Authorities to quash the whole/total quasi judicial process.

3. For that, the act of the respondent Authorities took 1170 days which caused inordinate delay in conducting the whole/total quasi-judicial process and also crossed the target limit of 470 days i.e from the date of issue of the charge sheet (03.09.2002) to the date of issue of the N.I.P (16.11.2005) is bad in law. As such this Hon'ble Tribunal be pleased to interfere into the matter and direct the respondent Authorities to quash the whole/total quasi-judicial process.
4. For that, in any view of the matter, the impugned orders is wholly untenable in law and the applicant is entitled to favour with relief as prayed for in this application.



VII. Details of the remedies exhausted :

As the applicant has challenged the legality and correctness of the impugned Notice of Imposition of Penalty dated 16.11.2005 and has prayed for setting aside and quashing the same.

VIII. Matter not previously filed or pending in any court:

The applicant has not filed any other case/application in any court/tribunal regarding the present subject matter.

IX. Reliefs sought for by the applicant:

Under the facts and circumstances, the applicant prays for the following relief :-

1. To set aside and quash the impugned major penalty issued through N.I.P dated 16.11.2005
2. For a declaration that the total quasi - judicial process dated 03.09.2002 to 16.11.2005 is illegal , invalid and improper.
3. For declaration that the N.I.P. dated 16.11.2005 was issued irregularly and arbitrarily as the said N.I.P. was not signed by the signatory of the Charge sheet and due to non-supply of the Enquiry Report prior to issue of the said N.I.P.
4. For redressal of the applicant's promotion to the post of CTI/II in Scale Rs. 5500-9000/- setting aside the remarks cited in DRM(P)/LMG's Office Order dated 03.08.2004 against Sr. No. 10.
5. To pass such order or orders as this Hon'ble Tribunal may deem fit and proper.
6. Cost of the proceeding

X. Interim Relief

No interim relief sought for.

XI. Particulars of the Postal Orders:

Postal Order Nos. 39G 356837, 43C 781867, 43C 781865

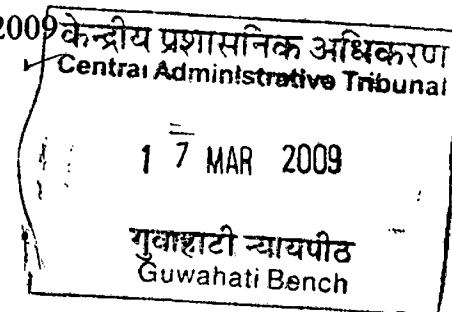
Date: 25.09.2008, 24.02.2009, 24.02.2009 केन्द्रीय प्रशासनिक अधिकरण

Issuing office: Guwahati GPO

Payable at: Guwahati

XII. List of enclosures

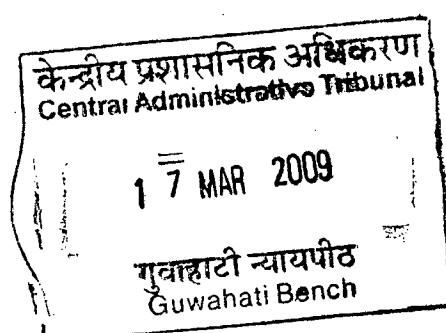
An index showing the particulars of documents enclosed.



VERIFICATION

I. Sri Mrinal Kanti Das-II, son of Late Nakul Chandra Das, aged about 54 years, by profession service holder, by religion Hindu, resident of 146/A, Adarsha Colony, Maligaon, Guwahati – 781011, Dist. Kamrup (Assam), do hereby verify that I am the applicant in the accompanying application. I am acquainted with the facts & circumstances of the case. I hereby verify that the statements made in Paragraphs III to XI are true to the best of my knowledge and that I have not suppressed any material facts.

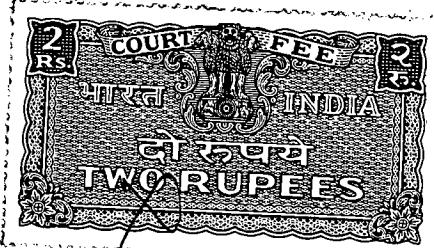
And I sign my hand on this verification to day on this 14 th day of February, 2009 at Guwahati.



Mrinal Kanti Das-II

Signature of the verifier

..... Affidavit P/14.



AFFIDAVIT

I, Sri Mrinal Kanti Das-II, son of Late Nakul Chandra Das, aged about 54 years, by profession service holder, by religion Hindu, resident of 146/A, Adarsha Colony, Maligaon, Guwahati - 781011, Dist. Kamrup (Assam), do hereby solemnly affirm and declare as follows:-

1. That, I am the applicant in the instant case and as such I am well acquainted with the facts and circumstances of the same and hence, I swearing this affidavit on my behalf.
2. That the contents of this affidavit and the statements in paragraphs No. 1, 4, 12, 13, 20 & 21..... are true to the best of my knowledge and belief, those made in paragraph 2, 3, 5 to 11, 14 to 19 are true to my information being mater of records derived there from which I believe to be correct and rests are my humble submission and prayer before this Hon'ble Tribunal.

An I swear and sign this affidavit on this 14 th day of February, 2009 at Guwahati.

केन्द्रीय प्रशासनिक अधिकारण Central Administrative Tribunal	
Identified by me Jyoti Prakash Ch. 14.02.09 Advocate/Advocate's Clerk	17 MAR 2009 गुवाहाटी न्यायपीठ Guwahati Bench Mrinal Kanti Das-II DE PONENT

N.F.Railway.

No. E/39/21 (TC)

To Shri Mamal Kanti Dass at office

Office of the
Divl. Rly. Manager
Lumding, dt/-13.9.86

Trainee Tpo

1. You are hereby appointed as a temporary Ticket Collector pay
Rs. 260/- P.M. in scale Rs.350-560/- plus usual allowances and
posted at Ghat (Ghy) subject to:-

Immediate discharge without any notice of termination of service
in the event of return of permanent incumbent from leave or to the
expiry of temporary duration of the post in which you are appointed
or to your mental or physical incapacity or to your removal or
dismissal from service for major misconduct.

2. If the termination of your service is due to some other cause
you will be entitled to a notice of 14 days or pay in lieu thereof.

3. You will not be eligible for any benefits except those admissible
to temporary employees under the rules in force from time to time.

4. Your appointment shall have effect from _____ or the
date you actually commence work.

Please report to... SS/ PWD Ghy

Ad

महाल राजिला अधीक्षण

for Divl. Optg. Supdt.
N.F.Rly., Lumding

Copy forwarded for information & n/action to

1) CC/Recd on of. to his NO. E/227/10/7 (Recd) ... dt 19.8.86

2) DAO/IMG

3) GC/ET/BM, RAO(Optg) at office. 100/NYC

4) AO/NCU, AO/BPB

5) SS/ PWD, He will pl. intimate this office when the above namey
of/Commr. at office. Ghy on first appointment.

SS/Ghy

for Divl. Optg. Supdt.
N.F.Rly., Lumding

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

17 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

Certified to be true copy

25.02.09

6 STANDARD FORM NO. 5

STANDARD FORM FOR CHARGE SHEET

Rules of the Railway Servants (Discipline and Appeal Rules - 1968)

No. C/CON/IM/MISC/98. (MKD-HD.TC-GHY) Date 2/08/2002

N.F. Railway: (Name of the Railway Administration).

Place of issue : DRM. (C)/LMG.

MEMORANDUM

The president/Railway Board/Undersigned propose (S) to hold an Enquiry against Shri M.K.Das-II/Hd.TC/GHY station under rule -9 of the Railway servants (Discipline and Appeal Rules-1968. The substance of the imputations of misconduct or misbehaviour in respect of which the enquiry is proposed to be held is set out in the enclosed statement of articles of charges (Annexure-I). A statement of the imputation of misconduct or misbehaviour in support of each articles of charge is enclosed (Annexure-II). A list of documents by which; and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed in the list of documents as per Annexure - III are enclosed.

Shri M.K.Das-II/Hd.TC/GHY station is hereby informed that if he desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure -III) in any time during office hours within 10 days of receipt of this Memorandum. For this purpose he should contact DRM (C)/LMG immediately on receipt of this Memorandum.

3. Shri .. M.K.Das-II/Hd.TC/GHY station...is further informed that he may if he so desires, take the assistance of any other Railway servants or official of Railway Trade Union (who satisfies the requirements of rules (9) (13) of the Railway Servants (Discipline) and Appeal) Rules-1968 and note 1 and or note 2 thereunder as the case may be for inspecting the documents and assisting him in presenting his case before the enquiring authority in the event of an oral enquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Railway servant (s) of Railway Trade Union official (s) Shri .. M.K.Das-II/Hd.TC/GHY station..... x..... should obtain an undertaking from the nominee (s) that he (they) is (are) willing to assist him during the Disciplinary proceedings. The undertaking should also contain the particulars of other case (s) if any in which the nominee (s) had already undertaking to assist and the undertaking should be furnished to the undersigned, B/08/2002/..... Railway along with the nomination.

4. Shri M.K.Das-II/Hd.TC/GHY station...is hereby directed to submit the undersigned (the General Manager/Deputy General Manager) written statement of his defence (which should reach the said (General Manager) within ten days of receipt of this Memorandum if he does not require to inspect any documents for the preparation of the defence within ten days after completion of inspection of documents if he not to inspect documents, and also (a) to state whether he wishes to be in person and (b) to furnish the names and addresses of the witnesses if any whom he wishes to call in support of this defence.

Contd....2.

Central Administrative Tribunal
Guwahati Bench

17 MAR 2009

Guwahati Central Administrative Tribunal
Guwahati Bench

Certified to be true copy

25-02-09

10-04-09
16-02-09

5. Shri M.K.Das-II/EMC/CHY station is informed that an enquiry will be held only in respect of those article of charges which is not admitted. He should, therefore, specifically admit or deny such article of charges.

6. Shri M.K.Das-II/EMC/CHY station 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 Enquiring authority or otherwise fails or refuse to comply with the provisions or rules-9 of the Railway Servant(Discipline and (Appeal) Rules-1963 on the orders/direction issued in pursuance of the said rules, the enquiring authority may hold the enquiry ex parte.

7. The attention of Shri M.K.Das-II/EMC/CHY is invited to Rules-20 of the Railway Servants(Conduct) rules-1963, 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 interest 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 these proceedings, it will be presumed that Shri M.K.Das-II/EMC/CHY station 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 rules of the Railway services conduct rules-1963.

8. The receipt of this Memorandum may be acknowledged.

Encl:

Signature: K.L.SARKAR DCM/TC/EMG
Name and designation of the Competent authority.

Civil Commercial Maru,
• श्री रमेश आमदानी
U. P. Railways/Board

To: Shri M.K.Das-II
Designation Em. TC/CHY
(Through: CH/CHY)

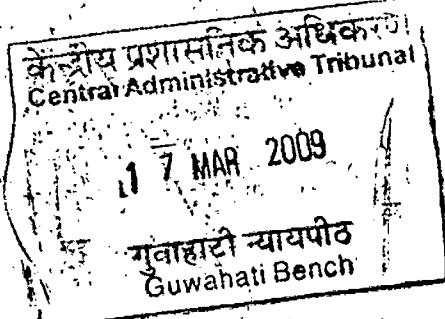
Copy to Shri CH/CHY (Name and designation of the lending authority) for information.
Strike out whichever is not applicable

To be deleted if copy is 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 the investigation authority or any authority who are in the custody of the documents or who would be arranging for inspection of documents to enable that authority being mention in the draft memorandum where as the President is the Disciplinary authority.)
To be retained wherever President or the Railway Board is the competent.

Certified to be true copy

25/02/09



Northeast Frontier Railway.

Annexure to Standard Form No.5
Memorandum of Charge sheet under Rule-9 of the R.S.
(D & A) Rules-1938.

Annexure-I

Statement of Articles of the charges framed against
Shri M.K.Das-II/nd.TC/GHY (Name and designation of the
Railway staff).

ARTICLE-I.

That the said Shri M.K.Das-II/nd.TC/GHY while
providing as (here enter definite and distinct articles of the Charges)

Shri K.K.Das-II while remained posted as Head Ticket
Collector N.F.Railway, Guwahati Railway Station, Guwahati
during the year 2001 failed to maintain absolute integrity and
devotion of duty in as much as on 20/11/2001, he demanded and
accepted illegal gratification of Rs. 100/- from Shri Monoj //
Agarwal of Bajoria Market, SRCB Road, Fancy Bazar, Guwahati for
providing him a sleeper class berth up to New Jalpaiguri
Railway Station in Train No. 5621 (N.E. Express) leaving
Guwahati on 21/11/2001 and by the aforesaid act Shri M.K.Das-II
contravened the provision of Rule 3.1 (i) (ii) & (iii) of
railway service (conduct) Rule, 1938.

Guwahati Bench
M.V. Commercial Manual (T-2)

Annexure-II. श्री. रेखा. आर्द्धिक

4. 9. Railway

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

Statement of imputation of Mis-conduct/Mis-behaviour
in support of the article of the charges, framed against
Shri M.K.Das-II/nd.TC/GHY station.

ARTICLE-I.

While Shri M.K.Das-II, Head Ticket Collector, N.F.Railway was posted at Guwahati Railway Station on 20/11/2001 demanded illegal gratification of Rs. 100/- from one Shri Monoj Agarwal of Bajoria Market SRCB Road, Fancy Bazar, Guwahati for providing him a sleeper Class berth upto New Jalpaiguri Railway Station in Train No. 5621 (N.E. Express) leaving Guwahati on 21/11/2001.

It is alleged that on 20/11/01 Shri Monoj Agarwal approached Shri M.K.Das-II to enquire about the availability of berth in N.E. Express leaving Guwahati on 21/11/01, when the said M.K.Das-II assured him that a sleeper class berth will be provided to him and demanded illegal gratification of Rs. 100/- from Shri Monoj Agarwal. As Shri Monoj Agarwal was not willing to pay the bribe, he lodged a complaint addressed to SP/CBI/ACB/Guwahati for taking legal action against Shri M.K.Das-II. On receipt of the complaint a case no. RC.18 (A)/2001-SNG was registered and in order to lay trap, a trap laying party was constituted wth. the following officers/Staff :

17 MAR 2009

Certified to be true copy
25-02-09

Guwahati Bench
M.V. Commercial Manual (T-2)
Contd2.

1) Shri B.S.Jha, Inspector 2) Shri L.Kangshing, Inspector
 3) Shri Manejit Dey, ASI 4) Shri Biren Suri, Constable
 5) Shri Jitu Deka, Constable. Services of two independent witnesses namely Shri S.N.Singh and Shri S.K.Dubey both of Central Ground Water Board, R.G.Borah Road, Zoo Tiniali, Guwahati-24 were requisitioned.

The trap laying team, witnesses and the complainant assembled in the CBI Office Guwahati on 20/11/01 at about 17.45 hrs. were Inspector B.S.Jha explained the purpose to all concerned and a demonstration regarding reaction of Phenolphthalein Powder with solution of sodium carbonate was given. The complainant was asked to produce the cost of the ticket and the amount of Rs. 100/- to be paid to Shri M.K.Das-II Shri Agarwal then produced the following currency notes of

Rs. 50/- G.C. Notes bearing No.

1) 2 DA 515768 & 11) 3 BG 711812

Rs. 100/- G.C. Notes bearing No.

1) 7 BN 708371 & 11) 1 GB 662864.

17 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

One Rs. 100/- G.C. Note bearing no.1 GB 662864 was treated with Phenolphthalein Powder and kept in the right side chest pocket of Shri Manej Agarwal and the remaining G.C. Notes was given to Manej Agarwal to be kept in his purse for purchasing ticket. He was asked to give tainted G.C. Note of Rs. 100/- only on demand to Shri M.K.Das-II.

A Pre- Trip Panchama¹ was prepared in this regard at the CBI Office incorporating all the details and the same was attested by both the witnesses.

The trap laying team alongwith the witnesses and the complainant reached Guwahati Railway Station at about 18.45 hrs. The complainant Shri Manej Agarwal met Shri M.K.Das-II in the G/e the CTI N.F.Rly, Guwahati Railway Station alongwith the witness Shri S.N.Singh and reminded him the purpose of his coming there. Shri M.K.Das-II gave the complainant a piece of paper and asked him to give his journey particulars, home address etc. After receiving the said particulars Shri M.K.Das-II wrote a requisition slip addressed to Chief Booking Clerk, Booking for issuing a sleeper and class ticket Ex. Guwahati to New Jalpaiguri for journey by 5621 on dtd. 21/11/2001 and handed over the same to Shri Agarwal with advise to bring the ticket from counter no.6. Shri Agarwal purchased sleeper class ticket No. 46890 and came back to CTI's office and handed over the ticket to Shri M.K.Das-II. Shri M.K.Das-II asked Shri Rahul Amin, Head ticket Collector to issue berth reservation ticket against the said journey ticket and make necessary entries in the reservation chart. On being asked by Shri M.K.Das-II Shri Rahul Amin issued berth reservation ticket no. 268866 and made necessary entries in the reservation chart of coach no. 6 of 5621 dte. 21/11/01 Shri M.K.Das-II thereafter collected the journey ticket and berth reservation ticket from Shri Rahul Amin and handed over to Shri Agarwal and demanded Rs. 100/- to be paid to him. On being demanded Shri Agarwal gave tainted G.C. Note No.1 GB 662864. After receiving the said Rs.100/- Shri M.K.Das-II demanded Rs.20/- more being the cost of the reservation charge. At this point of time Shri M.K.Das-II was challenged by the CBI Team for demanding and accepting illegal gratification of Rs.100/- from the complainant. Shri M.K.Das-II immediately dropped the tainted G.C. Note at the floor which was later recovered by the CBI Team. Right hand of Shri M.K.Das-II was washed with the solution of sodium carbonate which turned pink indicating that he had accepted the tainted money from the complainant. The said pink solution was preserved in a clean bottle and sealed. A post trap memorandum vide Panchama² was prepared on the spot and signature of all concerned were taken. By the above acts Shri M.K.Das-II contravened the provision of Rule 3 (1), (ii) & (iii) of Railway Service (Conduct) Rules, 1955.

3.1 (i) (ii) & (iii)

Certified to be true copy

25.02.09

21/11/01
CBI GUWAHATI
Civil Commercial Manager (VC)

03/IX
JWL

Annexure-III.

List of documents by which the articles of the charge framed against Shri M. K. Das - II are proved to be sustained.

1) Complaint dtd. 20/11/2001 lodged by Shri Manej Agarwala. PD/1

2) A DIC Book of Guwahati Railway Station Counter No.6 commencing from 11/11/2001 and closed on 20/11/2001. PD/2

3) Requisition slip for issuing sleeper class ticket by Chief Ticket Inspector, Guwahati ~~THE HON'BLE TRIBUNAL~~ dtd 20/11/2001

4) A Sleeper Class Ticket No. 46890 from Guwahati to New Jalpaiguri.

5) Reservation Chart of 6621 Down for 21/11/01. PD/3

6) BRT No. 265335. PD/4

7) BIC Diary of CTIs Office Guwahati from 17/11/01 to 21/11/01.

8) A Attendance Register of CTIs Office Guwahati opened on 17/09/2001 and closed on 18/10/2001. PD/5

9) A Duty Roaster of CTIs Office, Guwahati from 9/6/01 to 27/11/01

10) A Exhibit "A" leveled right hand wash.

11) A One envelope marked Ext.P containing G.C. Note of Rs 100/- denomination bearing no.1 GB 662864 " Tainted Bribe Money".

12) Panchnma No.1 dtd. 20/11/2001.

13) Panchnma No.2 dtd 20/11/2001.

Annexure-IV.

List of witnesses by whom the articles of the
framed against Shri M.K.Das-II, M.D.TC/GHY.
proposed to be sustained.

- 1) Shri Monoj Agarwal @ Monoj Bajoria, Bajoria Market SRCH Road, Fancy Bazar, Guwahati-1.
- 2) Shri S.N.Singh, Drillers In-Charge Division-VIII, Central Ground Water Board, R.G.Baruah Road Zec Tiniali, Guwahati-24.
- 3) Shri S.K.Dubey, Driver, Central Ground Water Board, R.G.Baruah Road, Zec Tiniali, Guwahati-24.
- 4) Shri Drabya Narayan Tripathy, Head coaching clerk, Guwahati Railway Station.
- 5) Shri Baturam Das, Chief Superintendent(Steck) N.F.Railway, Guwahati Station.
- 6) Md.Rahul Amin, Head ticket collector, N.F.Railway,Guwahati.
- 7) Shri Binandiran Kava, Chief Ticket Inspector, N.F.Railway.
- 8) Shri Gautam Chandra Das, Relieving TC, N.F.Railway, Guwahati Station.
- 9) Shri L.Hangshing, Inspector/CBI/ACB/Guwahati.
- 10) Shri Monojit Dey, ASI/CBI/ACB/Guwahati.
- 11) Shri Jitu Deka Constable CBI/ACB/Guwahati.
- 12) Shri Biren Suri, Constable CBI/ACB/Guwahati.
- 13) Shri B.S.Jha, Inspector of Police CBI/ACB/Guwahati.
- 14) Shri A.K.Saha, Dy.Superintendent of police/CBI/ACB/Guwahati.

14 (None) Non-Rhy. Witnesses
Duke of Clarence

7, 8 (Five) Rely
mind absent of
feared

केन्द्रीय प्रशासनिक अधिकारण Central Administrative Tribunal

17 MAR 2009

গুৱাহাটী ন্যায়পীঠ - Guwahati Bench

Certified to be true copy

25.02.09

To

The Divisional Commercial Manager (TC),
N.F. Railway, Lumding.

Dated, 08-01-2003.

Sir,

**Sub - Defence against Charge Memorandum No.C/CON/LM/MISC/06
(MKD-HdTC-GHY) Dated, 03.9.2002 issued by DCM(TC)/N.F.
Railway, Lumding for imposing Major Penalty.**

With due deference and humble submission, I beg to submit that I do not accept the charges which was labelled against me through your subject-noted Charge Memorandum.

In view of the above, I would request your honour kindly arrange to conduct the D.A.R Enquiry to enable me to disprove the charges incorporated in the aforesaid Charge Memorandum during the course of D.A.R Enquiry in the form of "Audi alteram partem" so that reasonable opportunity under Article 311 of the Constitution analogous to the principles of Natural Justice is not denied to me and feel me oblige thereby.

With regards,

Yours faithfully,

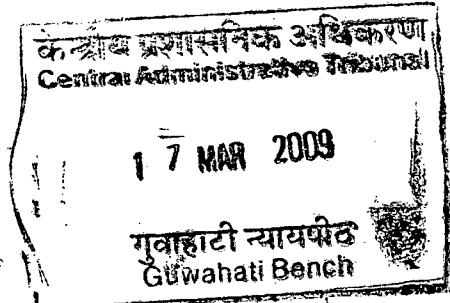
Minal Kanti Das

(M. K. Das, II)
Head Ticket Collector,
Guwahati Railway Station.

For record

25/02/09

Certified to be true copy



To Sri M. K. Das (vi)

through CT/104

ANNEXURE- (4) X

STANDARD FORM NO. 7

G - 134 F.

Standard form of order relating to
Appointment of Enquiry officer
(Rule-9 of R.C. (i) of R.C. (i) & N.R. Rules-1903)

No: C/CON/LM/Mil.c/06 (MIL-nd. TC-CHY)

Dated : 20/3/03

Name of the Railway Administration :

N.R.Railway.

Place of issue.

DRM(C), Land's Office.

O R D E R

Whereas an Enquiry under Rule-9 of the Railway servant (Discipline and appeal) Rules-1903 is being held against Sri

M.K.Das, MM, EX-II/nd.TC/CHY

(Name and designation of the Railway servant).

And whereas the undersigned consider (s) that an Enquiry Officer should be appointed to enquiry into the charges framed against Sri M.K.Das-II, nd.TC/CHY.

Now, therefore, the undersigned, in exercise of the powers conferred by sub-rule (2) of the said rule hereby Appointed Sri

R.S.Mishra, AGM/LMG. (Name and designation
of the Enquiry officer) as Enquiry officer to Enquire into the
charges framed against the said Sri M.K.Das-II, nd.TC/CHY.

This is in cancellation of the memorandum No.

C/CON/104 / nominating Sri

as Enquiry officer.

Signature : (H.L.SARKAR DCM/TC) 20/3/03

Designation : DCM/TC/ रेलवे प्रबन्ध
प्रबन्ध विभाग
Div. Comm. 11/2003/CHY/CHY

Copy to : Sri M.K.Das-II, nd.TC/CHY
(Name and designation of the Railway Employee)

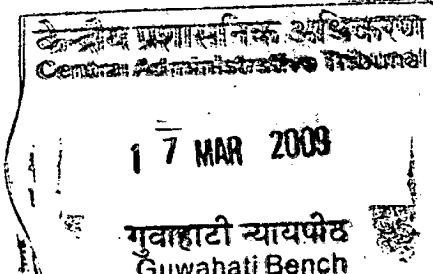
Copy to : Sri R.S.MISHRA, AGM/LMG.
(Name and designation of the enquiry officer.)

Recd on 26/3/03

Ch/29/3

Certified to be true copy

25.02.09



STANDARD FORM NO. 7.

G- 134 F.

Standard form of order relating to
Appointment of Enquiry Officer
(Rule No. 3(e) of R.C. (B & A) Rules-1953)

No. C/CON/LM/Misc/08 (MKD-Hd. TC-GHY)

Dated : 11.11.2003

Name of the Railway Administration :

N.F. Railway

Place of issue :

Divi(G), LMG's. office.

Q H D B H.

Whereas an Enquiry under Rule - 3 of the Railway servant
(Discipline and appeal) Rules-1953 is being held against Shri
M.K. Das,- II, Hd. TC/GHY
(Name and designation of the Railway servant).

And whereas the undersigned consider (e) that an Enquiry
Officer should be appointed to enquire into the charges framed against
Shri M. K. Das,- II, Hd. TC/GHY.

Now, therefore, the undersigned, in exercise of the powers
conferred by sub-rule(e) of the said rule hereby Appointed Shri
R. S. Mishra, Area Manager/RPAN (Name and designation
of the Enquiry Officer) as Enquiry Officer to enquire into the charges
framed against the said M. K. Das,- II, Hd. TC/GHY.

This is in cancellation of the memorandum No. C/CON/LM/Misc/
08 (MKD-Hd. TC/GHY) dated 22.03.2003 nominating Shri
Area Manager/BBB as Enquiry officer.

Signature. (J. Jamir)

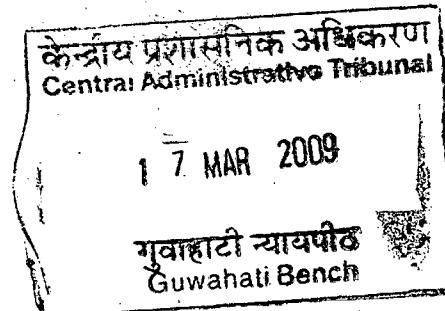
Designation.

DCM/LMG.

केन्द्रीय प्रशासनिक अधिकारपाल
Central Administrative Tribunal

Copy to :- Shri M. K. Das,- II, Hd. TC/GHY
(Name and designation of the Railway employee)

Shri R. S. Mishra, Area Manager/RPAN
(Name and designation of the enquiry officer.)



Certified to be true copy

25.02.09.



Daily Order Sheet No. 7.

Venue - Chamber of DCM/GHY.

Date : 18.9.2004

Time : 10 hrs. to 17.30 hrs.

Sub - D & A R inquiry against Shri Mrinal Kanti Das-II, Hd. TC/GHY.

The following officials are present at the time of RH on date :-

1. Shri Mrinal Kanti Das-II, Hd. TC/GHY CO.
2. Shri M. Chakraborty, Retd. Sr. SO(A) & Ex. CVI/MLG DC
3. Shri S. Sengupta, CVI(T)/MLG PO

The following officials are absent at the time of RH on date

1. Shri Monoj Agarwal, Monoj Bazaar, Bazaar Market, SRCB Road, Fancy Bazar, GHY PW-1
2. Shri S. N. Singh, Drillers, Central Ground Water Board, Zoo Tinali, Guwahati - 24 PW-2
3. Shri B. S. Jha, Inspector of Police, CBI/ACE/GHY PW-13
4. Shri A.K. Saha, Dy. SP CBI/ACB/GHY PW-14

17 MAR 2009

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Officer

गुवाहाटी न्यायपीठ
Guwahati Bench

The Regular Hearing resumed on 18.9.2004 at 10.00 hrs. as per Daily Order Sheet No. 6 dated, 17.9.2004. PO failed to produce PW-1, PW-2, PW-13 & PW-14 although the inquiry is being held for the last 4 (four) days i.e. from 15.9.2004 at GHY. Even then PO requested IO to fix up another date as final hearing on which he will try to produce all the witnesses including Shri Monoj Agarwal who is the key witness of the case, and at present Shri Agarwal is out of Guwahati as confirmed by PO as well as CBI Officials. But the request of PO is totally rejected on the ground that the dates of Regular Hearing of the case were fixed on 11.4.03 and 2.8.03 at LMG. In the midst, the PO was appointed on 22.8.03. Further dates of RH were fixed on 8.9.03 at BPB, 7.1.04 to 9.1.04 at GHY, 10.5.04 at GHY, 25.5.04 at GHY, 16.8.04 to 18.8.04 at Jhansi and 15.9.04 to 18.9.04 at GHY. Since it is case of November'01, it is not possible for dragging the case further. Out of aforesaid 4 witness, 3 witnesses(i.e. PW-1, PW-13 & PW14) have not been attending the inquiry for more than one year. Further, it is worthwhile to mention here that as per deposition of PW-3, it has come to knowledge that PW-2, PW-13 and

Mrinal Kanti Das-II
CO. 1899

Mrinal Kanti Das-II
DC. 18/9/04

18/9/04

Contd.....2

Resumed
18/9/04

Certified to be true copy

25-02-09

-(2)-



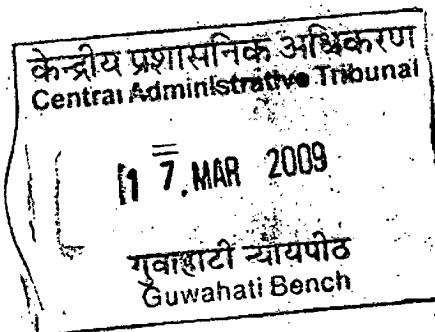
PW-14 have been transferred from Guwahati. So, there is remote possibility of attending the inquiry by the aforesaid officials in the date fixed in future also. On that consideration, it is decided not to fix up any further date for Regular Hearing in this case considering the principles of Natural Justice. The case from Prosecution side is closed and thereafter the CO was asked to produce defence documents and witnesses, if any to which CO replied negative. CO is asked to produce himself as witness in his case to which he replied negative. At this stage, IO decided to proceed with the General examination of CO by IO. After general examination of CO, the Regular Hearing of the case is closed on date. PO is requested to submit his Brief within 10 days and on receipt of the PO's Brief, CO will submit his Defence Brief within 10 days from the date of receipt of PO's Brief. If the Brief is not received from either side within stipulated time cited above, it will be presumed that there will be no Brief to be submitted from either side.

Mrinal Kanti Das
CO. 18/9/09

Munshi
18/9/09
DC.

DMB
PO
18/9/09

Received
10.18.91/09



Certified to be true copy

25-02-09

GS/AISCTREA/maligaon

H. F. RAILWAY.

587

NO. E/74/0/PT.XXI(C).

Office of the
General Manager.(P).

Maligaon, dated, 8-8-2001

To

GM/Maligaon, GM(CON)Maligaon, ACM/MLG.

All PHQDs, DRMs, ADMs, DAOs, WAO/HBQs, DBMs.

DY.CME/HBQs, DBMs, All Area Manager, All Sr.DPOs.

All AEG, Sr.AEW/CHY, NJP, Sr.DEG/MLG.

DEG/DBM, W(M)BMS/ENGN, All Sr.DME(D).

All Controlling Officers of Non-divisionalised Offices.

The GS/NFREU, NFEMU, AISCTREA & NFROBCEA.

Sub:- Model time schedule for
finalisation of DAR proceedings.

It has come to the notice of the administration
that in most DAR cases Disciplinary authorities do not
maintain the time schedule as fixed by Rly. Board for
completion of the proceedings whereby staff against whom
Disciplinary proceeding initiated are put under hardship.
The recognised unions have also expressed anguish over
such inordinate delays.

In view of the above, the model time schedule
for finalisation of DAR proceedings issued by Rly. Board
vide their letter No.E(DAR)308/0/Vol.VII dt.8-9-94 is
shown in the enclosed Annexure-'A' for its adherence.

DAR:-As above.

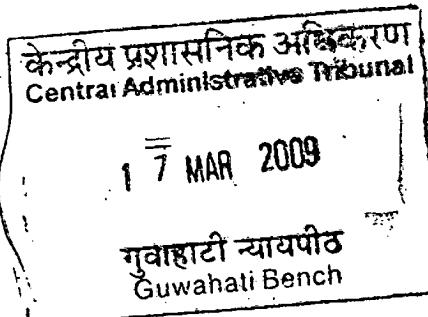
(overleaf) <

(Signature)
07/08/01

(P. G. JOHNSON.)
APD/R.
for GENERAL MANAGER.(P)MLG.

AB/7-8.

P.T.O



Certified to be true copy

25-02-09

ANNEXURE - A.

Model time schedule for progress of
major penalty DAR cases.

S.No.	Steps description.	Model Time schedule.		
		CVC/CBI cases.	Min. Vig. cases.	Dept. cases.
1	2	3	4	5
1.	Issue of chargesheet after receipt of advice.	30	30	10-20
2.	Service of chargesheet.	10	10	5-10
3.	Inspection of RUDs(Relied upon documents).	30	20	(To be supplied with SF.5).
4.	Submission of written defence with list of witness .	20	20	10-20
5.	Decision to hold the inquiry after receipt of the defence(Step-4).	30	30	✓ 20
6.	Nomination of IO/PO.	45	20	10-20
7.	Appointment of IO/PO.	20	05	✓ 05
8.	Completion of enquiry and submission of report.	180	180	50-60
9.	Obtaining CVC's second stage advice after receipt of inquiry report.	45	-	-
10.	Supply of copy of inquiry report to the charged official.	10	10	5-10
11.	C.O.'s submission of final defence.	15	15	10-15
12.	Submission of cases of Disciplinary Authority.	10	10	5-10
13.	Decision by Disciplinary Authority.	20	20	15-20
14.	Issue of MIP.	5	5	✓ 5
Total:-		470	365	20F 20S 150

Certified to be true copy

25-02-09

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

17 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

N. F. RAILWAY

OFFICE OF THE
GENERAL MANAGER(P)
MALIGAON::GUWAHATI-11

DAC-588.

No. E/74/0/Pt-XVI (C)

August 23, 2001.

To
 GM/MLG, GM (Con), AGM/MLG
 All PHODs, All DRMs, DAOs, WAOs/NBQ & DBWS
 All Controlling Officers of
 Non-divisionalised Offices of NF Railway
 The General Secretary/NFREU & NFRMU/PNO, GHY-12
 The GS/AISCTREA/Mallgaon, Guwahati-11

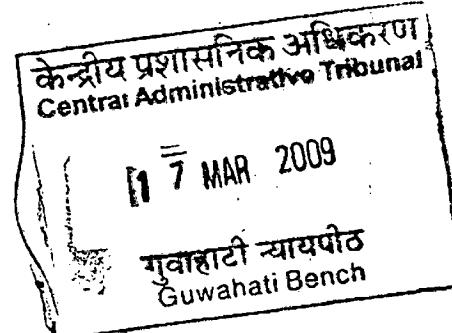
Sub: Speedy finalisation of DAR cases.

It has been noticed that finalisation of DAR proceedings especially in respect of major penalty, in some cases take unduly long time due to various reasons including lack of proper appreciation of rules and procedures.

Whereas instructions have been issued from time to time in respect of conducting of enquiries, supply of relevant documents, issue of charge sheet etc. and a model time schedule has been issued by the Railway Board which has duly been circulated to all the units of the railway, the same has again been reiterated by this office letter No. DAC-587 date 13.8.2001.

NFRMU, vide their PNM item No.90/8 at Zonal level, have drawn the attention of the administration towards the non-adherence of guidelines issued by the Railway Board in their letter No.E(D&A)97 RG-6 dated 12.8.99 by the Disciplinary Authority and Enquiry Officer which results in delay in finalisation of the DAR proceedings. It is, therefore, once again reiterated that instructions contained in Railway Board's letter No.E(D&A)97RG6-26 dated 12.8.99, circulated vide this office No.DAC-570 dated 01.11.99 should again be brought to the notice of the Disciplinary Authority and Enquiry Officer and scrupulously followed in addition to maintenance of model time schedule and other relevant instructions.

SMJ
 (SMN. ISLAM)
 Chief Personnel Officer/IR
 for General Manager (P)



Certified to be true copy

25-02-09

DAC - 600.

No. E/74/0 Pt. XVI (C)

Dated : 31 - 03 - 2003.

To
GM/MLG, GM/CON/MLG, ACM/MLG,
All PHODs, DRMs, ADRMs, Sr. DPOS, DAOs, SAO/NJP,
CWM/NBQs, DBS, WAO/NBQs, DBS, AIRM/NJP,
All Area Managers, Sr. DME (D)S, AENS, OSD/RNY,
DEN/DERT, APO/GHY, DBS, NBQs & NJP,
All non-divisionalised Unit, Dy. CE/Br./Line/MLG,
Sr. DEN/MLG, Dy. CSTE/MW/MLG, Dy. CSTE (TC)/MLG,
All SPOS & APOS of P. Branch/Maligaon,
The GS/NFREU, NERMU, AISCTREA/MLG.

Connects
DNC/597
E/74/0 Pt. XVI (C)
dt. 12.2.2003 for
GAB, emploee.

NOTIFICATION

A copy of Railway Board's notification No. E (D&A) 2002 - RG 6-1 dated 10-3-2003 (RBE No. 46/2003) on the above subject is forwarded for information and guidance please.

केन्द्रीय प्रशासनिक आयोग (संघ)
Central Administrative Tribunal

17 MAR 2009

Recd from
28/03/03

(P.G. Johnson)

APO/R

for GENERAL MANAGER (P)/MLG.

Copy of Railway Board's Notification No. E (D&A) 2002 - RG 6-1
dated 10-3-2003)

Notification

GSR..... - In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Railway Servants (Discipline and Appeal) Rules, 1968, namely:-

- (1) These rules may be called the Railway Servants (Discipline and Appeal) Second Amendment Rules, 2003.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Railway Servants (Discipline and Appeal) Rules, 1968, for Schedule-II, the following shall be substituted, namely:-

"SCHEDULE - II

[See rule 4 and sub-rule (2) of rule 7]

Schedule of Disciplinary powers and powers of suspension of different grades of Railway Officers and Senior supervisors in respect of non-gazetted staff of zonal Railways, Chittaranjan Locomotive Works, Diesel Locomotive Works, Integral Coach Factory, Wheel & Axle Plant, Metro Railway (Calcutta), Diesel Components Works (Patiala), Rail Coach Factory (Kapurthala), Railway Electrification Projects and Metropolitan Transport Projects (Railways).

Senior Supervisors in charge in the pay scale of Rs.4500-7000 and above. (Described as Supervisors In-charge by the Railway Administration for this purpose).	Assistant Officers (Junior Scale and Group 'B').	Senior Scale Officers and Assistant Officers (Junior Scale and Group 'B' holding independent charge).	Junior Administrative Grade Officers and Senior Scale Officers holding independent Charge or Incharge of a Department in the Division.	Additional Divisional Railway Managers in relation to the Departments attached to them or Divisional Railway Managers.	Senior Administrative Grade Officers in the Zonal Railways' Head Quarters in the pay scale of Rs.18400-22400 including Principal Heads of Departments in the pay scale of Rs. 22400-24500.	Additional General Managers in relation to Departments attached to them or Chief Administrative Officers or General Managers.	Railway Board
1.	2.	3.	4.	5.	6.	7.	8.

Certified to be true copy

25-02-09

OFFICE

(i) Censure:

1	2	3	4	5	6	7	8
---	---	---	---	---	---	---	---

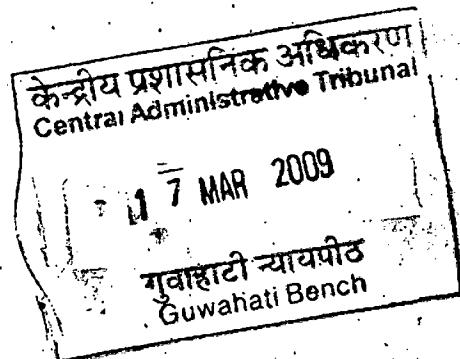
Group 'D' and Group 'C' staff who are three grades below and lower than the Disciplinary Authority.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs.5000- 8000.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs.5500- 9000.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs.5500- 9000.	Group 'D' and Group 'C' staff.			
---	--	--	--	--------------------------------	--------------------------------	--------------------------------	--------------------------------

(ii) Withholding of promotion:

Group 'D' and Group 'C' staff who are three grades below and lower than the Disciplinary Authority.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs.5000- 8000.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs.5500- 9000.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs.5500- 9000.	Group 'D' and Group 'C' staff.			
---	--	--	--	--------------------------------	--------------------------------	--------------------------------	--------------------------------

(iii) Recovery from pay of pecuniary loss caused to Government by negligence or breach of orders:

Group 'D' and Group 'C' staff who are three grades below and lower than the Disciplinary Authority.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs.5000- 8000.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs.5500- 9000.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs.5500- 9000.	Group 'D' and Group 'C' staff.			
---	--	--	--	--------------------------------	--------------------------------	--------------------------------	--------------------------------



Certified to be true copy

25-02-09

-3-

(a)

(iv) Withholding of privilege passes or privilege ticket orders or both:

1	2	3	4	5	6	7	8
Group 'D' and Group 'C' Staff who are three grades below and lower than the Disciplinary Authority.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs.5000-8000.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs.5500-9000.	Group 'D' and Group 'C' staff.				

(iii) (b)

(v)

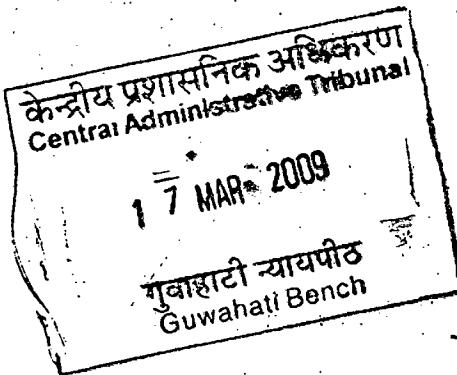
Reduction to a lower stage in time scale of pay for a period not exceeding three years, without cumulative effect and not affecting pension:

Group 'D' and Group 'C' staff who are three grades below and lower than the Disciplinary Authority.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs.5000-8000.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs.5500-9000.	Group 'D' and Group 'C' staff.				
---	---	---	--------------------------------	--------------------------------	--------------------------------	--------------------------------	--------------------------------

(iv)

(vi) Withholding of increments :

Group 'D' and Group 'C' staff who are three grades below and lower than the Disciplinary Authority - No powers exercisable where inquiry under sub-rule (2) of Rule 11 is required.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs.5000-8000.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs.5500-9000.	Group 'D' and Group 'C' staff.				
---	---	---	--------------------------------	--------------------------------	--------------------------------	--------------------------------	--------------------------------



Certified to be true copy

(A)
25-02-09

(vii) Reduction to a lower stage in the time scale of pay for a period exceeding three years or with cumulative effect or adversely affecting pension:

1	2	3	4	5	6	7	8
---	---	---	---	---	---	---	---

NIL.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs.5000- 8000.	Group 'D' and 'C' staff in pay scales of upto and including Rs.5500- 9000.	Group 'D' and Group 'C' staff.			
------	--	--	--------------------------------	--------------------------------	--------------------------------	--------------------------------

.(vi)

(viii) Reduction to a lower time scale of pay, grade, post or service:

NIL.	Group 'D' staff.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs.5500/- 9000.	Group 'D' and Group 'C' staff.			
------	------------------	---	--------------------------------	--------------------------------	--------------------------------	--------------------------------

vii

(ix) Compulsory retirement:

Appointing authority or

VIII

(x) Removal from service:

all authority of
equivalent rank or any

ix

(xi) **Dismissal from service:**

higher authority.

(x) (xi)

xii) **Suspension:** (Not amounting to penalty).

2 3 4 5 6 7 8

Group 'D' and Group 'C' staff in pay scales of upto and including Rs. 5200-4900 subject to report to Divisional Officer or Assistant Officer Incharge within 24 hours in the case of Group 'C' staff.

Group 'D'
and Group
'C' staff in
pay scales
of upto
and
including
Rs.4000-
6000.

Group 'D'
and Group
'C' staff in
pay scales of
upto and
including
Rs.5000-
8000.

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal
17 MAR 2009
गुवाहाटी न्यायपीठ
Guwahati Bench

Note 1 : The appellate authorities in the case of authorities mentioned in this Schedule shall be as shown in the next column, whereas in the case of the authority specified in the last column, the appellate authority shall be the President. If post of the rank shown in any particular column does not exist, the appellate authority shall be that shown in the next column.

Note 2 - The appointing authority or an authority of equivalent rank or any higher authority who is competent to impose the penalty of dismissal or removal or compulsory retirement from service, may also impose any lower penalty."

R.R. Jaruhar
Secretary
Railway Board

Certified to be true copy

(A) 25.02.09'

(File No.E(D&A)2002/RG 6-1)

Footnote. - The principal rules were published in the Gazette of India vide notification No.E(D&A) 66 RG 6-9 dated 22.8.1968 vide S.O. 3181 dated 14.9.68 and subsequently amended vide:-

- 33 -

<u>S.No.</u>	<u>Notification No.</u>	<u>Date</u>	Published in the Gazette of India Part II Section 3 Sub-section (i)	
			<u>GSR/SO No.</u>	<u>Date of Publication</u>
1.	2.	3.	4.	5.
1.	E(D&A) 66 RG 6-9	10.04.69	1531	24.06.1969
2.	E(D&A) 67 RG 6-13	07.04.71	1925	08.05.1971
3.	E(D&A) 70 RG 6-63	09.06.71	2501	03.07.1971
4.	E(D&A) 70 RG 6-60	19.10.71	5078	06.11.1971
5.	E(D&A) 70 RG 6-41	21.10.71	4050	30.10.1971
6.	E(D&A) 70 RG 6-43	12.11.71	5264	04.12.1971
7.	E(D&A) 70 RG 6-52	25.03.72	9467	08.04.1972
8.	E(D&A) 70 RG 6-69	17.11.72	3918	25.11.1972
9.	E(D&A) 69 RG 6-60	05.02.73		
10.	E(D&A) 71 RG 6-60	13.07.73	2897	06.10.1973
11.	E(D&A) 75 RG 6-35	05.04.77	1413	14.05.1977
12.	E(D&A) 77 RG 6-46	07.07.78	2193	29.07.1978
13.	E(D&A) 78 RG 6-54	29.11.78	364	23.12.1978
14.	E(D&A) 77 RG 6-30	07.04.78		
15.	E(D&A) 79 RG 6-26	17.08.79	3057	08.09.1979
16.	E(D&A) 79 RG 6-12	25.10.79	3777	17.11.1979
17.	E(D&A) 78 RG 6-61	22.11.79		
18.	E(D&A) 79 RG 6-39	31.12.79	0143	19.01.1980
19.	E(D&A) 78 RG 6-11	06.02.80	0441	23.02.1980
20.	E(D&A) 81 RG 6-72	31.08.82		
21.	E(D&A) 81 RG 6-63	10.08.83	GSR/982	17.12.1983
22.	E(D&A) 81 RG 6-54	31.05.84	GSR/632	23.06.1984
23.	E(D&A) 82 RG 6-29	30.03.85	1822	27.04.1985
24.	E(D&A) 83 RG 6-45	13.06.85	5667	06.07.1985
25.	E(D&A) 80 RG 6-25	20.01.86	GSR/667	22.02.1986
26.	E(D&A) 85 RG 6-16	20.03.87	GSR/241	04.04.1987
27.	E(D&A) 83 RG 6-14	28.08.87	GSR/708	19.09.1987
28.	E(D&A) 87 RG 6-47	26.10.87	GSR/869	21.11.1987
29.	E(D&A) 87 RG 6-146	10.05.88	GSR/420	21.05.1988
30.	E(D&A) 88 RG 6-43	12.08.88	GSR/759	17.09.1988
31.	E(D&A) 84 RG 6-44	20.10.89	GSR/850	11.11.1989
32.	E(D&A) 88 RG 6-38	16.11.89	GSR/900	02.12.1989
33.	E(D&A) 84 RG 6-44	22.11.90		
34.	E(D&A) 90 RG 6-112	16.11.90	GSR/723	11.12.1990
35.	E(D&A) 91 RG 6-42	08.06.91		
36.	E(D&A) 90 RG 6-117	19.09.91	GSR/568	05.10.1991
37.	E(D&A) 89 RG 6-80	20.01.92	GSR/86	22.02.1992
38.	E(D&A) 90 RG 6-112	22.10.92		
39.	E(D&A) 92 RG 6-148	09.11.92		
40.	E(D&A) 92 RG 6-166	11.01.93	GSR/63	30.01.1993
41.	E(D&A) 93 RG 6-94	23.06.94	GSR/327	16.07.1994
42.	E(D&A) 95 RG 6-68	13.08.97	GSR/422	27.12.1997
43.	E(D&A) 92 RG 6-151	06.11.97	GSR/106	06.06.1998
44.	E(D&A) 94 RG 6-10	16.02.99	87	20.03.1999
45.	E(D&A) 98 RG 6-42	11.10.99		
46.	E(D&A) 2001 RG 6-29	31.10.2001	617	24.11.2001
47.	E(D&A) 87 RG 6-151	08.08.2002		
48.	E(D&A) 98 RG 6-52	16.01.2003		

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

17 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

(K. Shankar)
Dy. Director Estt.(D&A)
Off. of the
Railway Board

Certified to be true copy

25-02-09

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/CON/LM/MISC/06 (MKD-Hd.TC-GHY)

Dt.16.11.05.

To,
Sri M. K. Das-II,
Hd. TC/GHY.

Father's Name	: - Sri Nakul Ch. Das,
Designation	: - Hd. TC/GHY.
Date of birth	: - 08.04.1953.
Date of Appointment	: - 15.09.1986.
Present pay and scale	: - Rs. 6650/- in scale of Rs5000-8000/-
Date of superannuation/Retirement	: - 31.05.2013.

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

17 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

1. The following charge was brought against you.

Charges (s)

2. Shri M. K. Das - II, Hd. TC/ GHY while remained posted as Head Ticket Collector, N. F. Railway, Guwahati Railway Station, Guwahati. During the year 2001 failed to maintain absolute integrity and devotion to duty as much as on 20.11.2001, he demanded and accepted illegal gratification of Rs.100/- from Sri Manoj Agarwal of Bajoria market, S.R. C. B. Road, Fancy Bazar, Guwahati for providing him a sleeper class berth upto New Jalpaiguri Railway Station, in train No.5621 (N. E. Express) leaving GHY on 21.11.2001 and by the aforesaid act Sri M. K. Das-II, contravened the provision of rule 3.1 (i) (ii) and (iii) of Railway service (Conduct) rules of 1966.

3. You are hereby informed that in accordance with the orders passed by Sr. DCM/LMG (observation of Sr. DCM/LMG in Annexure 'A') you are reduced to lower time scale of pay for 2 (two) years with cumulative effect.

Contd... page/2

Certified to be true copy

25-02-09

4. The above penalty shall operate to postpone your future increment on restoration to your formal stage in the existing pay & scale.
5. The above penalty shall take with immediate effect.

केन्द्रीय प्रशासनिक अधिकारपा
Central Administrative Tribunal

17 MAR 2009

S. C. Kumar
(S. C. Kumar)

गुवाहाटी न्यायपीठ
Guwahati Bench
Name and Designation
of the Disciplinary Authority

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

Copy to -

1. DRM (P)/LMG (OS/ET/Cadre, OS/ET/Bill) for information and necessary action please.
2. AVO/T/MLG for information and necessary action in reference to his letter No. Z/Vig./94/2/3/2002, dated 25.06.2002.
3. APQ/GHY for information and necessary action please.
4. SS/GHY for information please. He is advised to handover this NIP to the staff concerned with acknowledgement and send the same to this office.

(S. C. Kumar)
Sr. Divl. Commr. Manager
Lumding

Please note the instruction below:-

3. An appeal against these order lies to DRM (next immediate superior to the authority passing the orders) within 45 days time.
4. 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...

Certified to be true copy

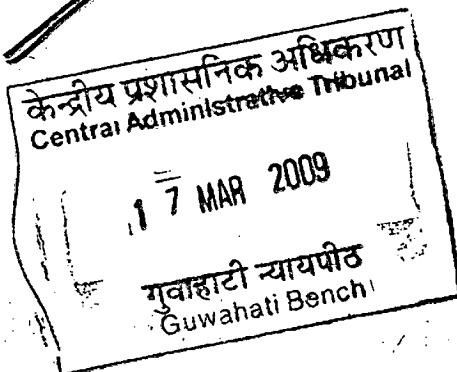
25-02-09

O B S E R V A T I O N

Annexure 'A'

I have gone through the charges, define of C.O., enquiry proceedings and all other aspect of the case carefully. I do not fully agree with the findings of the inquiry officer. Journey ticket was handed over by C.O. to RT clerk for making reservation ticket depriving queue passengers. C.O. along with said passenger entered the Booking Office for own benefit which is most irregular on the part of TC staff.

(5) As per remarks given by Dy. CVO/T vide letter No.Z/Vig/94/2/3/02, dated 22.03.2005, clearly highlighted the vital points which was over looked by I.O, these points could lead to establish the charges against C.O. After going through the case and remarks of vig. Organization, it is implied that the I.O has failed to delve into all the important vital points. So, I am not accepting the findings of I.O. which seems to be bias. Having examining all the aspects, I am of the opinion that the end of justice will be met if Sri M. K. Das-II, Hd.TC/GHY is reduced to lower time scale of pay for 2 years with cumulative effect.



Shambu
(S. C. Kumar)
Sr. Divl. Commr. Manager
Lumding

सरिष्ठ महान नामित
श. सी. कुमार, सामिति
Sr. Divl. Commr. Manager
M. V. Rly, Lumding

Certified to be true copy

25-02-09

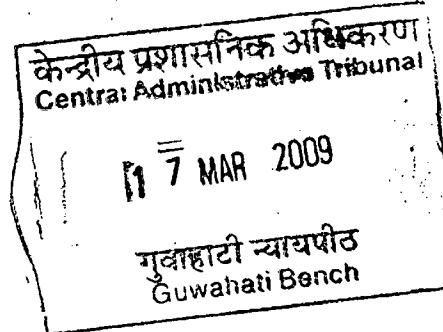
ANNEXURE



भारत सरकार Government of India
रेल विभाग Ministry of Railways
(रेलवे बोर्ड Railway Board)

रेल सेवक (अनुशासन और अपील) नियम, 1968
The Railway Servants
(Discipline and Appeals) Rules, 1968

(31 अक्टूबर, 2001 तक परिशोधित)
(Corrected upto 31st October, 2001)



नई दिल्ली 2001
New Delhi 2001

Certified to be true copy

25.02.2009

(5) (a) An order of suspension made or deemed to have been made under this rule, shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a Railway servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise) and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Railway servant shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule, may, at any time, be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Officer

17 MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

PART - III

PENALTIES AND DISCIPLINARY AUTHORITIES

6. Penalties : The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Railway servant, namely:-

Minor Penalties -

- (i) Censure;
- (ii) Withholding of his promotion for a specified period;
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders;
- (iii-a) Withholding of the Privilege Passes or Privilege Ticket Orders or both;
- (iii-b) Reduction to a lower stage in the time scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his pension;
- (iv) Withholding of increments of pay for a specified period with further directions as to whether on the expiry of such period, this will or will not have the effect of postponing the future increments of his pay;

Major Penalties -

- (v) Save as provided for in clause (iii-b) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;
- (vi) Reduction to a lower time scale of pay, grade, post, or service, with or without further directions regarding conditions of restoration to the grade or post or service from

Certified to be true copy

25.02.2009

DAC 591

NU: E/7470 Pt.XVI (C)

ANNEXURE- (2)

Dated 11 -9-2002.

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Officer

17 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

To :
 GM/Maligaon, GM(COW)/MLC, AGM/MIG,
 All PHCDs, All DRMs, ADMRs, SR.DPOs, DAOS,
 CWN/NEQS, DEWS, WAC/NEQS, DEWS,
 All Area Manager, All Sr.DME(D), All AEMs,
 DEN/DBFT, WM(EWS)/BNGN, Dy.CE/Br.Line/MIG,
 Sr.DEN/MIG, OSD/RNY, All Non-divisionalised Units,
 All SPOs and APOs, P.Branch/MIG.
 The GS/NFREU, NFRMU, AISCTREA & NFRCLCEA.

Sub :- Notification.

A copy of Railway Bd's letter No.E(D&A)87RG6-151 dated 8.8.02 (Ref No.132/02) on above mentioned subject is forwarded for information and necessary guidance please.

Dm: As above.

On 16/9/2002
 (A. K. Roy.)
 Asstt. Personnel Officer / MPP.
 for GENERAL MANAGER(P) / MIG.

(Copy of Rly.Bd's letter No.E(D&A)87RG6-151 dt. 8.8.02).

Notification

G.S.R In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Railway Servants (Discipline and Appeal) Rules, 1968, namely :-

1. (1) These rules may be called the Railway Servants(Discipline And Appeal) (Amendment) Rules, 2002.
 - (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as the said rules), for rule 10, the following rule shall be substituted, namely:-

"10. Action on the inquiry report :-

- (1) If the disciplinary authority:-

- (a) after considering the inquiry report, is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, it may recall the said witness and examine, cross-examine and re-examine the witness;
- (b) is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of rule 9, as far as may be.

- (2) The disciplinary authority:-

- (a) shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority, its findings on further examination of witnesses, if any, held under sub-rule(1) (a) together with its own tentative reasons for disagreement, if any, with findings of the inquiring authority on any article of charge to the Railway Servant, who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Railway Servant;

Contd-2

Certified to be true copy

We copy

03.08.09

- 2 -

(b) shall consider the representation if any, submitted by the Railway Servant and record its findings before proceeding further in the matter as specified in sub-rules (3), (4) and (5).

(3) Where the disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, he shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as provided in these rules.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 6 should be imposed on the railway servant, it shall, notwithstanding anything contained in rule 11, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Railway Servant.

(5) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses(v) to (ix) of rule 6 should be imposed on the railway servant, it shall make an order imposing such penalty and it shall not be necessary to give the railway servant any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the railway servant".

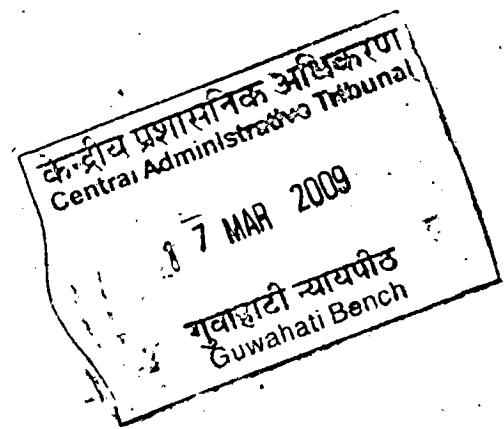
3. In the said rules, for rule 12, the following rule shall be substituted, namely :-

"12. Communication of Orders:- Orders made by the disciplinary authority which would also contain its findings on each article of charge, shall be communicated to the Railway Servant who shall also be supplied with a copy of the advice, if any, given by the Commission and, where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance".

(No. E(D&A)87 RG 6-151)

R.R. JARUHAR
SECRETARY/ RAILWAY BOARD

(Contd...3/-)



Certified to be true copy
03.08.09

NORTHEAST FRONTIER RAILWAY

DAC-480.

No. E/74/0 Pt.XIV(C).

Maligaon, dated 26-4-1991.

To

All Heads of Department,

All DRMs, DAOs & WAOs/NBQs & DBUs.

All Distt. & Asstt. Officers of
Non-divisionalised offices,

The GS/NFRMU/Maligaon with 40 spare copies,
The GS/NFRMU/Maligaon with 40 spare copies.

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Officer

7 MAR 2009

Sub :- Rule 10 of the Railway Servants (Discipline & गुवाहाटी न्यायपीठ
Appeal) Rules, 1968 - Supply of copy of the Guwahati Bench
Inquiry Report to the charged Railway servant
before final orders are passed by the
Disciplinary Authority.

....

A copy of Railway Board's letter No. E(D&A)87 RG6-151 dated 15.2.91 on the above mentioned subject is forwarded herewith for necessary information and guidance. Board's earlier letter dated 10.11.89 as referred to their present letter was circulated under this office No. DAC-461(E/74/07 Pt.XIV(C) dated 29.11.89.

for CHIEF PERSONNEL OFFICER. *Ansawar 2/3/91*

(Copy of Railway Board's letter No. E(D&A)87RG6-151
dated 15.2.91.)

Sub :- Rule 10 of the Railway Servants (Discipline & Appeal) Rules, 1968 - Supply of copy of the Inquiry Report to the charged Railway Servant before final orders are passed by the Disciplinary Authority.

....

Attention is invited to Board's letter of even number dated 10.11.1989 on the above subject.

2. A three judge bench of the Supreme Court consisting of the Chief Justice and two other judges have since delivered the judgement on 20.11.1990 on the Western Railway's appeal in the case of Premnath K. Sharma referred to in para 2 of the aforesaid letter. Certain relevant portion of the judgement are reproduced below :-

Contd... 2.

RS
12/3/91

Certified to be true copy

28-02-09

10/3/91

"There have been several occasions in different High Courts which, following the Forty-Second Amendment, have taken the view that it is no longer necessary to furnish a copy of the inquiry report to delinquent officers. Even on some occasions this Court has taken that view. Since we have reached a different conclusion the judgements in the different High Courts taking the contrary view must be taken to be no longer laying down good law. We have not been shown any decision of a co-ordinate or a larger Bench of this Court taking this view. Therefore, the conclusion to the contrary reached by any two-judge Bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground.

We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter."

It will be seen from the above observations that the Supreme Court have ruled that the procedure laid down in the second paragraph of their observations quoted above shall only have prospective application and no punishment imposed earlier shall be open to challenge on this ground.

3. In the case of one Phillips Vs. Director General, Ordnance Factory, the same question was decided by CAT/Madras in their judgement delivered in Feb. 1990. The CAT/Madras had ruled in the judgement that the procedure as mentioned in the second paragraph of the observations of the Supreme Court quoted above may be held to be binding only from the date of judgement of the CAT in Premnath K. Sharma's case i.e. 6.11.1987 and not to earlier cases.

4. Pending SLPs in the Supreme Court may have to be got disposed of to our advantage by making use of the observations of the Supreme Court and CAT/Madras as may be applicable to the circumstance of each case. Same line of defence may be taken in pending or future cases before the various benches of the CAT.

Please acknowledge receipt.

Extracts of the relevant portion of the judgement enclosed.

Contd... 3

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

7 MAR 2009

Certified to be true copy

25-02-09

गुवाहाटी न्यायपीठ
Guwahati Bench

Extracts of the Judgement dated 15.2.90 pf the
Central Administrative Tribunal/Madras Bench
in O.A. No. 658/88 filed by A. Philip.

(1990(2) SLJ CAT-631)

XXXXXX

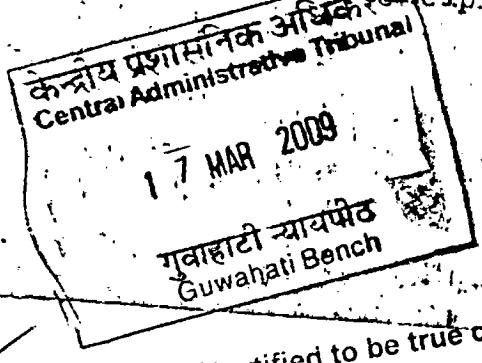
XXXXXX

XXXXXX

XXXXXX

8. The last ground of attack is that the copy of the Inquiry report was not communicated to the delinquent officer before the disciplinary authority decided to impose the penalty. Reliance was placed in this connection of the decision of the Full Bench of this Tribunal in *Premnath Kuchamol vs. Union of India & others* in which it was held that the copy of the Inquiry report by the Inquiry Officer must be given to the delinquent officer, before imposing the penalty. It is submitted by the learned counsel for the respondent that an appeal is pending before the Supreme Court against that judgement and that however, no stay has been obtained. In this predicament the ruling of the Full Bench has to be given effect to. However, the question arises as to what should be the date from which the decision will have the force of law. When a decision or ruling of a Court is in the nature of interpretation of any provision of the Constitution, Act, or Rule, that ruling will necessarily have effect from the date of the legal provision interpreted. But, when a judicial pronouncement is in the nature of a fresh Rule elaborated by a Court in the interest of justice, it can have effect only from the date of the judicial pronouncement. Its effect will be only prospective and not retrospective like any other new rule of law emanating from the Parliament or the Executive.

9. As far as the disciplinary proceedings are concerned, the Central Civil Services (CCS) Rules, 1955, enumerate step by step, how the inquiry proceedings should be conducted from the beginning till the imposition of the penalty. Those rules do not contain any provision enjoining the disciplinary authority to furnish a copy of the report taking to the penalty. Till the advent of the Full Bench decision no disciplinary authority was aware that such a requirement existed. The decision of the Tribunal in this connection is not in the nature of interpretation but is the nature of a fresh rule. Further the fact of giving retrospective effect to that requirement would entail the wholesale invalidation of all disciplinary actions otherwise conducted in conformity with known rules. Such a course would be against the basic principles of the administration of justice.



Contd... 4.

Certified to be true copy

25.02.09

Therefore, the requirement of prior communication of the inquiry report would not apply to penalties imposed prior to the Full Bench decision, like the present one. This contention also fails.

10. The last contention is that the punishment is disproportionate to the misconduct. First of all, this Tribunal therefore in the matter of punishment only if victimisation has been shown and if the punishment is grossly disproportionate to the nature of the misconduct. In this case, no ill-will on the part of the authorities is involved in the process of the disciplinary action has been shown, further taking into account the nature of the establishment in which the applicant was working and the nature of the misconduct which has been proved against the applicant, we do not find that the punishment is disproportionate. In the result the application is dismissed.

KB/26.2

केंद्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

MAR 2009

गुवाहाटी न्यायालय
Guwahati Bench

Certified to be true copy

Certified to be true copy

25-02-09



भारत सरकार Government of India
रेल विभाग Ministry of Railways
(रेलवे बोर्ड Railway Board)

रेल सेवक (अनुशासन और गपील) नियम, 1968

The Railway Servants
(Discipline and Appeals) Rules, 1968

(31 अक्टूबर, 2001 तक परिशोधित)
(Corrected upto 31st October, 2001)

नई दिल्ली 2001
New Delhi 2001

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

17 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Certified to be true copy

25.02.2009

Provided that in a case where the appellate authority is the Railway Board, the appeal shall be dealt with by any Member of the Railway Board, who has not made the order appealed against.

(3) A Railway servant may prefer an appeal against an order imposing any of the penalties specified in Rule 6 to the President, where no such appeal lies to him under sub-rule (1) or sub-rule (2), if such penalty is imposed by any authority other than the President, on such Railway servant in respect of his activities connected with his work as an office bearer of an association, federation or union participating in the Joint Consultation and Compulsory Arbitration Scheme.

20. Period of limitation for appeals

No appeal preferred under this part, shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against, is delivered to the appellant.

Provided that the appellate authority may entertain the appeal, after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

21. Form and contents and submission of appeal

(1) Every person preferring an appeal shall do so separately and in his own name. An appeal forwarded through or counter-signed by a legal practitioner or an assisting Railway servant or a Railway Trade Union Official shall not be entertained but shall be returned with the direction to submit it under the signature of the appellant only.

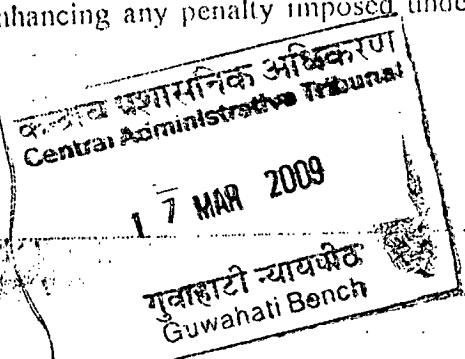
(2) The appeal shall be presented to the authority to whom the appeal lies, a copy being forwarded by the appellant to the authority which made the order appealed against. It shall contain all material statements and arguments on which the appellant relies, shall not contain any disrespectful or improper language and shall be complete in itself.

(3) The authority which made the order appealed against, shall, on receipt of a copy of the appeal, forward the same with its comments thereon together with the relevant records to the appellate authority without any avoidable delay and without waiting for any direction from the appellate authority.

22. Consideration of appeal

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 5 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider :-



Certified to be true copy

25.02.09

26

(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders:-

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case;

Provided that -

(i) the Commission shall be consulted in all cases where such consultation is necessary;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 14, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, make such orders as it may deem fit;

(iii) if the enhanced penalty which the appellate authority proposes to impose, is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has already been held in the case, the appellate authority shall, make such orders as it may deem fit;

(iv) subject to the provisions of Rule 14, the appellate authority shall -

(a) where the enhanced penalty which the appellate authority proposes to impose, is the one specified in clause (iv) of Rule 6 and falls within the scope of the provisions contained in sub-rule (2) of Rule 11; and

(b) where an inquiry in the manner laid down in Rule 9, has not already been held in the case, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit; and

(v) 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.

To,
Shri S.C. Kumare
Senior Divisional Commercial Manager
&
Disciplinary Authority
N.F. Railway / Lumding.

Dated, 21st November'2005.

Sir,

Sub : Prayer for supply of Dy. CVO (T) / MLG's letter No. Z/Vig/ 94/2/3/02 dt. 22-3-05 as referred to in the observation sheet (Annexure - A) of the N.I.P. issued by Sr. DCM/LMG (DA).

Ref : N.I.P. along with observation sheet (Annexure- A) issued by Sr. DCM/ LMG (DA) vide No. C/Con/ LM/MISC/ 06 (MKD-Hd. TC.- GHY) dated 16-11-2005 was handed over to CO. on 18-11-2005.

With due deference and humble submission, I beg to submit the following few lines for your perusal and kind judicious decision please.

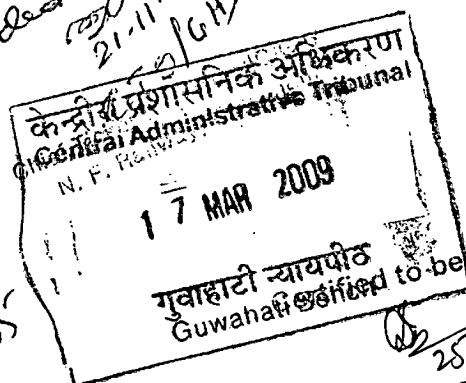
1.0 That sir, The letter of the Dy. CVO(T)/ MLG has been referred to in the observation sheet (Annexure - A) of NIP dated 16- 11-2005 as cited under reference which caused the Disciplinary Authority diverted from exercising judicious mind in the case rather guided the Disciplinary Authority to take pre-judicial action against the charged official without supplying the copy of the said letter. As and when any document referred to either in the Enquiry stage or decision stage of the various authority , instantly CO acquired the right to have a copy of the same ; otherwise it will tantamount to denial of reasonable opportunity and Natural justice at this stage also. No action can be initiated by the prosecution keeping the CO behind the screen; because it is a quasi - judicial process, wherein all sorts of opportunity must be extended to CO to enable him to rebut the allegation against him.

1.1 In view of the above, CO would request the Hon'ble DA to supply the Dy. CVO/ T's letter to enable him to submit his appeal to DRM / LMG ie.the next appellate authority within 45 days from the date of supply of the said letter to the CO.

2.0 An presto action on the issue of para 1.1. above is highly solicited and for which act of your kindness , I shall remain ever grateful to Hon'ble DA , Sir,

With regards.

Yours faithfully
Mrinal Kanti Das II
(M.K.. Das - II)
Head Ticket collector,
N.F. Railway / GHY



N. F. Railway

Office of the
Divl. Rly. Manager (C),
Lumding.

No. C/Con/LM/Misc/06 (MKD-Hd. TC-GHY)

Dt. 09.12.05.

To,
Sri Mrinal Kanti Das - II
Hd. TC/GHY.

Thro: - SM/GAZ/GHY.

Sub: - Supply of Vigilance letter.

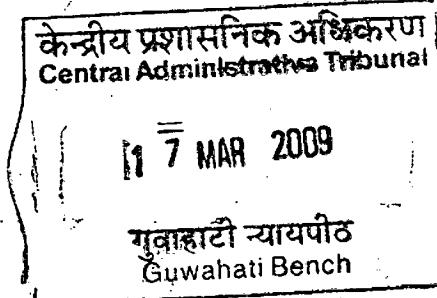
Ref: - Your letter dated 21.11.05

In reference to above, it is to inform you that since it is a vigilance case so vigilance organization can issue any letters to D.A. The letter No. Z/Vig/94/2/3/02 dated 22.3.05 issued by vigilance organization/Maligaon for perusal of Disciplinary authority although it was mentioned in the NIP about the said letter it is considered not necessary to send to C.O. You may prefer appeal to appellate authority based on relied upon documents.

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

15/12/05
Certified to be true copy

25-02-08



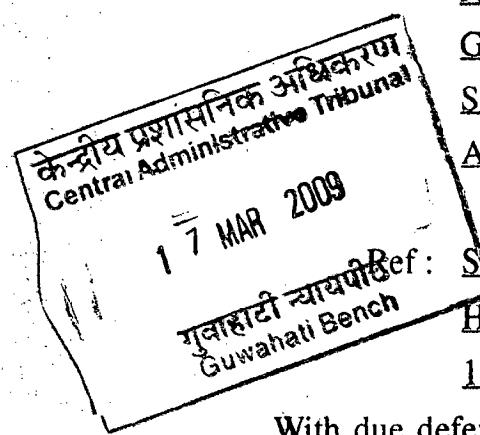
To,

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

Dated : 29 December '05

Sir,

Sub : Appeal against the observation (Annexure - 'A') of N.I.P. vide No. C/CON/LM/MISC/06 (MKD-Hd. TC-GHY) dated 16.11.2005 issued by Sri S.C. Kumar, Sr. DCM/LMG in the capacity of Disciplinary Authority.


Ref : Sr. DCM/LMG's Letter No. C/CON/MISC/06 (MKD-Hd.TC-GHY) dated 9.12.2005 received on 15.12.2005.

With due deference and humble submission, I beg to submit the following few lines on the above subject for your kind perusal, judicious decision and favourable orders please.

1.0. That sir, ab initio, I would like to invite your kind attention to the fact that as per procedures in vogue in the D & A Rules, the copy of the Inquiry Report is required to be supplied to the CO asking the CO to submit any submission/ representation on the finding of the Inquiry Officer within 15 (Fifteen) days to enable the Disciplinary Authority to decide the issue of N.I.P. after consideration of the same, Railway Board vide their letters Nos. E (D & A)/87/RG-6/151 dated 10.11.1989 and Nos. E (D & A) 87 RG-6-151 dated 4.4.96 RBE 33/96, Clearly stated to follow the aforesaid procedures before taking any decision.

But sir, with a painful heavy heart, I would like to submit that in the instant case, Hon'ble Disciplinary Authority did not supply the copy of the Inquiry Report and thereby did not allow me to submit any representation to him which caused denial of Reasonable opportunity and Natural Justice. This act of Hon'ble Disciplinary Authority is also in violation of Instructions laid down in Railway Board's aforesaid 2 (two) letters.

Contd. 2

Certified to be true copy

25.02.09

2.0. That sir, the Hon'ble Diciplinary Authority without following the procedures referred to para 1 (one) above and also without giving me any opportunity to submit representation to his kind honour, directly issued the N.I.P. vide No. C/ CON/LM/MISC/06 (MKD-Hd.TC-GHY) dated 16.11.05 along with the observation (Annaxure- 'A') awarding punishment of "Reduced to Lower time scale of Pay for 2 (two) years with cumulative effect."

3.0. That sir, on close scrutiny of the said N.I.P. and observation sheet (Annexure -'A') of N.I.P. dt. 16.11.2005, it appears that the Hon'ble Diciplinary Authority considered some points as revealed from N.I.P. and observation sheet (Annexure -'A') which may be sub-divided into following issues as ready reference for your kind perusal please.

The issues are :--

- (a) "I have gone through the charges define of CO, Inquiry proceedings and all other aspect of the case carefully, I do not fully agree with the finding of Inquiry Officer."
- (b) "Journey ticket was handed over by C.O. to RT clerk for making Reservation ticket depriving queue passengers."
- (c) "CO along with said Passenger entered in the Booking Office for own benefit which is **MOST IRREGULAR ON THE PART OF T.C. staff.**"
- (d) "As per remarks given by Dy. CVO (T) vide letter No. Z/VIG/94/2/3/02 dt. 22.3.05, clearly high lighted the vital points which were over looked by Inquiry Officer these points could lead to establish the charges against CO."
- (e) "After going through the case and remarks of the Vigilance Organisation, it is complied that the I.O. has failed to delve into all the important vital points." "I am not accepting the finding of I.O. which seems to



Certified to be true copy

[Signature]
25-02-09

Contd. 3

be biased."

4.0.0. The detailed submission in accordance with the issue referred to in para 3.0. above, are submitted below for kind consideration, judicious decision and favourable orders please.

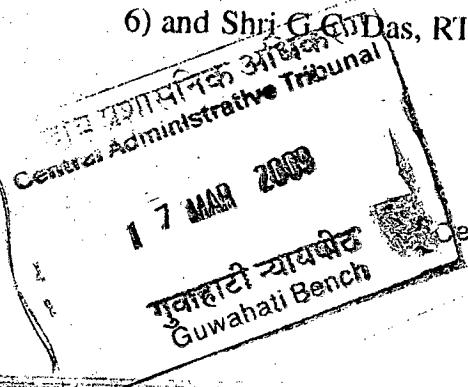
4.1.0. ISSUE No. (A) ABOVE

4.1.1. In regard to the issue under item (a) above, it is submitted that the Disciplinary Authority did not agree fully with the findings of the Inquiry Officer which indicates that some portion of the findings of the Inquiry Officers Report appeared to have been accepted by the Disciplinary Authority leaving some part not accepted. But sir, the part which is not accepted by the Disciplinary Authority has not been spelt out in specific on which I would have been in a position to submit to your honour sir, for redressal please. From such act of the Hon'ble Disciplinary Authority analogous to denial of Natural Justice and Reasonable opportunity, which demands quashing of whole DAR process initiated against the CO.

4.2. ISSUE NO. (b) ABOVE

4.2.1. In regard to the issue under item (b) above, it is submitted that the Journey ticket alleged to have been handed over to R.T. Clerk for arranging Reservation Ticket depriving Queue passenger is not factually correct. The fact remains that the Journey ticket was NOT handed over by me to the R.T. clerk for Reservation Ticket. The passenger personally has handed over the ticket to the RT Clerk. In this connection, Deposition of the R.T. Clerk, Md. Rahul Amin (PW-6) vide Ans. to Q. No. 4 dt. 11.4.03. is referred to for perusal please, where Md. Amin clearly stated that the ticket was given by the passenger from outside the counter for R.T. Then the Passenger came inside the counter stating that there was heavy rush outside the Counter. When he came inside, Md. Amin demanded Rs. 20/- as R.T. charge from the said passenger after preparing the R.T. No. 265885 simultaneously making entry in the Reservation chart. Again Shri G.C. Das, RTC/GHY (PW-8) in his deposition vide Ans. to Q. No. 2 dt. 11.4.03. clearly stated that, "So far I remember, I have issued a Requisition slip for issue of tickets."

From the aforsaid statements of Md. Rahul Amin, Hd..TC/GHY (PW-6) and Shri G.C. Das, RTC/GHY (PW-8), it is crystal clear that I had not handed



25-02-09

Contd. 4

over the Journey Ticket to the RTC for making Reservation Ticket.

So, this part of observation of Hon'ble DA. is far from the fact and lost its credibility.

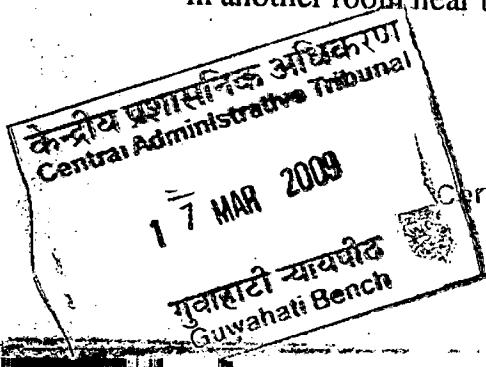
4.2.1.1. Regarding deprivation Queue passengers as referred to in the issue, in question, it is submitted that there was no mention of the said part of Disciplinary Authorities Observation in the allegation labelled against me through the charge Memorandum, in question. The part of allegation which was not incorporated in the charge Memorandum cannot be brought at this stage even in the form of observation by the Disciplinary Authority. Since it is an extraneous part, it appears to be undesirable and uncalled for.

Further the Journey ticket was purchased on issue of Requisition slip for issue of Advance ticket, while a berth kept ear-marked for the passenger and on receipt of the Journey ticket from the passengers, incomplete formalities are completed by the R.T. Clerk i.e. issue of Reservation Ticket and simultaneous entry in the Reservation Chart etc. in accordance with the commercial procedure. So, the question of depriving Queue passengers in the instant case does not arise & it is submitted that I have not committed any irregularity under the issue, in question.

Hence, the above hypothetical Speculation ^{of the Disciplinary Authority} has no locus-standi in the field of DAR process.

5.1. ISSUE No. (c) ABOVE

5.1.1. In regard to the issue under item (c) above, it is submitted that CO along with the passengers entered the Booking Office for own benefit which is most irregular on the part of T.C. staff, is not factually correct. In this connection, it is also submitted that during the material period, the ^{current} ~~correct~~ Reservation Counter (R.T.) and T.C. Office were housed in the same room with one entry/Exit door. In the room, few tables were used by the T.C. staff and one table near the window were inside as R.T. counters. Booking Office was situated in another room by the side of T.C. Office having separate entry/exit door. So, the question of my entry into Booking Office as referred to in the observation of the Hon'ble Disciplinary Authority is hypothetical and not based on facts. The Booking Office was situated in another room near by T.C. Office where I had no business to enter. Further, it is



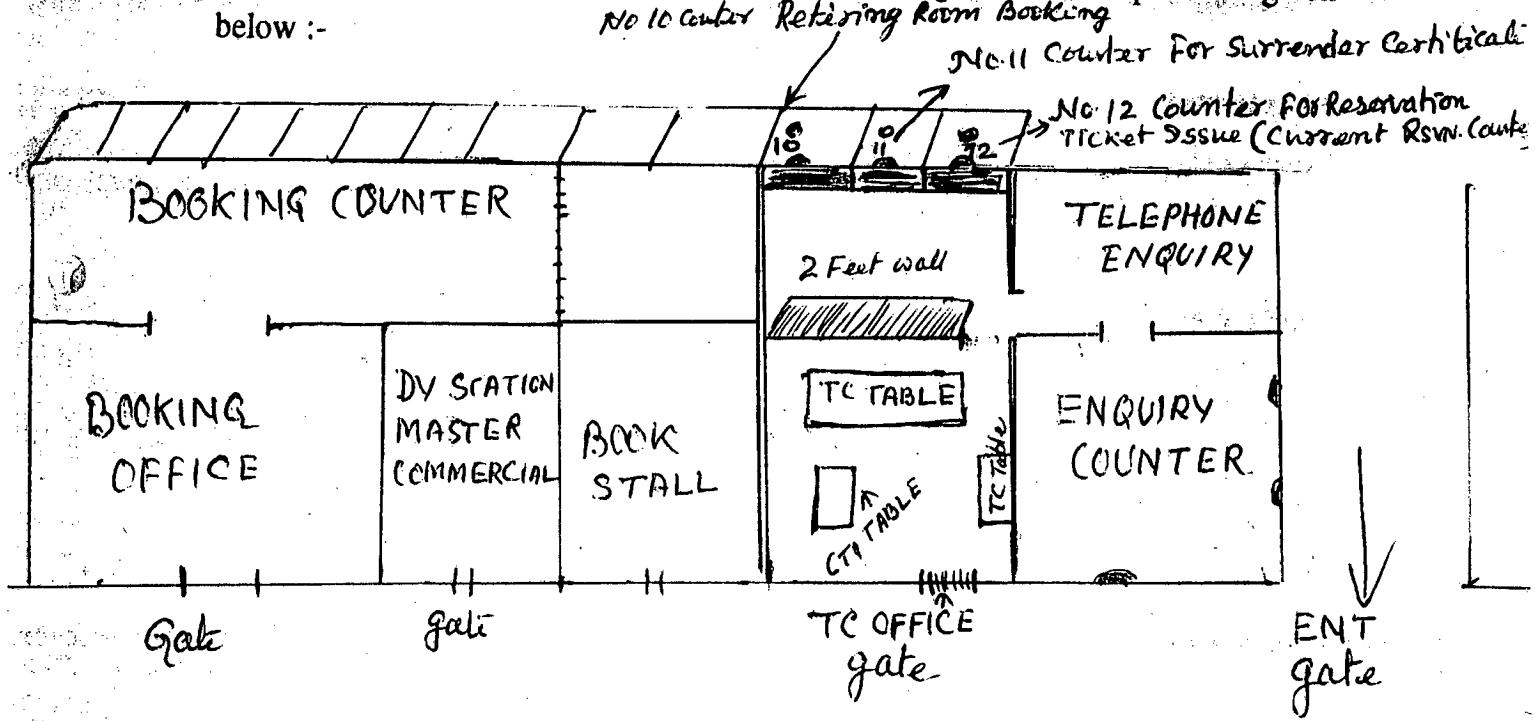
Certified to be true copy

25.02.09

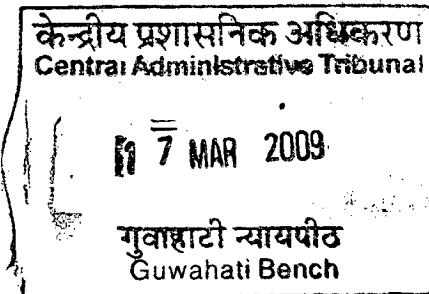
Contd. 5

also submitted that I was in my office and the passenger ^{entered} into the room for interaction with the R.T. Clerk where I had no role to play. In support of my claim, the deposition of PW-6 and PW-8 as referred to under issue No. (b) above are connected please.

For better appreciation, a sketch of the TC-Cum-Current Reservation Counter (R.T.) Room at GHY Railway Station during the material period is given below :-



PF NO 1



From the above, it is submitted that my entry to TC-Cum-Current Reservation Counter (R.T) Office cannot be ^{termed} as most irregular as observed by the Hon'ble Disciplinary Authority rather it may be termed as regular where I supposed to remain for table works, being the Batch-in-charge.

Hence, This part of the observation of the Hon'ble Disciplinary Authority is far from the fact and losts its credibility.

Certified to be true copy
25-02-09

Contd. 6

6.1. ISSUE No. (d) ABOVE

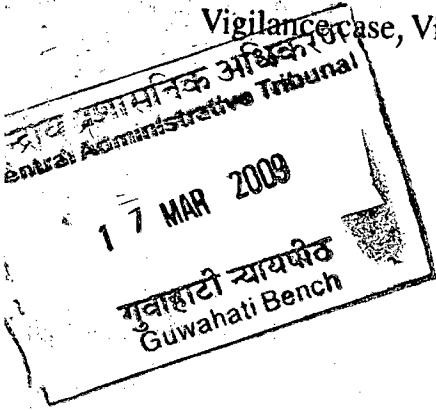
6.1.1. It is revealed from observation of Hon'ble Disciplinary Authority under issue No. (d) above, that Dy. CVO (T) vide his letter No. Z/VIG/94/2/3/02 dated 22.3.05 clearly high-lighted the vital points which were over-looked by Inquiry Officer which points could lead to established the charges against me.

From the said observation, it is established that the allegations against me had not been proved during inquiry.

6.1.2. It is clear that on receipt of the said letter from vigilance department, the Hon'ble Disciplinary Authority could understand that some points were over-looked by Inquiry Officer, as stated, the Hon'ble Disciplinary Authority could sent the case to the same Inquiry Officer for further inquiry on the points highlighted by Vigilance Organisation as per procedures of D & A Rules, 1968, which connect Railway Board's Letter No. E (D & A) 96/RG 6-22 dt. 3.10.1996 (RBE No. 98/96), so that I could have the opportunity to defend and rebut those untold points during further inquiry. But instead of giving me such opportunity and also keeping me in dark about the points raised by Vigilance Organisation which were stated to have been overlooked by Inquiry Officer, the Hon'ble Disciplinary Authority Straight-way imposed a stringent major penalty vide N.I.P. No. C/CON/LM/MISC/06 (MKD-Hd. TC-GHY) dt. 16.11.2005 and thereby I have been deprived of Reasonable Opportunity and Natural Justice.

6.1.3. Further, on receipt of the said N.I.P, I prayed to Hon'ble Disciplinary Authority to supply copy of the aforsaid letter received by the said Authority From the Vigilance Deptt. dated 22.3.2005, So that I could submit my appeal, to your honour sir, clarifying those points, but unfortunately Hon'ble Disciplinary Authority considered not necessary to send a copy to the CO vide his letter No. C/ CON/LM/MISC/06 (MKD-Hd. TC-GHY) dt. 9.12.05 (Copy enclosed for perusal please). The action of Hon'ble DA even at this stage attracts violation of Natural Justice and Reasonable Opportunities to the CO.

In this context, it may not be out of place to mention here that as stated by the Disciplinary Authority through the aforsaid letter that since it is a Vigilance case, Vigilance Organisation can issue any letter to DA. Hence, the letter



Contd. 7

25.02.09

No. Z/Vig/94/2/3/02 dt. 22.3.05. issued by Vigilance Organisation, Maligaon for perusal of the Disciplinary Authority. Sir, there cannot be 2 (two) opinions regarding the contention of Hon'ble Disciplinary Authority till this aspect. But while reference of such a letter made in the N.I.P. and the contents of the letter are utilised in deciding the case by imposing penalty on CO, the said letter became prejudicial to CO and CO achieved the right to get a copy of such document to maintain transparency in the case and also to maintain aspect of Reasonable Opportunity and Natural Justice.

It is also revealed that since the letter of Vigilance deptt. dt. 22.3.05 utilised in deciding the instant case which is obnoxious to the Natural Justice, that the Hon'ble Disciplinary Authority did not exercise his free mind while deciding the case as demanded by D & A Rules, 1968. Rather the Hon'ble DA has mostly been influenced by the advice of the Vigilance Organisation.

In view of the above, it is submitted to your honour sir, that the penalty imposed on me by the Hon'ble Disciplinary Authority was not in consideration of his own but also mostly on the advice of the Vigilance Organisation warrants quashed of the said penalty.

7.1.0. ISSUE NO. (e) ABOVE

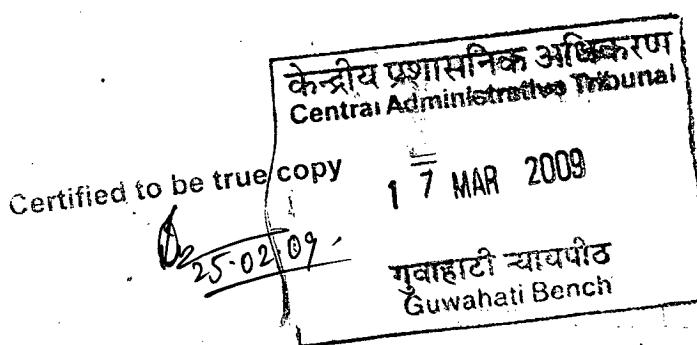
7.1.1. From the observation of Hon'ble Disciplinary Authority under issue (e) above, it is clear that the Hon'ble DA could understand on going through the case and remarks of the Vigilance Organisation, that Inquiry Officer had failed to delve into all the important vital points, and as such as he has not accepted the findings of Inquiry Officer which seemed to be biased.

Since it could be understood by the Hon'ble DA that --

- (i) Inquiry Officer had Failed to delve into all the important vital points;
- (ii) The findings seem to be biased;

The Case must have ^{been} sent to the same Inquiry Officer for further inquiry to extend Reasonable Opportunity and Natural Justice to the CO vide Railway Board's letter No. E (D & A) 96/RG -6-22 dt. 3.10.1996 (RBE No. 98/96) and to neutralise the question of biasness; before deciding case by imposing such an stringent Penalty. In doing so, the question of further inquiry by the Hon'ble Disciplinary Authority has already been lost.

Contd. 8



In view of the above, it is submitted that your honour may like to have a practical approach on the whole issue within the periphery of Discipline and Appeal Rules 1968 and arrange to exonerate me from the penalty imposed upon me by-passing the procedure of D & A Rules, 1968 by the Hon'ble Disciplinary Authority and for act of which, I shall remain ever grateful to your honour, sir.

With profound regards,

Yours faithfully,

Enclo : Sr. DCM/LMG's Letter

C/CON/LM/MISC/06

(MKD-Hd.TC-GHY)

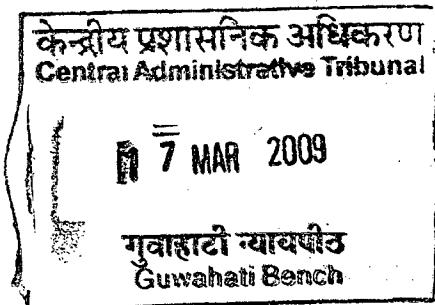
dt. 09.12.05

Mininal Kanti Das II

(M.K. Das-II)

Hd. TC/GHY Rly. Station

वरिष्ठ सेक्रेटरी
Senior Section Officer
N. F. Rly. Secy. Guwahati
G. 27/2.



Certified to be true copy.

25-02-09

N.F.Railway

Office of the
Divl.Railway Manager(C)
Lumding

NO.C/CON/LM/MISC/06(MKD-Hd TC-GHY) Dated 15-05-2006

केन्द्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal

17 MAR 2009

गुवाहाटी न्यायपीठ

(Thro :- Sr. SM/GAZ/GHY) Guwahati Bench

Sub:- Appeal against imposition of penalty No.

C/CON/LM/MISC/06(MKD-Hd TC-GHY) Dated 16-11-2005

Ref:- Your appeal dated 29-12-2005 addressed to DRM/LMG

~~✓~~ The Appellate Authority (ADRM/Lumding) having gone through
the appeal has passed the following orders:-

I have read the Charge, the representation, the enquiry proceedings, the remarks of the Disciplinary authority including NIP and the appeal of the employee, including defence official remarks.

This is a trap case and the employee has been caught red-handed. There can be no ground for excuse by the employee to exonerate him. I stand by the punishment that has been awarded to the employee by the Disciplinary authority which is deemed adequate to meet natural justice in this case considering all factors and circumstances of the case. There was no reason for the employee to collect reservation charges from passengers.

Revision petition, if any, may be filed to CCM/MLG within a period of 45 days time.

~~✓~~
(S C Kumar)
Sr.DCM/Lumding

Copy to:- 1) DRM/P/Lumding(OS/ET/Cadre) for information please. This is in reference to earlier NIP No. C/CON/LM/MISC/06(MKD-Hd TC-GHY) Dated 16-11-2005.
2) APO/ Guwahati for information please This is in reference to earlier NIP No C/CON/LM/MISC/06(MKD-Hd TC-GHY) Dated 16-11-2005.
3) Sr. SM/GAZ/GHY for information please. He is advised to hand over this letter to staff concerned under due acknowledgement and send the same to this Office for record.

Reb or 27/5/09

27/5/09
(S C Kumar)
Sr.DCM/Lumding

Approved to Geft
Certified to be true copy

25-02-09

To Shri K. Mukhopadhyaya,
Hon'ble Chief Commercial Manager,
N.F. Railway, Maligaon, Guwahati -781011
&
Reversionary Authority

Dated, 6th July'2006.

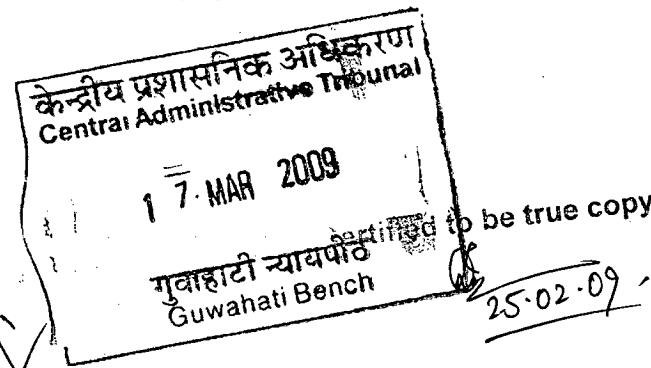
Respected Sir,

**Sub : Revision Petition against Observation of ADRM/LMG
vide Order No. C/CON/LM/MISC/06(MKD-Hd.TC-
GHY) dated 15.5.2006.**

With painful heavy heart and humble submission, I beg to submit the following few lines on the above subject for your kind perusal, judicious decisions and favourable orders please since I have been instructed vide order No. C/CON/ LM MISC/06 (MKD -Hd. TC- GHY) dated 15.5.2006 (**ANNEXURE -I**) to submit my "Revision Petition" to your honour within a period of 45 days which reached to me on 27.5.2006, hence I am submitting the same within stipulated time which will expire on 11.7.2006. Sir, it is worthwhile to mention here that my case has been dealt with in a most casual manner by the Sr. DCM/LMG as well as by ADRM/LMG being guided by Dy. CVO (T)/MLG vide his letter No. Z/ VIG/94/2/3/02 dt. 22.3.05 cited in the N.I.P vide no. C/CON/LM/MISC/06 (MKD- Hd.TC-GHY) dated 16.11.2005 (ANNEXURE -II -First, Second and third page) and that is why Sr. DCM/LMG and ADRM/LMG generated cryptic decision which caused prejudial for my service career, keeping aside the prudent and judicious decision of the Enquiry Officers Report.

**2.0. ISSUES OF ADRM/LMG'S OBSERVATION VIDE
ANNEXURE -I ABOVE**

2.1 That Sir, The observation of ADRM/LMG communicated through Annexure -I cited above, have been sub-divided into 4 (four) issues, which are Mentioned below: -



The Issues are:

- (a) This is trap-case and the employee has been caught red-handed.
- (b) There can be no ground for excuse by the employee to exonerate him.
- (c) I stand by the punishment that has been awarded to the employee by the Disciplinary Authority, which is deemed adequate to meet NATURAL JUSTICE in this case considering all factors and circumstances of the case.
- (d) There was no reason for the employee to collect reservation charges for passengers.

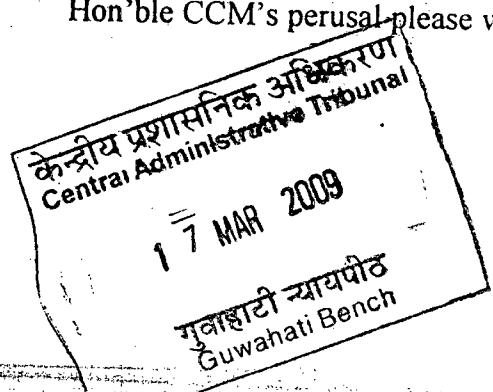
3.0.0 DETAILED DISCUSSION ON THE ABOVE ISSUES.

3.1.0 That Sir, the detailed submission against the above issues incorporated in ADRM/LMG's orders vide Annexure -I are appended below:

3.1.1 Discussion on the issue on 2.1 (a) above

In this connection, it is submitted that –

- (i) The concept of ADRM/LMG i.e "Caught red handed" is not based on any fact. So, the said contention does not have any Locus standi in deciding the case. Moreover, this part of concept has not been incorporated in the Article of charge; because it was one-sided Pre-enquiry process without following AUDI ALTERAM PARTEM. Thus EO who was the only Quasi-Judicial Authority in the process had seen the Original Records/ Documents and also interacted directly with the various witnesses and accordingly concluded the allegation as **NOT- PROVIDED**.
- (ii) during the enquiry stage, the demand and the acceptance of Rs. 100/- could not be established; because the so called Decoy, Shri Monoj Agarwal (PW-I) who had stated to have handed over the said Rs. 100/- to the CO could not be produced in the enquiry despite best effort of the E.O, P.O. and CBI officials. Consequently paying of Rs. 100/- as alleged remain unauthenticated and un-discussed and CO. has been deprived of cross-examination of Decoy (PW-I). In this connection, **Daily Order Sheet No. 7** dated 18.9.04(**ANNEXURE -III** – First & Second page) is connected for Hon'ble CCM's perusal please wherein it has been recorded the dropping of



Certified to be true copy

25-02-09

the vital and most important **Key Witness (Decoy)**, Shri Monoj Agarwal (PW-I) by P.O, the Representative of the Disciplinary authority. Thus PD/I remained as unauthenticated.

(iii) so it is evidently proved that Sr. DCM/LMG and ADRM/LMG being biased and guided by the Dy. CVO (T)/MLG (cited in Annexure -II above) recorded their observation at their own without considering the pros and cons of the Enquiry Proceedings; otherwise specific deposition of witnesses would have been referred to in the said observation.

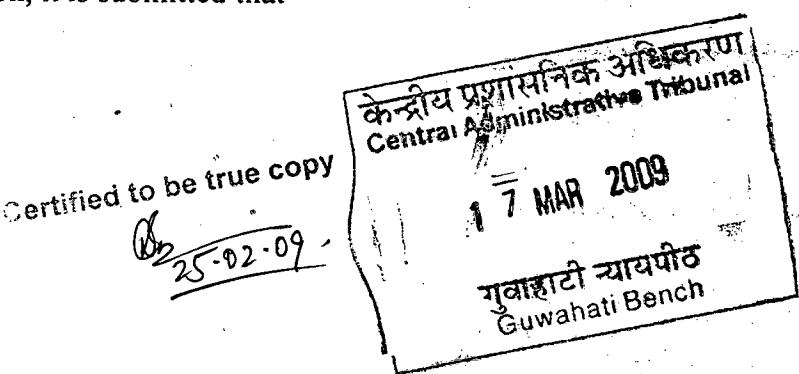
(iv) although the deposition of some of the Prosecution witnesses have been recorded during the enquiry stage, but in absence of attendance & recording of deposition of Sri Monoj Agarwal, Decoy & complaint (PW-I), the deposition of all the witnesses lost its credibility and stands valueless because none of the PWs could confirm through their depositions that CO entered into a contact with said PW -I for bribe money of Rs. 100/- in lieu of arranging a reservation in sleeper class of NE Express leaving GHY on 21.11.2001, **which EO very correctly assessed because he was the only Quasi- Judicial Authority in the process as mentioned in para 3.1.1 (i) above.**

(v) again during enquiry stage, P.O tried to establish that the proper hand wash of the CO had been done by Sri Monojit Day, ASI (ACB/CBI)/GHY (PW-10); but the containers containing the result of the hand wash had not been produced & marked as exhibit during enquiry stage. In absence of those vital exhibits, the allegation remains **NOT SUBSTANTIATED/NOT PROVED** during enquiry stage.

Hence, ADRM/LMG's contention is not tenable to CO in terms of Railway Servants (Discipline & Appeal) Rules, 1968. -

3.1.2 **DISCUSSION ON THE ISSUE NO. 2.1 (b) ABOVE.**

In this connection, it is submitted that –



(i) there is sufficient ground for exoneration from the deposition of the witnesses and from the judicious view of EO, the allegations were **NOT PROVED**. Hence the observation of ADRM/LMG does not hold good.

3.1.3 DISCUSSION ON THE ISSUE NO. 2;1 (C) ABOVE

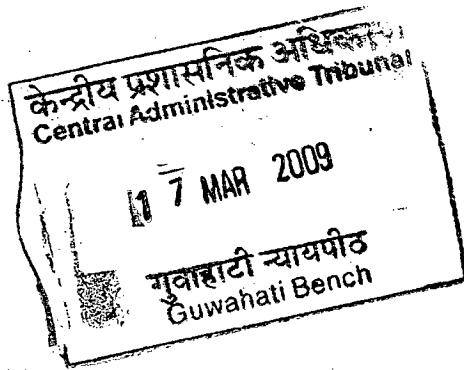
In this connection, it is submitted that -

(i) since ADRM/LMG stood by the punishment awarded by DA (Sr. DCM/LMG) on the Hypothetical Speculation and arrived at cryptic decision, the ADRM/ LMG's observation/ Conclusion also not tenable to CO in terms of RS (D &A) Rules in vogue.

(ii) the DA did not supply the copy of the Enquiry Report to the CO but took cryptic decision which was communicated to the CO through NIP (Annexure -II cited above) violating Rule No. 10 of RS (D & A) Rules, 1968 vide Railway Board's letter No. E (D &A) 87 RG 6-151 dated 8.8.02 circulated under GM (P)/MLG's letter No. DAC -591 (E/74/0 P XVI (C) dt. 11.9.2002 (ANNEXURE -IV -First & Second page). Had it been supplied to me (CO), I could have explained the position in a befitting manner for perusal of DA. Thus natural Justice & Reasonable opportunities are denied.

(iii) the DA cited the Dy. CVO(T)/MLG's letter vide No. Z/VIG/94/2/3/02 dated 22.3.05 in the said NIP (Annexure -II cited above) while the allegations against me (CO) was not proved during inquiry. So, CO acquired the right to have a copy of the said letter before submission of Appeal to DRN/LMG but DA declined to supply the same as communicated to CO vide DA's letter No. C.CON/ LM/MISC/06 (MKD-Hd. TC-GHY) dted 09.12..2005 (ANNEXURE -V) against CO's appeal dt. 21.11.2005 (ANNEXURE -VI) which tantamount denial of Reasonable Opportunity and Natural Justice and that cannot be over-ruled.

(iv) the DA was diverted and prevented from exercising judicious/ free mind in the case. To the contrary, the DA was guided to take prejudicial



certified to be true copy
25-02-09

1/2

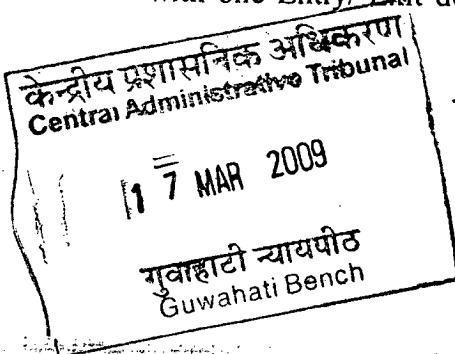
action against the Charged Official without supplying the copy of the said letter issued by Dy. CVO (T)/MLG.

(v) the DA expressed that he accepted some portion of Enquiry Report and he did not accept some portion, which portion was not accepted by DA was not categorically and specifically mentioned and thus CO prevented from submitting effective Representation to DRM/LMG causing denial of Reasonable opportunity and Natural Justice. In this connection, I would like to invite the kind attention of Hon'ble CCM towards para 4.1.1 of my appeal dt. 29.12.05 addressed to DRM/LMG (ANNEXURE-VII containing 8 pages).

(vi) The DA alleged that Journey Ticket was handed over by CO to the RT clerk which far from the fact. The fact remains that the Journey ticket was not handed over by me to RT clerk for reservation ticket. The passenger himself did the same. Connects PW-6 deposition vide Ans to Q No. 4 dt. 11.4.03 and the passenger came inside the room on the plea of heavy rush when PW-6 demand Rs. 20/- as RT, Charge from the passenger after preparing R.T. No. 265885 and making entry in the Reservation Chart. Again PW-8 deposed vide Ans to Q.No. 2 dt. 11.4.03 clearly stated " So far I remember I have issued a Requisition Slip for issue of tickets". Connects para 4.2.1 of my appeal dt. 29.12.05 addressed to DRM/LMG for kind perusal of Hon'ble CCM (ANNEXURE -VII cited above).

(vii) The DA alleged deprivation of queue passengers. This is an extraneous point which was not incorporated in the Charge Memorandum connects para 4.2.1.1 of my appeal dt. 29.12.05 addressed to DRM/LMG (ANNEXURE-VII cited above) since it was a HYPOTHETICAL SPECULATION of the DA.

(viii) the DA alleged CO along with the passengers entered the booking Office for own benefit which is most irregular on the part of T.C staff. In this connection, it is submitted that during material period the current Reservation Counter / RT and TC office were housed in the same room with one Entry/ Exit door. In the room, few tables were used by the TC

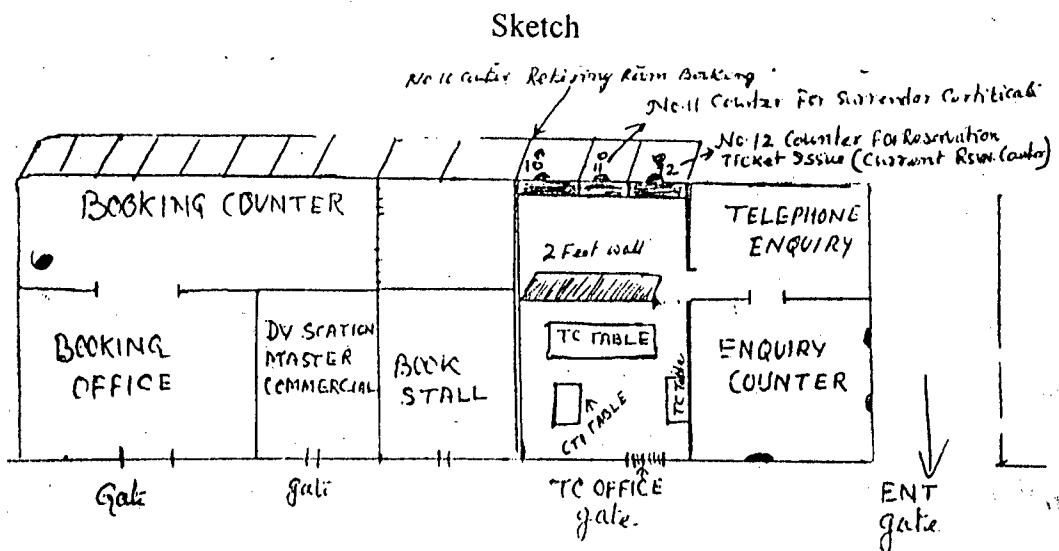


Certified to be true copy

25.02.09

staff and one table near the window were inside the R.T. Counters. Booking Office was situated Separate Entry/Exit door. So, the question of my entry into Booking Office along with passenger is HYPOTHETICAL AND NOT BASED ON FACTS. Connects deposition of PW-6 and PW-8 referred to vide para 5:1.1. if any appeal dt. 29.12.05 addressed to DRM/LMG for kind perusal of Hon'ble CCM. (ANNEXURE – VII cited above)

For better appreciation, a sketch of TC-Cum- current Reservation Counter (R.T) Room at Guwahati railway station during the material period is given below:



PF NO 1

(ix) the DA was guided by Dy. CVO (T)/MLG's letter No. Z/VIG/94/2/3/02 dated 22.3.05(cited in Annexure-II above) wherein some points were high-lighted which were over -looked by the Enquiry Officer. Those points could lead to establish the charges against the CO as stated.

From the above, it is established that the allegation against CO had not been proved during enquiry. Connects para 6.1.1 of my appeal dt. 29.12.05 address to DRM/LMG for kind perusal of Hon'ble CCM please (Annexure – VII cited above).

Certified to be true copy
25-02-09

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

17 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

(x) on receipt of the letter cited in para (ix) above from Dy. CVO(T), DA could sent back the case to the same Enquiry Officer for further enquiry in terms of Rly Boards letter No. E/(D&A)96/RG 6-22 dt. 3.10.96 (RBE No. 98/96) which could pave the way to defend/ rebut those untold points during further enquiry. But keeping the CO in dark, the DA straightway imposed punishment. Thus CO has been deprived of Reasonable Opportunity and Natural Justice. Connects para. 6.1.2 of my appeal dt. 29 12.05 addressed to DRM/LMG for kind perusal of the Hon'ble CCM please. (ANNEXURE –VII cited above)

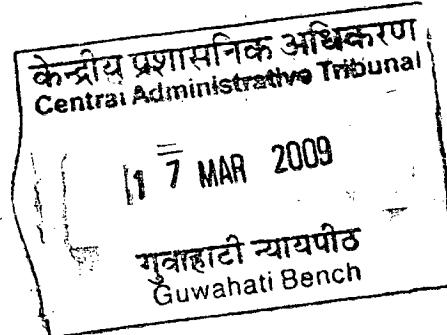
(xi) the D.A declined to supply the Dy. CVO (T)/MLG's letter to CO causing denial of Reasonable opportunity and Natural Justice since the said letter was referred to in the NIP, in question. Connects para 6.1.3 of any appeal dt. 29.12.05 addressed to DRM/LMG for kind perusal of the Hon'ble CCM please (ANNEXURE – VII cited above) DA imposed punishment straight way keeping the CO in dark.

(xii) same as cited in para (x) above. Connects para 7.1.1 of my appeal dt. 29.12.05 address to DRM/LMG for kind perusal of Hon'ble CCM please (ANNEXURE –VII cited above).

From the above, it is established that observation of DA is full of inconsistencies and he failed to assess the deposition of various Prosecution witnesses as well as failed to delve the Enquiry proceedings which paved the path to bring out some points Mechanically being guided by the Dy. CVO (T)/MLG to imposed punishment on CO unlawfully keeping the CO in dark ignoring the prudent and judicious decision of the E.O who was the only Quasi Judicial Authority directly interacted with the various witness and had gone through the Original documents during the enquiry stage.

Since the ADRM/LMG recorded his observation on the basis of the inconsistence observation of the DA (Sr. DCM/LMG), the observation of ADRM//LMG lost its independent nature of Quasi- Judicial decisions.

Certified to be true copy
25-02-09



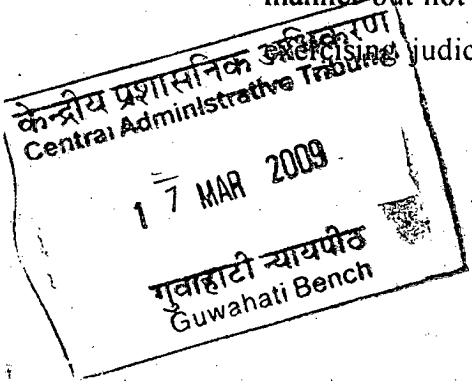
Therefore, the issue No. 2.1 (C) relating to observation of ADRM/LMG does not govern by Article 311 consists of two pillars viz Natural Justice and Reasonable Opportunities. Since both are absent in this issue cited above, this observation of ADRM/LMG is not tenable in RS (D &A) Rules, 1968 and does not hold good. Hence it is not acceptable to CO.

3.1.4 DISCUSSION ON THE ISSUE NO. 2.1(d) ABOVE.

In this connection, it is submitted the

(i) during material period, the current reservation counter/ RT and TC office were housed in the same room with one entry/exit door. In the room, few tables were used by T.C staff and one table near the window were inside the R.T. counters as revealed from the above sketch. The passenger who came inside for RT on the pleas of heavy rush, tendered one hundred Rupee G.C Note against demand of Rs. 20/- as RT charge from RT Clerk (PW-6). The passenger had no scope to cross- the table from one side to other side where CO was sitting in a chair . The passenger from opposite site of the table intentionally or unintentionally dropped the said G.C Note by the side of the CO. Then CO courtesy shake picked up the said G.C Note to return and in the mean time CBI officials intercepted the CO giving no chance to explain. Thus the observation of ADRM/LMG regarding collection of Reservation charge by the employee is far from fact, because the CO being the batch-in-charge, was no way connected with the collection of R.T. Charge from the passenger since all the current Reservation counters/RT have been manned by designated TCs in the same room where the table and chair of the batch-in charge were stabled during the material period.

Thus this observation of ADRM/LMG is based on surmises and conjecture. Besides, the said authority recorded his observation in a pedantic manner but not in a practical approach and reasonable way which perversed in



Certified to be true copy

25.02.09

proceedings scrupulosity which invited prejudicial action against one innocent person like me (CO) with the intention to malign the image of the Govt. employee not only in the field of the working place but also in the field of society and family.

4.0

**VITAL DEPOSITIONS OF SOME WITNESSES NEITHER
CONSIDERED BY SR. DCM/LMG NOR BY ADRM/LMG
WHILE RECORDING THEIR OBSERVATIONS.**

4.1.

Shri D.N. Tripathy, Hd. CC/GHY (PW-4) deposed that he did not know anything about the case vide Ans to Q No. 2 dt. 11.4.03 (ANNEXURE - VIII).

4.2

Shri G.C. Das, RTC/GHY (PW-8) deposed that he issued a Requisition Slip for issuing ticket vide Ans to Q.No. 2 dt. 11.4.03 further he deposed that due to heavy rush in the counter, the slip was written by his batch-in-charge, Shri M.K. Das-II on request and signed on it vide Ans to Q. No. 3 dt. 11.4.03 and Ans to Q No.5 dt. 11.4.03. He also confirmed that during rush this thing are happened very often vide Ans to Q. No. 6 dt. 11.4.03 (ANNEXURE - VIII).

4.3

Shri Rahul Amin, Hd TC/GHY (PW-6) confirmed that the ticket was given by the passenger from outside the counter for R.T. stating heavy rush outside the counter, the passenger came inside the counter when PW-6 demanded Rs. 20/- as R.T charge after preparation of R.T and entry in the Reservation Chart vide Ans to Q. No. 4 dt. 11.4.03. The said Passenger tendered one hundred Rupee G.C. Note expressing that he had no small currency Note. But during transaction, it fell on the ground and Sri M.K. Das - II picked up the said currency Note for giving to PW-6. In the mean time , immediately the CBI officials intercepted Sri M.K. Das-II. PW-6 confirmed that batch incharge's office and the Counter No. 12 are in the same room vide Ans to Q no.5 dt. 11.4.03. Being the same room, and being the batch -in-

Certified to be true copy

25-02-09

केन्द्रीय प्रशासनिक अधिकाराण
Central Administrative Tribunal

17 MAR 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

charge. Shri Das came to the Counter for some official purpose and vide Ans to Q. No. 7 during cross-examination, the said PW-6 stated that the said R.T. Charge was not paid and subsequently at the end of the shift, PW-6 made good Rs. 20/- from his own pocket and vide Ans. to Q. No.8 on being asked whether there was any demand for extra money from the said passenger in connection with the issue of ticket/ reservation on 20.11.2001, Shri Amin (PW-6) replied that there was no such demand from any corner and vide Ans to Q. No. 9 & 10 dt. 11.4.2003 Shri Amin (PW-6) stated that nearly 110 berths were kept reserved in NE Express exclusively for NJP bound passengers and as such berths were easily available for NJP bound passengers in sufficient numbers and vide Ans to Q. No.11 dated 11.4.03, PW-6 stated in his deposition that Shri M.K. Das -II had not done anything wrong in the instant case (ANNEXURE -VIII)

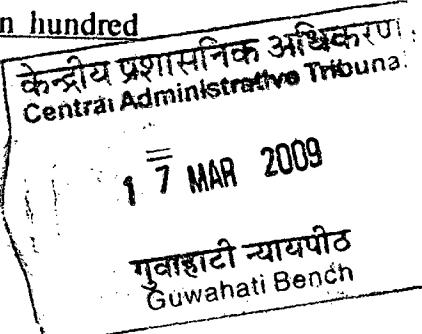
4.4 Shri B.R. Rabha, CTI/GHY (PW-7) vide Ans to Q. No. 1 confirmed that he performed his duty in the morning shift i.e from 6 hrs to 14 hrs at GHY on 20.11.2001 and vide Ans to Q.No.2 categorically stated that since he was not on duty during the material period, he does not know anything regarding the case. (ANNEXURE -VIII).

4.5 Shri Baturam Das, CS (Stock)/GHY (PW-5) vide Ans to Q No.4 dated 15.9.04 stated very clearly that he did not know about the check conducted by CBI officials since he was not present during the material period (ANNEXURE - VIII)

4.6 Shri S.K. Dubey, Driver/ Central Ground Board Guwahati (Independent Witness - PW-3) vide Ans to Q No. 1 (put by P.O.), authenticated his signature and confirmed the contents of both the Panchanamas as correct. But during cross-examination, PW-3 vide Ans to Q No 4 dated 15.9.04 stated, " At about 8 P.M I was standing out side the Booking Office Counter with other CBI officials while one Mr. Monoj Agarwal paid hundred Rupee G.C Note to Shri M.K. Das in connection with purchase of a ticket. Ticket was not purchased rather immediately CBI people rushed to the spot and enquired about why Mr. Das had taken hundred

Certified to be true copy

25-02-09



Rupee. G.C. Note. I know nothing about it" And vide Ans to Q No. 5, PW-3 confirmed that ticket was not purchased. Further during clarification questions put to PW-3 by EO, said PW-3 stated, " At about 16.30 hrs, CBI officials requisitioned my services through XEN and at about 17.00 hrs , I reached CBI office and signed the Panchanama No.1 at about 22.00 hrs of 20.11.2001 putting myself as punch witness (ANNEXURE -VIII)

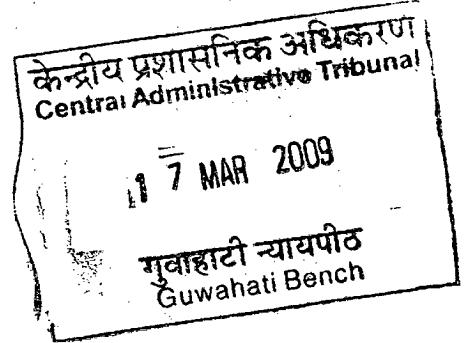
4.6.1. The aforesaid deposition of PW-3 (Independent Witness) widely differs from the allegation labelled against the CO vide Article-I of the charges memorandum. Even the time stated to have been 22.00 hrs. when he signed Panachanama No.1, was not tallying with that of time (i.e. 17.15 hrs to 18.00 hrs) shown in the said Panchanama (PD-12 enclosed as ANNEXURE - IX).

4.6.2. Therefore, being Independent witness as PW-3 whatever deposed during enquiry is AT VARIANCE with the allegation. It is also established from the said deposition that Mr. Agarwal, (PW-1) paid hundred Rupees G.C. note to Shri M.K.Das in connection with purchase of ticket. The allegation, in this respect, also differs from the deposition of PW-3. Hence, the allegation loses its credential in reference to deposition of PW-3.

4.7. Shri Jitu Deka, Constable/CBI/ACB/GHY(PW-11) vide his Ans. To Q. No.2 dated, 16.09.2004 during cross-examination confirmed that he did not hear the conversation, if any, made between complainant (PW-1) and Mr. Das and vide Ans. To Q.No.3 during cross-examination stated, " Since I did not hear anything I cannot say what for this money was paid to Sri M.K.Das" and vide Ans. To Q.No.4 confirmed, "No, I have not heard anything that Shri M.K.Das demanded money from the complainant(PW-1). Vide Ans. to Q.No.1 during cross-examination he stated that he was out-side the room at a distance of about 20 feet". (ANNEXURE-VIII).

Certified to be true copy

25-02-09



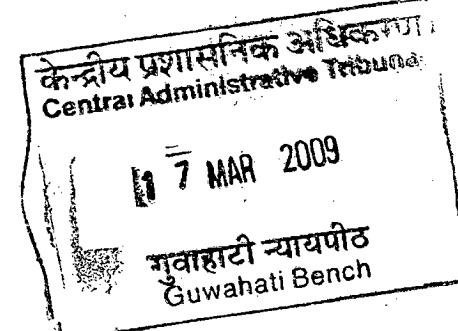
4.7.1. The aforesaid deposition of PW-11 does not sustain that Sri M.K.Das (CO) has demanded money from the complainant/Passenger(PW-1).

4.8. Shri Biren Suri, Constable/CBI/ACB/GHY(PW-12), Vide Ans. to Q.No.2 during cross-examination confined that there was none along with compliant (PW-I) in the Booking office from their team members. He also confined that he did not hear any conversation if any, between the complainant (PW-I) and CO vide Ans. to Q.No.4 dated 16.09.04. Also stated, "Since I did not hear anything about the conversation, I cannot say what for this money was paid to Shri M.K.Das." PW-12 also vide Ans. to Q.No.5 dated 16.09.04 confirmed that he had not heard anything that Shri M.K.Das, CO demanded money from the complainant (PW-1). Vide Ans. to Q.No.9, PW-12 confirmed that he had not seen whether the complainant (PW-1) purchased any ticket or not and vide Ans. to Q.No.10 & 11, said PW-12 stated that after completion of formalities at Guwahati station, they returned to CBI office approx. at about 23 Hrs of 20.11.2001 from Guwahati station- (ANNEXURE-VIII).

4.9.0. Shri L. Hangshing, Inspector/CBI/ACB/GHY (PW-9) vide Ans. to Q. No. 2dt. 17.09.04 (Put by P.O) stated " All the facts had been recorded in Panchanama No. 1& 2 dated 20.11.2001 which have been placed before me, I confirmed the correctness of all the Panchanamas", and vide Ans. to Q.No.1 during cross-examination dated 17.09.04, PW-9 deposed that the said Panchanama Nos. 1 & 2 do not bear his signature and vide Ans. to Q.No.2 PW-9 deposed that he was standing outside the Booking office where he could see the complainant (PW-1). Vide Ans. to Q.No.3 on being asked to confirm how he could say the contents of Panchanamas are correct while he was not a signatory in the Panachananas. The said PW-9 avoided the reply by stating that "though the Panchanamas do not bear my signature, I was very much a Member of the trap laying team," Further on being asked vide Ans. to Q.No.4 to confirm where the complainant (PW-1) was standing just at the beginning of the trap laying function at Guwahati Booking office, he, in reply, deposed that

Certified to be true copy

25-02-09



it is given in the Memorandum which indicates it was not within his knowledge. (ANNEXURE-VIII).

4.9.1. Further during certification question put by Enquiry officer vide Q.No.1 whether conducting of check was informed either to any Railway Official or RSO/GHY said PW-9 clearly stated, " I do not know," and vide Ans. to Q.No.2 dated 17.09.2004 on being asked to state when they have returned from Guwahati station to their office and also to confirm whether Shri M.K.Das-II was taken to their office; in reply to which Sri Hangshing, Inspector/CBI/ACB/GHY (PW-9) deposed that, "I do not remember", (ANNEXUERE-VIII cited above)

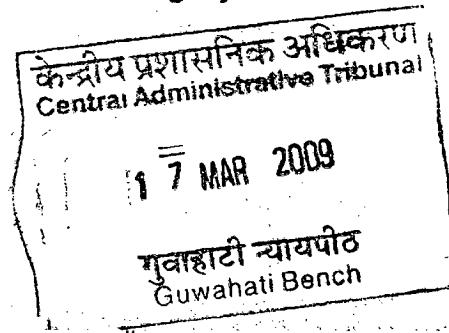
From the deposition of PW-9, it is indicated that the said PW-9 avoided to give the proper answer to the questions which means that he was not aware of the fact of the incident held on 20.11.2001 at Guwahati Station (ANNEXUERE-VIII cited above).

4.10. Sri Monojit Dey, ASI/CBI/ACB/GHY (PW-10) vide Ans. to Q.No.2 (Put by PO) dated 17.09.2004 narrated the role played by him in the said check i.e. hand wash etc. and vide Ans. to Q. No.1 dated 17.09.2004 during cross-examination he confirmed that he came later in the check, and vide Ans. to Q.No.3 dated 17.09.2004, PW-10 avoided to give the specific reply of the question. The reference of Sodium Carbonate solution and turning milk solution into the Pink through Phynopthelene Powder etc. etc. kept a separate glasses and sealed, were not produced as exhibit during enquiry. (ANNEXUERE-VIII)

From the above depositions, it is concluded that no prosecution witness deposed in favour of the prosecution which proved that the allegation remained un established during enquiry stage. Even then Sr. DCM/LMG and ADRM/LMG being guided by Dy. CVO(T)/MLG lost their independent nature of thinking and debarred from exercising their free mind in deciding my DAR

Certified to be true copy

25.02.09



case prudently and judicially amounting to denial of Reasonable opportunities and Natural Justice. Therefore, the afore-said authorities failed to generate sanctity in dealing with DAR process which is obnoxious in the field of DAR. So, the observation of Sr. DCM/LMG as well as ADRM/LMG lost their credential and stands quashed.

Under the circumstances, fact and depositions of various witness narrated above, it is clearly established that I have not committed anything wrong, which Hon'ble EO could only assess properly and thus could not prove the allegation during the enquiry stage. Hence, I would request your benign honour to look into the case with practical approach and exonerate me by quashing the punishment awarded on me by the DA and vetted by ADRM/LMG at the appeal stage so that I can over come the financial stringency caused out of the penalty and thereby my children may prosecute their studies smoothly.

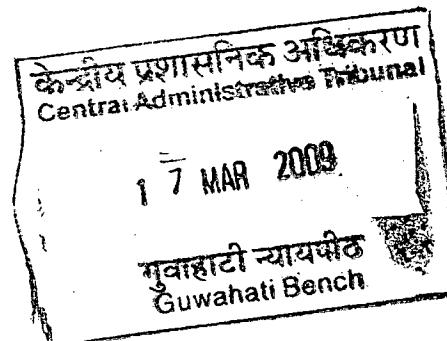
In view of the above, it is requested to your honour sir, that the CO may kindly be let free from the ambit of charges so that he may lead a peaceful life and render devoted services towards the administration and for the act of your kindness and magnanimity, CO will remain ever grateful to your honour, sir.

With profound regards,

Yours faithfully,

Mrinal Kanti Das,

(Mrinal Kanti Das-II)
Charged Official
(Hd. TC/GHY)



Certified to be true copy

25-02-09

N.F.Railway

No.C/CON/LM/MISC/06 (MKD-Hd TC-GHY)

Office of the
Divl.Railway Manager
Lumding
Dated 28.09.07.

To,

Shri M.K.Das -II,
Hd TC/GHY,

(Thru: - CTMC/GHY)

Sub: - Appeal against imposition of penalty.

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

The ~~appellate authority~~, (CCM/MLG) having gone through your appeal has passed the following orders:-

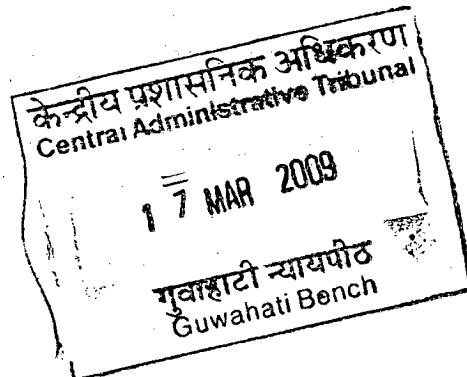
"I have gone through the case and find no reason to reduce the penalty, already imposed on the staff. The same thus, stands good."

A
Dr. S.C. Kumar
Sr.DCM/LMG

Copy to :- 1) DRM/P/LMG (ET/Cadre)
2) APO/GHY
3) CTMC/GHY

} for information and necessary action please.

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



Certified to be true copy

25.02.09

No.C/CON/LM/MISC/06 (MKD-Hd.TC-GHY)

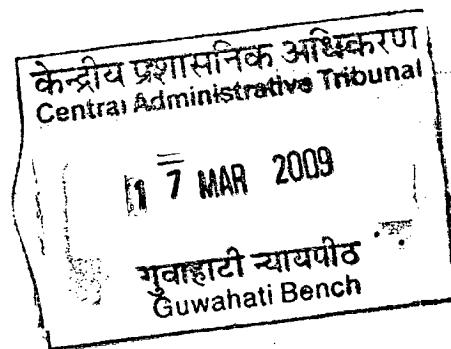
Office of the
Divl Railway Manager ©
Lumding
Dated 19.03.2008

To,

Sri M.K.Das -II,
Hd.TC/GHY,(Through: - CTI/IC/GHY)
Sub: - Order of Appellate Authority

The order of Appellate authority (CCM/MLG) was communicated to you vide this office letter No. C/CON/LM/MISC/06 (MKD-Hd.TC-GHY dated 28.09.2007. However a copy of the letter is sending herewith for your information please.

Enclo: - 1(One), as stated above,

19/3
(S Seh)
ACM/LMG

Certified to be true copy

25.02.09

N. F. Railway.

OFFICE ORDER

Office of the
Divl. Rly. Manager (P)
Lumding. Dt. 03/08/04.

As a result of restructuring of cadre w.e.from 01-11-03 in terms of Rly. Bd's letter No. EC/III/2003/CRC/6 Dt. 09-10-03 communicated by GM(P)/MLG's letter No. E/304/O-Restructuring (T) Dt. 30-10-03 and this office Memorandum No. E/III/Gr.II (Restructuring) Commr(T) Dt. 5-4-2004 the following Hd.TC in scale Rs. 5000-8000/- of Commercial Department who have been found suitable for the post of CTI/II in scale Rs. 5500-9000/- arising out of restructuring and the existing vacancies as on 01-11-03 are hereby promoted to the post of CTI/II in scale Rs. 5500-9000/- from the date as shown against each and posted at the stations as shown against each subject to posting at the pinpointed stations subsequently.

Sl. No.	Name, Designation & Station	Place of posting on promotion as CTI/II	Date of effect of promotion as CTI/II in scale Rs. 5500-9000/-	Remarks
1	Sri Satya Ram Das, Hd.TC/13PB.	BPB	01-11-03	
2	Sri S. P. Chakraborty, Hd.TC/GHY.	---	---	He cannot be promoted as he is under going punishment of stoppage of increment from 1-5-01 to 30-4-07.
3	Sri R. C. Bharali, Hd.TC/GHY (SC).	GHY	---	His promotion will be effected from 1-11-04 i.e. on expiry of punishment of reversion to the post of Jr.TC provided he is free from SPE/VIG/ DAR Case.
4	Sri Sovan Kr. Saha, Ex. Hd.TC/LMG now CTI/II at GHY.	GHY	01-11-03	
5	Sri Subrata Banerjee, Hd.TC/GHY.	GHY	01-11-03	
6	Sri P. Narzary, Hd.TC/GHY (ST).	GHY	01-11-03	
7	Sri Dulal Ch. Deb, Hd.TC/LMG.	LMG	With immediate effect i.e., from the date of shouldering higher responsibility.	
8	Sri Anukul Ch. Das, Hd.TC/LMG.	LMG	- Do -	
9	Sri K. C. Kalita, Hd.TC/DMR.	GHY (at his own request)	- Do -	
10	Sri M. K. Das-II, Hd.TC/GHY (SC).	---	17 MAR 2009	He cannot be promoted as DAR case is pending against him.

केन्द्रीय प्रशासनिक अदालत
Central Administrative Tribunal

गुवाहाटी न्यायपोठ
Guwahati Bench

Certified to be true copy

25-02-09

Contd. to page/2.

Sl. No.	Name, Designation & Station	Place of posting on promotion as CTI/II	Date of effect of promotion as CTI/II in scale Rs. 5500- 9000/-	Remarks
11	Sri Samar Lal Dey, Hd.TC/GHY.	GHY	With immediate effect i.e. from the date of shouldering higher responsibility.	With immediate effect i.e. from the date of shouldering higher responsibility.
12	Sri M. K. Das-I, Hd.TC/GHY (SC).	GHY	-- Do --	-- Do --
13	Sri Manik Ch. Das, Hd.TC/GHY	GHY	---	His promotion will be effected from 1.3.05 i.e. on expiry of his punishment provided he is free from SPE/VIG/ DAR Case.

The above named staff except (Sl. No. 2 and 10) are advised to exercise their options if they are willing to get the fixation of pay from the next substantive date of their increment in lower grade within the month from the date of issue of this order.

Sl. No. 3 & 13 may exercise their options after their promotion to the higher grade is effected.

Sl. No. 9 will not get CTG, transfer pass and joining time etc. as per extent rule.

'B' Sri Ratan Kr. Nath, Ed. TC/LMC in scale Rs. 8000-8000/- who has been promoted and posted as I.I. (T) LMC against the temporarily vacated post from BPP to LMC for a period of one year vide this office memorandum No. E/IU/Cadre/3 (up) Review T/Comml. Dt. 13-8-02 is now posted at LMC vice vacancy of CTI/H

This has the approval of competent authority.

N. MUKHERJEE
(N. Mukherjee)
APOLLO

For Divl. Rly. Manager (P),
N. F. Railway, Luading.

No. E/11/GE-H(Restructuring) Comm/T/L, 1986.

DL. 03/08/2004.

Copy forwarded for information and necessary action to :-

(1) SS/Gaz/GHY, (2) SS/LMG, BPB, GHY, DMR, (3) CTU/I/GHY, LMG, BPB, (4) GM(P)/MLG, (5) DCM/LMG, GHY, (6) AM/BPB, (7) DFM/LMG, (8) OS/ET/Bill at office, (9) APO/GHY, (10) Staff concerned through proper channel, (11) Dir. Secy. NFREU/LMG, (12) Convener NFRMU/LMG, (13) Spare copy for P/Case.

18/04
For Div'l. Rly. Manager (P),
N. J. Railway, Lombard.

certified to be true copy
1990-01-01

-79-

127

Central Adminstrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

03 JUN 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

Filed by : →
Mrinal Kanti Das II
the applicant,
through Advocate
S. K. Das
Date : 03.06.10

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL::
GUWAHATI BENCH:: GUWAHATI.

ORIGINAL APPLICATION. No. 46/2009

Sri Mrinal Kanti Das -II,

..... Applicant.

-Vs-

The Union of India & Others / N.F. Railway

..... Respondents.

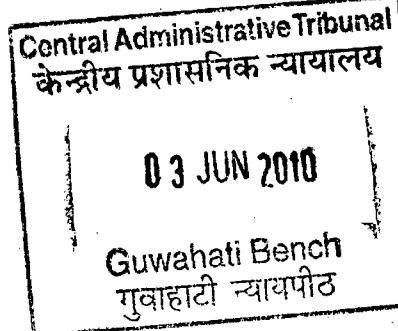
The humble petition on behalf of the applicant
above named.

MOST RESPECTFULLY SHEWETH :

- (1) That, the above named applicant, Sri Mrinal Kanti Das - II has filed an O.A.No.46/2009 before the Hon'ble Tribunal, Guwahati Bench on 17.03.2009.
- (2) That, some relevant Annexures of the O.A are illegible and for which, the above named applicant is filing / submitting the typed copies of all the relevant Annexures of the said O.A. before the Hon'ble Tribunal, Guwahati Bench. Hence, kindly accept the same.
- (3) That, this petition is made bonafide for the ends of justice and equity.

It is, therefore, prayed before Your Lordship would be pleased to admit this petition and further be pleased to accept the typed copies of all the relevant Annexures of the said O.A. No.46/2010 and / or pass such order/orders as this Hon'ble Tribunal may deem fit and proper.

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



-15-

TYPED COPYANNEXURE- 1**N.F. RAILWAY**

Office of the
Div. Railway Manager(P)
Lumding

No. E/39-24 (TC)

Date 13.9.86

Sri Mrinal Kanti Das at Office

Trainee T/C

You are hereby appointed as a temporary Ticket Collector pay 260/- P.M.in scale Rs. 330-560/- plus usual allowances and posted at GHY subject to :-

1. Immediate discharge without any notice of termination of service in the event of return of permanent incumbent from leave or to the expiry of temporary sanction of the post in which you are appointed on to your mental or physical incapacity or to your removal of dismissal from service for misconduct.
2. If the termination of your service is due to some other causes you will be entitled to a notice of 14 days or pay in lieu thereof.
3. You will not be eligible for any benefits except those admissible to temporary employees under the rules inforce from time to time.
4. Your appointment shall have affect from or from the date you actually commence work.

Please report to SS/GHY for duty.

Sd/- Illegible

Stamp Divisional Commercial Supdt.

N.F. Railway/ Lumding

For Divl. Optg. Supdt.

N.F. Rly. Lumding

(Stamp) Civil. Comml. Supdt.

N.F.Railway, Lumding

Copy forwarded for information & necessary action to:-

1. CPO/Rectt. in ref. to his No. E/227/10/7 (Rectt) dt. 19-8-86
2. DAO/ LMG.
3. APO/ NGC
4. AO/ NGC.AO/BPB
5. SS/GHY. He will pl. intimate this office when the above named resumes at GHY on first appointment.
6. OS/ Comml. at Ofice.

Stamp Divisional Commercial Supdt.

N.F. Railway/ Lumding

For Divl. Optg. Supdt.

N.F. Rly. Lumding

(Stamp) Civil. Comml. Supdt.

N.F.Railway, Lumding

Certified to be true copy

02-06-10

(STANDARD FROM No. 5)

ANNEXURE-2

STANDARD FORM FOR CHARGE SHEET

(Rules of the Railway Servants (Discipline and appeal Rules-1969)

No. C/CON/LM/MISC/06 (MKD-Hd.TC.-GHY) date 3-09-2002

N.F. Railway.....(Name of the Railway administration).

Place of issue : DRM (C)/ LMG.

MEMORANDUM

1. The president /Railway Board/ Undersigned propose (s) to hold an Enquiry against Shri M.K. Das, II/ Hd.TC/GHY station under rule -9 of the Railway servants (Discipline and appeal Rules-1968. The subsuance of the imputations of misconduct or misbehaviour in respect of which the enquiry is proposed to be held is set out in the enclosed statement of articles of charges (Annexure-I). A statement of the imputation of misconduct or misbehaviour in support of each articles of charge is enclosed (Annexure-II), A list of documents by which; and a list of witnesses by whom, the articles of change are proposed to be sustained are also enclosed in the list of documents as per Annexure-III are enclosed.
2. Shri M.K. Das-II/ Hd. TC/GHY station is hereby informed that if he desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure-III) in any time during office hours within 10 days of receipt of this Memorandum. For this purpose he should contact DRM (C)/LMG immediately on receipt of this Memorandum.
3. Shri M.K. Das –II/Hd. TC/ GHY station is further informed that he may if he so desires, take the assistance of any other Railway servants in official of Railway Trade Union (who satisfies the requirements of rule (9) (13) of the Railway Servants (Discipline) and Appeal) Rules -1968 and note 1 and or note 2 thereunder as the case may be for inspecting the documents and assisting him in presenting his case before the enquiring authority in the event of an oral enquiry being held. For this purpose, he should nominate one or more persons in order to preference. Before nominating the assisting Railway servant (s) of Railway Trade Union Official(s) Shri M.K. Das –II/Hd. TC/ GHY station should obtain an undertaking from the nominee (s) that he (they) is (are) willing to assist him during the Disciplinary proceedings. The undertaking should also contain the particulars of other case (s) if any in which the nominee(s) had already undertaking to assist and the undertaking should be furnished to the undersigned, Railway along with the nomination.
4. Shri M.K. Das –II/Hd. TC/ GHY station is hereby directed to submit the undersigned (.....Railway) a written statement of his defence (which should reach the said (General Manger) within ten days of receipt of this Memorandum if he does not require to inspect any documents for the preparation of the defence within ten days after completion of inspection of documents if he got to inspect documents, and also (a) to state whether he wishes to be he in person and (b) to furnish the names and addresses of the witnesses if any whom he wishes to call in support of this defence.

Certified to be true copy

contd....2

02-06-10

130

Central Administrative Tribunal
केन्द्रीय व्यवस्थानिक न्यायालय
03 JUN 2010
Guwahati Bench
गुवाहाटी न्यायपीठ

5. Shri M.K. Das -II/Hd. TC/ GHY station is informed that an enquiry will be held only in respect of those article of charges are not admitted. He should, therefore, specifically admit or done each article of charges.
6. Shri M.K. Das -II/Hd. TC/ GHY station 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 Enquiring authority or otherwise fails or refuse to comply with the provisions of rules-9 of the Railway servant (Discipline and (Appeal) Rules -1968 on the orders/direction issued in pursuance of the said rules, the enquiring authority may hold the enquiry ex parte.
7. The attention of Shri M.K. Das -II/Hd. TC/ GHY is invited to Rules 20 of the Railway servants (Conduct) Rules 1966, under which no Railway servant shall bring or attempt to bring any political or to other influence to bear upon any superiors Authority to further his interest in respect of materials pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Shri M.K. Das -II/Hd. TC/ GHY station is aware of such a representation and that it has been made at his issuance and action will be taken against him for violation of rules of the Railway services conduct Rules- 1966.
8. The receipt of this Memorandum may be acknowledged.

Encl :

Sd/- H.L. Sarkar 03/IX/2002

Signature: Sd/- H.L.SARKAR

DCM/ TC/ LMG

Name and designation of the
Competent authority

Stamp Divisional Commercial Manager (TC)

N.F. Railway/ Lumding

To,

Shri M.K. Das, II
Designation Hd. TC/ GHY
(Through SS/GHY)

Copy to Shri SS/ GHY (Name and designation of the lending authority)
for information Strike out whichever 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 the investigation authority or any authority who are in the custody of the documents or who would be engaging for inspection of documents to enable that authority being mention in the draft memorandum whereas the President is the Disciplinary authority.

To be retained wherever President of the Railway Board is the competent.

contd..3

Certified to be true copy

62-06-10

83
03 JUN 2010

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

-18-

(3)

NORTHEAST FRONTIER RAILWAY

Annexure to Standard Form No. 5

Memorandum of Charge sheet under Rule -9 of the R.S. (D & A)

Rules -1968.

ANNEXURE-I

Statement of Articles of the charges framed against Shri M.K. Das -II/ Hd. TC/ GHY (Name and designation of the Railway staff).

ARTICLE -1

That the said Shri M.K. Das -II/ Hd. TC/ GHY while as (here enter definite and distinct articles of the Charges)

Shri M.K. Das -II while remained posted as Head Ticket Collector N.F. Railway, Guwahati Railway station, Guwahati during the year 2001 failed to maintain absolute integrity and devotion of duty in as much as on 20-11-2001, he demanded and accepted illegal gratification of Rs. 100/- from Shri Monoj Agarwal of Bajoria Market, SRCB Road, Fancy Bazar, Guwahati for providing him a sleeper class berth up to New Jalpaiguri Railway station in Train No. 5621 (N.E. Express) leaving Guwahati on 21/11/2001 and by the aforesaid act Shri M.K. Das -II contravened the provision of Rule 3-1 (i) (ii) & (iii) or railway service (conduct) Rule, 1966.

Sd/- H.L. Sarkar 03/IX/2002

Stamp Divisional Commercial Manager (TC).

N.F. Railway/ Lumding

ANNEXURE- II

Statement of imputation of Mis-conduct/ Mis-behaviour in support of the article of the charges framed against Shri M.K. Das -II/ Hd. TC/ GHY station.

ARTICLE- I

While Shri M.K. Das -II, Head Ticket Collector, N.F. Railway was posted at Guwahati Railway Station on 20/11/2001 demanded illegal gratification of Rs. 100/- from one Shri Monoj Agarwal of Bajoria Market SRCB Raod, Fancy Bazar, Guwahati for providing him a sleeper class berth upto New Jalpaiguri Railway Station in Train No. 5621 (N.E. Express) leaving Guwahati on 21/11/2001.

It is alleged that on 20/11/2001 Shri Monoj Agarwal approached Shri M.K Das-II to enquire about the availability of berth in N.E. Express leaving Guwahati on 21/11/2001, when the said M. K. Das-II assured him that sleeper class berth will be provided to him and demanded illegal gratification of Rs. 100/- from Shri Monoj Agarwal. As Shri Monoj Agarwal was not willing to pay the bribe, he lodged a complaint addressed to SP/CBI/ACB/Guwahati for taking legal action against Shri M.K Das-II. On receipt of the complaint a case No. R.C.18 (A)/2001 SHG was registered and in order to lay trap, a trap laying party was constituted with the following Officers/ Staff.

Sd/- H.L. Sarkar 03/IX/2002

Stamp Divisional Commercial Manager (TC).

N.F. Railway/ Lumding

Certified to be true copy

contd....4

01.06.10

03 JUN 2010

Guwahati Bench
गुवाहाटी न्यायालय

-19-

1) Shri B.S. Jha, Inspector 2) Shri L. Hangshing, Inspector (3) Shri Monojit Dey, ASI 4) Shri Biren Suri, Constable 5) Shri Jitu Deka, Cosntable. Services of two independent witness namely Shri S.N. Singh and Shri S.K. Dubey both of Central Ground Water Baord, R.G. Baruah Road, Zoo Tiniali, Guwahati-24 were requisitioned.

The trap laying team, witnesses and the complainant assembled in the CBI office Guwahati on 20/11/01 at about 17.45 hrs. were Inspector B.S. Jha explained the purpose to all concerned and a demonstration regarding reaction of Phenolphthalein Power with solution of sodium carbonate was given. The complainant was asked to produce the cost of the ticket and the bribe amount of Rs. 100/- to be paid to Shri M.K. Das-II Shri Agarwal then produced the following currency notes of

Rs. 50/- G.C. Notes bearing No.

i) 2DA 515768 & ii) 3 BQ 711812

Rs. 100/- G.C. Notes bearing No.

i) 7 E N 708371 & ii) 1 GB. 662864.

One Rs. 100/- G.C. Note bearing No.1 GB 662864 was treated with Phenolphthalein Power and kept in the right side chest pocket of Shri Monoj Agarwal and the remaining G.C. Notes was given to Monoj Agarwal to be kept in his purse for purchasing ticket He was asked to give tainted G.C. Note of Rs. 100/- only on demand to Shri M.K. Das-II

A Pre-Trap Panchnama-I, was prepared in this regard at the CBI office incorporating all the details and the same was attested by both the witnessed.

The trap laying team alongwith the witnesses and the complainant reached Guwahati Railway station at about 18.45 Hrs. The complainant Shri Monoj Agarwal met Shri M.K. Das-II in the O/o. the CTI, N.F. Rly. Guwahati Raiplay Station alongwith the witness Shri S.N. Singh and reminded him the purpose of his coming there. Shri M.K. Das-II gave the complainant a piece of paper and asked him to give his journey partuculars, name address etc. After receiving the said particulars Shri M.K. Das-II wrote a requisition slip addressed to Chief Coaching Clerk, Booking for a issuing a sleeper class ticket Ex. Guwahati to New Jalpaiguri for journey by 5621 on dtd. 21/11/2001 and handed over the same to Shri Agarwal with advise to bring the ticket form counter No. 6 Shri Agarwal purchased sleeper class ticket No. 45890 and came back to CTIs office and handed over the ticket to Shri M.K. Das-II. Shri M.K. Das-II asked Shri Rahul Amin, Head ticket Collector to issue berth reservation ticket against the said journey ticket and make necessary entries in the reservation chart. On being asked by Shri M.K. Das-II Shri Rahul Amin issued berth reservation ticket No.265885 and made necessary entries in the reservation chart of coach No. 6 of 5621 dtd. 21-11-01 Shri M.K. Das-II thereafter collected the Jounrey Ticket and berth reservation ticket from Shri Rahul Amin and handed over to Shri Agarwal and demanded Rs. 100/- to be paid to him. On being demanded Shri Agarwal gave tainted G.C. Note No. GB 662864. After receiving the said Rs. 100/- Shri M.K. Das-II demanded Rs. 20/- more being the cost of the reservation charge. At this point of time Shri M.K. Das-II was challenged by the CBI Team for demanding and accepting illegal gratification of Rs. 100/- from the complainant. Shri M.K. Das-II immediately dropped the tainted G.C. note at the floor which was later recovered by the CBI Team. Right hand of Shri M.K. Das-II was washed with the solution of sodium carbonate which turned pink indicating that he had accepted the tainted money from the complainant. The said pink solution was preserved in a clean bottle and sealed. A post trap memorandum vide Panchanama 2 was prepared on the spot and signature of all concerned were taken. By the above acts Shri M.K. Das-II contravened the provision of Rule 3 (i) (ii) & (iii) of Rilway service (Conduct) Rules, 1966.

Sd/- H.L. Sarkar 03/IX/2002
Stamp Divisional Commercial Manager (TC).
N.F. Railway/ Lumding

Certified to be true copy

21-06-10

03 JULY 2010

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

-20-

(4)

ANNEXURE-III

**List of documents by which the articles of the charge framed against
Shri M.K. Das-II are proposed to be sustained.**

- 1.) Complaint dtd. 20/11/2001 lodged by Shri Monoj Agarwala.
- 2.) DTC book of Guwahati Railway Station Counter No. 6 commencing from 11/11/2001 and closed on 20/11/2001.
- 3.) Requisition slip for issuing sleeper class ticket by Chief Ticket Inspector, Guwahati dtd. 20/11/2001.
- 4.) Sleeper Class Ticket No. 45890 from Guwahati to New Jalpaiguri.
- 5.) Reservation Chart of 5621 Down for 21/11/01.
- 6.) BRT. No. 265885.
- 7.) BIC Diary of CTIs Office Guwahati from 17/11/01 to 21/11/01.
- 8.) Attendance Register of CTIs office Guwahati opened on 17/09/2001 and closed on 16/10/2001.
- 9.) Duty Roaster of CTIs Office, Guwahati from 9/6/01 to 27/11/01.
- 10.) Exhibit "A" leveled right hand wash.
- 11.) One envelope marked Ext. D containing G.C. Note of Rs.100/- denomination bearing no. 1 GB 662864 "Tainted Bribe Money".
- 12.) Panchnama No. 1 dtd. 20/11/2001.
- 13.) Panchnama No.2 dtd. 20/11/2001.

Sd/- H.L. Sarkar 03/IX/2002
 Stamp Divisional Commercial Manager (TC).
 N.F. Railway/ Lumding

Annexure-IV

List of Witnesses by whom the articles of the changes framed against Shri M.K. Das-II proposed to be sustained.

1) Shri Monoj Agarwal @ Monoj Bajaria, Bajaria Market SRCB Road, Fancy Bazar, Guwahati-1 }
 2) Shri S. N. Singh, Drillers In-charge Division-VIII, Central Ground Water Board, R.G. Baruah Road, Zoo Tiniali, Guwahati-24.
 3) Shri S.K. Dubey , Driver, Central Ground Water Board R.G. Baruah Road, Zoo Tiniali, Guwahati-24
 4) Shri Drabya Narayan Tripathy, Head coaching clerk, Guwahati Railway Station.
 5) Shri Baturam Das, Chief Superintendent (stock) N.F. Railway, Guwahati Station.
 6) Md. Rahul Amin, Head ticket collector, N.F. Railway, Guwahati.
 7) Shri Binandiram Rava, Chief Ticket Inspector, N.F. Railway.
 8) Shri Gautam Chandra Das, Relieving TC, N.F. Railway, Guwahati Station.
 9) Shri L. Hangshing, Inspector/ CBI/ ACB/ Guwahati
 10) Shri Monojit Dey, ASI/CBI/ACB/ Guwahati
 11) Shri Jitu Deka, Constable CBI/ACB/ Guwahati
 12) Shri Biren Suri, Constable CBI/ACB/ Guwahati.
 13) Shri B.S. Jha, Inspector of Police CBI/ACB/ Guwahati.
 14) Shri A.K. Saha, Dy. Superintendent of police/ CBI/ ACB/Guwahati.

Sd/- H.L. Sarkar 03/IX/2002
 Stamp Divisional Commercial Manager (TC).
 N.F. Railway/ Lumding

Certified to be true copy

02-06-10

03 JUN 2010

Guwahati Bench
গুৱাহাটী স্বায়োৰ্ধTYPED COPYANNEXURE -3

-21-

To,

The Divisional Commercial Manager (TC)
N.F., Railway, Lumding.

Dated 08-01-2003

Sir,

Sub : Defence against Charge Memorandum No. C/CON/LM/MISC/06 (MKD-Hd TC-GHY) Dated, 03-09-2002 issued by DCM (TC) / N.F. Railway, Lumding for imposing Major Penalty.

With due deference and humble submission I beg to submit that I do not accept the charges which was labelled against me through your subject noted Charge Memorandum.

In view of the above, I would request your honour kindly arrange to conduct the D.A.R. Enquiry to enable me to disprove the charges incorporated in the aforesaid Charge Memorandum during the course of D.A.R. Enquiry in the form of "Audi alteram partem" so that reasonable opportunity under Article 311 of the Constitution analogous to the principles of Natural Justice is not denied to me and feel me oblige thereby.

With regards.

Yours faithfully,

Sd/
(M.K. Das, II)
Head Ticket Collector
Guwahati Railway Station

Certified to be true copy

02.06.10
A

TYPED COPY

ANNEXURE-4

SANDARD FORM NO.7

G-134 F.

Standard form of order relating to Appointment of Enquiry Officer

(Rule No. 9 (2) of R.S. (D & A) Rules-1968)

No. C/CON/LM/MISC/06/ (MKD.-Hd. TC-GHY

Dated 20/03/03

Name of the Railway Administration

N.F. Railway

Place of Issue

DRM (C)/LMG's Office.

ORDER

Where as an Enquiry under Rule -9 of the Railway servant (Discipline and appeal) Rules -1968 is being held against Shri M.K. Das-II/Hd. TC/ GHY (Name and designation of the Railway Servant)

And where as the undersigned consider (s) that an Enquiry officer should be appointed to enquiry into the charges framed against Shri M.K. Das-II Hd. TC/ GHY.

Now, therefore the undersigned in exercise of the powers conferred by Sub-Rule (2) of the said rule hereby Appointed Shri R.S. Mishra, ACM/ LMG (Name and designation of the Enquiry Officer) as Enquiry Officer to enquire into the Charges framed against the said Shri M.K. Das-II Hd. TC/ GHY.

This is in cancellation of the memorandum No.
nominating Sri as Enquiry Officer.

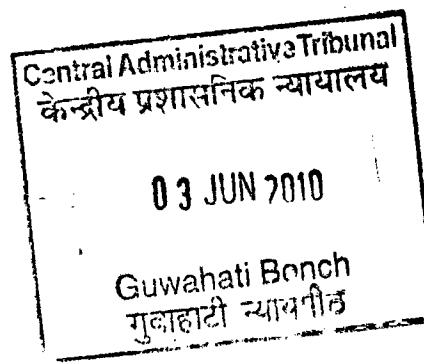
Signature : Sd/- H.L. Sarkar 03/IX/2002
Designation : Stamp Divisional Commercial Manager (TC).
N.F. Railway/ Lumding

Copy to : Shri M.K. Das-II, Hd. TC/ GHY
(Name and Designation of the Railway Employee)
Copy to : Shri R.S. Mishra, ACM/ LMG.
(Name and designation of the Enquiry Officer).

Certified to be true copy

02.06.10

TYPED COPY



ANNEXURE-5

SANDARD FORM NO.7

G-134 F.

Standard form order of relating to Appointment of Enquiry Officer
(Rule No. 9 (2) of R.S. (D & A) Rules-1968)

No. C/CON/LM/MISC/06/ (MKD. Hd. TC-GHY) Dated 11/11/2003
Name of the Railway Administration N.F. Railway
Place of Issue DRM (C)/LMG's Office.

ORDER

Where as an Enquiry under Rule -9 of the Railway servant (Discipline and appeal) Rules -1968 is being held against Shri M.K. Das-II/Hd. TC/ GHY (Name and designation of the Railway Servant)

And whereas the undersigned consider (s) that an Enquiry officer should be appointed to enquire into the charges framed against Shri M.K. Das-II Hd. TC/ GHY.

Now, therefore, the undersigned, in exercise of the powers conferred Sub- Rule (2) of the said rule hereby Appointed Shri R.S. Mishra, Area Manager/ RPAN (Name and designation of the Enquiry Officer) as Enquiry Officer to enquire into the Charges framed against the said Shri M.K. Das-II Hd. TC/ GHY.

This is in cancellation of the memorandum No. C/CON/LM/MISC/06/ (MKD. Hd. TC-GHY dated 22-03-2003 Shri Area Manager /BPB as Enquiry Officer.

Signature : Sd/- J. Jamir, 11/11/
Designation :Stamp Divisional Commercial Manager (TC).
N.F. Railway/ Lumding

Copy to : Shri M.K. Das-II, Hd. TC/ GHY
(Name and Designation of the Railway Employee)
Copy to : Shri R.S. Mishra, Area Manager/ RPAN
(Name and designation of the Enquiry Officer).

Certified to be true copy

02.06.10

89 / 137
03 JUN 2010

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

-24-

TYPED COPY

ANNEXURE-6

Daily Order Sheet No. 7

Venue- Chamber of DCM/ GHY

Date : 18-09-2004

Time : 10 Hrs. 17.30 hrs.

Sub : D & A R inquiry against Shri Mrinal Kanti Das-II, Hd TC/ GHY

The following officials are present at the time of RH on date :-

- ✓ 1. Shri Mrinal Kanti Das -II Hd. T.C./ GHY CO
- 2. Shri M. Chakraborty, Retd. Sr. SO (A) & Ex. CVI/MLG..... DC
- 3. Shri S. Sengupta, CVI (T)/MLG..... PO

The following Officials are absent at the time of RH on date :-

- ✓ 1. Shri Monoj Agarwal, Monoj Bazaria, Bazaria Market,
SRCB Raod, Fancy Bazar, GHY..... PW-1 ✓
- 2. Shri S.N. Singh, Drillers, Central Ground Water Baord,
Zoo Tiniali, Guwahati -24..... PW-2
- 3. Shri B.S. Jha, Inspector of Police, CBI/ACB/ GHY PW-13
- 4. Shri A.K. Saha, Dy. SP CBI/ACB/GHY..... PW-14

The Regular Hearing resumed on 18-09-2004 at 10.00 hrs. as per Daily Order Sheet No. 6 dated 17-09-2004 P.O. failed to produce PW-1, PW-2, PW-13 & PW-14 although the inquiry is being held for the last 4 (four) days i.e. from 15-09-2004 at GHY. Even then PO requested IO to fix up another date as final hearing on which he will try to produce all the witnesses including Shri Monoj Agarwal, who is the key witness of the case, and at present Shri Agarwal is out of Guwahati as confirmed by PO as well as CBI Officials. But the request of PO is totally rejected on the ground that the dates of Regular Hearing of the case were fixed on 11-04-03 and 2-8-03 at LMG. In the midst, the PO was appointed on 22-08-03. Further date of RH were fixed on 8-9-03 at BPB, 7-1-04 to 9-1-04 at GHY, 10-05-04 at GHY, 10-5-04 at GHY, 25.5.04 at GHY, 16-08-04 to 18-08-04 at Jhansi and 15-9-04 to 18-09-04 at GHY. Since it is case of November'01, it is not possible for dragging the case further. Out of aforesaid 4 witness, 3 witnesses (i.e. PW-1) PW-13 & PW-14) have not been attending the inquiry for more than one year. Further, it is worthwhile to mention here that as per deposition of PW-3, it has come to knowledge that PW-2, PW-13 and

Sd/ Mrinal Kanti Das
18/9
C.D.

Sd/- M. Chakraborty
18/9/04
D.C.

Sd/ S. Sengupta
18/9/04
P.O.

Sd/ R.S. Mishra
18/09/04
I.O.

Certified to be true copy

contd..2

02.06.10

90'

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

33 JUN 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

-25-

(2)

PW-14 have been transferred from Guwahati. So, there is remote possibility of attending the inquiry by the aforesaid officials in the date fixed in future also. On that consideration, it is decided not to fix up any further date for Regular Hearing in this case considering the principles of Natural Justice. The case from Prosecution side is closed and thereafter the CO was asked to produce defence documents and witnesses, if any to which CO replied negative. CO is asked to produce himself as witness in his case to which he replied negative. At this stage IO decided to proceed with the General examination of CO by IO. After general examination of CO, the Regular Hearing of the case is closed on date. PO is requested to submit his Brief within IO days and on receipt of the PO's Brief, CO will submit his Defence Brief within 10 days from the date of receipt of PO's Brief. If the Brief is not received from either side within stipulated time cited above, it will be presumed that there will be no Brief to be submitted from either side.

Sd/ Mrinal Kanti Das
18/9
C.D.

Sd/- M. Chakraborty
18/9/04
D.C.

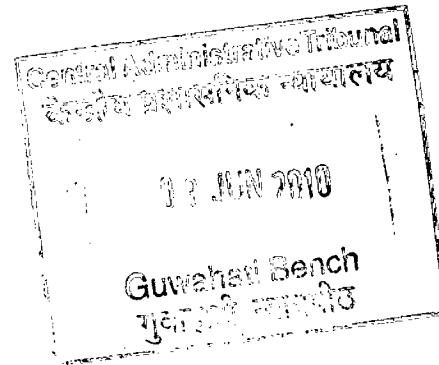
Sd/ S. Sengupta
18/9/04
P.O.

Sd/ R.S. Mishra
18/09/04
I.O.

Certified to be true copy

02-06-10

TYPED COPY



ANNEXURE-7

N. F. RAILWAY

Office of the
General Manager (P)

Maligaon, dated 8-8-2001

DAC-587

No. E/74/0/Pt XVI (C)

To,

GM/Maligaon, GM (CON) Maligaon, AGM/ MLG.

All PHODs, DRMs, ADRMs, DAOs, WAO/ NBQs, DBWS.

Dy. CME/NBQs, DBWS, All Area Manager, All Sr, DPOs.

ALL AEN, Sr. ARM/GHY, NJP, Sr. DEN/ MLG

DEN/ DBRT, WM (EWS) BNGN, Sr. DME (D)

All Controlling Oficer of Non-divisionalised Offices

The GS/NFR, NFRMU, AISCTREA & NFROBCEA.

Sub : Model time schedule for finalization of DAR Proceedings.

It has come to the notice of the administration that in most DAR cases Disciplinary authorities do not maintain the time schedule as fixed by Rly. Board for completion of the proceedings whereby staff against whom Disciplinary proceeding initiated are put under hardship. The recognized unions have also expressed anguish over such inordinate delays.

In view of the above, the modal time schedule for finalization of DAR proceedings issued by Rly. Board vide their letter No. E(DAR) 308/O/... VII dtd. 8-9-94 is shown in the enclosed Annexure 'A' for its adherence.

DA -As above.

Sd/-

(P.G. Johnson.)

APO/R.

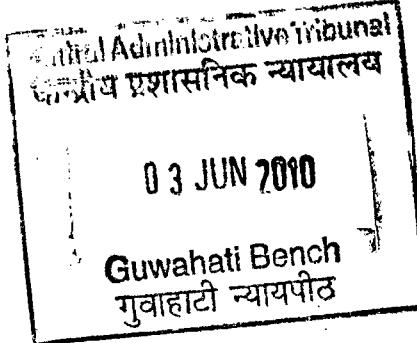
For General Manager, (P) MLG.

AB/7-8.

P.T.O.

Certified to be true copy

62.06.10



-27-

ANNEXURE-'A'

Model time schedule for progress of major penalty DAR cases.

SL. Steps description.	Model time Schedule		
	<input checked="" type="checkbox"/> CVC/CBI Cases.	Rly. Vig. Cases.	Dept. Cases.
1. 2.	3	4	5
1. Issue of chargesheet after receipt of advice.	30	30	20
2. Service of chargesheet.	10	10	10
3. Inspection of RUDs (Ralled upon documents).	30	20	
	(To be supplied with SF.5)		
4. Submission of written defence with list of witness	20	20	20
5. Decision to hold the inquiry after receipt of the deference (step-4)	30	30	20
6. Nomination of (O/PO)	45	20	20
7. Appointment of (O/PO)	20	05	05
8. Completion of enquiry and submission of report.	180	180	60
9. Obtaining CVC's second stage advice after receipt of inquiry report.	45	-	-
10. Supply of copy of inquiry report to the charged official.	10	10	10
11. C.O.'s submission of final defence.	15	15	15
12. Submission of cases of Disciplinary Authority	10	10	10
13. Decision by Disciplinary Authority	20	20	20
14. Issue of NIP.	5	5	5
Total	470	365	205

Certified to be true copy

02-06-10

TYPED COPY

— 93 —

Central Admin. Disciplinary Tribunal
केन्द्रीय प्रशासनिक न्यायालय
03 JUN 2001
Guwahati Bench
গুৱাহাটী ন্যায়পীঁত

ANNEXURE-8

N. F. RAILWAY

Office of the
General Manager (P)
Maligaon, Guwahati-11
August- 23, 2001

DAC-588
No. E/74/0/Pt-XVI (C)

To,

GM/MLG, GM (Con), AGM/MLG
All PHODs, All DRMs, DAOs, WAOs/ NBQ & DBWS
All Controlling Officers of
Non-divisionalised Offices of NF Railway
The General Secretary/ NFREU & NFRMU/ PNO, GHY-12
The GS/AISCTREA/Maligaon, Guwahati-11



Sub : Speedy finalization of DAR cases.



It has been noticed that finalization of DAR proceedings especially in respect of major penalty, in some cases take unduly long time due to various reasons including lack of proper appreciation of rules and procedures.

Whereas instructions have been issued from time to time in respect of conducting of enquiries, supply of relevant documents, issue of charge sheet etc. and a model time schedule has been issued by the Railway Board which has duly been circulated to all the units of this railway, the same has again been reiterated by this office letter No. DAC-587 dated 8-8-2001.

NFRMU, vide their PNM item No. 90/8 at Zenal level, have drawn the attention of the administration towards the non-adherence of guidelines issued by the Railway Board in their letter No. E (D & A) 97 RG-6 dated 12-08-99 by the Disciplinary Authority and Enquiry Officer which results in delay in finalization of the DAR proceedings. It is, therefore, once again reiterated that instructions contained in Railway Board's letter No. E (D & A) 97 RG6-26 dated 12-08-99, circulated vide this office No. DAC-570 dated 01-11-99 should again be brought to the notice of the Disciplinary Authority and Enquiry Officer and scrupulously followed in addition to maintenance of model time schedule and other relevant instructions.

Sd/-

(SMN ISLAM)

Chief Personal Officer/ TR

For General Manager (P)

Certified to be true copy

02-06-10

03 JUN 2010

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

TYPED COPY

N. F. RAILWAY

ANNEXURE-9

Office of the
General Manager (P)
Maligaon, Guwahati-11
August-31/03/2003

DAC- 600

No. E/74/0/Pt-XVI (C)

To, GM/MLG, GM/ CON/ MLG, AGM/MLG
All PHODs, DRMs, ADRMs, Sr. DPOs, DAOs, SAO/ NJP
CWM/ NBQs, DBWS, WAO/ NBQS, DBWS, ADRM/ NJP,
All Area Manager, Sr. DME (D)s, AENs OSD/ RNY,
DEN/ DBRT, APO/GHY, DBWS, NBQS & NJP.
All Non-divisionalised Unit, Dy. CE/ BR. Line/MLG,
Sr. DEN/ MLG, Dy. CSTE/MW/MLG, Dy. CSTE (TC)/MLG,
All SPOS & APOs of P. Branch/ Maligaon,
The GS/NFREU, NERMU, AISCTREA/MLG

NOTIFICATION

A copy of the Railway Board's notification No. E (D & A) 2002-RG 6-1 dated 10-03-2003 (RBE No. 46/2003) on the above subject is forwarded for information and guidance please.

Sd/-
(P.G. Johnson)
APO/R

For General Manager (P)/ MLG

(Copy of Railway Board's Notification No. E (D & A) 2002-RG6-1 Dated 10-03-2003)

NOTIFICATION

GSR..... in exercise of the powers conferred, by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Railway Servants (Discipline and Appeal) Rules, 1968 namely :-

- (1). These rules may be called the Railway Servants (Discipline and Appeal) Second Amendment Rules, 2003
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Railway Servants (Discipline and Appeal) Rules, 1968, for Schedule-II, the following shall be substituted, namely :-

"SCHEDULE-II"

(SEE RULE 4 AND SUB-RULE (2) OF RULE 7)

Schedule of Disciplinary powers and powers of suspension of different grades of Railway Officers and Senior supervisors in respect of non-gazetted staff of zonal Railway, Chittaranjan Locomotive Works, Diesel Locomotive Works, Intergral Coach Factory, Wheel & Axle Plant, Metro Railway (Calcutta), Diesel Components Works (Patiala), Rail Coach Factory (Kapurthala) , Railway Electrification projects and Metropolitan Transport Projects (Railways).

Senior Supervisors in charge in the pay scale of Rs. 4500-7000 and above (Described as Supervisors In-Charge by the Railway Administration for this purpose)	Assistant Officers(Junior Scale and Group 'B')	Senior Scale officers and Assistant Officers (Junior Scale and Group 'B' holding independent charge).	Junior Administrative Grade Officers and Senior Scale Officers holding independent Charge or In charge of a Department in the Division	Additional Divisional Railway Manager in relation to the Departments attached to them or Divisional Railway Manager	Senior Administrative Grade Officers in the Zonal Railways Head Quarters in the pay scale of Rs. 18400-22400 including Principal Heads of Departments in the pay scale of Rs. 22400-24500.	Additional General Manager in relation to Departments attached to them or Chief Administrative Officer or General Managers	Railway Board.
1	2	3	4	5	6	7	8

Certified to be true copy

02-06-10

1 03 JUN 2010

Guwahati Bench
गुवाहाटी न्यायपोऱ

-30-

-2-

(i)

Censure :

1	2	3	4	5	6	7	8
---	---	---	---	---	---	---	---

Group 'D' and Group 'D'
Group 'C' staff and Group 'C' staff in pay
who are three scales of upto
grades below and including
and lower than the Rs. 5000-
Disciplinary 8000.
Authority.

Group 'D' and Group 'C' staff in pay
scales of upto and including
Rs. 5500- 9000.

Group 'D' and Group 'C' staff in pay
scales of upto and including
Rs. 5500- 9000.

Group 'D' and Group 'C' staff in pay
scales of upto and including
Rs. 5500- 9000.

Group 'D' and Group 'C' staff in pay
scales of upto and including
Rs. 5500- 9000.

Group 'D' and Group 'C' staff in pay
scales of upto and including
Rs. 5500- 9000.

Group 'D' and Group 'C' staff in pay
scales of upto and including
Rs. 5500- 9000.

(ii) With holding of promotion :

1	2	3	4	5	6	7	8
---	---	---	---	---	---	---	---

Group 'D' and Group 'D'
Group 'C' staff and Group 'C' staff in pay
who are three scales of upto
grades below and including
and lower than the Rs. 5000-
Disciplinary 8000.
Authority.

Group 'D' and Group 'C' staff in pay
scales of upto and including
Rs. 5500- 9000.

Group 'D' and Group 'C' staff in pay
scales of upto and including
Rs. 5500- 9000.

Group 'D' and Group 'C' staff in pay
scales of upto and including
Rs. 5500- 9000.

Group 'D' and Group 'C' staff in pay
scales of upto and including
Rs. 5500- 9000.

Group 'D' and Group 'C' staff in pay
scales of upto and including
Rs. 5500- 9000.

Group 'D' and Group 'C' staff in pay
scales of upto and including
Rs. 5500- 9000.

(iii) Recovery from pay of pecuniary loss caused to Government
by negligence or breach of orders :

1	2	3	4	5	6	7	8
---	---	---	---	---	---	---	---

Group 'D' and Group 'D'
Group 'C' staff and Group 'C' staff in pay
who are three scales of upto
grades below and including
and lower than the Rs. 5000-
Disciplinary 8000.
Authority.

Group 'D' and Group 'C' staff in pay
scales of upto and including
Rs. 5500- 9000.

Group 'D' and Group 'C' staff in pay
scales of upto and including
Rs. 5500- 9000.

Group 'D' and Group 'C' staff in pay
scales of upto and including
Rs. 5500- 9000.

Group 'D' and Group 'C' staff in pay
scales of upto and including
Rs. 5500- 9000.

Group 'D' and Group 'C' staff in pay
scales of upto and including
Rs. 5500- 9000.

Group 'D' and Group 'C' staff in pay
scales of upto and including
Rs. 5500- 9000.

Certified to be true copy

A
02.06.10

03 JUN 2010

Guwahati Bench
গুৱাহাটী ন্যায়পোঠ

(iv) Withholding of privilege passes or privilege ticket orders or both :

1	2	3	4	5	6	7	8
Group 'D' and Group 'C' staff who are three grades below and lower than the Disciplinary Authority.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs. 5000- 8000.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs. 5500- 9000.	Group 'D' and Group 'C' staff.				

(v) Reduction to a lower stage in time scale of pay for a period not exceeding three years without cumulative effect and not affecting pension :

1	2	3	4	5	6	7	8
Group 'D' and Group 'C' staff who are three grades below and lower than the Disciplinary Authority.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs. 5000- 8000.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs. 5500- 9000.	Group 'D' and Group 'C' staff.				

(vi) With Holding of increments :

1	2	3	4	5	6	7	8
Group 'D' and Group 'C' staff who are three grades below and lower than the Disciplinary Authority. No powers exercisable where inquiry under sub-rule (2) of Rule 11 is required.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs. 5000- 8000.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs. 5500- 9000.	Group 'D' and Group 'C' staff.				

Certified to be true copy

62 - 86 - 10

03 JUN 2010

Guwahati Bench
गुवाहाटी न्यायालय

(vii) Reduction to a lower stage in the time scale of pay for a period exceeding three years or with cumulative effect or adversely affecting pension.

1	2	3	4	5	6	7	8
NIL	Group 'D' and Group 'C' staff in pay scales of upto and including Rs. 5000-8000	Group 'D' and Group 'C' staff in pay scales of upto and including Rs. 5500-9000	Group 'D' and Group 'C' staff				

(viii) Reduction to a lower time scale of pay, grade, post or service :

1	2	3	4	5	6	7	8
NIL	Group 'D' 'C' staff.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs. 5500-9000.	Group 'D' and Group 'C' staff.				

ix) Compulsory retirement : } Appointing authority or an authority of equivalent rank or
 (x) Removal from Service : } any higher authority.
 xi) Dismissal from service : }
 xii) Suspension : (Not amounting to penalty)

1	2	3	4	5	6	7	8
Group 'D' and Group 'C' staff in pay scales of upto and including Rs. 3200-4900 subject to report to Divisional Officer or Assistant Officer in charge within 24 hours in the case of Group 'C' staff.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs. 4000-6000.	Group 'D' and Group 'C' staff in pay scales of upto and including Rs. 5500-8000.	Group 'D' and Group 'C' staff.				

Note : 1. The appellate authorities in the case of authorities mentioned in this Schedule shall be as shown in the next column, whereas in the case of the authority specified in the last column, the appellate authority shall be the President. If post of the rank shown in any particular column does not exist, the appellate authority shall be that shown in the next column.

Note-2- The appointing authority or an authority of equivalent rank or any higher authority who is competent to impose the penalty of dismissal or removal or compulsory retirement from service, may also impose any lower penalty"

R.R. Jaruhar
Secretary
Railway Board
(File No. E (D & A) 2002/ RG 6-1

Certified to be true copy

02-06-10

176
 03 JUN 2010

Guwahati Bench
 गुवाहाटी न्यायपीठ

-33-

-6-

Footnote The principal rules were published in the Gazette of India vide notification No. E (D & A) 66 RG 6-9 dated 22-8-1968 vide S.O. 3181 dated 14-09-68 and subsequently amended vide-

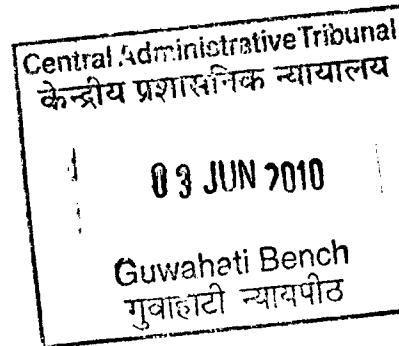
S.No.	Notification No.	Date	Published in the Gazette of India Part II Section 3 Sub section (i)	
			GSR/SO No.	Date of Publication

1	2	3	4	5
1.	E (D & A) 66 RG 6-9	10-04-69	1531	24-06-1969
2.	E (D & A) 67 RG 6-13	07-04-71	1925	08-05-1971
3.	E (D & A) 70 RG 6-63	09-06-71	2501	03-07-1971
4.	E (D & A) 70 RG 6-60	19-10-71	5078	06-11-1971
5.	E (D & A) 70 RG 6-41	21-10-71	4050	30-10-1971
6.	E (D & A) 70 RG 6-43	12-11-71	5264	04-12-1971
7.	E (D & A) 70 RG 6-52	25-03-72	9467	08-04-1972
8.	E (D & A) 70 RG 6-69	17-11-72	3918	25-11-1972
9.	E (D & A) 69 RG 6-60	05-02-73	-	-
10.	E (D & A) 71 RG 6-60	13-07-73	2897	06-10-1973
11.	E (D & A) 75 RG 6-35	05-04-77	1413	14-05-1977
12.	E (D & A) 77 RG 6-46	07-07-78	2193	29-07-1978
13.	E (D & A) 78 RG 6-54	2-11-78	364	23-12-1978
14.	E (D & A) 77 RG 6-30	07-04-78	-	-
15.	E (D & A) 79 RG 6-26	17-08-79	3057	08-09-1979
16.	E (D & A) 79 RG 6-12	25-10-79	3777	17-11-1979
17.	E (D & A) 78 RG 6-61	22-11-79	-	-
18.	E (D & A) 79 RG 6-39	31-12-79	0143	19-01-1980
19.	E (D & A) 78 RG 6-11	06-02-80	0441	23-02-1980
20.	E (D & A) 81 RG 6-72	31-08-82	-	-
21.	E (D & A) 81 RG 6-63	10-08-82	GSR/982	17-12-1983
22.	E (D & A) 81 RG 6-54	31-05-84	GSR/632	23-06-1984
23.	E (D & A) 82 RG 6-29	30-03-84	1822	27-04-1985
24.	E (D & A) 83 RG 6-45	13-06-85	5667	06-07-1985
25.	E (D & A) 80 RG 6-25	20-01-86	GSR/667	22-02-1986
26.	E (D & A) 85 RG 6-16	20-03-87	GSR/241	04-04-1987
27.	E (D & A) 83 RG 6-14	28-08-87	GSR/708	19-09-1987
28.	E (D & A) 87 RG 6-47	26-10-87	GSR/869	21-11-1987
29.	E (D & A) 87 RG 6-146	10-05-88	GSR/420	21-11-1987
30.	E (D & A) 88 RG 6-43	12-08-88	GSR/759	17-09-1988
31.	E (D & A) 84 RG 6-44	20-10-89	GSR/850	11-11-1989
32.	E (D & A) 88 RG 6-38	16-11-89	GSR/900	02-12-1989
33.	E (D & A) 84 RG 6-44	22-11-90	-	-
34.	E (D & A) 90 RG 6-112	16-11-90	GSR/723	11-12-1990
35.	E (D & A) 91 RG 6-42	08-06-91	-	-
36.	E (D & A) 90 RG 6-117	1-09-91	GSR/568	05-10-1991
37.	E (D & A) 89 RG 6-80	20-01-92	GSR/86	22-02-1992
38.	E (D & A) 90 RG 6-112	22-10-92	-	-
39.	E (D & A) 92 RG 6-148	09-11-92	-	-
40.	E (D & A) 92 RG 6-166	11-01-93	GSR/63	30-01-1993
41.	E (D & A) 93 RG 6-94	23-06-94	GSR/327	16-07-1994
42.	E (D & A) 95 RG 6-68	13-08-97	GSR/422	27-12-1997
43.	E (D & A) 92 RG 6-151	06-11-97	GSR/106	06-06-1998
44.	E (D & A) 94 RG 6-10	16-02-99	87	20-03-1999
45.	E (D & A) 98 RG 6-42	11-10-99	-	-
46.	E (D & A) 2001 RG 6-29	31-10-2001	617	24-11-2001
47.	E (D & A) 87 RG 6-151	31-10-202	-	-
48.	E (D & A) 98 RG 6-52	16-01-2003	-	-

Sd/-
 (k. Shankar)
 Dy. Director Estt. (D & A)
 Railway Board

Certified to be true copy

\$
 06-10

TYPED COPYANNEXURE-10**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/CON/LM/MISC/06 (MKD-Hd. TC-GHY)**DT.16-11-05****To,**

**Sri M.K. Das- II,
Hd. TC GHY.**

Father's Name : - Sri Nakul Ch. Das
 Designation : - Hd. TC/ Ghy.
 Date of Birth : - 08-04-1953
 Date of Appointment : - 15-09-1986
 Present pay and scale : - Rs.6650/- in scale of Rs.5000-8000/-
 Date of superannuation/ Retirement:- 31-05-2013

1. The following charge was brought against you

Charges (s)

2. Shri M.K. Das -II, Hd. TC/GHY while remained posted as Head Ticket Collector, N.F. Railway, Guwhati Railway Station, Guwhati. During the year 2001 failed to maintain absolute integrity and devotion to duty is as much as on 20-11-2001, he demanded and accepted illegal gratification of Rs. 100/- from Sri Manoj Agarwal of Bajoria Market, S.R.C.B. Road, Fancy Bazar, Guwhati for providing him a sleeper class berth upto New Jalpaiguri Railway Station, in train No. 5621 (N.E. Express) leaving GHY on 21-11-2001 and by the aforesaid act Sri M.K. Das-II, contravened the provision of rule 3.1 (i) (ii) and (iii) of Railway service (Conduct) Rules of 1966.

3. Your are hereby informed that in accordance with the orders passed by Sr. DCM/ LMG (observation of Sr. DCM/ LMG in Annexure'A") You are reduced to lower time scale of pay for 2 (two) years with cumulative effect.

Contd... Page/2

Certified to be true copy

- 25/100

Central Govt. of India
केन्द्रीय प्रशासनिक न्यायालय

1-18

03 JUN 2010

Guwahati Bench
গুৱাহাটী ন্যায়পৌঠ

-2-

4. The above penalty shall operate to postpone your future increment on restoration to your formal stage in the existing pay & scale.
5. The above penalty shall take with immediate effect.

Enclo :- Observation of Sr. DCM/ LMG/
In Annexure- 'A'

Sd/- 16-11-05
(S.C. Kumar)

Name and Designation
of the Disciplinary Authority
Stamp Sr. Dvl. Commercial Manager
N.F. Railway/ Lumding

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

2. AVO/T/MLG for information and necessary action in to his letter No. Z/Vig./94/2/3/2002 dated 25-06-2002.
3. APO/GHY for information and necessary action please.
4. SS/GHY for information please. He is advised to handover this NIP to the staff concerned with acknowledgement and send the same to this office.

(S.C. Kumar)
Sr. Divl. Commr. Manager
Lumding

Please note the instruction below :-

3. An appeal against these order lies to DRM (next immediate superior to the authority passing the orders) within 45 days time.

4. 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 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

Certified to be true copy

15.4.10

Certified to be true copy
02.06.10

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

03 JUN 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

OBSERVATION

ANNEXURE 'A'

I have gone through the charges, define of C.O. enquiry proceedings and all other aspect of the case carefully I do not fully agree with the findings of the inquiry officer. Journey ticket was handed over by C.O. to R.T. clerk for making reservation ticket depriving queue passengers. C.O. along with said passenger entered the Booking Office for own benefit which is most irregular on the part of TC staff.

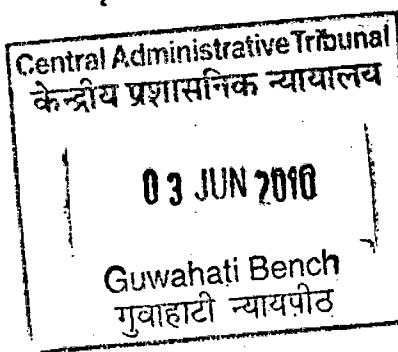
As per remarks given by Dy. CVO/T vide letter No. Z/Vig./ 94/2/3/02 dated 22-03-2005, clearly highlighted the vital points which was over looked by I.O. these points could lead to establish the charges against C.O. After going through the case and remarks of vig. Organization, it is implied that the I.O. has failed to delve into all the important vital points. So, I am not accepting the findings of I.O. which seems to be bias Having examining all the aspects. I am of the opinion that the ends of justice will be met if Sri M.K. Das-II Hd. TC/GHY is reduced to lower time scale of pay for 2 years with cumulative effect.

Sd/-
16-11-05
(S.C. Kumar)
Sr. Divl. Comml. Manager
Lumding.

Certified to be true copy

02.06.10

TYPE COPY



ANNEXURE--11



भारत सरकार Govt. of India
रेल मंत्रालय Ministry of Railways
रेलवे बोर्ड Railway Board

रेल सेवक (अनुशासन और अपील) नियम, 1968
The Railway Servants
(Discipline and Appeals) Rules, 1968

(31 अक्टूबर, 2001 तक परिशोधित)
(Corrected upto 31st October, 2001)

नई दिल्ली 2001
New Delhi 2001

Certified to be true copy

02-06-10

(5) (a) An order of suspension made or deemed to have been made under this rule, shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Were a Railway servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise) and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Railway servant shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

PART -III

PENALTIES AND DISCIPLINARY AUTHORITIES

6. Panalties : The following penalties may for good and sufficient reasons and as hereinafter provided be imposed on a Railway servant, namely:-

Minor Penalties :-

- (i) Censure,
- (ii) Withholding of his promotion for a specified period
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders :
- (iii-a) Withholding of the Privilege Passes on Privilege Ticket Orders or both;
- (iii-b) Reduction to a lower stage in the time scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.
- (iv) Withholding of increments of pay for a specified period with further directions as to whether on the expiry of such period this will or will not have the effect of postponing the future increments of his pay.

Major Penalties :-

- (v) Save as provided for in clause (iii-b) reduction to a lower stage in the time -scale of pay for a specified period, with further directions as to whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;
- (vi) Reduction to a lower time scale of pay, grade, post, or service, with or without further directions regarding condition of restoration to the grade or post or service from

Certified to be true copy

02-06-10

03 JUN 2010

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

-39-

TYPED COPY

N.F. RAILWAY

ANNEXURE-12OFFICE OF THE
GENERAL MANGER (p)
GUWAHATI-11DAC-591

No. E/74/0 Pt XVI (C)

To

GN/ Maligaon, GN (con)/ MLG, AGM/ NIG,
 ALL PHODs, ALL DRNs, ADRMs, SR. DPOs, DAOs,
 CWN/NEQS, DBWS, WAO/NEQS, DEWS,
 ALL Aron Manager, All Sr. DME (D), All AEMs,
 DEN/ DBFT, WM (EWS)/ BNGN, Dy. CS/ Er, Line/ MIG,
 Sr. DEN/ NIG, OSD/ RNY, All Non-divisionalised Units,
 All SPOs and APOs, P. Branch/ MIG.
 The GS/ NFREU, NFRMU, AISCTREA & NFRCBCEA.

Sub : Notification

Dated / / 9-2002

A copy of Railway Bd's letter No. E (D & A) 87EG6-151 dated 8-8-02 (RBE No. 132/02) on above mentioned subject is forwarded for information and necessary guidance please.

Da : As above

Sd/-

(A.K. Roy)

Asstt. Personnel Officer/ MPO
For GENERAL MANAGER (P)/ MIG.

(copy of Rly. Bd's letter No. E (D & A) 87RG6-151 dt. 8-8-02)

NOTIFICATION

G.S.R. in exercise of the powers conferred by the proviso to article 309 of the constitution, the President hereby makes the following rules further to amend the Railway Servants (Discipline and Appeal) rules, 1968, namely :-

1. (1) These rules may be called the Railway Servant (Discipline And appeal) Amendment) Rules 2002.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Railway Servants (Discipline and Appeal) rules, 1968 (hereinafter referred to as the said rules,) for rule 10, the following rules shall be substituted, namely ;-
 - ✓ 10. Action on the injury report :-
 - (1) If the disciplinary authority :-
 - (a) after considering the inquiry report, is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, it may recall the said witness and examine, cross examine and re-examine the witness;
 - (b) is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of rule 9 as far as may be.
 - 2. The disciplinary authority :-
 - a. Shall forward or cause to be forwarded a copy of the report of the inquiry, if any held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring its findings on further examination of witnesses, if any held under sub-rule (1) (a) together with its own tentative reasons for disagreement if any with findings of the inquiring authority on any article of t charge to the Railway Servant , who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Railway Servant.

Certified to be true copy

02-06-10

Contd...2

03 JUN 2006

Guwahati Bench
गुवाहाटी बैचिठ

-40-

-2-

b. Shall consider the representation if any, submitted by the Railway Servant and record its findings before proceeding further in the matter as specified in sub-rules (3), (4) and (5)

(3) Where the disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, he shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as provided in these rules.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (iv) of rules 6 should be imposed on the railway servant, it shall, notwithstanding anything contained in rule 11 make an order imposing such penalty ;
 Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the commission, the record of the inquiry shall be forwarded by the disciplinary authority to the commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Railway Servant.

(5) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses (v) to (ix) of rules 6 should be imposed on the railway servant, it shall make an order imposing such penalty and it shall not be necessary to give the railway servant any opportunity of making representation on the penalty proposed to be imposed ;

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the commission, the record of the inquiry shall be forwarded by the disciplinary authority to the commission for its advice and such advice shall be taken into consideration before making any order imposing any such penalty on the Railway Servant.

3. In the said rules, for rule 12 the following rule shall be substituted , namely :-

"12 Commissioner of Orders :- Order made by the disciplinary authority which would also contain its findings on each article of charge, shall be communicated to the Railway Servant who shall also be supplied with a copy of the advice, if any given by the commission and, where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance'.

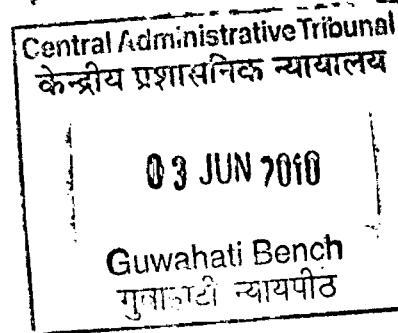
(No. E(D &A) 87 RG 6-151)

R.R. JARUHAR
SECRETARY/ RAILWAY BOARD

Certified to be true copy

(Contd.....3/-)

6
02.06.10



-41-

TYPED COPYANNEXURE- 13**NORTH-EAST FRONTIER RAILWAY**DAC -480

No. E/74/0 Pt. XIV (C)

Maligaon, dated 26-4-91

To

All Heads of Department,
All DRMs DAOs & WAOs/ NBQS & DBWS
All Distt. & Asstt. Officers of
Non-divisionalised Offices,

The GS/NFREU/Maligaon with 40 spare copies,
The GS/NFRMU/ Maligaon with 40 spare copies,

✓ **Sub :** Rule 10 of the Railway Servants (Discipline & Appeal) Rules, 1968 supply of copy of the Inquiry Report to the charged Railway servant before final orders are passed by the Disciplinary Authority.

A copy of the Railway Board's letter No. E (D & A) 87 RG6-151 dated 15-02-91 on the above mentioned subject is forwarded herewith for necessary information and guidance. Board's earlier letter dated 10-11-89 as referred to their present letter was circulated under this office No. DAC-461 (E/74/O Pt. XIV (C) dated 29-11-89.

Sd/-

12-03-91

For CHIEF PERSONAL OFFICER,

(Copy of Railway Board's letter No. E (D & A) 87RG6-151 dated 15-02-91)

✓ **Sub :** Rule 10 of the Railway Servants (Discipline & Appeal) Rules, 1968 Supply of copy of the Inquiry Report to the charged Railway Servant before final orders are passed by the Disciplinary Authority

Attention is invited to Board's letter of even number dated 10-11-1989 on the above subject.

2. A three judge bench of the supreme court consisting of the Chief Justice and two other judges have since delivered the judgment on 20-11-1990 on the western Railway's appeal in the case of Premnath K. Sharma referred to in para 2 of the aforesaid letter. Certain relevant portion of the Judgment are reproduced bellow :-

Contd...2

Certified to be true copy

02-06-10

Central Public Sector Undertakings
केन्द्रीय सरकारी संस्थाएँ

Guwahati Bench
गुवाहाटी बैच

3 JUN 2010

-42-

-2-

"There have been several occasions in different High Court which, following the forty -Second Amendment, have taken the view that it is no longer necessary to furnish a copy of the inquiry report to delinquent officers. Even on some occasions this Court has taken that view, since we have reached a different conclusion the judgments in the different High Courts taking the contrary view must be taken to be no longer laying down good law. We have not been shown any decision of a co-ordinate or a larger Bench of this Court taking this view. Therefore the conclusion to the contrary reached by any two judge Bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground.

We make it clear that wherever there has been an Inquiry officer and he has furnished a report to the Disciplinary Authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter"

It will be seen from the above observation that the supreme Court have rules that the procedure laid down in the second paragraph of their observations quoted above shall only have prospective application and no punishment imposed earlier shall be open to challenge on this ground.

- 3 In the case of one Philips Vs. Director General Ordnance Factory the same question was decided by CAT/ Madras in their judgment delivered in Feb. 1990. The CAT/ Madrass had ruled in the judgment that the procedure as mentioned in the second paragraph of the observations of the Supreme Court quoted above may be held to be binding only from the date of judgment of the CAT in Premnath K. Sharma's case i.e. 6-11-1987 and not to earlier cases.
- 4 Pending SLPs in the Supreme Court may have to be got disposed of the our advantage by making use of the observations of the Supreme Court and Cat/ Madrass as may be applicable to the circumstances of each case. Same line of defense may be taken in pending or future cases before the various benches of the CAT.

Please acknowledge receipt.

Extracts of the relevant portion of the judgment enclosed.

Contd...3

Certified to be true copy

02-06-10

Extracts of the Judgement dated 15-02-90 of the Central Administrative Tribunal / Madrass Bench in O.A. No. 658/88 filed by A. Philip.

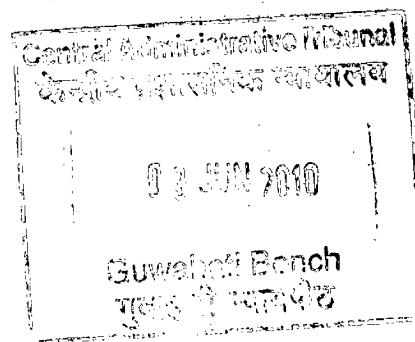
(1990 (2) SLJ CAT -631)

8. The last ground of attack is that the copy of the inquiry report was not communicated to the delinquent officer before the disciplinary authority decided to impose the penalty. Reliance was placed in this connection of the decision of the Full Bench of this Tribunal in Premnath K. Sharma Vs Union of India & other in which it was held that the copy of the inquiry report by the Inquiry Officer must be given to the delinquent officer, before imposing the penalty. It is submitted by the learned counsel for the respondent that an appeal is pending before the supreme Court against that judgment and that however, no stay has been obtained. In this predicaments the ruling of the Full Bench has to be given effect to. However, the question arises as to what should be the date from which the decision will have the force of law, when a decision or ruling of a Court is in the nature of interpretation of any provision of the constitution Act, or Rule, that ruling will necessarily have effect from the date of the legal provision interpreted. But, when a judicial pronouncement is in the nature of a fresh Rule elaborated by the Court in the interest of justice, it can have effect only from the date of the judicial pronouncement, Its effect will be only prospective and not retrospective like any other now rule of law emanating from the Parliament or the Executive.
9. As far as the disciplinary proceedings are concerned, the Central Civil Services (CCA) rules, 1956, enumerate step by step, how the inquiry proceedings should be conducted from the beginning till the imposition of the penalty. Those rules do not contain any provision enjoining the disciplinary authority in furnish copy of the report prior to penalty. Till the advent of the Full Bench decision no disciplinary authority was aware that such a requirement existed. The decision of the Tribunal in this connection is not in the nature of interpretation but in the nature of a fresh rule. Further the fact of giving retrospective effect to that requirement would entail the wholesale invalidation of all disciplinary actions otherwise conducted in conformity with known rules. Such a course would be against the basic principles of the administration of justice.

Contd....4

Certified to be true copy

02.06.10



-44-

-4-

Therefore, the requirement of prior communication of the inquiry report would not apply to penalties imposed prior to the Full Bench decision, like the present one. This contention also fails.

10. The last contention is that the punishment is disproportionate to the misconduct. First of all, this Tribunal interfere in the matter of punishment only if victimisation has been shown and if the punishment is grossly disproportionate to the nature of the misconduct. In this case, ill will on the part of the authorities involved in the process of the disciplinary action has been shown, further taking into account the nature of the establishment in which the applicant was working and the nature of the misconduct which has been proved against the applicant, we do not find that the punishment is disproportionate. In the result the application is dismissed.

KB/26.2

Certified to be true copy

02.06.10

03 JUN 2010

Guwahati Bench
গুৱাহাটী ব্যায়পীঁড়

-45-

TYPE COPYANNEXURE-14

भारत सरकार Govt. of India

रेल मंत्रालय Ministry of Railways

रेलवे बोर्ड Railway Board

रेल सेवक (अनुशासन और अपील) नियम, 1968

The Railway Servants

(Discipline and Appeals) Rules, 1968

(31 अक्टूबर, 2001 तक परिशोधित)

(Corrected upto 31st October, 2001)

नई दिल्ली 2001

New Delhi 2001

Certified to be true copy

02-06-10

Guwahati Bench
गुवाहाटी न्यायपीठ

03 JUN 2010

Provided that in a case where the appellate authority is the Railway Board, the appeal shall be dealt with by any Member of the Railway Board, who has not made the order appealed against.

(3) A Railway servant may prefer an appeal against an order imposing any of the penalties specified in Rule 6 to the President, where no such appeal lies to him under sub-rule (1) or sub-rule (2), if such penalty is imposed by any authority other than the President, on such Railway servant in respect of his activities connected with his work as an office bearer of an association, federation or union participating in the Joint Consultation and Compulsory Arbitration Scheme.

20. Period of limitation for appeals-

No appeal preferred under this part, shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against is delivered to the appellant.

Provided that the appellate authority may entertain the appeal, after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

21. Form and contents and submission of appeal

(1) Every person preferring an appeal shall do so separately and in his own name. An appeal forwarded through or counter-signed by a legal practitioner of an assisting Railway servant or a Railway Trade Union Official shall not be entertained but shall be returned with the direction to submit it under the signature of the appellant only.

(2) The appeal shall be presented to the authority to whom the appeal lies, a copy being forwarded by the appellant to the authority which made the order appealed against. It shall contain all material statements and arguments on which the appellant relies, shall not contain any disrespectful or improper language and shall be complete in itself.

(3) The authority which made the order appealed against shall on receipt of a copy of the appeal, forward the same with its comments thereon together with the relevant records to the appellate authority without any avoidable delay and without waiting for any direction from the appellate authority.

22. Consideration of appeal -

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 5 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider.

Certified to be true copy

02-06-10

(a) whether the procedure laid down in these rules has been complied with and if not whether such non-compliance has resulted in the violation of any provisions of the constitution of India or in the failure of justice.

(b) Whether the findings of the disciplinary authority are warranted by the evidence on the record, and

(c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe and pass orders :-

(i) confirming enhancing, reducing or setting aside the penalty or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

Provided that -

(i) the Commission shall be consulted in all cases where such consultation is necessary;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 6 and an inquiry under Rule 9 has not already been held in the case, the appellate authority shall subject to the provisions of Rule 14, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, make such orders as it may deem fit.

(iii) If the enhanced penalty which the appellate authority proposes to impose, is one of the penalties specified in clauses (v) to (ix) of rule 6 and an inquiry under Rule 9 has already been held in the case, the appellate authority shall make such orders as it may deem fit.

(iv) Subject to the provisions of Rule 14, the appellate authority shall-

(a) where the enhanced penalty which the appellate authority proposes to impose, is the one specified in clause (iv) of Rule 6 and falls within the scope of the provisions contained in sub-rule (2) of Rule 11 and

(b) where an inquiry in the manner laid down in Rule 9, has not already been held in the case, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rules 9 and thereafter on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit and

(v) 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.

Certified to be true copy

62-06-10

TYPED COPY

8 JUN 2010

Guwahati Bench
গুৱাহাটী ব্যাসার্ধি

ANNEXURE-15

To

Shri S.C. Kumare
Senior Divisional Commercial Manager
&
Disciplinary Authority
N.F. Railway/ Lumding

Dated 21st November, 2005

Sir,

Sub : Prayer for supply of Dy. CVO (T) / MLG's letter No. Z/Vig/94/2/3/02 dt. 22-03-05 as referred to in the observation sheet (ANNEXURE-A) of the N.I.P. issued by Sr. DCM/ LMG (DA)

Ref. : N.I.P. along with observation Sheet (Annexure-A) issued by Sr. DCM/ LMG (DA) vide No. C/Con/ LM/ MIS/ 06 (MKD-Hd. TC.- GHY) dated 16-11-2005 was handed over to CO on 18-11-2005.

With due deference and humble submission, I beg to submit the following few lines for your perusal and kind judicious decision please.

- 1.0. That, sir, the letter of the Dy. CVO (T) / MLG has been referred to in the observation sheet (Annexure-A) of NIP dated 16-11-2005 as cited under reference which caused the Disciplinary Authority diverted from exercising judicious mind in the case rather guided the Disciplinary Authority to take pre-judicial action against the charged official without supplying the copy of the said letter. As and when any document referred to either in the Enquiry stage or decision stage of the various authority, instantly CO acquired the right to have a copy of the same, otherwise it will tantamount to denial of reasonable Opportunity and Natural Justice at this stage also. No action can be initiated by the prosecution keeping the CO behind the screen, because it is a quasi-judicial process, wherein all sorts of opportunity must be extended to CO to enable him to rebut the allegation against him.
- 1.1. In view of the above, CO would request the Hon'ble DA to supply the Dy. CVO/ T's letter to enable him to submit his appeal to DRM/ LMG i.e. the next appellate authority within 45 days from the date of supply of the said letter to CO.
- 2.0. An presto action on the issue of para 1.1 above is highly solicited and for which act of your kindness, I shall remain ever grateful to Hon'ble DA, Sir,

With regards.

Yours faithfully
Sd/-

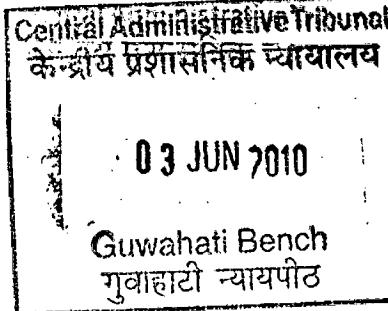
(M.K. DAs -II)
Head Ticket Collector
N.F. Railway/ GHY

Forwarded
Sd/- Illegible
21-11-05
CTI/ GHY
Stamp

Certified to be true copy

02-06-10

TYPED COPY



ANNEXURE- 16

N.F. RAILWAY

Office of the
Divl. Rly. Manager (C)

Lumding

No. C/CON/ LM/ MISC/ 06/ (MKD-Hd. TC-GHY)

Dated 09-12-05

To,

Sri Mrinal Kanti Das -II
Hd. TC/GHY.

Thro- SM/ GAZ/ GHY

Sub - Supply of Vigilance letter

Ref. Your letter dated 21-11-05

In reference to above, it is to inform you that since it is a vigilance case so vigilance organization can issue any letter to D.A. The letter No. Z/Vig/94/2/3/02 dated 22-03-05 issued by the vigilance organization/ Maligaon for perusal of Disciplinary authority although it was mentioned in the NIP about the said letter it is considered not necessary to send to C.O. Your may prefer appeal to appellate authority based on relied upon documents.

Sd/-

9/12/2005

(S.C. Kumar)

Sr. DCM/ LMG

Certified to be true copy

02-06-10

03 JUN 2010

TYPED COPY

Guwahati Bench
গুৱাহাটী ন্যায়পাঠ

ANNEXURE-17

To,

The Divisional Railway Manager
N.F. Railay, Lumding

Dated 29 December'05

Sir,

Sub : Appeal against the observation (Annexure-A) of N.I.P vide No. C/CON/LM/MISC/06 (MKD-Hd. TC-GHY) dated 16-11.2005 issued by Sri S.C. Kumar, Sr. DCM/ LMG in the capacity of Disciplinary Authority.

Ref. : Sr. DCM/ LMG 's Letter No. C/CON/MISC/06 (MKD-Hd. TC-GHY) dated 9-12-2005 received on 15-12-2005.

With due deference and humble submission, I beg to submit the following few lines on the above subject for your kind perusal, judicious decision and favourable orders please.

1.0. That sir, ab initio, I would like to invite your kind attention to the fact that as per procedures in vogue in the D & A Rules, the copy of the Inquiry Report is required to be supplied to the CO asking the CO to submit any submission/ representation on the finding of the Inquiry Officer within 15 (fifteen) days to enable the Disciplinary Authority to decide the issue of N.I.P. after consideration of the same. Railway Board vide their letter Nos. E (D & A.) 87/RG6/151 dated 10-11-1989 and Nos. E (D & A) 87 RG-6 -151 dated 4-4-96 RBE 33/96, clearly stated to follow the aforesaid procedures before taking any decision.

But Sir with a painful heavy heart, I would like to submit that in the instant case, Hon'ble Disciplinary Authority did not supply the copy of the Inquiry Report and thereby did not allow me to submit any representation to him which caused denial of Reasonable opportunity and Natural Justice. This act of Hon'ble Disciplinary Authority is also in violation of instructions laid down in Railway Board's aforesaid 2 (two) letters.

Contd...2

Certified to be true copy

02-06-10

Chivalanand Banerji
General Secretary

2.0. That, Sir, the Hon'ble Disciplinary Authority without following the procedures referred to para 1 (one) above and also without giving me any opportunity to submit representation to his kind honour, directly issued the N.I.P. vide No. C/CON/LM/MISC/06 (MKD-Hd.TC-GHY) dated 16.11.05 along with the observation (Annexure-'A') awarding punishment of "Reduced to Lower time scale of Pay for 2 (two) years with cumulative effect".

3.0. That sir, on close scrutiny of the said N.I.P. and observation sheet (Annexure -'A') of N.I.P. dt. 16.11.2005, it appears that the Hon'ble Disciplinary Authority considered some points as revealed from N.I.P. and observation sheet (Annexure-'A') which may be sub-divided into following issues as ready reference for your kind perusal please.

The issues are : -

- (a) "I have gone through the charges define of CO, Inquiry proceedings and all other aspect of the case carefully, I do not fully agree with the finding of Inquiry Officer".
- (b) "Journey ticket was handed over by C.O. to RT clerk for making Reservation ticket depriving queue passengers".
- (c) "CO along with said Passenger entered in the Booking Office for own benefit which is MOST IRREGULAR ON THE PART OF T.C. staff".
- (d) "As per remarks given by Dy. CVO (T) vide Letter No. Z/VIG/94/ 2/3/02 DT. 22.4.05 clearly high lighted the vital points which were over looked by the Inquiry Officer these points could lead to establish the charges against CO".
- (e) "After going through the case and remarks of the Vigilance Organisation, it is complied that the I.O. has failed to delve into all the important vital points".

"I am not accepting the finding of I.O. which seems

Contd...3

Certified to be true copy

02.06.10

03.04.2019

Guwahati Bench
গুৱাহাটী বৰ্ষা মেঠা

-52-

to be biased".

4.0.0. The detailed submission in accordance with the issue referred to in para 3.0 above are submitted below for kind consideration, judicious decision and favourable orders please.

4.1.0. ISSUE No. (a) ABOVE

4.1.1. In regard to the issue under item (a) above, it is submitted that the Disciplinary Authority did not agree fully with the findings of the Inquiry Officer which indicates that some portion of the findings of the Inquiry Officer Report appeared to have been accepted by the Disciplinary Authority leaving some part not accepted. But Sir, the part which is not accepted by the Disciplinary Authority has not been spelt out in specific on which I would have been in a position to submit to your honour sir, for redressal please. From such act of the Hon'ble Disciplinary Authority analogous to denial of Natural Justice and Reasonable opportunity, which demands quashing of whole DAR process initiated against the CO.

4.2 ISSUE NO. (b) ABOVE

4.2.1 In regard to the issue under item (b) above, it is submitted that the Journey ticket alleged to have been handed over to R.T. Clerk for arranging Reservation Ticket depriving Queue passenger is not factually correct. The fact remains that the Journey ticket was NOT handed over by me to the R.T. clerk for Reservation Ticket. The passenger personally has handed over the ticket to the RT Clerk. In this connection, Deposition of the R.T. Clerk, Md. Rahul Amin (PW-6) vide Ans. to Q. No. 4 dt. 11-04-03 is referred to for perusal please, where Md. Amin clearly stated that the ticket was given by the passenger from outside the counter for R.T.. Then the Passenger came inside the counter stating that there was heavy rush outside the Counter. When he came inside, Md. Amin demanded Rs. 20/- as R.T. charge from the said passenger after preparing the R.T. No. 265885 simultaneously making entry in the Reservation chart. Again Shri G.C Das, RTC/GHY (PW-8) in his deposition vide Ans. to Q. No. 2 dtd 11.4.03. clearly stated that, "So far I remember, I have issued a Requisition slip for issue of tickets."

From the aforesaid statements of Md. Rahul Amin, Hd. TC/GHY (PW-6) and Shri G.C. Das RTC/GHY (PW-8), it is crystal clear that I had not handed

Contd...4

Certified to be true copy

02-06-10

over the Journey Ticket to the RTC for making Reservation Ticket. So, this part of observation of Hon'ble DA, is far from the fact and lost its credibility.

4.2.1.1. Regarding deprivation Queue passengers as referred to in the issue, in question, it is submitted that there was no mention of the said part of Disciplinary Authority Observation in the allegation labeled against me through the charge Memorandum, in question. The part of allegation which was not incorporated in the charge Memorandum cannot be brought at this stage even in the form of observation by the Disciplinary Authority. Since it is an extraneous part, it appears to be undesirable and uncalled for.

Further the Journey ticket was purchased on issue of Requisition slip for issue of Advance ticket, while a berth kept ear-marked for the passenger and on receipt of the Journey ticket from the passengers, incomplete formalities are completed by the R.T. Clerk i.e. issue of Reservation Ticket and simultaneous entry in the Reservation Chart etc. in accordance with the Commercial procedure. So, the question of depriving Queue passengers in the instant case does not arise & it is submitted that I have not committed any irregularity under the issue, in question.

Hence, the above hypothetical Speculation of the Disciplinary Authority has no locus-standi in the filed of DAR process.

5.1. ISSUE No. (c) ABOVE.

5.1.1. In regard to the issue under item (c) above, it is submitted that CO along with the passengers entered the Booking Office for own benefit which is most irregular on the part of T.C. staff, is not factually correct. In this connection, it is also submitted that during the material period, the current Reservation Counter (R.T.) and T.C. Office were housed in the same room with one entry/ Exit door. In the room, few tables were used by the T.C. staff and one table near the window were inside as R.T. counters. The Booking Office was situated in another room by this side of T.C. Office having separate entry / exit door. So, the question of my entry into Booking Office as referred to in the observation of the Hon'ble Disciplinary Authority is phygothetical and not based on facts. The Booking office was situated in another room neary by TC Office where I had no business to enter. Further, it is

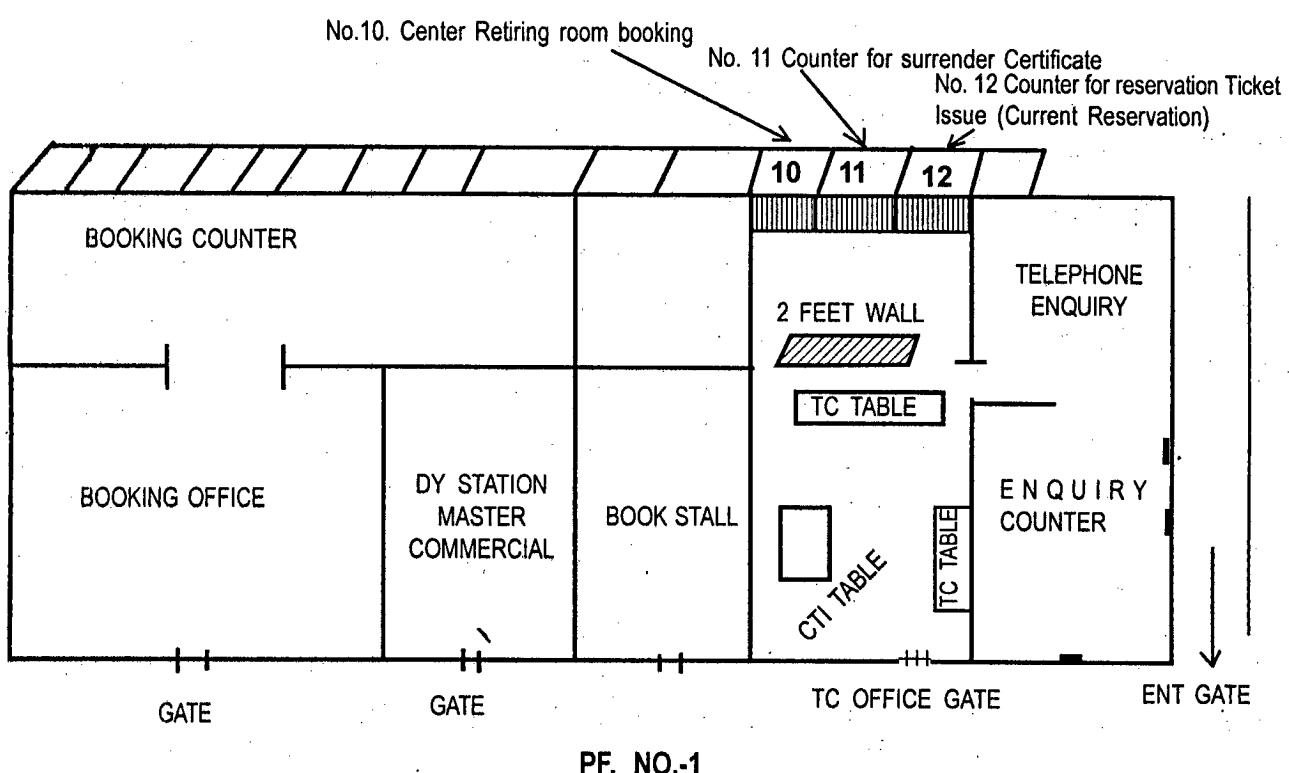
Contd....5

Certified to be true copy

02.06.10

also submitted that I was in my office and the passenger in consideration of his own entered into the room for interaction with the R.T. Cleark where I had no role to play. In support of my claim, the deposition of PW-6 and PW-8 as referred to under issue No. (b) above are connected please.

For better appreciation, a sketch of the TC-Cum-Current Reservation Counter (R.T.) Room at GHY Railway Station during the material period is given below :-



From the above, it is submitted that my entry to TC -Cum-Current Reservation Counter (R.T.) Office cannot be termed as most irregular as observed by the Hon'ble Disciplinary Authority rather it may be termed as regular where I supposed to remain for table works being the Batch-in-charge.

Hence this part of the observation of the Hon'ble Disciplinary Authority is far from the fact and losts its credibility.

Contd...6

Certified to be true copy

02.06.10

120
12.05.2006

Gurugram Bench

6.1. ISSUE No. (d) ABOVE

6.1.1. It is revealed from observation of Hon'ble Disciplinary Authority under issue No. (d) above, that Dy. CVO (T) vide his letter No. Z/VIG/94/2/3/02 DTD. 22-3-05 CLEARLY HIGH -LIGHTED THE VITAL POINTS WHICH WERE OVER-LOOKED BY Inquiry Officer which points could lead to establish the charges against me.

From the said observation, it is established that the allegations against me had not been proved during inquiry.

6.1.2. It is clear that on receipt of the said letter from vigilance department, the Hon'ble Disciplinary Authority could understand that some points were over-looked by Inquiry Officer, as stated, the Hon'ble Disciplinary Authority could sent the case to the same Inquiry Officer for further inquiry on the points high-lighted by Vigilance Organisation as per procedures of D & A Rules, 1968, which connects Railway Board's Letter No. E (D & A) 96/RG6-22 dt. 3-10-1996 (RBE No. 98/96), so that I could have the opportunity to defend and rebut those untold points during further inquiry. But instead of giving me such opportunity and also keeping me in dark about the points raised by Vigilance Organisation which were stated to have been overlooked by Inquiry Officer, the Hon'ble Disciplinary Authority Straight-way imposed a stringent major penalty vide N.I.P. No. C/CON/LM/MISC/06 (MKD/Hd. TC.-GHY) dt. 16-11-2005 and thereby I have been deprived of Reasonable Opportunity and Natural Justice.

6.1.3. Further, on receipt of the said N.I.P. I prayed to Hon'ble Disciplinary Authority to supply copy of the aforesaid letter received by the said authority from the Vigilance Deptt. Dated 22-03-2005, So that I could submit my appeal, to your honour sir, clarifying those points, but unfortunately Hon'ble Disciplinary Authority considered not necessary to send a copy of the CO vide his letter No. vide N.I.P. No. C/CON/LM/MISC/06 (MKD/Hd. TC.-GHY) dt. 9-12-05 (copy enclosed for perusal please). The action of Hon'ble DA even at this stage attracts violation of Natural Justice and Reasonable Opportunities to the CO.

In this context, it may not be out of place to mention here that as stated by the Disciplinary Authority through the aforesaid letter that since it is a Vigilance case, Vigilance Organisation can issue any letter to DA. Hence, the letter

Contd...7

Certified to be true copy

02-06-10

No. Z/VIG/94/2/3/02 dt. 22-03-05 issued by Vigilance Organisation, Maligaon for perusal of the Disciplinary Authority. Sir, there cannot be 2 (two) opinions regarding the contention of Hon'ble Disciplinary Authority till this aspect. But while reference of such a letter made in the N.I.P. and the contents of the letter are utilized in deciding the case by imposing penalty on CO, the said letter became prejudicial to CO and CO achieved the right to get a copy of such document to maintain transparency in the case and also to maintain aspect of Reasonable Opportunity and Natural Justice.

It is also revealed that since the letter Vigilance deppt. Dt. 22-03-05 utilised in deciding the instant case which is obnoxious to the Natural Justice, that the Hon'ble Disciplinary Authority did not exercise his free mind while deciding the case as demanded by D & A Rules, 1968. Rather the Hon'ble DA, has mostly been influenced by the advice of the Vigilance Organisation.

In view of the above, it is submitted to your honour sir, that the penalty imposed on me by the Hon'ble Disciplinary Authority was not in consideration of his own but also mostly on the advice of the Vigilance Organisation warrants quashed of the said penalty.

7.1.0. ISSUE NO.(e) ABOVE

7.1.1. From the observation of Hon'ble Disciplinary Authority under issue (e) above, it is clear that the Hon'ble DA could understand on going through the case and remarks of the Vigilance Organisation, that Inquiry Officer had failed to delve into all the important vital points, and as such as he has not accepted the findings of Inquiry Officer which seemed to be biased.

Since it could be understood by the Hon'ble DA that—

- (i) Inquiry Officer had failed to delve into all the important vital points;
- (ii) The findings seem to be biased;

The Case must have been sent to the same Inquiry Officer for further inquiry to extend Reasonable Opportunity and Natural Justice to the CO vide Railway Board's letter No. E (D & A) 96/RG-6-22 dt. 3-10-1996 (RBE No. 98/96) and to neutralise the question of biasness, before deciding case by imposing such an stringent Penalty. In doing so, the question of further inquiry by the Hon'ble Disciplinary Authority has already been lost.

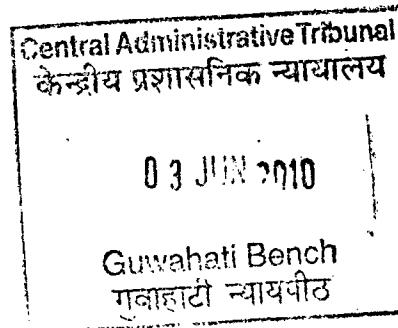
Contd...8

Certified to be true copy

02-06-10

122

-57-



In view of the above, it is submitted that your honour may like to have a practical approach on the whole issue within the periphery of Discipline and Appeal Rules 1968 and arrange to exonerate me from the penalty imposed upon me by-passing the procedure of D & A Rules, 1968 by the Hon'ble Disciplinary Authority and for act of which, I shall remain ever grateful to your honour, sir.

With profound regards,

Yours faithfully

Sd/-

(M.K. Das -II)

Hd. TC/GHY Rly. Station

Enclo : Sr. DCM/LMG's Letter

C/CON/LM/MISC/06

(MKD-Hd.TC-GHY)

dt. 9-12-05

Certified to be true copy

02.06.10

03 JUN 2006

Guwahati Bench
গুৱাহাটী বেচ

-58-

TYPED COPY

ANNEXURE-18

N.F. RAILWAY

Office of the
Divl. Rly. Manager (C)
Lumding

No. C/CON/ LM/ MISC/ 06/ (MKD-Hd. TC-GHY) Dated 15-5-2006

To,
Sri M.K. Das- II
Hd. TC/GHY.
Thro- Sr. SM/ GAZ/ GHY

Sub - Appeal against imposition of penalty No. C/CON/ LM/ MISC/ 06/ (MKD-Hd. TC-GHY) dtd. 16-12-2005.

Ref. Your appeal dated 29-11-2005 addressed to DRM/LMG

The Appellate Authority (ADRM/ Lumding) having gone through the appeal has passed the following orders :-

I have read the Charge, the representation, the enquiry proceedings, the remarks of the Disciplinary Authority including NIP and the appeal of the employee, including defence official remarks.

This is a trap case and the employee has been caught red-handed. There can be no ground for excuse by the employee to exonerate him. I stand by the punishment that has been awarded to the employee by the Disciplinary Authority which is deemed adequate to meet natural justice in this case considering all factors and circumstances of the case. There was no reason for the employee to collect reservation charges from passengers.

Revision petition, if any, may be filed to CCM/ MLG within a period of 45 days time.

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

Copy to 1). DRM/P/Lumding (OS/ET/Cadre) for information please. This is in reference to earlier NIP No. C/CON/ LM/ MISC/ 06/ (MKD-Hd. TC-GHY) dtd. 16-11-2005.

2) APO/ Guwahati for information please. This is in reference to earlier NIP No. C/CON/ LM/ MISC/ 06/ (MKD-Hd. TC-GHY) dtd. 16-11-2005.

3) Sr. SM/ GAZ/GHY for information please. He is advised to hand over this letter to staff concerned under due acknowledgement and send the same to this Office for record.

Certified to be true copy

02-06-10

Sd/- 15-05-2006
(S.C. Kumar)
Sr. DCM/ Lumding

TYPED COPY

ANNEXURE- 19

To,

**Shri K. Mukhopadhyaya,
Hon'ble Chief Commercial Manager,
N.F. Railway, Maligaon, Guwahati-781011**

&

Reversionary Authority

Dated 6th July 2006

Respected Sir,

Sub : Revision Petition against Observation of ADRM/ LMG vide Order No. C/CON/LM/MISC/06 (MKD-Hd.TC-GHY) dated 15-05-2006.

With painful heavy heart and humble submission, I beg to submit the following few lines on the above subject for your kind perusal, judicious decisions and favourable orders please since I have been instructed vide order No. . C/CON/LM/MISC/06 (MKD-Hd.TC-GHY) dated 15-05-2006 (ANNEXURE-I) to submit my "Revision Petition" to your honour with a period of 45 days which reached to me on 27-05-2006, hence I am submitting the same within stipulated time which will expire on 11-7-2006. Sir it is worthwhile to mention here that my case has been dealt with in a most casual manner by the Sr. DCM/LMG as well as by the ADRM/ LMG being guided by Dy. CVO (T)/MLG vide his letter No. Z/VIG/94/2/3/02 dt. 22-03-05 cited in the N.I.P vide No. C/CON/LM/MISC/06 (MKD-Hd.TC-GHY) dated 16-11-2005 (ANNEXURE-II- First, Second and Third page) and that is why Sr. DCM/ LMG and ADRM/LMG generated cryptic decision which caused prejudial for my service career, keeping aside the prudent and judicious decision of the Enquiry Officers Report.

2.O. ISSUES OF ADRM/LMG'S OBSERVATION VIDE ANNEXURE-I ABOVE

2.1. That, Sir, The observation of ADRM/ LMG communicated through Annexure-I, cited above, have been sub-divided into 4 (four) issues, which are Mentioned below :-

Certified to be true copy

02.06.06

03 JUL 2010

Guwahati Bench
গুৱাহাটী বিধায়াৰ্থ

The Issues are :

- (a) This is trap-case and the employee has been caught red-handed.
- (b) There can be no ground for excuse by the employee to exonerate him.
- (c) I stand by the punishment that has been awarded to the employee by the Disciplinary Authority, which is deemed adequate to meet NATURAL JUSTICE in this case considering all factors and circumstances fo the case.
- (d) There was no reason for the employee to collect reservation charges for passengers.

3.0.0. DETAILED DISCUSSION ON THE ABOVE ISSUES.

3.1.0. That Sir, the detailed submission against the above issues incorporated in ADRM/ LMG's orders vide Annexure-I are appended below :

3.1.1. Discussion on the issue on 2.1 (a) above

In this connection it is submitted that –

- (i) The concept of ADRM/ LMG i.e. "Caught red handed" is not based on any fact, So, said contention does not have any Locus standi in deciding the case. Moreover, this part of concept has not been incorporated in the Article of charge, because it was one-sided Pre-enquiry process without following AUDI ALTERAM PARTEM. Thus EO who was the only Quasi Judicial Authority in the process had seen the Original Records/ Documents and also interacted directly with the various witnesses and accordingly concluded the allegation. as NOT-PROVIDED
- (ii) During the enquiry stage, the demand and the acceptance of Rs. 100/- could not be established, because the so called Decoy, Shri Monoj Agarwal (PW.-1) who had stated to have handed over the said Rs. 100/- to the CO could not be produced in the enquiry despite best effort of the E.O. P.O. and CBI officials, Consequently paying of Rs. 100/- as alleged remain unauthenticated and un-discussed and CO. has been deprived of cross-examination of Decoy (PW-1). In this connection, Daily Order Sheet No. 7 dated 18-09-04 (ANNEXURE-III) First & Second page) is connected for Hon'ble CCM's perusal please wherein it has been recorded the dropping of

Certified to be true copy

02-06-10

the vital and most important Key Witness (Decoy), Shri Monoj Agarwal (PW-1) by P.O the Representative of the Disciplinary Authority. Thus PD/1 remained as unauthenticated.

(iii) So it is evidently proved that Sr. DCM/LMG and ADRM/LMG being biased and guided by the Dy. CVO (T) /MLG (cited in Annexure-II above) recorded their observation at their own without considering the pros and cons of the Enquiry Proceedings, otherwise specific deposition of witnesses would have been referred to in the said observation.

(iv) Although the deposition of some of Prosecution witnesses have been recorded during the enquiry stage, but in absence of attendance & recording of deposition of Sri. Monjo Agarwal, Decoy & complaint (PW-1), the deposition of all the witnesses lost its credibility and stands valueless because none of the PWs could confirm through their depositions that CO entered into a contact with said PW-1 for bribe money of Rs. 100/- in lieu of arranging a reservation in sleeper class of NE Express leaving GHY on 21.11.2001, which EO very correctly assessed because he was the only Quasi-Judicial Authority in the process as mentioned in para 3.1.1 (i) above.

(v) Again during enquiry stage, P.O. tried to establish that the proper hand wash of the CO had been done by Sri Monojit Dey, ASI (ACB/CBI)/GHY (PW-10), but the containers containing the result of the hand wash had not been produced & marked as exhibit during enquiry stage. In absence of those vital exhibits, the allegation remains NOT SUBSTANTIATED / NOT PROVED during enquiry stage.

Hence, ADRM/ LMG's contention is not tenable to CO in terms of Railway Servants (Discipline & Appeal) Rules, 1968.

3.1.2. DISCUSSION ON THE ISSE NO. 2.1. (b) ABOVE.

In this connection, it is submitted that—

Certified to be true copy

02-06-10

(i) there is sufficient ground for exoneration from the deposition of the witnesses and from the judicious view of EO, the allegations were NOT PROVED. Hence the observation of ADRM/LMG does not hold good.

3.1.3. DISCUSSION ON THE ISSUE NO. 2.1 (C) ABOVE

In this connection, it is submitted that-

- (i) since ADRM/ LMG stood by the punishment awarded by DA (Sr. DCM/ LMG) on the Hypothetical Speculation and arrived at cryptic decision, the ADRM/ LMG's observation/ Conclusion also tenable to CO in terms of Rs (D &A) Rules in vogue.
- (ii) The DA did not supply the copy of the Enquiry Report to the CO but took cryptic decision which was communicated to the CO through NIP Annexure-II cited above) violating Rule No. 10 of RS (D &A) Rules, 1968 vide Railway Board's letter No. E (D &A) 87 RG 6-151 dated 8-8-02 circulated under GM (P)/MLG's letter No. DAC-591 (E/74/0 P XVI (C) dt. 11-09-2002 (ANNEXURE-IV- First & Second page). Had it been supplied to me (CO), I could have explained the position in a befitting manner for perusal of DA. Thus natural Justice & Reasonable opportunities are denied.
- (iii) The DA cited the Dy. CVO(T)/MLG's letter vide No. Z/VIG/94/2/3/02 DATED 22-03-2005 in the said NIP (Annexure-II cited above) while the allegations against me (CO) was not proved during inquiry. So, CO acquired the right to have a copy of the said letter before submission of Appeal to DRN/ LMG but DA declined to supply the same as communicated to CO vide DA's letter No. C.CON/LM/MISC/06 (MKD-Hd. TC-GHY) dtd. 09-12-2005 (ANNEXURE-V) against CO's appeal dt. 21-11-2005 (ANNEXURE-VI) which tantamount denial of Reasonable Opportunity and Natural Justice and that cannot be over-ruled.
- (iv) The DA was diverted and prevented from exercising judicious/ free mind in the case. To the contrary, the DA was guided to take prejudicial

Certified to be true copy

02-06-10

07-01-2010

-63-

Central Public Complaints Unit
प्रधानमंत्री का लिएक स्थायी उद्योग

action against the Charged Official without supplying the copy of the said letter issued by the Dy. CVO (T) / MLG.

(v) The DA expressed that he accepted some portion of Enquiry Report and he did not accept some portion, which portion was not accepted by DA was not categorically and specifically mentioned and thus CO prevented from submitting effective Representation to DRM/ LMG causing denial of Reasonable opportunity and Natural Justice. In this connection, I would like to invite the kind attention of Hon'ble CCM towards para 4.1.1 of my appeal dt. 29-12-05 addressed to DRM/ LMG (ANNEXURE-VII-containing 8 pages)

(vi) The DA alleged that Journey Ticket was handed over by CO to the RT clerk which far from the fact. The fact remains that the Journey ticket was not handed over by me to RT clerk for reservation ticket. The passenger himself did the same. Connects PW-6 deposition vide Ans to Q.No. 4 dt. 11-04-03 and the passenger came inside the room on the plea of heavy rush when PW-6 demand Rs. 20/- as RT, Charge from the passenger after preparing R.T. No. 265885 and making entry in the Reservation Chart. Again PW-8 deposed vide Ans to Q.No. 2 dt. 11-4-03 clearly stated "So far I remember I have issued a Requisition Slip for issue of tickets". Connects para 4.2.1 of my appeal dt. 29-12-05 addressed to DRM/LMG for kidn perusal of Hon'ble CCM (ANNEXURE-VII cited above)

(vii) The DA alleged deprivation of queue passengers. This is an extraneous point which was not in incorporated in the Charge Memorandum connects para 4-2-1-1 of my appeal dt. 29-12-05 addressed to DRM/LMG (ANNEXURE-VII cited above) since it was a HYPOTHETICAL SPECULATION of the DA.

(viii) The DA alleged CO along with the passengers entered the booking Office for own benefit which is most irregular on the part of T.C. staff. In this connection, it is submitted that during material period the current Reservation Counter/ RT and TC office were housed in the same room with one Entry/ Exit door. In the room few tables were used by the TC

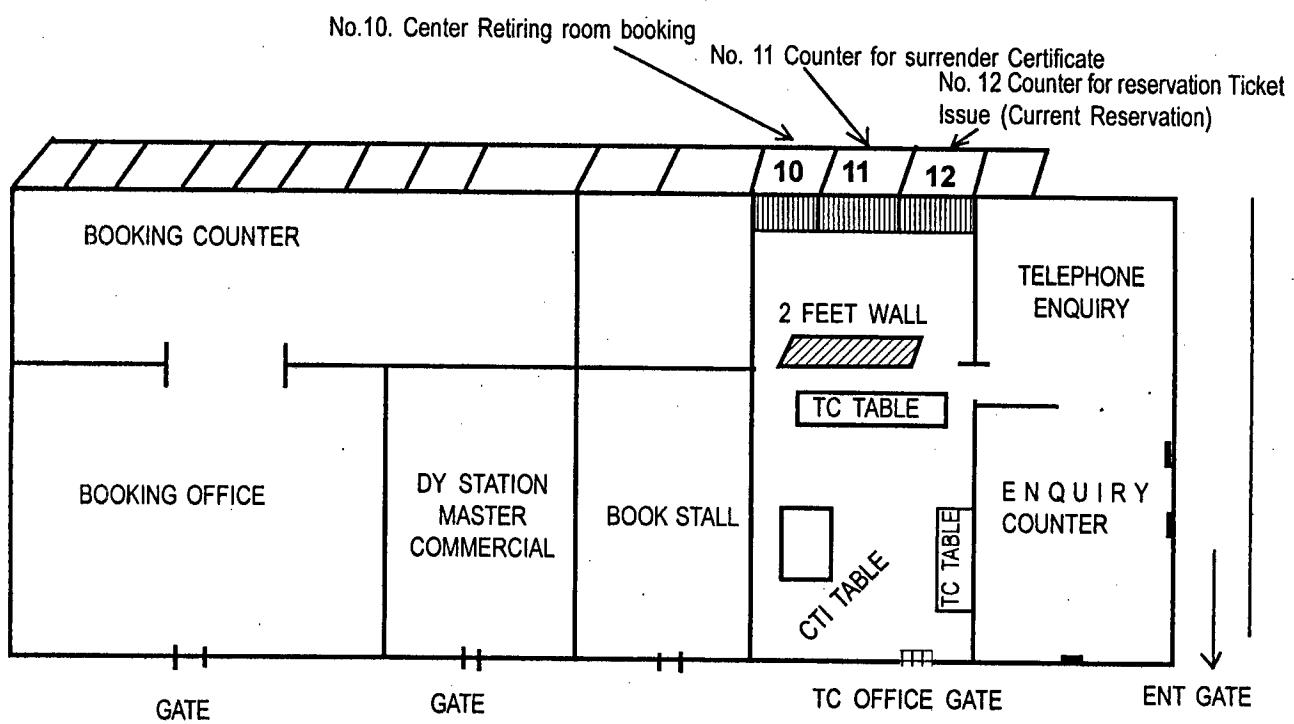
Certified to be true copy

02-06-10

staff and one table near the window were inside the R.T. Counters. Booking Office was situated Separate Entry/ Exit door. So, the question of my entry into Booking Office along with passenger is **HYPOTHETICAL AND NOT BASED ON FACTS** Connects deposition of PW-6 and PW-8 referred to vide para 5:1.1. if any appeal dt. 29-10-05 addressed to DRM/LMG for kind perusal of Hon'ble CCM (ANNEXURE-VII cited above)

For better appreciation, a sketch of TC-Cum-current Reservation Counter (R.T.) Room at Guwahati railway station during the material period is given below :

Sketch



PF. NO.-1

(ix) the DA was guided by Dy. CVO (T)/MLG's letter No. Z/VIG/94/2/3/02 DATED 22-03-05 (cited in Annexure-II above) wherein some points were highlighted which were over-looked by the Enquiry Officer. Those points could lead to establish the charges against the CO as stated.

From the above, it is established that the allegation against CO had not been proved during enquiry. Connects para 6.1.1 of my appeal dt. 29-12-05 address to DRM/ LMG for kind perusal of Hon'ble CCM please (Annexure-VII cited above).

Certified to be true copy

02-06-10

130

(x) on receipt of the letter cited in para (ix) above from Dy. CVO (T), DA could sent back the case to the same Enquiry Officer for further enquiry in terms of Rly Boards letter E/(D&A) 96/RG6-22 dtd. 3-10-96 (RBE NO. 98/96) which could pave the way to defend/ rebut those untold points during further enquiry. But keeping the CO in dark, the DA straightway imposed punishment. Thus CO has been deprived of Reasonable Opportunity and Natural Justice. Connects para 6.1-2 of my appeal dt. 29-12-05 addressed to DRM/ LMG for kind perusal of the Hon'ble CCM please. (ANNEXURE-VII cited above)

(xi) the D.A declined to supply the Dy. CVO (T)/ MLG's letter to CO causing denial of Reasonable opportunity and Natural Justice since the said letter was referred to in the NIP, in question. Connects para 6.1.3 of any appeal dt. 29-12-05 addressed to DRM/ LMG for kind perusal of the Hon'ble CCM please (ANNEXURE-VII cited above) DA imposed punishment straight way keeping the CO in dark.

(xii) Same as cited in para (x) above, Connects para 7.1.1 of my appeal dt. 29-12-05 address to DRM/LMG for kind perusal of Hon'ble CCM please (ANNEXURE-VII cited above).

From the above, it is established that observation of DA is full of inconsistencies and he failed to assess the deposition of various Prosecution witnesses as well as failed to delve the Enquiry proceedings which paved the path to bring out some points Mechanically being guided by the Dy. CVO (T)/ MLG to imposed punishment on CO unlawfully keeping the CO in dark ignoring the prudent and judicious decision of the E.O. who was the only Quasi Judicial Authority directly interacted with the various witness and had gone through the Original documents during the enquiry stage.

Since the ADRM/LMG recorded his observation on the basis of the inconsistence observation of the DA (Sr. DCM/LMG), the observation of ADRM/ LMG lost its independent nature of Quasi-Judicial decisions.

Certified to be true copy

02-06-10

131
03 JUN 2010

-66-

Guwahati Bench
गुवाहाटी न्यायालय

Therefore, the issue No. 2.1 (C) relating to observation of ADRM/LMG does not govern by Article -311 consists of two pillars viz Natural Justice and Reasonable Opportunities. Since both are absent in this issue cited above, this observation of ADRM/LMG is not tenable in Rs. (D & A) Rules, 1968 and does not hold good. Hence it is not acceptable to CO.

3.1.4. DISCUSSION ON THE ISSUE NO. 2.1. (d) ABOVE

In this connection, it is submitted the

(i) during material period, the current reservation counter/ RT and TC office were housed in the same room with one entry/exit door. In the room, few tables were used by T.C. staff and one able near the window were inside the R.T. counters as revealed from the above sketch. The passenger who came inside for RT on the pleas of heavy rush, tendered one hundred Rupee G.C. Note against demand of Rs. 20/- as RT charge from RT Clerk (PW-6). The passenger had no scope to cross – the table from one side to other side where CO was sitting in a chair. The passenger from opposite site of the table intentionally or unintentionally dropped the said G.C. Note by the side of the CD. Then the CO courtesy shake picked up the said G.C. Note to return and in the mean time CBI officials intercepted the CO giving no chance to explain. Thus the observation of ADRM/LMG regarding collection of Reservation charge by the employee is far from fact, because the CO being the batch-in-charge, was no way connected with the collection R.T. Charge from the passenger since all the current Reservation counters/ R.T. have been manned by designated TCs in the same room where the table and chair of the batch-in- charge were stabled during the materials period.

Thus this observation of ADRM/ LMG is based on surmises and conjecture Besides, the said authority recorded his observation a pedantic manner but not in a practical approach and reasonable way which perversed in exercising judicious, prudent and free mind to evaluate the Quasi-judicial

Certified to be true copy

02.06.10

03 JUN 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

proceedings scrupulosity which invited prejudicial action against one innocent person like me (CO) with the intention to malign the image of the Govt. employee not only in the field of the working place but also in the field of society and family.

4.O. VITAL DEPOSITIONS OF SOME WITNESSES NEITHER CONSIDERED BY SR. DCM/ LMG NOR BY ADRM/ LMG WHILE RECORDING THEIR OBSERVATIONS.

4.1 Shri D.N. Tripathy, Hd. CC/GHY (PW-4) deposed that he did not know anything about the case vide Ans to Q.No. 2 dt. 11.4.03. (ANNEXURE-VIII).

4.2. Shri G.C. Das, RTC/GHY (PW-8) deposed that he issued a Requisition slip for issuing ticket vide Ans to Q. No. 2 dtd. 11.4.2003 further he deposed that due to heavy rush in the counter, the slip was written by his batch in charge, Sri M.K. Das-II on request and signed on it vide Ans to Q. No.3 dt. 11.4.03 and Ans to Qto 5 dt.11.4.03. He also confirmed that during rush this thing are happened very often vide Ans to Q. No. 6 dt 11.4.03 (Annexure-VIII)

4.3 Sri Rahul Amin, Hd. TC/GHY (PW-6) confirmed that the ticket was given by the passenger from outside the counter for R.T stating heavy rush outside the counter, the passenger came inside the counter when PW-6 demanded Rs. 20/- as RT charge after preparation of RT and entry in the Reservation chart vide Ans to Q. 4 dt.11.4.03. The said passenger tendered one hundred Rupee GC. Note expressing that he had no small currency Note. But during transaction, it fell on the ground and Sri MK Das –II picked up the said currency Note for giving to PW-6. In the mean time, immediately the CBI officials intercepted Sri MK Das-II. PW-6 confirmed that batch- in-

Certified to be true copy

62-06-10

03 JUN 2010

Guwahati Bench
গুৱাহাটী স্বায়ত্ত্ব

charge's office and the counter No.12 are in the same room vide Ans to Q No.5 dt. 11.4.03. Being the same room, and being the batch in-charge Sri Das came to the counter for some official purpose and vide Ans to Q No.7 during cross- examination, the said PW-6 stated that the said RT charge was not paid and subsequently at the end of the Shift, PW-6 made good Rs. 20/- from his own pocket and vide Ans. To Q No.8 on being asked whether there was any demand for extra money from the said passenger in connection with the issue of ticket/ reservation on 20.11.2001, Sri Amin (PW-6) replied there was no such demand from any corner and vide Ans to Q. No.9 & 10 dt. 11.4.03 Sri Amin (PW-6) stated that nearly 110 berths were kept reserved in N.E. express exclusively for NJP bound passengers and as such berths were easily available for NJP bound passengers in sufficient numbers and vide Ans to Q No.11 dt. 11.4.03, PW-6 stated in his deposition that sri MK Das-II had not done anything wrong in the instant case (Annexure-VIII)

4.4 Sri BR Rabha, CTTI/GHY (PW-7) vide Ans. to Q No.1 confirmed that he performed his duty in the morning shift i.e. from 6 hrs to 14 hrs at GHY on 20.11.2001 and vide Ans to Q. No.2 categorically stated that since he was not on duty during the material period, he does not know anything regarding the case, (Annexure-VIII).

4.5 Sri Baturam Das,CS (stock)/ GHY (PW-5) vide Ans to Q No.4 dated 15.9.04 stated very clearly that he did not know about the check conducted by CBI officials since he was not present during the material period (Annexure-VIII).

4.6 Sri SK Dubey, Driver/ Central ground Board Guwahati independent witness- PW-3) vide Ans to Q No.1 (Put by P.O), authenticated his signature and confirmed the contents of both the panchanamas as correct. But during cross-examination, PW-3 vide Ans to Q No. 4 dated 15.9.04 stated, "At about 8 Pm I was standing outside the Booking office counter with other CBI officials while one Mr. Monoj Agarwal paid hundred Rupee GC Note to Sri M.K. Das-II in connection with purchase of a ticket. Ticket was not purchased rather immediately CBI people rushed to the spot and enquired about why Mr. Das had taken hundred

Certified to be true copy

02.06.10

134
03 JUN 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

-69-

Rupee GC Note. I know nothing about it.... And vide Ans to Q No.5, PW-3 confirmed that ticket was not purchased. Further during clarification question put to PW-3 by EO, said PW-3 stated, "At about 16.30 hrs, CBI officials requisitioned my services through XEN and at about 17.00hrs. I reached CBI office and signed the Panchanama No. 1 at about 22.00 hrs of 20.11.2001 putting myself as punch witness (Annexure-VIII)

- 4.6.1. That aforesaid deposition of PW-3 (Independent witness) widely differs from the allegation labeled against the CO vide Article-1 of the charges memorandum. Even the time stated to have been 22.00 hrs. When he signed Panchanama No.1, was not tallying with that of time (i.e 17.15 hrs to 18.00hrs) shown in the said Panchanama (PD-12 enclosed as Annexure-IX).
- 4.6.2. Therefore, being Independent witness as whatever deposed during enquiry is AT VARIANCE with the allegation. It is also established from the said deposition that Mr. Agarwal, (P.W-1) paid hundred Rupees GC Note to sri MK Das in connection with purchase of ticket. The allegation, in this respect, also differs from the deposition of P.W.-3. Hence, the allegation lost its credential in reference to deposition of PW-3.
- 4.7. Sri Jitu Deka, constable/ CBI/ ACB/ GHY (PW-1) vide his Ans to Q.No.2 dated 16.09.2004 during cross-examination confirmed that he did not hear the conversation, if any, made between complainant (PW-1) and Mr. Das and vide Ans. To Q. No. 3 during cross-examination stated, " Since I did no hear anything I cannot say what for his money was paid to Sri MK Das" and vide Ans. To Q. No.4 confirmed the complainant (PW-1). Vide Ans. To Q.no.1 during cross – examination he stated that he was out-side the room at a distance of about 20 feet" (Annexure-VIII).

Certified to be true copy

02/06/10

03 JUN 2004

Guwahati Bench
Guj. T21 777

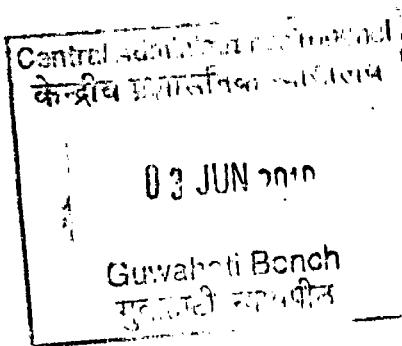
4.7.1. The aforesaid deposition of PW-11 does not sustain that Sri MK Das (CO) has demanded money from the complainant/ passenger (P.W.-1)

4.8. Sri Biren Suri, constable/ CBI/ ACB/ GHY (PW-12) Vide Ans. To Q.No. 2 during cross- examination confined that there was none along with complaint (PW-1) in the Booking office from their team members. He also confined that he did not hear any conversation if any, between the complainant (PW-1) and CO vide Ans. To Q No. 4 date 16.09.04. Also stated, " Since I did not hear anything about the conversation, I cannot say what for this money was paid to Sri MK Das" PW-12 also vide Ans to Q No. 5 dated 16.09.04 confirmed that he had not heard anything that Sri MKDas, CO demanded money from the complainant (PW-1). Vide Ans. to Q. No. 9 P.W. -12 confined that he had not seen whether the complainant (PW-1) purchased any ticket or not and vide Ans to Q.No. 10 &11, said PW-12 stated that after completion of formalities at Guwahati station, they returned to CBI office approx. at about 23.hrs of 20.11.2001 from Guwahati station- (Annexure-VIII)

4.9.0. Sri L. Hangshing, Inspector/ CBI/ Acts/ GHY (PW-9) Vide Ans. to Q.No. 2 dt .17.09.04 (Put by P.O.) stated" All the facts had been recorded in Panchanama No. 1& 2 dated 20.11.2001 which have been placed before me, "I confirmed the correctness of all the Panchanama" , and vide Ans. to Q.No.1 during cross- examination dated 17.09.04, PW-9 deposed that the said panchanama Nos. 1& 2 do not bear his signature and vide Ans to Q.No. 2 PW-9 deposed that he was standing outside the booking office where he could see the complainant (PW-1) vide Ans to Q No.3 on being asked to confirm how he could say the contents of Panchanamas are correct while he was not a signatory in the Panchanamas. The said PW-9 avoided the reply by stating that "though the panchanamas do not bear my signature, I was very much a Member of the trap laying team," Further on being asked vide Ans to Q.No.4 to confirm where the complainant (PW-1) was standing Just at the beginning of the trap laying function at Guwahati Booking office, he in reply, deposed that

Certified to be true copy

62-06-10



it is given in the Memorandum which indicates that it was not within his knowledge (Annexure-VIII)

4.9.1. Further during certification question put by Enquiry officer vide Q. No.1 whether conducting of check was informed either to any Railway Official or RSO/GHY said PW-9 clearly stated, " I do not know, " and vide Ans to Q.No. 2 dated 17.09.2004 on being asked to state when they have returned from Guwahati station to their office and also to confirm whether Sri MK Das-II was taken to their office , in reply to which Sri Hangshing, Inspector/ CBI/ ACB/GHY (PW-9) deposed that " I do not remember' (Annexure-VIII cited above)

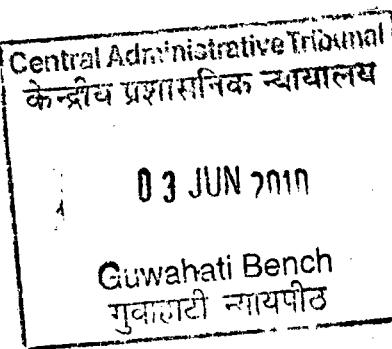
From the deposition of PW-9, it is indicated that the said PW-9 avoided to give the proper answer to the question which means that he was not aware of the fact of the incident held on 20.11. 2001 at Guwahati Station (Annexure-VIII cited above)

4.10. Sri Monojit Dey ASI/ C BI/ GHY (PW-10) Vide Ans. To Q.No. 2 (put by P.O) dated 17.09.2004 narrated the role played by him in the said check i.e. hand wash etc and vide Ans. to Q. No. 1 dated 17.09.2004 during cross- examination he confirmed that he came later in the check, and vide Ans to Q.No. 3 dated 17.09.2004, PW-10 avoided to give the specific reply of the question. The reference of sodium Carbonate solution and turning milk solution into the pink through phenophthaleine powder etc. etc. kept a separate glasses and sealed, were not produced as exhibit during enquiry. (Annexure-VIII)

From the above depositions, it is concluded that no prosecution witness deposed in favour of the prosecution which proved that the allegation remained un established during enquiry stage. Even then Sr. DCM/LMG and ADRM/LMG being guided by Dy.CVO(T)/ MLG lost their independent nature of thinking and debarred from exercising their free mind in deciding my DAR

Certified to be true copy

02.06.10



-72-

case prudently and judicially amounting to denial of Reasonable opportunities and Natural Justice. Therefore, the aforesaid authorities failed to generate sanctity in dealing with DAR Process which is obnoxious in the filed of DAR. So, the observation of Sr. DCM/MLG as well as ADRM/ LMG lost their credential and stands quashed.

Under the circumstances, fact and depositions of various witness narrated above, it is clearly established that I have not committed anything wrong, which Hon'ble EO could only assess properly and thus could not prove the allegation during the enquiry stage. Hence, I would request your benign honour to look into the case with practical approach and exonerate me by quashing the punishment awarded on me by the DA and vetted by ADRM/LMG at the appeal stage so that I can over come the financial stringency caused out of the penalty and thereby my children may prosecute their studies smoothly.

In view of the above, it is requested to your honour sir, that the CO may kindly be let free from the ambit of charges so that he may lead a peaceful life and render devoted services towards the administration and for the act of your kindness and magnanimity, CO will remain ever grateful to your honour, sir.

With profound regards.

Yours faithfully,

Sd/-
(Mrinal Kanti Das-II)
Charged Official
(Hd. TC/GHY)

Certified to be true copy

02-06-10

TYPED COPY

13 JUN 2008

Guwahati Bench
গুৱাহাটী ন্যায়পালি

ANNEXURE- 21

N.F. RAILWAY

Office of the
Div. Railway Manager
Lumding

No. C/CON/ LM/ MISC/06/(MKD-Hd.T.C.-GHY)

Date 19-03-2008

To

Sri M.K Das-II
Hd.TC/GHY

Through- CTI/IC/GHY)

Sub:- Order of Appellate Authority

The Order of Appellate authority (CCM/MLG) was communicated to you vide this office letter No. C/CON/LM/MISC/06 (MKD-Hd. T.C.-GHY dated 28-09-2007. However a copy of the letter is sending herewith for your information please.

Enclo – 1 (One) as stated above.

Sd/0

19-03

(S Sen)

ACM/ LMG

Certified to be true copy

02-06-10

TYPED COPYGuwahati Bench
ANNEXURE- 22**N.F. RAILWAY**Office of the
Divl. Rly. Manager (P)
Lumding Dt. 03-08-04**OFFICE ORDER**

As a result of restructuring of cadre w.e. from 01-11-03 in terms of Rly. Bd's letter No. EC/III/2003/2003/CRC/6 dt. 09-10-03 communicated by GM (P)/LMG's letter No. E/304/O Restructuring (T) Dt. 30-10-03 and this Office Memorandum No. I /III/G II (Restructuring) Comml (T) Dt. 5-4-2004 the following Hd. TC in scale Rs. 5000-8000/- of commercial Department who have been found suitable for the post of CTI/II in scale Rs. 5500-9000/- arising out of restructuring and the existing vacancies as on 01-11-03 are hereby promoted to the post of CTI/ II in scale Rs. 5500-9000/- from the date as shown against each and posted at the stated at the stations as shown against each subject to posting at the pinpointed stations subsequently.

Sl No	Name, Designation & Station	Please of positing on promotion as as CTI / II	Date of effect of promotion as CTI/II in scale Rs. 5500-9000	Remarks
1	Sri Satya Ram Das,	BPB	1/11/2003	
2	Sri S.P. Chakraborty, Hd. TC/GHY	GHY	—	He cannot be promoted as he is under going punishment of stoppage of increment from 1-5-01 to 304-07
3	Sri R.C. Bharali, Hd. TC/ GHY (SC)	GHY	—	His promotion will be effected from 1-11-04 i.e. on expiry of punishment of reversion to the post of Jr. TC provided he is free from SPE/ VIG/DAR Case
4	Sri Sovan Kr. Saha, Ex.Hd. TC/ LMG now CTI/II at GHY	GHY	1/11/2003	
5	Sri Subrata Banerjee, Hd. TC/ GHY	GHY	1/11/2003	
6	Sri P. Narzary, Hd. TC/GHY (St)	GHY	1/11/2003	
7	Sri Dulal Ch. Deb, Hd. TC/ LMG	LMG	With immediate effect i.e. from the date of shouldering higher responsibility	
8	Sri Anukul Ch. Das Hd. TC/ LMG	LMG	With immediate effect i.e. from the date of shouldering higher responsibility	
9	Sri K.C. Kalita GHY Hd. TC/ LMG	GHY (at (his own request)		-Do-
10	Sri M.K. Das-II Hd. TC/ GHY (SC)	-	-	He cannot be promoted as DAR case is pending against him

Certified to be true copy

contd to page/2

62-06-10

03 JUN 2010

-76-

Guwahati Bench

गुवाहाटी न्यायपाल

SI No.	Name, Designation & Station	Please of posting on promotion as as CTI/II	Date of effect of promotion as CTI/II in scale Rs. 5500-9000	Remarks
11	Sri Samar Lal Dey, Hd. TC/GHY	GHY	With immediate effect i.e. from the date of shouldering higher responsibility	
12	Sri M.K. Das-II Hd. TC/ GHY (SC)	GHY	do	
13	Sri Manik Ch. Das, Hd.Tc. GHY	GHY	—	His promotion will be effected from 1-3-05 i.e. on expiry of punishment provided he is free from SPE/ VIG/DAR Case

The above named staff except (SI. No. 2 and 10) are advised to exercise their options if they are willing to get the fixation of pay from the next substantive date of their increment in lower grade within the month from the date of issue of this order.

SI. No. 3 & 13 may exercise their option after their promotion to the higher grade is effected

SI. No. 9 will not get CTG, transfer pass and joining time etc. as per extent rule.

Sri Ratan Kr. Nath, Hd. TC/ LMG is scale Rs. 5000-8000/- who has been promoted and posted as o LMG for a period of one year vide this office memorandum No. E/III/ Cadre/ 5 (up) Review T/ Compl. Dt. 13-08-02 is now posted at LMG vice vacancy of CTI/II

This has the approval of competent authority.

(N.Mukerjee)

APO/ LMG
For Divl. Rly. Manager (P)
N.f. Railway, Lumding

No. E/III/Gr.-II (Restructuring) Committ/ L case. Dt. 03-08-2004

Copy forwarded for information and necessary action to :-

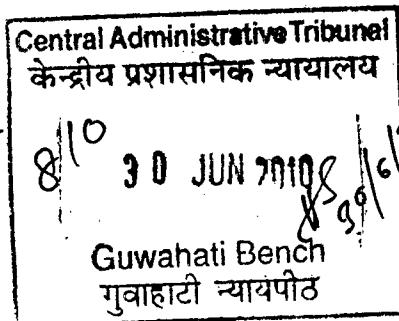
(1)SS/Gaz/GHY (2) SS/LMG, BPB, GHY GMR, (3) CTI/I/GHY, LMG, BPB, (4) GM (P) MLG, (5) DCM/ LMG, GHY, (6) AM/BPB, (7) DFM/LMG (8) OS/ET/ Bill at office (9) APO/GHY, (10) Staff concerned through proper channel (11) Divl. Secy, NFREU/ LMG (12) Convenor NFRMU/LMg, (13) Spare copy for P/Case.

Certified to be true copy

62-06-10

For Divl. Rly. Manager (P)
N.f. Railway, Lumding

142-
File No. 21
D.T. Smt
S/Chp. 20/6/10
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH,
GUWAHATI.



O. A. No. 46/2009

Shri M.K. Das II

Vs.

Union of India & Ors.

Hira Lal Sankar
प्रधान संतान न्यायिक प्रबन्ध
प्रभु की देवी/प्रधान
Smt. Smt. General Manager
W.M. W.M. General Manager

Written statement of respondents.

1. That the respondents have gone through the O.A. and understood the contents thereof.

2. That the application is barred by limitation and deserves to be dismissed.

3. That in reply to statements para 1 to 7 it is stated that on receipt of complaint from a passenger, CBI trap case was arranged, and in the trap case applicant was found guilty and formal charge sheet has been issued for and departmental proceeding under D.A.R., 1968 conducted. Shri Manoj Agarwal, a passenger who had made a complaint, did not attend in the enquiry before E.O. though summoned. It is stated that the charge sheet has not been issued on the complaint only, but after the trap case which found applicant guilty. The absence of Shri Agarwal has not caused prejudice to the applicant, the allegations/imputations are based on the trap case.

Contd.....2

30 JUN 2010

Guwahati Bench গুৱাহাটী ন্যায়পীঠ

- 2 -

≤ 143

19

Chirala Lak Sankar ^{मुख्य प्रबन्धक}
मु० श्री० रेणु रामचन्द्र
Sr. Mkt. General. Mkt. M.
H. P. Mkt. M.

4. That in reply to statements in paras 8 to 11 of the O.A. it is stated that the disciplinary proceedings have been conducted according to the D.A. Rules, 1968, by competent authorities. The authorities signing the charge sheet and subsequent orders are competent under the said Rules. As regards the time taken it is stated that due to transfer of Railway officers on exigency of service the proceedings took the time for following the procedural requirements. The time stated by applicant in para 8 is the model time prescribed by Railway Board, this is recommendatory, and not mandatory. In the present case procedural reasons required more time. It is stated that the applicant received a copy of the Enquiry report, no acknowledgement was received. He made use of the same in his revision petition. Non-supply of the Enquiry report has not caused him any prejudice. The Disciplinary authority has given his observations with the NIP.

5. That in reply to statements in paras 12 to 15 it is denied that the Sr. Divisional Commercial Manager was guided by Dy. Chief Vigilance Officer(T)/Maligaon as alleged in para 12. The departmental proceeding is a domestic enquiry, and it is as a result of trap case as already stated, and as such the disciplinary authority in exercise of his reasonable power shall have to be reasonable, without causing prejudice to the applicant, and has communicated with the co-ordinate officer of the Railway itself i.e. Dy. Chief Vigilance Officer (T), N. F. Railway. The D.A. has to be fully equipped with the procedure. The communication

Contd....3

30 JUN 2010

-: 3 :-

Guwahati Bench
गुवाहाटी न्यायपीठ

of Dy. CVO is an internal communication which indicated that Enquiry Officer over looked vital points, thereafter the D.A. took independent decision. The Dy. CVO (T)'s letter dated 22.3.2005 is not relevant in connection with penalty ~~of~~ decided by the D.A., and not a relevant document and such was not supplied to applicant. This caused him no prejudice.

6. That in reply to statements in para 16 to 19 it is stated that applicant submitted his revision petition dated 6.7.2006 (Annexure-19 of O.A.). In the said petition he relied on the Enquiry report. The decision of the revisionary authority was communicated to applicant by letter dated 28.9.2007. The order of penalty was not interfered. It is stated that it was erroneously written as Appeal, Appellate Authority instead of Revision Petition and revisional authority. The applicant informed the office over telephone after about 11 (eleven) months that he has not received the decision of the revisioning Authority. By letter dated 19.3.2008 he was again sent a copy of the said letter dated 28.9.2007. It was written as appellate authority erroneously instead of revisionary authority.

7. That in reply to statements in paras 20 and 21 it is respectfully submitted that the O.A. deserves to be dismissed.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
193
30 JUN 2010
Guwahati Bench
गुवाहाटी न्यायपाठ

VERIFICATION.

I, Shri Hiralal Sankar....., aged about
.....28 years, son of Late H. M. Sankar.....
now working as SAC/ Lumsing, do hereby verify
that the statements made in para 1 to 7 above are true
to my knowledge and that I have not suppressed any material
facts.

I sign this verification this 26th day of June,
2010 at Guwahati.

H. Sankar
Signature.
(Hiralal Sankar)

परिषद संस्करण प्राप्ति
को लिए रेकर्ड/अधिकार
S. Dated, Guwahati, Mar
W. P. Hly, Law

146-
897
28 JUL 2010
Guwahati Bench
M.P.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL::
GUWAHATI BENCH:: GUWAHATI.

IN THE MATTER OF:

O.A. No. 46/2009

Sri Mrinal Kanti Das -II,

..... Applicant.

-Vs-

The Union of India & Others / N.F. Railway

..... Respondents.

- AND -

IN THE MATTER OF:

A reply statement/re-joinder challenging the Written Statement of the respondent(s) No. 4 of the said O.A.

The humble applicant above named most humbly and respectfully begs to state as under :-

1. That, in regard to the statements made in para 2 (two) of the said Written Statement (i.e. W.S), it is stated that the letter No. C/CON/LM/MISC/06 (MKD-Hd.TC-GHY) dtd. 28.09.2007 and the letter No. C/CON/LM/MISC/06 (MKD-Hd.TC-GHY) dtd. 19.03.2008 are the communicated letters of the final orders passed by the CCM/MLG and in none of the said letters, the date on which the said final orders of the CCM/MLG was passed has been mentioned.

Moreover, the statement of the respondent authorities vide para 6 (six) of the W.S as well as the said letter dated 19.03.2008 denotes that the said letter dated 28.09.2007 was delivered to the applicant only along with the said subsequent letter dated 19.03.2008 as enclosure.

Hence, it is proved that the said letter dated 28.09.2007 was not delivered to the applicant prior to 19.03.2008.

Contd.....2

File by: -
the applicant
through Supt. of Posts
dtd. 09/07/10.

Xans Dec 11
Mrinal

Therefore, as per Section 20(2)(a) & 21(1)(a) of the Administrative Tribunals Act, 1985, the instant O.A. No. 46/09 is not barred by limitation and as such the same is tenable in the eye of law.

2. That, in regard to the statements made in para 3 (three) of the said W.S., it is stated that no where in para 1 to 7 of the said O.A. No. 46/09 the contention of the respondents was spelt out. But it is also admitted by the respondents in the W.S. that the said complainant did not attend in the Inquiry before Enquiry Officer though summoned.

Hence, the absence of Sri Agarwal during enquiry stage has severely caused prejudice to the applicant as the applicant was deprived of cross-questioning the said complaint which might help the applicant to not prove the said allegation levelled against him.

Formal Charge Sheet dated 03.09.02 has been issued under the departmental proceedings rules i.e. Railway Servant (Discipline and Appeal) Rules, 1968. But the said departmental proceedings could not be completed within the rigid target limit of 470 days from the date of issue of the said Charge Sheet dated 03.09.02 to the date of issue of N.I.P (16.11.2005) which is a clear violation of Annexure – 7 and Annexure – 8 of the said O.A. No. 46/09.

Further, no evidence on record shows that at the time of approaching the applicant to enquire about the availability of berth in N.E. Express leaving Guwahati on 21.11.01, the complaint possessed platform ticket without which the said complainant must be treated as unauthorized person/trespasser entering the Guwahati Railway premises as well as the unauthorized complainant entered into the RT counter (as per the deposition of PW-6 on 21.11.01). So, it is proved that either the complainant did not come with clean hand or there were procedural lapses in the investigation conducted by the C.B.I on the said date; since during investigation, no platform ticket was procured by the investigating agency i.e. C.B.I from the said complainant, so it is proved that the said complainant did not come with clean hand & for the same, the said complainant cannot be termed as passenger. Hence, the said complaint is liable to be set aside and quashed.

There is no evidence on record to prove that the said applicant was found guilty in the said C.B.I trap case.

3. That, in regard to the statements made in para 4 of the said W.S. the disciplinary proceedings starts with the issue of the Charge Sheet and ends with the issue of N.I.P.

In the instant case, the disciplinary proceedings started with the issue of the Charge Sheet (03.09.02) issued by the DCM/TC/LMG i.e. the Disciplinary Authority but the same proceeding was concluded with the imposition of Penalty through the Notice of Imposition of Penalty (16.11.05) issued by the Senior Divisional Commercial Manager/N.F.Railway/Lumding i.e. the Appellate Authority who is the higher authority to DCM/TC/LMG i.e. the Disciplinary Authority (i.e. DCM/TC/LMG, the Competent Authority) who issued the said Charge Sheet as per Column 3 (three) of Schedule -II of the S.O.P (Annexure – 9 of the O.A.No. 46/09) of the R.S(D & A) Rules, 1968.

Since the Senior DCM/LMG acted arbitrarily as Disciplinary Authority in the instant case violating Rule 22(2)(C)(i) & (ii)[Annexure -14 of the O.A. No. 46/09] of the R.S.(D & A) Rules, 1968. So, it is apparent that the said Disciplinary Proceedings including N.I.P in the instant case is liable to be set aside and quashed. It is also admitted that the said Charge Sheet was signed by the DCM/TC/LMG i.e. the Disciplinary Authority but the subsequent orders i.e. the orders passed through N.I.P (16.11.05) is not by the Competent Authority i.e. Senior DCM/LMG as the Senior DCM/LMG is the Appellate Authority in the instant case & thus the powers of the Appellate Authority is confined to the powers specified in para 22(2) (C)(i) &(ii) of the R.S. (D & A) Rules, 1968.

There is no specific provision wherein it is mentioned that due to transfer of Railway Officers on exigency of service, the respondents shall be allowed to take extra time beyond the stipulated time period scheduled to complete the disciplinary proceedings already initiated by the respondents.

The time-schedule as stated in para 8 of the said O.A. No. 46/09, the Model time prescribed by the Railway Board is a statutory rule and thereby the same is mandatory one and not recommendatory as revealed from R.B.E No. 102/2004 [No. E(D&A) 2004/GS 1-3 dtd. 20.5.2004. So, the plea taken by the respondents for taking more time for finalization of the disciplinary proceeding is not at all tenable in the eye of law. Further, no specific provision allows the respondents to exceed the allotted time period of 470 days in the instant case and in the Railway Board's Orders No. E(D&A) 95 RG 6-15 dated 24.04.95, it is stated that every attempt should be made to adhere to this target rigidly.

There is no documentary evidence lying with the respondents that the copy of the Inquiry Report was supplied to the applicant prior to imposition of penalty upon the applicant. Had the respondents supplied the Inquiry Report to the said applicant prior to imposition of penalty, the respondents would have received the acknowledgement of the same.

28 JUL 2010

-4-

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

No evidence on record shows that the applicant made the use of the same (i.e. Inquiry Report) in his revision petition dtd. 06.07.2006. The submission of the revision petition is made on the basis of the observation of ADRM/LMG's letter vide Order No. C/CON/LM/MISC/06 (MKD-Hd. TC-GHY) dtd. 15.05.06.

The respondents themselves admitted that they did not supply the Inquiry report to the applicant which severely caused him prejudice as due to non-supply of the same prior to imposition of the said penalty, the applicant could not make his representation or submission to the Disciplinary Authority in time which caused not only denial of reasonable opportunity and natural justice under Article -311(2) of the Constitution of India but also violated Rule – 10 (2) (a) of the R.S.(Discipline & Appeal) Rules, 1968. Moreover, Annexure –A of N.I.P (16.11.05) is the opinion & not findings of the Senior DCM/LMG who un-authorisedly acted as Disciplinary Authority by passing the competent Disciplinary Authority i.e. DCM/TC/LMG intentionally to avoid acting his appropriate status of Appellate Authority in the instant case. Therefore, the respondents could not only legally rebut the points raised in the appeal dtd. 29.12.05 (i.e. Annexure – 17 of the O.A.No. 46/09) against the contentions of the said Annexure-A of the said said N.I.P but also violated Rule-10 of the R.S. (D & A) Rules, 1968.

4. That, in regard to the statements made in para-5 of the said W.S, it is submitted that since in Annexure - A of the N. I. P (16.11.05) the reference of Dy. CVO(T) / MLG vide letter no. Z/Vig/94/2/3/02 dtd. 22.03.05 has been cited, the concerned authority is legally bound to supply the same to the applicant and in this regard, the Hon'ble Supreme Court in case of State Bank of India – Vs – D.C.Agarwal 1993 (1) SCC page-13 held that C.V.C report should be supplied to the Charge Official or the applicant before imposition of penalty. Moreover, in Annexure – A of the N.I.P (16.11.05), it is mentioned that Dy. CVO/T vide the said letter dtd. 22.03.05 clearly highlighted the vital points which was over looked by Inquiry Officer, so it is proved that the said remarks of the Dy. CVO/MLG helped the Senior DCM/LMG to form his baseless and hypothetical opinion recorded in the N.I.P (16.11.05) and thereby, being the Appellate Authority, illegally and arbitrarily punished the applicant vide the said N.I.P (16.11.05) violating Rule 22(2)(C) (i) & (ii) of the R.S. (D&A)Rules, 1968. No where in Annexure – A of the said N.I.P, it is mentioned that it is the result of

trap case. Since, the punishment vide the said N.I.P was imposed by the Sr. DCM/LMG, being the Appellate Authority in the instant case, it caused grievous prejudice to the applicant by depriving him to make his representation to the appropriate authority violating the statutory Rule 10 of R.S.(D&A) Rules, 1968 which caused un-authorise & un-lawful interference of Dy. CVO/T/Maligaon in the instant case and which also resulted the snatching of independent & impartial thinking of the punishing authority. Moreover, the Sr. DCM/LMG, holding the status of the Appellate Authority in the instant case in terms of R.S. (D & A) Rules, 1968, has acted arbitrarily and un-authorisedly as Disciplinary Authority at his own whims violating the statutory Rule 22(2)(C) (i) & (ii) of the R.S. (D&A)Rules, 1968 and thus the plea taken by the respondents vide para 5 of the said W.S. is not tenable in law.

Further, the DCM/TC/LMG, being the Disciplinary Authority in the instant case was prevented from acting as Disciplinary Authority by the Senior DCM/LMG in respect of issuing the said N.I.P(16.11.05) and the Senior DCM/LMG acted as the Disciplinary Authority arbitrarily and illegally and also imposed the punishment under the guidance of the Dy. CVO(T)/MLG as reflected in the said N.I.P.

Had the Inquiry Officer overlooked the vital points, the Disciplinary Authority as per provision of Rule- 10 (1) (b) of R.S. (D & A) Rules, 1968 could have remitted the case to the Inquiring Authority for further inquiry which is absent in the instant case and thereby the concerned authority violated the Rule – 10(1)(b) of R.S.(D&A)Rules, 1968 incorporated in the Railway Board's letter No. E(D&A) 87 RG 6-151 dated 8.8.2002 circulated by GM(P)/MLG's Circular letter DAC-591 (No. E/74/O/Pt. XVI(C) dated 11.9.2002 **(Annexure-12 of O.A. No. 46/09).**

Since the remarks of the Dy. CVO(T) has been reflected in Annexure –'A' of the said N.I.P, the Senior DCM/LMG without supplying the said letter dtd. 22.03.05 issued by Dy. CVO/T directed the applicant to submit his ap peal to the Appellate Authority and kept the applicant behind the screen, which is a crystal violation of Article 311(2) of the Constitution of India. And thus it is evidently proved that the Senior DCM/LMG was out and out guided by the Dy.CVO/T which made him to loss his independent & impartial nature of thinking in deciding the instant case prudently and judicially.

-(6)-

5. That, in regard to the statements made in para-6, it is stated that no evidence in record is there to prove that the applicant relied on the Inquiry Report since it was not supplied to him and nowhere in the revision petition (06.07.06) (i.e. Annexure – 19 of the said O.A), the applicant mentioned that he relied on the Inquiry Report rather in the said revision petition, it is mentioned in the subject that the Revision Petition against observation of ADRM/LMG vide order no. C/CON/LM/MISC/06(MKD-Hd. TC-GHY) dated 15.05.06. Thus, it is proved that the applicant relied in the said revision petition on ADRM/LMG's letter dated 15.05.06 and also on the Daily Proceedings.

No evidence in record shows that I received the said letter No. C/CON/LM/MISC/06 (MKD-Hd.TC-GHY) dated 28.09.07 was delivered to the applicant prior to 19.03.08. Fact is that the said letter No. C/CON/LM/MISC/06 (MKD-Hd.TC-GHY) dated 28.09.07 was communicated to the applicant only along with the said letter No. C/CON/LM/MISC/06 (MKD-Hd.TC-GHY) dated 19.03.08 which is apparent in the said letter No. C/CON/LM/MISC/06 (MKD-Hd.TC-GHY) dated 19.03.08 as enclosure.

Had the said letter No. C/CON/LM/MISC/06 (MKD-Hd.TC-GHY) dated 28.09.07 been communicated to the applicant prior to 19.03.08, the respondents would not have communicated the same to the applicant further on 19.03.08.

Kamal
Minal

It is asserted in the said W.S. that the applicant informed the officer over telephone after about 11 (eleven) months regarding his non-receipt of the decision of the said authority which also indicates that the said letter dated 28.09.2007 was not delivered to the applicant prior to 19.03.2008.

6. That, in view of the matter raised in the application and the reasons set forth thereon, the huge prejudice caused to the applicant for the non-compliance of the Statutory rules and procedures and the provision of law by the respondents in the instant case and as such the instant W.S. of the respondents is liable to be dismissed with gross cost.

152

28 JUL 2009

-(7)-

Gauhati Bench

It is, therefore, prayed before Your Lordship would be pleased to admit this Rejoinder / reply statement filed against the Written Statement of the respondents of the Original Application no. 46 /2009 and further be pleased to dismiss / reject the Written Statement of the said Respondent with gross cost after hearing the parties and / or pass such order / orders as this Hon'ble Tribunal may deem fit and proper.

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

VERIFICATION ENCLOSED

28 JUL 2009
Gauhati Bench
Minal

VERIFICATION.

I, Sri Mrinal Kanti Das-II, S/O Late Nakul Chandra Das, aged about 54 years, by profession Railway Service holder; by religion – Hindu, R/O Rly. Qrs. Nos. 146/A, Adarsha Colony, Maligaon, Guwahati -781011, Dist. Kamrup (Assam), do hereby solemnly affirm and verify the statements made in this reply statement/re-joinder from paragraphs No. 1 (One) to 6 (Six) are true to the best of my knowledge & belief.

Mrinal Kanti Das, II
Signature of the Verifier.

Place: Guwahati.

Date: 28.07.2010

From :-

Jyoti Prakash Das,
Advocate,
Guwahati High Court.

9-
28 JUL 2010
COURT OF APPEAL
28.07.2010
Dated, 28.07.2010

To

Dr. J. L. Sarkar,
Railway Standing Counsel,
N.F.Railway,

Or, his Junior Counsel.

For a reply statement / re-joinder challenging the Written Statements in O.A. No. 46/2009 submitted by the respondent of the O.A. No. 46/2009 before the Hon'ble Central Administrative Tribunal, Guwahati Bench Guwahati.

Sub - A reply statement challenging the Written Statements submitted by the Respondent no. 4 of the O.A. No. 46/2009.

Original Application No. 46/2009.

Sri Mrinal Kanti Das-II.

..... Applicant.

— Vs —

The Union of India & Others/N.F.Railway

..... Respondents.

Sir,

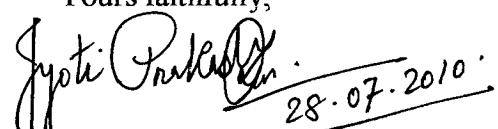
Please find herewith a copy of the above referred reply statements challenging the Written Statements of the Respondents in O.A. No. 46/2009 which is being filed before the Central Administrative Tribunal, Guwahati Bench, Guwahati.

Please acknowledge receipt thereof.

Thanking you,

R copy
For Dr. J. L. Sarkar
S.C. Railway
28/7/10

Yours faithfully,


28.07.2010

(Jyoti Prakash Das)
Advocate,
Guwahati High Court.