

10

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 228/2009

R.A/C.P No.

E.P/M.A No. 130/2009

1. Orders Sheet.....O.A......Pg. 1.....to. 5 ✓
2. Judgment/Order dtd. M.P. 130/09 order sheet — Pg. 1 — to 3 Allonced 31.8.2010
22.9.2010 Pg. 1.....to. 9 Dismissed ✓
3. Judgment & Order dtd.Received from H.C/Supreme Court
High order Page - 1 — to 4
4. O.A.WP(C) 235/11 22.8/2010.....Pg. 1.....to. 47 ✓
5. E.P/M.P.130/2010.....Pg. 1.....to. 6 ✓
6. R.A/C.P.Pg.to.
7. W.S.Pg. 1.....to. 11 ✓
8. Rejoinder.....Pg.to.
9. Reply.....Pg.to.
10. Any other Papers.....Pg.to.
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

23/11/16
SECTION OFFICER (Judl.)

23/11/2011

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

1. ORIGINAL APPLICATION No : 228 / 2009
2. Transfer Application No : -----/2009 in O.A. No.-----
3. Misc. Petition No : -----/2009 in O.A. No.-----
4. Contempt Petition No : -----/2009 in O.A. No.-----
5. Review Application No : -----/2009 in O.A. No.-----
6. Execution Petition No : -----/2009 in O.A. No.-----

Applicant (S) : Bikash Roy

Respondent (S) : M. C. I. Foks

Advocate for the : K.K. Mahanta, H.K. Kalita, M. Pathak
{Applicant (S)}

Advocate for the : Railway advocate
{Respondent (S)}

Notes of the Registry

Date

Order of the Tribunal

This application is in form.
is filed/C.F. No. 296-
deposited with P.B.D.
No. 296 438735
Dated 03/11/09

27.11.2009

List on 12.01.2010.

The Limitation issue will be decided at
the time of hearing.

(Madan Kumar Chaturvedi)
Member (A)

Dy. Registrar
Petitioner's copy for
issue. notices are
received with envelope. /pb/
copy served. Green
Rs-15/- has been deposited
note receipt No. 3022
dated 4.11.09.

12.01.2010

Penalty of removal has been challenged
in present case as imposed on 29th August,
2008 against which statutory appeal was
preferred and had been rejected on 13.10.2008.

M.A. 130 of 2009 has also been preferred
seeking condonation of delay. Notice be issued
to Respondents under Rule 11 (1) (i) of CAT
(Procedure) Rules 1987 returnable on 24th
February, 2010.

List the matter on 24.02.2010.

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

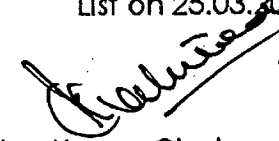
K. Daimoni
Notice be issued. W/M
11(1)(i) of CAT (Procedure
Rule 1987.

/PB/

24.02.2010

Proxy counsel for Respondents Mrs.B.Devi enters appearance and prays for four weeks time to file reply. Request has not been opposed by learned counsel for the Applicant. In the circumstances, service on Respondents 1-7 is complete.

List on 25.03.2010.



(Madan Kumar Chaturvedi)
Member (A)




(Mukesh Kumar Gupta)
Member (J)

Copies of notices along with order dated 12/01/2010 send to D/Sec. for issuing to the respondents by speed post, A/D at the cost of H/counsel for the applicant.

Memo no. 215 to 222 /bb/
21-1-2010

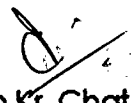
Notice duly served on
R-4 No. 23


16/2/2010

25.03.2015

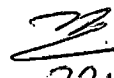
Ms. R. Bora, proxy counsel for Mrs. B. Devi, learned counsel for Respondents enters appearance and prayed for four weeks time to file reply. Request has not been opposed by Mr. M.K. Boro, learned counsel for Applicant.

List on 04th May 2010.




(Madan Kr. Chaturvedi)
Member (A)

① Service report awaited.


23/2/2010

the time of hearing
/pb/

No wls blich


24/3/2010

04.05.2010

Mrs. B.Devi, learned counsel for Railway states that reply has been filed to-day with copy to Applicant. Mr.M.K.Boro, learned counsel for Applicant seeks to weeks time to file rejoinder.

List the matter on 20.5.2010.

(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

lm

04.05.2010 Mrs. B.Devi, learned counsel for Railway states that reply has been filed to-day with copy to Applicant. Mr.M.K.Boro, learned counsel for Applicant seeks two weeks time to file rejoinder..

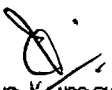
List the matter on 20.5.2010.



(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)


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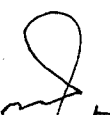
20.05.2010 Mr M.K. Boro, learned, learned counsel for applicant, states that the matter may be fixed for hearing and in the meantime, he will file rejoinder, if any. In the circumstances list on 18.06.2010.


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)


nkm
18.06.2010 On the last date of hearing, matter was adjourned to today on the request of Mr M.K. Boro, learned counsel for applicant, who stated that the matter be fixed for hearing for today and in the meantime rejoinder, if any, will be filed. No rejoinder has been filed. Today Mr H.K. Das, proxy counsel states that Mr K.C. Mahanta, learned ^{Sr.}counsel for applicant, is in some difficulty. As the matter has already been fixed for hearing, keeping in view the request made by proxy counsel for applicant, adjourned to 06.07.2010. List it under the heading "Hearing" and not for orders.


(Madan Kumar Chaturvedi)
Member (A)



(Mukesh Kumar Gupta)
Member (J)

4.5.2010
W/S has been
filed by the respondents.
Copy served.
4/5/2010.

No rejoinder filed.


19.5.2010

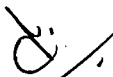
No rejoinder filed.



17.6.2010

-4-
O.A.228/2009

06.07.2010

Mr.M.K.Boro, learned counsel for the applicant states that Mr.K.K.Mahanta, learned Sr. counsel is in some personal difficulty. List on 09.07.2010. It is made clear that no further adjournment will be allowed.


(Madan Kumar Chaturvedi)
Member (A)



(Mukesh Kumar Gupta)
Member (J)


/bb/

09.07.2010

Mr.M.K.Boro, learned counsel for applicant prays for adjournment stating that Mr.K.K.Mahanta, learned Sr. counsel is in personal difficulty. We notice that matter has been adjourned repeatedly. Learned counsel prays that this should be last opportunity and he will not pray for further adjournment. Noticing the aforesaid, matter is adjourned to 03.08.2010, as prayed for.

It is made clear that no further adjournment shall be granted.


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)


/bb/

03.08.2010

Mr M.K.Boro, learned counsel for the applicant prays for adjournment.

List on 10.8.2010.


(Madan Kumar Chaturvedi)
Member (A)


Mukesh Kumar Gupta
Member (J)

/pg/

5
O.A. 228/2009

11.08.2010

Being Division Bench matter list on
30.8.2010.



(Mukesh Kumar Gupta)
Member (J)

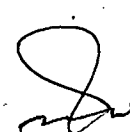
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30.08.2010

Proxy counsel for applicant prays for
adjournment.

List on 31.8.2010.


(Madan Kumar Chaturvedi)
Member (A)

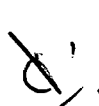

(Mukesh Kumar Gupta)
Member (J)

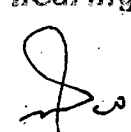
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31.08.2010

Mr K.K. Mahanta, learned counsel for
applicant prays for adjournment as he is
unwell.

List on 16.09.2010 for hearing.

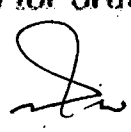

(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

nkrm

16.09.2010

Heard Mr K.K. Mahanta, learned
s.c. counsel for applicant and Ms B. Devi,
learned counsel for the respondents.
Hearing concluded. Reserved for orders.



(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

nkrm

22.009.2010

Judgment pronounced in open court.
Kept in separate sheets. For the reasons
recorded separately, this O.A. stands
dismissed. No costs.


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

/pb/

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8/11/2010

Implement/anderson dated

22/9/2010 send to the DHS

for issuing vest

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**(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)**

Appeal from

Civil Rule

W.P.(C) No.

233

2010

Applicant:

Petitioner:

Stu Bikash Roy

versus

The union of India is 701.

Respondent

Opposite Party

Appellant

For

Petitioner

Respondent.

For

Opposite Party

Mr. K.K. Mahanta, Sr Adv.

Mr. K. Konwar,

Mr. P. Barhakur, MS, M.K. Pradhan

S.C. Rly

Nrs B. Dev - NF Rly.

Noting by Officer or Advocate.	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

WP(C) 233 of 2011

BEFORE
HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE L. S. JAMIR

01.11.2016

(*Hrishikesh Roy, J.*)

Heard Mr. KK Mahanta, learned senior counsel appearing for the petitioner. Also heard Ms. B Devi, learned Standing Counsel, representing the respondent Railways.

The petitioner was appointed on compassionate basis as a Stenographer, in the office of the Divisional Railway Manager, Lumding but when it was discovered that he was incapable of taking dictation or to type out the dictated matter, disciplinary proceeding was drawn up and eventually, through the order dated 29.08.2008 (Annexure-10), the penalty of *removal* from service was inflicted on the inefficient Stenographer. The legality of the disciplinary action was challenged in the Central Administrative Tribunal, Guwahati, but the O.A. No.228/2009 was dismissed by the impugned verdict of 22.09.2010 (Annexure-15) and that is how, that decision of the Tribunal is challenged before us.

While the case was pending in the Court, a decision was taken by the Railways to accommodate the petitioner in some other post where he can perform better and that is how, the case was adjourned earlier on 28.09.2016.

Today Mr. KK Mahanta, learned senior counsel, on instruction, submits that the petitioner was recently appointed as *Apprentice Techniquial Grade-III (C & W)* in Mechanical Department in the Lumding Division, through the appointment letter dated 06.10.2016, issued by the Divisional Personal Officer of NF Railways. The senior counsel points out that this is indicated to be a fresh appointment order and therefore, the petitioner may lose the service benefits for the period when, he was employed as a Stenographer.

However, Ms. B Devi, learned standing counsel for the Railways submits that the employer has accommodated the petitioner by taking a lenient view of all the circumstances and since his service as Stenographer was below the mark, he cannot claim any service benefit on account of his past services.

WP(C) 233 of 2011

Page 1 of 2

13

We have seen the recent appointment order issued to the petitioner and also considered the submission made by the learned counsel for the parties. As the termination of the Stenographer was on the ground of inefficiency and the CAT did not interfere with the termination order, we are not inclined to order any service benefit for the petitioner, when he was employed as Stenographer. However, if the petitioner makes any representation for any such benefit of the past service, the employer is at liberty to consider the same on its own merit, without being influenced by this order.

With the above order, the matter is closed by taking on record the copy of the appointment order dated 06.10.2016, produced by the petitioner's lawyer.

Registry should return the LCR with a copy of this order.

Sd/- L.S. JAMIR
JUDGE

Sd/- HRISHIKESH ROY
JUDGE

14
Memo No.HC.XXI

32,291-299

R.M.Dtd

8/11/16

Copy forwarded for information and necessary action to:-

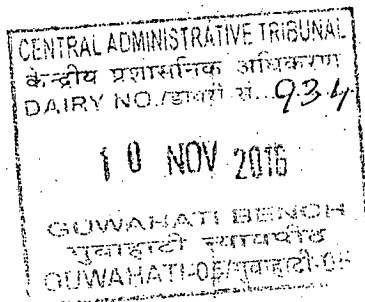
1. The Union of India, represented by the Secretary to the Ministry of Railways, Govt. of India, 'Rail Bhawan', New Delhi-110001.
2. N.F. Railways, represented by the General Manager, N.F. Railway, Maligaon, P.O.-Maligaon, Guwahati-781011, District-Kamrup(M), Assam.
3. The Divisional Railway Manager (DRM), N.F. Railway, Lumding, Pin-782447, District-Nagaon, Assam.
4. The Additional Divisional Railway Manager (the Appellate Authority), N.F. Railway, Lumding, Pin-782447, District-Nagaon, Assam.
5. The Senior Divisional Operational Manager (Sr. DOM), N.F. Railway, Lumding, Pin-782447, District-Nagaon, Assam.
6. Shri Madhukar Roat, Area Railway Manager, Gandhi Dham, Western Railway, Gujrat, Pin-370201.
7. Shri A.K. Dey, the then Assistant Operations Manager (Goods), Inquiry Officer, N.F. Railway, Lumding, Pin-782447, District-Nagaon, Assam.
8. Sri Bikash Roy, Son of Late Haripada Roy, resident of Village Pub-Kandulimari, P.O.-Jugijan Bazar, Pin-782429, P.S.-Hojai, District-Nagaon, Assam.
9. The Registrar, Central Administrative Tribunal, Guwahati Bench, Bhangagarh, Guwahati-781005, Assam. He is requested to acknowledge the receipt of the following case records. This has a reference to his letter No. 16-3/02-JA/65 dated 12.01.2012.

Enclo:-

Original Case records of O.A. 228/2009,

Containing 1(one) File

91 Sheets



By Order

8/11/16

Asstt. Registrar (Judl.-II)
Gauhati High Court, Guwahati

8/11/16

10/11/16
SO PD
BDM
10/11/16
Deosi / S. Kalita

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 228 of 2009

Date of Decision: 22.09.2010

Sri Bikash Roy

..... Applicant/s

Mr. K.K. Mahanta, Sr. Advocate along with Mr. M.K. Boro

..... Advocates for
the Applicant/s

- Versus -

U.O.I. & Ors.

..... Respondents

Ms. B. Devi, Railway Counsel

..... Advocate for the
Respondents

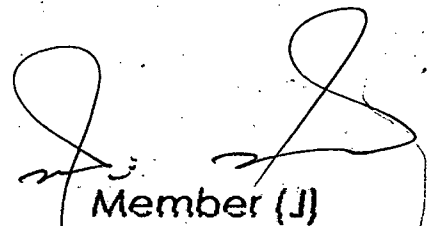
CORAM:

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

HON'BLE SHRI 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


Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI –BENCH:

Original Application No. 228 of 2009

Date of Decision: This, the 22nd day of September 2010.

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

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

Sri Bikash Roy
Son of Late Haripada Roy
Resident of Village – Pub-Kandulimari
P.O. – Jugijan Bazar
Pin – 782429, P.S. – Hojai
District – Nagaon, Assam.

...Applicant

By Advocate: Mr. K.K. Mahanta, Sr. Advocate along with Mr. M.K. Boro.

-Versus-

1. The Union of India
Represented by the Secretary to
The Ministry of Railway
Govt. of India, Rail Bhawan
New Delhi – 110001.
2. N.F. Railways represented by
The General Manager
N.F. Railway, Maligaon
Guwahati – 781011
District – Kamrup (M), Assam.
3. The Divisional Railway Manager (DRM)
N.F. Railway, Lumding
Pin – 782447, District – Nagaon, Assam.
4. The Additional Divisional Railway Manager
(the Appellate Authority)
N.F. Railway, Lumding
Pin – 782447, District – Nagaon, Assam.
5. The Senior Divisional Operational Manager (Sr. DOM)
N.F. Railway, Lumding
Pin – 782447, District – Nagaon, Assam.
6. Shri Madhukar Roat
The then Senior Divisional Operational Manager (Sr. DOM)
N.F. Railway, Lumding
Pin – 782447, District – Nagaon, Assam.
7. The Assistant Operations Manager (Goods)
Inquiry Officer, N.F. Railway, Lumding
Pin – 782447, District – Nagaon, Assam.

8. **Shri A.K. Dey**
The then Assistant Operations Manager (Goods)
Inquiry Officer, N.F. Railway
N.F. Railway, Lumding
Pin - 782447, District - Nagaon, Assam.

Respondents


By Advocate: Ms. B. Devi, Railway Advocate.

ORDER

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

Sri Bikash Roy, Stenographer, Grade - III, in this application, challenges impugned penalty of removal inflicted vide disciplinary authority's order dated 29th August 2008, as upheld vide appellate authority's order dated 13th October 2008 (Annexures - J & L respectively). He also seeks reinstatement with all consequential benefits.

2. Admitted facts are: consequent upon, death of his father in harness on 24.06.1999, applicant filed an application before Railway Authority, and he was selected & appointed as Stenographer Grade - III on compassionate ground and posted under Senior Divisional Operations Manager/Lumding vide order dated 10.04.2003 (Annexure - A). He was placed on probation for a period of 2 (two) years. Show cause notice dated 08.07.2005 was issued requiring him to give explanation regarding his not being able to take small dictation given by DRM/LMG on 30.06.05. It was also stated therein that he was counseled several times for improvement



in dictation as well as drafting letter but no improvement was seen. Memorandum under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 was issued on 28.07.2006. Due to some procedural reasons, said charge Memorandum was cancelled with liberty to issue a fresh charge sheet and therefore another Memorandum dated 25.10.2006 was issued. The gravamen of the charge as per statement of imputation reads thus:

" It appears from the NOTE of DRM/LMG bearing No. LMG/DRM/71.40, dated: 30.06.2005 that on 30.06.05, one small dictation was given by DRM/LMG to you. During dictation it was noticed by DRM/LMG that you are incapable of taking dictation in shorthand. On producing the draft of the note dictated, it was further noticed that you have made various mistakes in typing.

It is to be mentioned here that Sr. DOM/LMG counseled you several times for improvement in dictation as well as drafting letter, but no improvement is seen. Moreover, Sr. DOM/LMG also gave personal counseling and practice dictation to you. But after constant effort no improvement is seen.

Also, you were called for an explanation regarding your not being able to take dictation in shorthand as well as not being able to produce a draft with reasonable correctness, vide letter No. T/MISC/TD (BR), dated 08.7.05 and the letter was duly received by you on 11.7.05. But you have failed to submit your explanation within stipulated time (i.e. 07 days)."

(emphasis supplied)

3. Preliminary hearing was held on 30th May 2008, since he accepted charge as leveled unequivocally & unconditionally inquiry was concluded on said date. Findings of Enquiry Officer were submitted on 18th June 2008, which in turn, were supplied to Applicant vide communication dated 14th July 2008 stating that based on enquiry report submitted by Enquiry Officer, the

Disciplinary Authority decided to take suitable action as per Rules and therefore, required him to submit representation, if any. He, indeed, submitted representation on 14th July 2008 (Annexure - 1). On consideration of representation made, findings of Enquiry Officer, Disciplinary Authority, holding that his defence, was not satisfactory, inflicted penalty of removal. A statutory appeal was preferred on 10th September 2008 (Annexure - K). Appellate authority passed a detail order rejecting the said appeal and conveyed its decision vide communication dated 13.10.2010.

4. Challenging aforesaid order, present O.A. was instituted. Mr. K.K. Mahanta, learned Sr. Advocate appearing along with Mr. M.K. Boro raised the following contentions:

- (i) The alleged charge did not constitute misconduct. No fair enquiry was held. Enquiry Officer acted under the influence of complainant i.e. DRM, Lumding and closed the enquiry on very first day of enquiry to the utter prejudice of Applicant. No document, no witness were examined. Provision of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 were given a total go bye.
- (ii) Enquiry Officer acted illegally, arbitrarily and with material irregularity. He acted as a prosecutor as well as judge. Enquiry Officer influenced and pressurized him, only to please his boss. No warning or memorandum of any nature required him to improve his work or to the effect that he lacks proficiency in stenography, was over issued. The penalty imposed is harsh, excessive and disproportionate. He was appointed on compassionate ground. With imposition of major penalty of removal, very object and purpose behind the compassionate appointment is frustrated.

Appellate authority passed a cryptic order and failed to consider that there was gross violation of procedural provisions in the departmental enquiry. If Applicant was not found fit for the job of stenographer, he ought to have been given a chance to work on some other Ministerial post, enabling him to survive.

5. In the above backdrop, Mr. K.K. Mahanta, learned Sr. Advocate appearing for Applicant forcefully pleaded that Applicant be reinstated.

6. By filing reply, Respondents contested claim stating that on 30th Jun 2005, Divisional Railway Manager, Lumding gave a small dictation to Applicant. It was noticed that he was incapable of taking dictation in shorthand. When draft note of said dictation was submitted before concerned officer i.e. Divisional Railway Manager, Lumding, it was further noticed that, he made various typographical mistakes. Therefore, his explanation was called for. He was counseled on several times for improvement in dictation as well as drafting letter. He was also sent for training for improving the skill but after constant effort, no improvement was seen. As his explanation submitted on 26.07.2005 (Annexure - II), was not found to be satisfactory, charge Memorandum was issued. Accordingly, he filed his written statement vide letter dated 23.08.2005 (Annexure - III) and on receiving the said reply, Inquiry Officer was nominated. He was given various opportunities. Preliminary hearing was fixed on

25.11.2005 but on his request made from time to time, the enquiry was adjourned and ultimately proceedings were held on 30th May 2008. This itself shows that more than reasonable time and opportunity had been provided to him. He made a statement on the said date voluntarily. His allegations to the effect that Inquiry Officer persuaded him to accept the charges with an assurance to impose minor penalty, was strongly refuted. Applicant was most inefficient and not capable of taking dictation in short hand, which was a serious misconduct.

7. We have heard Mr. K.K. Mahanta, learned Sr. counsel appearing for Applicant and Ms. B. Devi, learned counsel appearing for Respondents, perused the pleadings and other materials placed on record. At the outset, we may note that no rejoinder was filed by Applicant despite various opportunities granted and therefore, statements made by Respondents in their reply, filed on 4th May 2010 remained uncontroverted. Vide explanation letter dated 26.07.2005 (Annexure – II), Applicant, very candidly, admitted that he cannot take dictation properly and work was found not satisfactory. He, in unequivocal term stated therein that : **"it is also a fact, that you have given me ample opportunity to improve my work."** Similarly, we may note that, in reply to Question No. 3, in enquiry held on 30th May 2008, he stated as follows:

"Q. No.3: Do you accept the charges as leveled against you in the Article-I of Annexure-I and Article-I of Annexure-II of the charged Major

Memorandum No. T/MISC/LM/TD (BR), dated: 25.10.06 ?

And: Yes, I do accept the charges as leveled against me vide Major Memorandum No. T/MISC/LM/TD (BR), dated: 25.10.06."

(emphasis supplied)

8. Furthermore, we may note that Hon'ble Supreme Court in **State of U.P. & Anr. Vs. Ram Adhar AIR 2008 SC 3243** had occasion to consider the charges leveled of incompetency and inefficiency on the part of stenographer. Said decision, which is very brief reads as under:

"This appeal filed by the State is directed against the judgment and order dated 14.08.2001 passed by the Division Bench of the Allahabad High Court.

2. Heard the parties.
3. The respondent herein was appointed on adhoc basis on the post of Stenographer for a period of three months. The time was extended twice and ultimately, the respondent also appeared in the test but failed. The respondent preferred writ petition before the learned Single Judge. The same was disposed by the learned Single Judge allowing the respondent to continue till the regularly selected Stenographer joins the post. The same was confirmed by the Division Bench of the High Court.
4. While issuing notice on 15.10.2001 this Court stayed both the orders of the Division Bench and the learned Single Judge. In view of the interim order, the respondent is no more in service today. Even otherwise an adhoc appointee appointed for a period of three months as Stenographer, whose term is further extended, should not be allowed to continue in the public interest when he failed in the test.
5. It may be mentioned that there is no principle of law that a person appointed in a temporary capacity has a right to continue till a regular selection. Rather, the legal position is just the reverse, that is, that a temporary employee has no right to the post vide (State of U.P. V. Kaushal Kishore, [1991] 1 SCC 691). Hence, he has no

right to continue even for a day as of right, far from having a right to continue till a regular appointment.

6. On this sole ground we set aside both the orders of the learned Single Judge and the Division Bench of the High Court. This appeal is allowed. No costs.
7. Before parting with this case we would like to mention that very often selection and appointments are made on posts requiring special skills like that of a stenographer. On such posts the only criterion should be merit. However, very often such appointments are not made on merit but on some recommendations, and such appointees are very often incompetent.
8. If an incompetent stenographer is appointed for the Court the result will be that the correct order passed by the Judge will not be recorded, and this will create many problems. Much of the time of the Judge will be spent on making corrections. Hence great care must be taken by the selection committee for selecting persons to be appointed on posts requiring special skills like that of a stenographer purely on merit disregarding any recommendation made by anyone, howsoever high."

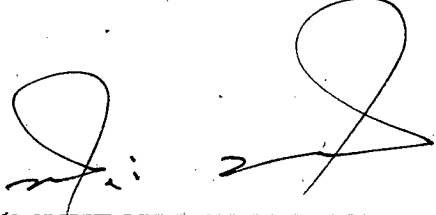
(emphasis supplied)

9. On examination of the matter, on the touchstone of the law, notice hereinabove vis-à-vis the facts of present case, we are of the considered view that ratio laid down in Ram Adhar (supra) is squarely applicable to facts of present case. Applicant, in our considered view, had been given adequate opportunity to him to prove his efficiency but he failed to improve. In our considered view, the findings of Inquiry Officer, which were accepted by disciplinary authority, cannot be faulted. Provisions of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 were duly observed, principle of natural justices were satisfied and punishment imposed is commensurate with the guilt proved. Mere grant of compassionate appointment cannot be a ground not to take disciplinary action, if a person found to be inefficient and found guilty &

lack of devotion to duty. Furthermore, on 14th July 2008, Sr. DOM, Lumding, in a note, addressed to Divisional Office Operations Branch, Lumding, also noticed that he was unable to take any dictation in shorthand and therefore he sought replacement immediately.

We hold that, various contentions raised by Applicant are totally baseless, without any substance and have been raised without any justification. We do not find any justification in the contentions raised by Applicant that he should have been allowed in some other post and that would have been in consonance of principle of natural justice. The punishment imposed in given circumstances is neither harsh nor disproportionate to the proved charges. Therefore, taking an overall cumulative view of the mater, O.A. found to be bereft of merit, is dismissed. No costs.


(MADAN KUMAR CHATURVEDI)
Member (A)


(MUKESH KUMAR GUPTA)
Member (J)

/PB/

(1)

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: AT GUWAHATI

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

3 NOV 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

O.A. NO. 228 /2009

Sri Bikash ROY

-----Applicant

-VS-

The Union of India and others ----- Respondents

SYNOPSIS

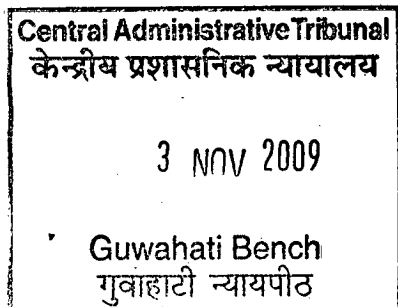
That the applicant was appointed on compassionate ground in the post stenographer, in N.F. Railway, Lumding on 10/04/03 after due selection. Due to some unintentional mistakes of the applicant in taking dictation given by the Divisional Railway Manager, Lumding on 30/06/05 disciplinary proceedings was initiated against the applicant and charge sheet was issued on 28/07/05. But the disciplinary authority arbitrarily withholding the charge sheet dated 28/07/05 issued a fresh/second charge sheet on 25/10/06 after filing the inquiry report by the Inquiry Officer in relation to the first charge sheet on 14/07/06. On the basis of the second/fresh charge sheet a fresh inquiry was conducted in violation of procedural provisions and thereby imposed penalty of removal from service against the applicant. The applicant preferred appeal before the appellate authority but in vain. Hence this application before this Hon'ble Tribunal for justice.

Filed by

Malabika Patnaik

Advocate

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: AT GUWAHATI



O.A. NO. 228 /2009

Sri Bikash ROY -----Applicant

-VS-

The Union of India and others ----- Respondents

LIST OF DATES

<u>DATE</u>	<u>EVENTS</u>
10/04/03	The applicant was appointed to the post of Stenographer/Gr.III on compassionate ground. (Annexure-A, page - 21).
11/04/03	Applicant joined in service.
30/6/05	Applicant was given dictation by DRM/LMG (Respondent No.3) where the applicant made some mistakes. (Page- 28) .
08/07/05	Explanation was asked from applicant by Sr. DOM/LMG (Respondent No. 5). (Annexure-B, page- 22)
26/07/05	Applicant filed explanation to the letter dated 08/07/05.
28/07/05	The Major Charge Memorandum issued by Sr. DOM/LMG against applicant. (Annexure-C, page- 23)
Nil	The applicant filed reply to Charge Memo dated 28/07/05.
14/07/06	The Inquiry Officer Sri T. Medhi filed enquiry report in relation the charge sheet dated 28/07/05.

3 NOV 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

33

19/10/06 The Charge Memo. dated 28/07/05 was cancelled due to procedural informalities. (Annexure-D , page- 30)

25/10/06 Fresh/Second Charge Sheet was issued. (Annexure- E , page- 31)

15/02/08 First sitting of the Departmental Proceeding.

17/04/08 Second sitting of the Departmental Proceeding.

29/05/08 Applicant was influenced by Inquiry Officer Sri A.K.Dey, respondent No.8 and Sri Madhukar Roat, Sr. DOM, respondent No.6.

30/05/08 3rd and last sitting of Departmental Proceeding. Applicant was put question which he replied accordingly. (Annexure- F , page- 36)

18/06/08 Findings/report of the second Departmental Inquiry. (Annexure- H , page- 38)

14/07/08 Show cause notice issued to applicant. (Annexure- G , page- 37)

14/07/08 Representation submitted by applicant, against notice dated 14/07/08. (Annexure- I , page- 41)

29/08/08 Notice issued for imposition of penalties against the applicant. (Annexure- J , page- 42)

10/09/08 Appeal against penalty order dated 29/08/08. (Annexure- K , page- 44)

13/10/08 Order of appeal passed by the appellate authority. (Annexure- L , page- 46)

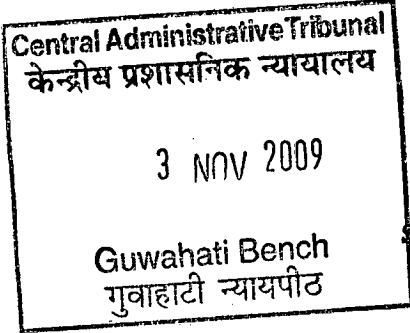
Filed by

Malabika Patnaik

Advocate

35

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: AT GUWAHATI



O.A. NO. 228 /2009

Sri Bikash ROY -----Applicant

-VS-

The Union of India and others ----- Respondents

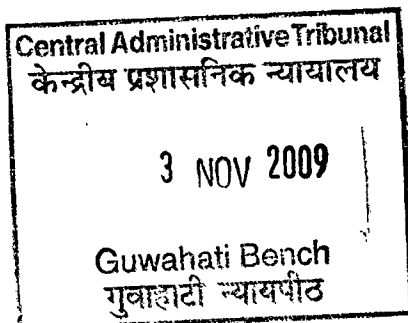
INDEX

Sl. No.	Particulars	Page No.
1.	Body of the application-----	1-19
2.	Verification-----	20
3.	Annexure-A-----	21
4.	Annexure-B-----	22
5.	Annexure-C-----	23-29
6.	Annexure-D-----	30
7.	Annexure-E-----	31-35
8.	Annexure-F-----	36
9.	Annexure-G-----	37
10.	Annexure-H-----	38-40
11.	Annexure-I-----	41
12.	Annexure-J-----	42-43
13.	Annexure-K-----	44-45
14.	Annexure-L-----	46-47
15.	W/S	48-59

Filed by
Malabika Pathak.
Advocate

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: AT GUWAHATI

O.A. NO. 228 /2009



Sri Bikash Roy, son of Late
Haripada Roy, resident of Village
Pub-Kandulimari, P.O. Jugijan
Bazar, PIN- 782429, P.S. Hojai,
District-Nagaon, Assam,

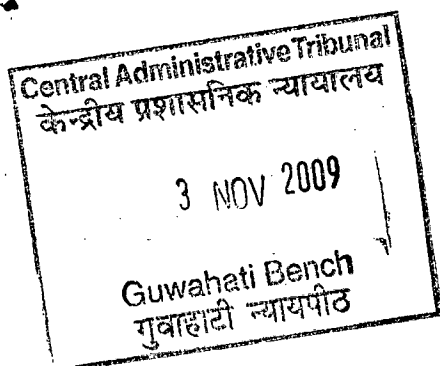
-----Applicant

-VS-

1. The Union of India,
represented by the Secretary to
the Ministry of Railway, Govt. of
India, 'Rail Bhawan', New Delhi-
110001,
2. N.F. Railways represented by
The General Manager, N.F. Railway,
Maligaon, P.O. Maligaon, Guwahati-
781011, District- Kamrup (M), Assam,
3. The Divisional Railway
Manager (DRM), N.F. Railway,
Lumding, PIN- 782447, District-
Nagaon, Assam,
4. The Additional Divisional
Railway Manager (the Appellate
Authority), N.F. Railway, Lumding,
PIN 782447, District- Nagaon,
Assam

Filed by - Malabya Pathak
Advocate
On behalf of the applicant
03/11/09

Bikash Roy



5. The Senior Divisional Operational Manager (Sr.DOM), N.F. Railway, Lumding, PIN- 782447, District- Nagaon, Assam,

6. Shri Madhukar Roat, the then Senior Divisional Operational Manager (Sr.DOM), N.F. Railway, Lumding, PIN- 782447, District- Nagaon, Assam,

7. The Assistant Operations Manager (Goods), Inquiry Officer, N.F. Railway, Lumding, PIN- 782447, District- Nagaon, Assam,

8. Shri A.K.Dey, the then Assistant Operations Manager (Goods), Inquiry Officer, N.F. Railway, Lumding, PIN- 782447, District- Nagaon, Assam,

-----Respondents

DETAILS OF APPLICATION

1. Particulars of orders against which this application is made

(A) Appeal Order No. T/MISC/LM/TD(BR), dated 13/10/2008 passed by the Additional Divisional Railway Manager, the appellate authority N.F. Railway, Lumding upholding the order of imposition of penalty of removal from service imposed by the Disciplinary Authority against the applicant (Annexure- L , Page- 46)

Arindam Roy

(B) Order No. T/MISC/LM/TD/(BR), dated 29/08/2008 passed by the Senior Divisional Operations Manger(Disciplinary Authority), Lumding Division, N.F. Railway, whereby the applicant was removed from service with immediate effect. (Annexure- 3, page- 42.)

2. Jurisdiction of the Tribunal

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

3. Limitation

This application is barred by twenty days delay. Hence a separate petition is filed, along with this application, under section 21(3) of the Administrative Tribunals Act, 1985 for condonation of twenty days delay.

4. Facts of the Case

(A) That the father of the applicant Late Haripada Roy who was an employee of N.F. Railway while working as Station Master died-in-harness on 24/06/1999. As the father of the applicant was the sole bread winner after his death the family of the applicant was put in acute financial hardships. To overcome this hardships the applicant filed application before the Railway Authority for his compassionate appointment in a suitable post considering his educational qualifications.

It is to be mentioned that the applicant passed the HSSLC examination in the year 2001 and also completed stenography course under the "Assam Institute of Professional Studies", Hojai, Nagaon in the year 2001, and was awarded certificate of proficiency in stenography after successful completion of the course.

Arindam Roy.

(B) That the Railway Authority to select and appoint suitable candidates on compassionate ground constituted a Selection Board with highly experienced and senior officials of the department Viz. The Divisional Railway Manager(Personnel)/Lumding, The Senior Divisional Personnel Officer, The Divisional Personnel Officer etc. The Selection Board Conducted a selection test amongst the candidates who applied for compassionate appointment. The selection test was consisting of written test, practical test and viva-voce. As the applicant performed well in the entire selection test he was finally selected and his name was appeared in the final select/merit list published by the selection board amongst the other successful candidates who applied for compassionate appointment.

Accordingly vide office order dated 10/04/2003, the applicant was appointed to the post of stenographer/Grade III and was posted under Senior Divisional Operations Manager/Lumding (Sr. DOM/LMG in short) vice Sri Rupendra Chakraborty, Stenographer/Grade II, and applicant joined in the said post on 11/04/2003.

A copy of the appointment letter dated 10/04/2003 is annexed and marked as Annexure- A.

(C) That since the date of joining as stenographer/Gr.III the applicant has been discharging his duties to the satisfaction of all concerned more particularly to his controlling officer, i.e. respondent No. 5. His utmost devotion and sincerity in discharging his duties made no room for any complaint in regard to his performance of official duties. In this way he has completed two years service, i.e. the probation period, as stenographer/Gr.III under Sr. DOM/LMG, respondent No. 5, till June/2005. And during this period of two years there was no whisper of dissatisfaction or complaint on the part of the Sr. DOM who is the controlling officer of the applicant, in regard to the performance of the applicant.

Amirash Roy.

It is to be ~~mentioned~~ that the applicant smoothly worked/discharged his duties under two other Sr. DOM namely Sri Lakshwar Saikia and Sri A.K. Jagannathan, for more than one and half years before working under Sri Madhukar Roat, Sr. DOM, the respondent No.6 herein. The earlier two Sr. DOM had never objected/complained of about the performance of the applicant. Similarly Sri Madhukar Roat, respondent No.6, had also no occasion to complain about the performance of the applicant. Thus having completed the probationary period successfully the applicant continued in service as a regular employee.

(D) That while working smoothly with/under his controlling officer, respondent No. 5/6, suddenly on 30/06/2005 the applicant was called by the **Divisional Railway Manager (DRM in short)**, Lumding, the respondent No. 3, to his official chamber to take dictation. Accordingly the applicant appeared in the official chamber of DRM, respondent No. 3, at about 11.30 AM to take dictation. It was the first instance/experience since the date of joining of the applicant as stenographer/Grade III that he was ever called by such a senior most officer/head of Lumding Division to take dictation. During his just two years service experience as stenographer he was never given dictation by such a higher grade officer/head of Lumding Division. However, the initial appointment of the applicant was as stenographer/Grade III, and the officers like the respondent No. 3 used to give dictation to stenographer/Grade I, who are more experienced and senior in rank. Therefore the applicant felt some extent of nervousness when he was called by the DRM/Respondent No. 3 to take dictation. Nevertheless, with the sense of obedience and responsibility the applicant took the dictation given by Mr. M.S. Sharma/DRM/Respondent No. 3 on the subject matter of "ensuring better availability and utilization of M.G. Hopper Wagons", with utmost attention and sincerity.

Mr. Laksh Roy.

But unfortunately as the applicant could not follow properly some pronunciation of Sri M.S. Sharma, i.e. respondent No.3, during the dictation some unintentional mistakes crept in the note recorded by the applicant in shorthand. However, the nervousness of the applicant also affected his performance to some extent.

After completion of the dictation the application was asked to make a draft typing of the note recorded in shorthand. Accordingly the applicant typed the note in computer and presented the printed draft before the DRM/Respondent No. 3. At the very time of delivering the printed draft the applicant humbly stated the DRM/respondent No.3 that there may appear some unintentional mistakes in writing the note as he could not understand/follow some pronunciation during dictation. He also requested the respondent No. 3 for a proof reading of the draft so that he could correct the mistakes. And the respondent No.3 assuring the proof reading released the applicant from his chamber.

Prakash Roy

(E) That after a week from the date of giving dictation by DRM/respondent No.3, the applicant was taken a back when he was served a letter dated 08/07/2005 issued by the Sr.DOM/LMG, respondent No. 5/6, the immediate controlling officer of the applicant, which was received on 11/07/2005. By the said letter the applicant was asked to give explanation as to why no action should be taken against him for not being able to take dictation from DRM/Lumding, i.e. respondent No.3, on 30/06/2005. It was also mentioned in the said letter to the effect that the applicant was counseled several times for improvement in dictation as well as drafting letter but no improvement was seen. And that personal counseling and practice dictation was also given to him, but no improvement was seen.

Thereafter, the applicant filed his detail explanation in reply to the said letter before the authority on 26/07/2005. By his explanation the applicant placed the real/true facts about the allegations leveled against him vide letter dated 08/07/2005.

It is to be mentioned that the applicant was never counseled by any one during the period of two years from the date of his joining for improvement his dictation as well as drafting letter as it was alleged in the letter dated 08/07/2005. As it is already stated that before working under Sri Madhukar Roat, Sr.DOM, the respondent No.6, the applicant worked under two other Sr. DOM who never complained about the performance of the applicant. However there is no any office record which reveals that Sri Madukar Roat, Sr. DOM/LMG, had ever counseled the applicant for improvement in dictation as well as drafting letter. No personal counseling as well as practice dictation was also ever given to the applicant for his improvement as it is mentioned in letter dated 08/07/2005.

A copy of the letter dated 08/07/2005 is annexed as **Annexure-B**.

(F) That the applicant duly filed his explanation on 26/07/2005 as asked for by the respondent authority. But they did not consider the explanations of the applicant and issued the charge sheet just two days thereafter, i.e. on 28/07/2005, and a copy of the Memorandum of Charge Sheet was delivered to the applicant on the same day.

The charge Memorandum vide No. T/MISC/LM/TD(BR), dated 28/07/2005 was issued by Sri Madhukar Roat, Sr. DOM, the respondent No.6, who was immediate controlling officer of the applicant. In the statement of articles of charge it was stated that the applicant is charged for violation of

41
Mukesh Roy.

3 NOV 2009

-8-

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

Rule No. 3.1(ii) and 3.1(iii) of the Railway Service (Conduct) Rules, 1966. In the statement of imputations of misconduct or misbehavior in support of the articles of charge framed against the applicant it was stated as follows-

"It appears from the NOTE of DRM/LMG bearing No. LMG/DRM/71.40, dated 30/06/05 that on 30/06/2005 one small dictation was given by DRM/LMG to you. During dictation it was noticed by DRM/LMG that you are incapable of taking dictation in shorthand. On producing the draft of the note dictated, it was further noticed that you have made various mistakes in typing.

It is to be mentioned here that Sr. DOM counseled you several times for improvement in dictation as well as drafting letter but no improvement is seen. Moreover, Sr. DOM also gave personal counseling and practice dictation to you. But after constant effort no improvement is seen"

In the charge Memorandum though there was list of documents by which the charge leveled against the applicant was sought to be proved, but there was no any name of witnesses mentioned in the charge sheet. On delivering the copy of the charge sheet the applicant was also informed that Sri T. Medhi, AOM(C)/LMG has been appointed as Inquiry Officer who will conduct the inquiry. Along with the charge sheet the applicant was also served a copy of the office note dated 30/06/05 of DRM/LMG, the respondent No.3, to Sr. DOM, the respondent No.5, and the copy to the draft note written by the applicant.

A copy of the Memorandum of Charge Sheet dated-28/07/05 is annexed and marked as **Annexure-C**.

52
Anikash Roy-

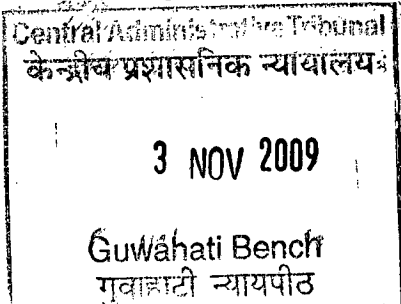
(G) That after receipt of the charge sheet the applicant filed his written statement of defense. In his written statement the applicant stated that on 30/06/05 due to his nervousness he could not take dictation correctly which was given by DRM/LMG, respondent No.3. It was his first day/experience that he was called by DRM/LMG, who is the head of Lunding Division, to take dictation. The applicant never before took dictation from DRM/LMG as the applicant was a Grade III Stenographer, and normally Grade-I stenographers who are more experienced used to take dictation from DRM, the respondent No.3.

It is to be mentioned that as it was his first day with DRM/LMG he could not follow properly some pronunciation of DRM/LMG during dictation and also because of some amount of nervousness on his part some unintentional mistakes crept in while taking dictation in shorthand.

It is further to be mentioned that after commencement of the inquiry the applicant was not debarred from attending office and discharge his normal duties as stenographer. The applicant regularly attended the office and put his signatures on office attendance roll. He also discharged his normal official duties as stenographer till his removal from service on 29/08/08.

(H) That though Sri T.Medhi, AOM(C)/LMG was appointed as Inquiry Officer he never asked/called the applicant to any sittings of the inquiry. The applicant was completely in dark about the proceedings of the Inquiry Officer Sri T. Medhi. Although subsequently it was learnt that the said Inquiry Officer submitted a report behind the back of the applicant. However, the respondent authority never informed about the findings of the Inquiry Officer and the reason thereof is best known to them.

143
Anil Kash Ray.



(I) That on 19/10/06 the applicant was served a letter issued on the same day by Sri Madhukar Roat, Sr.DOM, the respondent No.5/6, whereby it was informed to the applicant that, due to some procedural informalities the Major Charge Memorandum No.T/MISC/LM/TD(BR), dated 28/07/05 issued against the applicant is treated as cancelled. And that the Disciplinary Authority i.e. respondent No. 5, reserves its right to issue a fresh charge sheet on the same allegation.

A copy of the letter dated 19/10/06 is annexed and marked as **Annexure-D.**

(J) That after five days Sri Madhukar Roat, Sr. DOM/LMG, respondent No. 5/6, issued a fresh/second charge sheet vide no.T/MISC/LM/TD(BR), dated 25/10/06. Although the contents of the earlier charge sheet dated 28/07/05 and the second charge sheet dated 25/10/06 were same, the disciplinary authority added a new paragraphs in Article-I of Annexure-I of the second/fresh charge sheet. The added paragraph in the second charge sheet is as follows-

" That the said Sri Bikash Roy, while functioning as Steno to Sr.DOM/LMG on 30/06/05, Shri Roy was given a small dictation by DRM/LMG on 30/06/05. During dictation it was noticed by DRM/LMG that Shri Roy was incapable of taking dictation in shorthand. On producing the draft of the note dictated, it was further noticed by DRM/LMG that Shri Roy have made various mistakes in typing."

In the second charge sheet also the disciplinary authority did not mention any list of witnesses by whom the charge leveled against the applicant was sought to be proved.

A copy of the charge sheet dated- 25/10/06 is annexed and marked as **Annexure-E.**

Bikash Roy.

3 NOV 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

-11-

(K) That though it was asked to file defense statement by the applicant in the second charge sheet the applicant did not file the same as his explanation was the same as it was stated in the earlier defense statement submitted in response to the first charge sheet.

(L) That to conduct the inquiry in relation the second charge sheet Shri A.K. Dey, AOM(G)/LMG was appointed as the Inquiry Officer for second time. The first sitting of the departmental proceeding was fixed on 15/02/08 at 11 A.M. in the official chamber of the Inquiry Officer and the applicant was asked to attend the inquiry vide letter dated 06/02/08. On the day fixed the applicant after signing the attendance roll of daily duty went to appear before the Inquiry Officer at 11 AM. But the Inquiry Officer asked the applicant to go back keep on working his normal duties and that he will call the applicant when he will sit for enquiry. Accordingly the applicant came back to his place of work and was discharging his normal duties waiting for the call from Inquiry Officer which never came.

(M) That the second sitting of the enquiry/departmental proceeding was fixed on 17/04/08 at 11 AM in the official chamber of the Inquiry Officer and the same was informed to the applicant vide letter dated 31/03/08. On the day fixed though the applicant was present in the office he was not spared by his controlling officer, i.e. respondent No. 5/6, therefore the applicant could not attend the departmental inquiry on that day.

(N) That the third sitting of the departmental proceeding was fixed on 30/05/08 which was informed to the applicant vide letter dated 22/05/08. Accordingly the applicant on the specified day and time of the third sitting appeared before the Inquiry Officer at 11 AM. On his appearance the Inquiry Officer straight way asked him some questions one by one and he answered those questions.

Prakash Ray

His signature was obtained in the questionnaire and the Inquiry Officer then closed the departmental proceeding. Neither any witness examined nor any record/document produced and/or considered by the Inquiry Officer to prove the charge leveled against the applicant. The Inquiry officer did not give any opportunity to the applicant to prove his case and no date was fixed for defense evidence etc. There was no presenting officer and the Inquiry Officer himself played the role of the presenting officer as well as the Inquiry Officer. There was virtually no enquiry worth the name and the applicant's proficiency was not at all tested by the Inquiry officer.

It is pertinent to mention here that 29/05/08 i.e. one day preceding the third sitting of the departmental proceeding the Inquiry Officer Shri A.K. Dey, respondent No.8 came to the chamber of the respondent No. 5/6, Sri Madhukar Roat, the controlling officer of the applicant, and called the applicant before them and they exhorted upon the applicant that if the applicant accept the charges leveled against him it would be ended with a minor penalty, otherwise the departmental proceeding will continue for long time and that there is pressure from high ups to complete the departmental proceeding early. On being so influenced the applicant answered the questions put to him on 30/05/08 in affirmative, otherwise he would not have accepted the charges voluntarily.

A copy of the questionnaire dated 30/05/08 is annexed and marked as Annexure-F.

(O) That vide letter dated 14/07/08 the applicant was served a copy of the Inquiry Report submitted by the Inquiry officer dated 18/06/08. It was also advised to the applicant to file his representation within 15 days from

46

Shrikash Roy

3 NOV 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

-13-

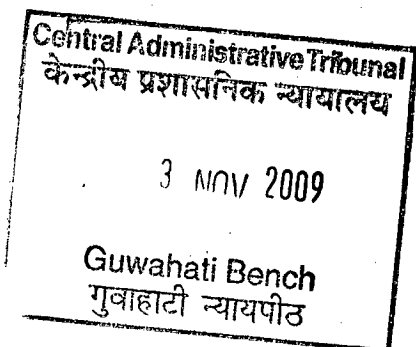
the date of receipt of the inquiry report. From the said inquiry report it transpired that the earlier Inquiry Officer Shri T.Medhi, AOM(C)/LMG also submitted his enquiry report vide dated 14/07/06 which was mentioned in the present report which was considered by the second Inquiry officer Shri A.K.Dey, respondent No.8. But the report was not brought to the notice of the applicant at any point of time. Neither the same was before the Inquiry officer on the third/last day of the inquiry.

In the findings of the report it is stated that the applicant had failed in taking dictation in shorthand which was dictated by DRM/LMG, respondent No.3, on 30/06/05 and also made several mistakes in typing of the draft dictated, which the applicant has admitted in his reply to Q.No.4 due to nervousness. Therefore the Inquiry Officer gave opinion that the charge of violation of Railway(conduct)Rule No. 3.1(ii) and 3.1(iii) of 1966 as brought against the applicant steno to Sr.DOM/LMG in the Major Memorandum No.T/MISC/LM/TD(BR) dated 25/10/06 is found justified.

Copies of the letter dated 14/07/08 and the enquiry report dated 18/06/08 are annexed and marked as **Annexure- G and h** respectively.

(P) That after receipt of the enquiry report on 14/07/08 the applicant on the same day filed his representation before the Sr.DOM/LMG, the respondent No.5/6, upon the said report. In his representation the applicant reiterated that on 30/06/05 due to his nervousness he could not take dictation correctly which was given by DRM/LMG, the respondent No.3. He also conveyed his assurance to the effect that he has improved himself and can take dictation in shorthand without any mistake in typing also and assured that the mistake will never occur in future.

47
Anirash Roy



-14-

A copy of the representation dated 14/07/08 is annexed and marked as Annexure-I.

(Q) That the Disciplinary Authority vide its order dated 29/08/08 imposed penalties on the applicant on the basis of the enquiry report dated 18/06/08. By the said order of penalty the applicant was removed from service with immediate effect. In the penalty order it is stated as follows-

" Inquiry officer in his enquiry report given finding that 'Sri Bikash Roy, steno to Sr.DOM/LMG had failed in taking dictation in shorthand which was dictated by DRM/LMG on 30/06/05 and also made several mistakes in typing of the draft of dictation'. So Inquiry Officer found that charge of violation of railway service (Conduct) Rule No.3.1(ii) and 3.1(iii) of 1966 brought against Sri Bikash Roy, Steno to Sr.DOM/LMG is proved.

Enquiry report was given to Sri Roy on 14/07/08. And Sri Roy has given his final defense. He again reiterated in the defense about the nervousness while taking dictation from DRM/LMG.

Sri Bikash Roy was appointed as Stenographer on 11/04/2003 on compassionate ground. Sri Roy could not take dictation in shorthand on 30/06/05 even after passing of two years service in the capacity of Stenographer. His defence is not satisfactory. He does not deserve to hold the post of Stenographer."

A copy of the order dated 29/08/08 is annexed and marked as Annexure-J.

(R) That the applicant on 10/09/08 preferred an appeal before the Additional Divisional Railway Manager,

Bikash Roy

3 NOV 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

-15-

the respondent No.4, against the penalty order dated 29/08/08 praying for exonerating him from the punishment of removal from service as he was appointed on compassionate ground after sudden expiry of his father. He also pleaded that he could not follow the dictation of DRM/LMG on 30/06/05 properly due to his sudden feeling of sickness arising out of nervousness as it was his first day of taking dictation from such a higher rank officer/head of the Lumding Division.

But the appellate authority vide its order dated 13/10/08 rejected the appeal and upheld the order of penalty dated 29/08/08. The appellate authority without going into factual detail of the matter unjustifiably observed that it has been proved that the applicant was not capable of taking dictation in shorthand. Since the applicant is incapable of taking dictation in shorthand, he does not deserve to hold the post of stenographer.

Copies of the appeal dated 10/09/08 and appeal order dated 13/10/08 are annexed and marked as **Annexures-K and L** respectively.

5. Ground for relief with legal provision:

A. For that the impugned order of removal from service dated 29/08/08 is bad in law, arbitrary, unjust and can not sustain a judicial scrutiny.

B. For that the so called charge of misconduct brought against the applicant does not legally constitute a misconduct and it is not a misconduct at all under the Railways Services(Conduct)Rules,1966, in as much as the applicant attended his duty with full dedication and devotion all through out his service period and also

20
Anil Kashyap

3 NOV 2009

-16-

Guwahati Bench

maintained absolute integrity in service. The allegations as mentioned in the statement of imputation do not constitute any misconduct and the authority committed a serious mistakes of law and fact in imposing the penalty on the so called charge of misconduct.

C. For that there was no fair inquiry and the so called departmental inquiry was no inquiry at all in the eye of law.

D. For that the Inquiry Officer acted under the influence of the complainant DRM/LMG, the respondent No. 3, and closed the inquiry virtually on the vary first day of its holding to the utter prejudice of the applicant.

E. For that there was no enquiry worth the name. No document, no witness were examined on behalf of the Railway Authority and the provision of Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 were given a total go bye.

F. For that the Inquiry Officer acted illegally and with material irregularity as he himself acted as the prosecutor as well as the judge of the Inquiry Proceeding.

G. For that no proof/evidence was produced before the Inquiry Officer and the applicant got no opportunity to cross-examine the complainant/departmental witness. Hence there is no material/evidence on record to substantiate the charges so leveled against the applicant.

H. For that the Inquiry Officer to satisfy his higher authority, i.e Divisional Railway Manager, the respondent No. 3 (who is the complainant in this case) with the help of the controlling officer of the applicant influenced and pressurized the applicant to act according to them and put the answers to the questions into the mouth of the applicant to suit there purpose and thus mislead the applicant.

50
Aniruddh Roy

2 NOV 2009

-17-

Guwahati Bench

J. For that there is no proof to establish that the applicant was repeatedly warned to improve his work or that he lacks proficiency in stenography, when the facts reveals that his services as a stenographer was utilized by the authority till his removal.

K. For that the appellate authority failed to exercise its jurisdiction properly and mechanically upheld the order of punishment. It has failed to consider that there was gross violation of procedural provision in the departmental enquiry and that the entire disciplinary proceeding was vitiated by illegality and irregularity.

L. For that the appellate authority also failed to consider that there was no evidence/proof on record to warrant the findings recorded by the disciplinary authority.

M. For that the appellate authority also failed to consider that the so called charge of misconduct is no misconduct in the eye of law and that the applicant can not be penalized with a major penalty for the so called misconduct.

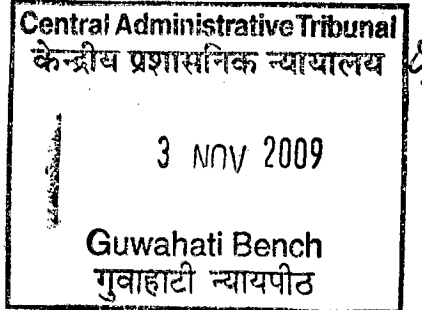
N. For that the appellate authority also failed to consider that the punishment is not only illegal, unjust and unfair but is also highly excessive and totally unfounded.

O. For that the impugned punishment can not be sustained in law as the same is whimsical, arbitrary, unjust and vindictive in nature.

6. Details Of Remedies Exhausted

Appeal dated 10/09/2008 before the Additional Divisional Railway Manager (Appellate Authority), Lumding, the respondent No.4 herein, which was disposed of vide order dated 13/10/2008.

Hikash Roy



7. Matter not pending with any Court

The applicant declares that there is no case pending before any other court/tribunal in this regard.

8. Relief Sought For

In the above facts and circumstances the applicant respectfully prayed that-

A. the impugned appeal order dated 13/10/2008 (Annexure-L), passed by the respondent No. 4 upholding the order of imposition of penalty of removal from service imposed by the Disciplinary Authority against the applicant, may be set aside and quashed ; and

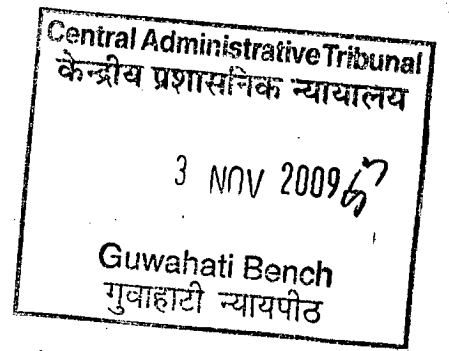
B. the impugned order of imposition of penalties dated 29/08/2008 (Annexure- J), passed by the Disciplinary Authority, the respondent No.5, whereby the applicant was removed from service with immediate effect, may be set aside and quashed ; and

C. the respondent authorities be directed to reinstate the applicant in his original post of stenographer with all service benefits.

9. Interim Relief:

It is further prayed that pending final decision in this case the respondents authority kindly be directed not to fill up the post which fall vacant due to removal of the applicant.

Arish Roy



10. Particulars of Postal Order:

IPO No : 39 G - 438735

Date of issue : 03/11/09

Issued from : GPO, Guwahati

Payable at : Guwahati

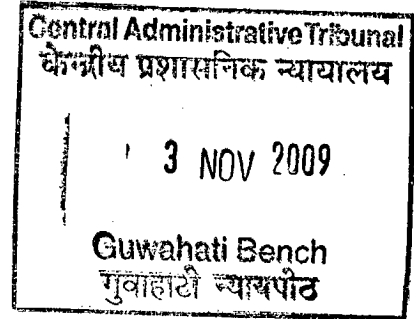
11. List of Enclosures

As per Index.

VERIFICATION

Aakash Roy

- 20 -



VERIFICATION

I, Sri Bikash Roy, aged about 28 years, son of Late Haripada Roy, resident of village Pub-Kandulimari, P.O. Jugijan Bazar, PIN- 782429, P.S. Hojai, District- Nagaon, Assam do hereby declare that I am the applicant in the instant application before this Hon'ble Tribunal and also hereby solemnly affirm and verify that the statements made in the paragraphs of the accompanying application are true to the best of my knowledge, belief and information and I have not concealed anything materials there from.

o

And I put my signature unto this verification on this 3rd day of November, 2009 in Guwahati.

Bikash Roy.

Signature of the applicant

OFFICE ORDER.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

3 NOV 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

Office of the
DRM(P)/LMG.
Dtd: 10/4/2003.

In terms of this Office letter No. E/227/1/LM/Comp(W), Gr.'C' dtd: 9.4.2003, Sri Bikash Roy (UR), S/O. Lt. Haripada Roy, Ex.SM/ DHRY is hereby temporarily appointed to the post of Stenographer/ Gr.III in scale Rs.4000 – 6000/-, on Compassionate ground and as agreed to by Sr.DOM/LMG, he is posted under Sr.DOM/LMG vice Sri Rupendra Chakraborty, Stenographer/ Gr.II in Scale Rs.5000 – 8000/- under order of transfer to HQ, on pay Rs.4000/- Plus usual allowances as admissible from time to time on usual terms and conditions as stated below:-

(a). You will be on probation for a period of two years subject to condition that you will have to qualify in stenography test as per prescribed forms within a period of two years from the date of apptt.

(b). You will liable to be discharged without any notice of termination of services in the event of return of permanent incumbent from leave or the expiry of the temporary sanction of the post to which you are appointed or to your mental or physical incapacity or removal or dismissal from service for misconduct.

(c). If the termination of your service is due to some other causes you will be entitled to a notice of 14 days in lieu thereof.

(d). You will not be entitled to any grain , grainshop concession of facilities. No provision of Rly. Qrs. is guaranteed.

(e). You will not be eligible for any benefit except those admissible to temporary employees under rules in force from time to time.

(f). Your seniority will be determined as per provision of para 15 of MC – 34 contained in Board's Letter No. E(NG) I/90/SR6/51, dated: 10.7.97.

(S.N.ROY)
DPO/LMG
For DRM(P)/LMG

No.E/283/30/LM(Q) Pt.II, Dtd: 10.4.2003.

Copy forwarded for information and necessary action to :-

(1). GM(P)/MLG. (2). SPO(RP)/MLG (3). Sr.DOM/LMG. (4). DFM/LMG.

(5). COS/ET Cadre at Office with necessary documents of apptt. and M/C. bearing No.46/03, dtd: 8.4.2003 of Sri Bikash Roy to issue formal apptt. Letter. The date of joining of Sri Roy should be intimated to OS/EQ at office for record.

DA= As stated.

(6). OS/ET. Bill Sec. at Office. (7). Candidate concerned at office to report to COS/ET Cadre at office. (8). Copy for P/Case.

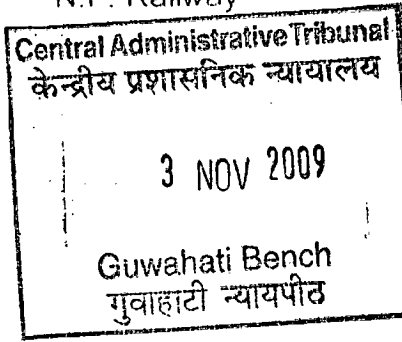
For DRM(P)/LMG

Certified by true copy
Advt
Date

-22-

N.F. Railway

Annexure - B



Divisional Office
Operations Branch
Lumding

Date: 08.07.2005

56

No. T/MISC/LM/TD (BR).

To,
Shri Bikash Roy,
Steno to Sr.DOM/LMG, at Office.

Sub: Explanation.

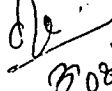
On 30.6.05, one small dictation was given by DRM/LMG to you. During dictation it was noticed by DRM/LMG that you are incapable of taking dictation in shorthand. On producing the draft of the note dictated, it was further noticed that you have made various mistakes in typing.

It is to mention here that you were counseled several times for improvement in dictation as well as drafting letter but no improvement is seen. Moreover, personal counselling and practice dictation was also given to you. But after constant effort no improvement is seen.


You are advised to explain as to why no action should be taken against you for not being able to take dictation in shorthand as well as not being able to produce a draft with reasonable correctness.

Your explanation should reach within 07 days of receipt of this letter.


(Madhukar Roat)
Sr.DOM/LMG


08/07/05


11/07/05

Certified by true copy

Advocate.

23 -
STANDARD FORM OF CHARGE SHEET

Annexure - C
STANDARD FORM No.5.

(Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968).

No. T/MISC/LM/TD (BR).

Dated: 18/07/2005

Name of Railway Administration: N.F. Railway.
Place of issue: DRM(O)/LMG's Office.

MEMORANDUM

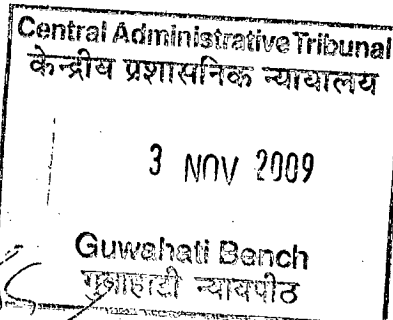
The Undersigned propose(s) to hold an inquiry against Shri Bikash Roy, Steno to Sr.DOM/LMG under Rule 9 of the Railway servants (Discipline & Appeal) Rules, 1968. The substance of imputations of misconduct or misbehavior in respect of which the inquiry is proposed to be held is sent out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of misconduct or misbehavior in support of each articles of charge is enclosed (Annexure-II). A list of documents by which, under list of witness are also enclosed (Annexure-III & IV), further, copies of documents mentioned in the list of documents, as per Annexure-III are enclosed.

2.* Shri Bikash Roy, Steno to Sr.DOM/LMG is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents(Annexure-III) at any time during office hours within ten days of receipt of this Memorandum immediately on receipt of this Memorandum. For this purpose he should contact** undersigned immediately on receipt of this Memorandum.

3. Shri Bikash Roy, Steno to Sr.DOM/LMG is further informed that he may, if he so desired, take the assistance of any other Railway servant an official of Railway Trade Union (who satisfies the requirements of Rule 9 (13) of the Railway servants (Discipline & Appeal) Rules, 1968, and Note 1 and 7 or Note 2 there under as the case may be) for inspecting the documents and assisting him in presenting his case before the Inquiry Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Railway servant or Railway Trade Union official(s), Shri Bikash Roy, Steno to Sr.DOM/LMG should obtain an undertaking from the nominee(s) that he (they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case(s) if any, in which the nominee(s) had already undertaken to assist and the undertaking should be along with the nomination.

4. Shri Bikash Roy, Steno to Sr.DOM/LMG is hereby directed to submit to the undersigned a written statement of his defence (which should reach to the undersigned within Ten days of receipt of this Memorandum, if he does not require to inspect any for the preparation of his defence, and within ten days after completion of inspection of documents, and also (a) to state whether he wishes to be heard in person, and (b) to furnish the names and addresses of the witnesses if any whom he wishes to call in support of his defence

Certified by true copy
M. S. Sate



(Madhukar Roat)
Sr. DOM/LMG
Contd... P/2..

5. Shri Bikash Roy, Steno to Sr.DOM/LMG is informed that an inquiry will be held only in respect of those articles of charges as are not admitted. He should, therefore, specifically admit or/dely each articles of charge.

6. Shri Bikash Roy, Steno to Sr.DOM/LMG is further informed that if he does not submit his written statement of defence within the period specified in para 2 or does not appear in person before the inquiring authority or otherwise fails to refuse to comply with the provisions of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquire ex-parte.

7. The attention of Shri Bikash Roy, Steno to Sr.DOM/LMG is invited to Rule 20 of the Railway services (conduct) Rules, 1966, under which no Railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of any matters pertaining to his service under the Govt. 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 Bikash Roy, Steno to Sr.DOM/LMG 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, 20 of the Railway Services (Conduct) Rules, 1966.

8. The receipt of this Memorandum may be acknowledged.

/ _ By order and in the name of the President.

Signature:

(Madhukar Roat)
Sr.DOM/LMG

(Name & Designation of the Competent Authority).

To,

Shri Bikash Roy, Steno to Sr.DOM/LMG (at Office).

@ Copy to (Name & Designation of the sending authority) for information.

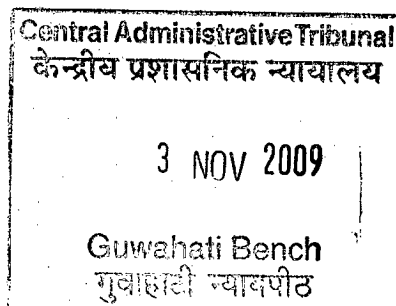
/ _ Strike out which ever is not applicable.

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

** Name of the authority. This would imply that whenever a case is referred to the Disciplinary Authority by the investigating authority or any authority who are in the custody of the listed documents or who would be arranging for inspection of the documents to enable that authority being mentioned in the draft Memorandum.

To be retained wherever President or the Railway Board is the Competent Authority.

@ To be wherever applicable SEE Rule 16(I) of the R.S(D&A) Rules, 1968 not to be inserted in the copy sent to the Railway Servant.



1/2
B. 28/11/09

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ANNEXURE TO STANDARD FORM NO. 5.

MEMORANDUM OF CHARGE SHEET.

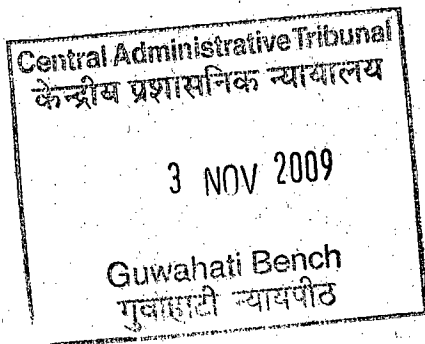
Under Rule-9 of RS (D&A) Rules, 1968.

ANNEXURE-I

Statement of articles of charge framed against Shri Bikash Roy, Steno to Sr.DOM/LMG (Name & Designation of the Rly. Servant).

ARTICLE-I

That the said Shri Bikash Roy, Steno to Sr.DOM/LMG is charged for violation of Rule No. 3.1 (ii) & 3.1 (iii) of the Railway Service (Conduct) Rules, 1966.

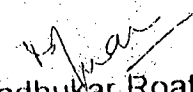


ARTICLE-II

Nil

ARTICLE-III

Nil


(Madhukar Roat)
Sr.DOM/LMG

Contd....4

Statement of imputations of misconduct or misbehavior in support of the articles of charge framed against Shri Bikash Roy, Steno to Sr.DOM/LMG (Name and Designation of the Railway Servant).

ARTICLE-I

It appears from the NOTE of DRM/LMG bearing No. LMG/DRM/71.40, dated: 30.06.2005 that on 30.6.05, one small dictation was given by DRM/LMG to you. During dictation it was noticed by DRM/LMG that you are incapable of taking dictation in shorthand. On producing the draft of the note dictated, it was further noticed that you have made various mistakes in typing.

It is to be mentioned here that Sr.DOM counseled you several times for improvement in dictation as well as drafting letter but no improvement is seen. Moreover, Sr.DOM also gave personal counselling and practice dictation to you. But after constant effort no improvement is seen.

Moreover, you were called for an explanation regarding your not being able to take dictation in shorthand as well as not being able to produce a draft with reasonable correctness, vide letter No. T/MISC/LM/TD (BR), dated: 08.07.2005 and the letter was duly received by you on 11.07.05. But you have failed to submit your explanation within stipulated time (i.e. 07 days).

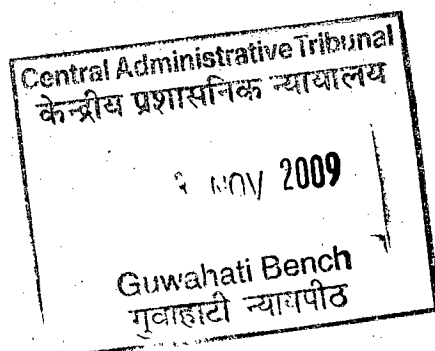
From the above facts it is found that you have no competency in taking dictation in shorthand. Being a Steno of a Branch Manager who deals all the confidential matters of a respective department this is a serious misconduct on your part, showing your irresponsibility and it tantamount to lack of devotion to your duty and unbecoming of a Railway servant on your part and thus contravened Rule No. 3.1 (ii) & 3.1 (iii) of Railway service (Conduct) Rules, 1966.

ARTICLE-II

NIL

ARTICLE-III

NIL



(Madhukar Roat)
Sr.DOM/LMG

27

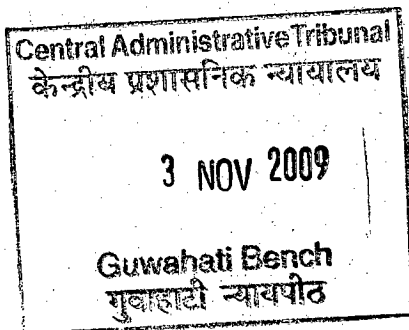
List of documents by which the articles of charge framed against Shri Bikash Roy, Steno to Sr.DOM/LMG (Name & Designation of the Railway Servant) are proposed to be sustained: -

1. DRM/LMG's NOTE No. LMG/DRM/71.40, dated: 30.06.2005.
2. Copy of Draft Office Note regarding Ensuring better availability and utilization of MG Hopper wagons.
3. Letter No. T/MISC/LM (TD), dated: 08.07.2005.

ANNEXURE-IV

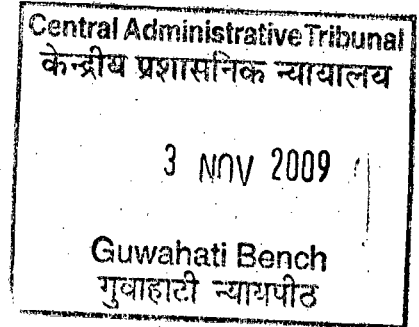
List of witnesses by whom the articles of charge framed against Shri Bikash Roy, Steno to Sr.DOM/LMG (Name & Designation of the Railway Servant) are proposed to be sustained.

Nil.



(Madhukar Roat)
Sr.DOM/LMG

-28-



N. F. RAILWAY

No.LMG/DRM/71.40

Office of the,
Divisional Railway Manager,
Lumding, Dated: 30.06.2005.

NOTE

Sub: - Incompetence in taking dictation in shorthand by
Shri Bikash Roy, Steno.

On 30.6.05, one small dictation was given to Shri Bikash Roy, Steno to Sr.DOM. During dictation it was noticed that Shri Bikash Roy is incapable of taking dictation in shorthand. On producing the draft of the note dictated, it was further noticed that he has made various mistakes in typing.

A copy of the dictation taken by Shri Bikash Roy (in longhand) as well as the draft of the note dictated, produced by the above employee is enclosed herewith.

You are advised to call for the explanation from Shri Bikash Roy as to why no action should be taken for his not being able to take dictation in shorthand as well as not being able to produce a draft with reasonable correctness. His explanation should reach within 10 days of the receipt of this note by him.

DA: As above.



(M.S.SHARMA)
DRM/LMG.

~~Sr.DOM~~

OFFICE NOTE
No. ~~21740~~ DRO/ENG/71-70.

and 29 -

Sub. - Lincoln Nov 24/93

- ix)
- 

To,
 Sr.DME (IC), Sr.DOM & Sr.DEN(C) ^{for} should take necessary action as the above.

Item

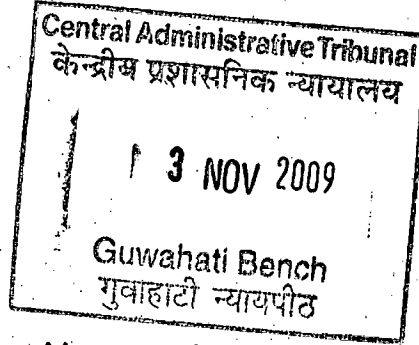
Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
3 NOV 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

30 -
N.F. Railway

Annexure - D - 61

No. T/MISC/LM/TD (BR).

To,
Shri Bikash Roy,
Steno to Sr.DOM/LMG (at Office).



Office of the
Sr.DOM/Lumding
Date: 19.10.06

Sub: Cancellation of major charge Memorandum issued
against Shri Bikash Roy, Steno to Sr.DOM/LMG.

Due to some procedural informalities, the major charge Memorandum No. T/MISC/LM/TD (BR), dated: 28.7.05 issued against you is hereby treated as cancelled.

However, the disciplinary authority reserves its right to issue a fresh charge sheet on the same allegation.

This is for your information please.

Mhar
(Madhukar Roat)
Sr.DOM/LMG

o/c.

19/10/06.

Certified by true copy:
Advocate

31 - Annexure - E

STANDARD FORM OF CHARGE SHEET

STANDARD FORM No.5.

(Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968).

No. T/MISC/LM/TD (BR).

Dated 25/10/06

Name of Railway Administration:

N.F. Railway.

Place of issue:

DRM(O)/LMG's Office.

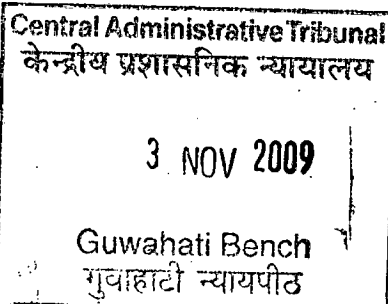
MEMORANDUM

The Undersigned propose(s) to hold an inquiry against Shri Bikash Roy, Steno to Sr.DOM/LMG under Rule 9 of the Railway servants (Discipline & Appeal) Rules, 1968. The substance of imputations of misconduct or misbehavior in respect of which the inquiry is proposed to be held is sent out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of misconduct or misbehavior in support of each articles of charge is enclosed (Annexure-II). A list of documents by which, under list of witness are also enclosed (Annexure-III & IV), further, copies of documents mentioned in the list of documents, as per Annexure-III are enclosed.

2.* Shri Bikash Roy, Steno to Sr.DOM/LMG is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents(Annexure-III) at any time during office hours within ten days of receipt of this Memorandum immediately on receipt of this Memorandum. For this purpose he should contact** undersigned immediately on receipt of this Memorandum.

3. Shri Bikash Roy, Steno to Sr.DOM/LMG is further informed that he may, if he so desired, take the assistance of any other Railway servant an official of Railway Trade Union (who satisfies the requirements of Rule 9 (13) of the Railway servants (Discipline & Appeal) Rules, 1968, and Note 1 and 7 or Note 2 there under as the case may be) for inspecting the documents and assisting him in presenting his case before the Inquiry Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Railway servant or Railway Trade Union official(s), Shri Bikash Roy, Steno to Sr.DOM/LMG should obtain an undertaking from the nominee(s) that he (they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case(s) if any, in which the nominee(s) had already undertaken to assist and the undertaking should be along with the nomination.

4. Shri Bikash Roy, Steno to Sr.DOM/LMG is hereby directed to submit to the undersigned a written statement of his defence (which should reach to the undersigned within Ten days of receipt of this Memorandum, if he does not require to inspect any for the preparation of his defence, and within ten days after completion of inspection of documents, and also (a) to state whether he wishes to be heard in person, and (b) to furnish the names and addresses of the witnesses if any whom he wishes to call in support of his defence.



Certified by true copy
Advocate

(Madhukar Roat)

Sr.DOM/LMG

Sr. DOM, Guwahati Bench

को. प्र. वि. न्या. पीठ, गुवाहाटी

Co. Pr. Vi. Nya. Pith, P/2

5. Shri Bikash Roy, Steno to Sr.DOM/LMG is informed that an inquiry will be held only in respect of those articles of charges as are not admitted. He should, therefore, specifically admit or/deny each articles of charge.

6. Shri Bikash Roy, Steno to Sr.DOM/LMG is further informed that if he does not submit his written statement of defence within the period specified in Para 2 or does not appear in person before the inquiring authority or otherwise fails to comply with the provisions of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquire ex-parte.

7. The attention of Shri Bikash Roy, Steno to Sr.DOM/LMG is invited to Rule 20 of the Railway services (conduct) Rules, 1966, under which no Railway servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of any matters pertaining to his service under the Govt. 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 Bikash Roy, Steno to Sr.DOM/LMG 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, 20 of the Railway Services (Conduct) Rules, 1966.

8. The receipt of this Memorandum may be acknowledged
/ _ By order and in the name of the President.

Signature:

Madhukar Roat
(Madhukar Roat)
Sr.DOM/LMG

(Name & Designation of the Competent Authority).

Dr. P. K. Singh, Manager
to the Railway Board
New Delhi

To,

Shri Bikash Roy, Steno to Sr.DOM/LMG (at Office).

@ Copy to (Name & Designation of the sending authority) for information.

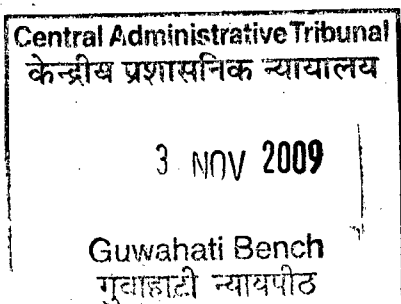
/ _ Strike out which ever is not applicable.

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

** Name of the authority. This would imply that whenever a case is referred to the Disciplinary Authority by the investigating authority or any authority who is in the custody of the Railway documents or who would be arranging for inspection of the documents to enable that authority being mentioned in the draft Memorandum.

To be retained wherever President or the Railway Board is the Competent Authority.

@ To be wherever applicable SRT Rule 16(t) of the R.S. (D&A) Rules, 1968 not to be inserted in the copy sent to the Railway Servant.



Contd...3

ANNEXURE TO STANDARD FORM NO. 5.

MEMORANDUM OF CHARGE SHEET.

Under Rule-9 of RS (D&A) Rules, 1968.

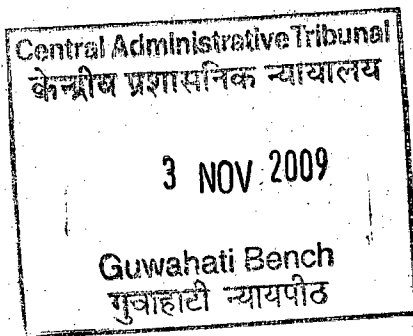
ANNEXURE-I

Statement of articles of charge framed against Shri Bikash Roy, Steno to Sr.DOM/LMG (Name & Designation of the Rly. Servant).

ARTICLE-I

That the said Shri Bikash Roy, while functioning as Steno to Sr.DOM/LMG on 30.6.05, Shri Roy was given a small dictation by DRM/LMG on 30.6.05. During dictation it was noticed by DRM/LMG that Shri Roy was incapable of taking dictation in shorthand. On producing the draft of the note dictated, it was further noticed by DRM/LMG that Shri Roy have made various mistakes in typing.

Therefore, Shri Bikash Roy, Steno to Sr.DOM/LMG is charged for violation of Rule No. 3.1 (ii) & 3.1 (iii) of the Railway Service (Conduct) Rules, 1966.



ARTICLE-II

Nil

ARTICLE-III

Nil

Madhukar Roat
(Madhukar Roat)

Sr.DOM/LMG

Contd....4

ANNEXURE-II

Statement of imputations of misconduct or misbehavior in support of the articles of charge framed against Shri Bikash Roy, Steno to Sr.DOM/LMG (Name and Designation of the Railway Servant).

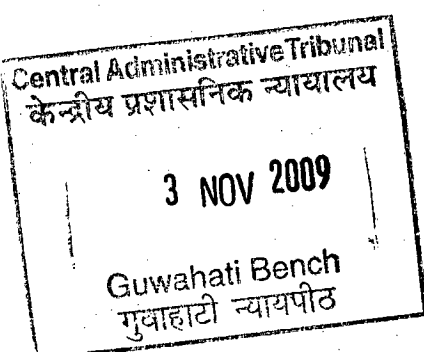
ARTICLE-I

It appears from the NOTE of DRM/LMG bearing No. LMG/DRM/71.40, dated: 30.6.2005 that on 30.6.05, one small dictation was given by DRM/LMG to you. During dictation it was noticed by DRM/LMG that you are incapable of taking dictation in shorthand. On producing the draft of the note dictated, it was further noticed that you have made various mistakes in typing.

It is to be mentioned here that Sr.DOM/LMG counseled you several times for improvement in dictation as well as drafting letter, but no improvement is seen. Moreover, Sr.DOM/LMG also gave personal counseling and practice dictation to you. But after constant effort no improvement is seen.

Also, you were called for an explanation regarding your not being able to take dictation in shorthand as well as not being able to produce a draft with reasonable correctness, vide letter No. T/MISC/LM/TD (BR), dated: 08.7.05 and the letter was duly received by you on 11.7.05. But you have failed to submit your explanation within stipulated time (i.e. 07 days).

From the above facts it is found that you have no competency in taking dictation in shorthand. Being a Steno of a Branch Manager who deals all the confidential matters of a respective department this is a serious misconduct on your part, showing your irresponsibility and it tantamount to lack of devotion to your duty and unbecoming of a Railway servant on your part and thus contravened Rule No. 3.1 (ii) & 3.1 (iii) of Railway Service (Conduct) Rules, 1966.



ARTICLE-II
NIL

ARTICLE-III
NIL

(Madhukar Roat)
Sr.DOM/LMG
No. D. P. Roy, Steno to Sr. DOM/LMG
To the Secy. to the Govt.
M. P. Roy, Steno to Sr. DOM/LMG

Contd... 5

ANNEXURE - III

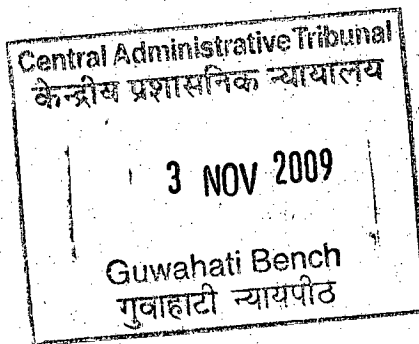
List of documents by which the articles of charge framed against Shri Bikash Roy, Steno to Sr.DOM/LMG (Name & Designation of the Railway Servant) are proposed to be sustained:

1. DRM/LMG's NOTE No. LMG/DRM/71.40, dated: 30.6.2005.
2. Copy of Draft Office Note regarding - Ensuring better availability and utilization of MG Hopper wagons.
3. Letter No. T/MISC/LM/TD (BR), dated: 08.7.05.

ANNEXURE-IV

List of witnesses by whom the articles of Shri Bikash Roy, Steno to Sr.DOM/LMG (Name & Designation of the Railway Servant) are proposed to be sustained.

- NIL -



(Madhukar Roat)
Sr.DOM/LMG
M. D. ...
...
...

36 -

Annexure - F 80

**DAR enquiry in connection with Major Memorandum No. T/MISC/LM/TD (BR),
dated: 25.10.06 issued in favour of Sri Bikash Roy, Steno to Sr.DOM/LMG.**

Date: 30.5.2008.

Place: AOM(C)/LMG's Chamber.

Sri Bikash Roy, Steno to Sr.DOM/LMG has attended in the final date of DAR enquiry on date (30.5.2008). The following questionnaires are proposed to be answered by the delinquent employee, as under:

Q. No.1: Have you gone through the charges leveled against you vide Major Memorandum No. T/MISC/LM/TD (BR), dated: 25.10.06 ?

Ans: Yes.

Q. No.2: In fact you were asked on several occasions to submit the name(s) of defence counsel along with consent letter(s), but you did not intimate regarding nomination of your defence counsel, if any. However, please state whether you will face the DAR enquiry with the help of defence counsel or otherwise ?

Ans: I will face the DAR enquiry without any assistance of defence counsel.

A / Q.No.3: Do you accept, with the charges leveled against you in the Article-I of Annexure-I and Article-I of Annexure-II of the charged Major Memorandum No. T/MISC/LM/TD (BR), dated: 25.10.06 ?

✓ Ans: Yes, I do accept the charges as leveled against me vide Major Memorandum No. T/MISC/LM/TD (BR), dated: 25.10.06.

A / Q.No.4: You were charged for being incapable of taking dictation in short hand and made various mistakes in typing which was dictated by DRM/LMG on 30.6.05. What would you like to say about these?

Ans: I was newly appointed in Rly. in the capacity of Stenographer on compassionate ground on 11.4.03. Being the new comer it was very hard on my part to take dictation in short hand, which was dictated by DRM/LMG. Thus I felt some nervousness while taking dictation. Now I can take dictation in short hand and also can type easily with no mistake.

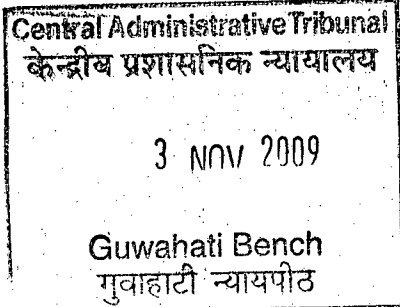
With this, the DAR enquiry is concluded.

(Signature)
(Shri Bikash Roy)
Steno to Sr.DOM/LMG
(Charged Official)

Certified by true copy
(Signature)
Advocate

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
2 NOV 2009
Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

(Signature) 30/5/08
(Shri A. K. Dey)
AOM(G)/LMG
(Inquiry Officer)



N.F. Railway

Divisional Office
Operations Branch
Lumding

Date: 14.7.2008

No. T/MISC/LM/TD (BR).

To,
Sri Bikash Roy,
Steno to Sr.DOM/LMG (at Office).

Sub: Show cause notice against major Memorandum
(SF-5) No. T/MISC/LM/TD (BR), dated: 25.10.06.

Please find herewith a copy of DAR enquiry report as submitted by the Inquiry Officer dated: 18.6.08 in connection with the major Memorandum (SF-5) as issued against you vide No. T/MISC/LM/TD (BR), dated: 25.10.06. The finding of the enquiry report is accepted.

Considering the finding of the above mentioned DAR enquiry report the undersigned has decided to take suitable action as per DAR.

If you wish to submit your representation, if any, you may do so in writing within 15 days of receipt of this show cause notice. If you fails to submit any representation within the prescribed time as mentioned above, it will be presumed that you have nothing to represent your case further and accepted the charges as leveled against you vide above-mentioned major Memorandum.

Please acknowledge receipt.

Encl: As above.

Signature:

(BIJAY KUMAR)
Sr.DOM/LMG

Name & Designation of the Disciplinary Authority

Certified by true copy
Advocate

38 - Annexure - II 72

**FINDINGS OF THE DAR ENQUIRY REPORT IN CONNECTION WITH THE MAJOR
MEMORANDUM NO. T/MISC/LM/TD (BR), DATED: 25.10.2006 ISSUED TO
SHRI BIKASH ROY, STENO TO SR.DOM/LMG BY SR.DOM/LMG.**

(I). **BRIEF HISTORY OF THE CASE:** DRM/LMG vide his NOTE bearing No. LMG/DRM/71.40, dated: 30.6.2005, had reported that one small dictation was given to Shri Bikash Roy, Steno to Sr.DOM by DRM/LMG. During dictation it was noticed that Shri Roy is incapable of taking dictation in shorthand. On producing the draft of the note dictated, it was further noticed by DRM/LMG that Shri Roy has made various mistakes in typing.

Accordingly, as advised by DRM/LMG, an explanation was called from Shri Bikash Roy, Steno to Sr.DOM, by Sr.DOM/LMG vide No. T/MISC/LM/TD (BR), dated: 08.7.2005, as to why no action should be taken for his not being able to take dictation in shorthand as well as not being able to produce a draft with reasonable correctness.

In reply to the above explanation, Shri Roy stated and assured that there will be no complaint against him within a short time.

The explanation of Shri Roy, dated: 26.7.05 was not fully convincing and accordingly Shri Bikash Roy, Steno to Sr.DOM was charge sheeted by Sr.DOM/LMG under major memorandum bearing No. T/MISC/LM/TD (BR), dated: 25.10.2006. The details of Article of charges are -

(II). **ARTICLE OF CHARGES:**

Annexure-I : Article-I : That the said Shri Bikash Roy, while functioning as Steno to Sr.DOM/LMG on 30.6.05, Shri Roy was given a small dictation by DRM/LMG on 30.6.05. During dictation it was noticed by DRM/LMG that Shri Roy was incapable of taking dictation in short hand. On producing the draft of the note dictated, it was further noticed by DRM/LMG that Shri Roy have made various mistakes in typing.

Therefore, Shri Bikash Roy, Steno to Sr.DOM/LMG is charged for violation of Rule No. 3.1 (ii) & 3.1 (iii) of Railway Service (Conduct) Rules, 1966.

Annexure-II : Article-I : It appears from the NOTE of DRM/LMG bearing No. LMG/DRM/71.40, dated: 30.6.2005 that on 30.6.05, one small dictation was given by DRM/LMG to you. During dictation it was noticed by DRM/LMG that you are incapable of taking dictation in short hand. On producing the draft of the note dictated, it was further noticed that you have made various mistakes in typing.

It is to be mentioned here that Sr.DOM counseled you several times for improvement in dictation as well as drafting letter but no improvement is seen. Moreover, Sr.DOM also gave personal counseling and practice dictation to you. But after constant effort no improvement is seen.

Also, you were called for an explanation regarding your not being able to take dictation in short hand as well as not being able to produce a draft with reasonable correctness, vide letter No. T/MISC/LM/TD (BR), dated: 08.7.2005 and the letter was duly received by you on 11.7.05. But you have failed to submit your explanation within stipulated time (i.e. 07 days),

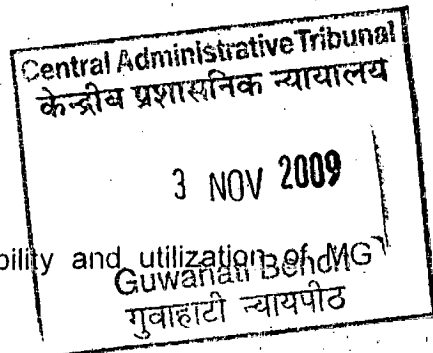
From the above facts it is found that you have no competency in taking dictation in short hand. Being a Steno of a Branch Manager who deals all the confidential matters of a respective department this is a serious misconduct on your part, showing your irresponsibility and it tantamount to lack of devotion to your duty and unbecoming of a Railway servant on your part and thus contravened Rule No. 3.1 (ii) & 3.1 (iii) of Railway Service (Conduct) Rules, 1966.

Certified by true copy
Advocate

National Administrative Tribunal
कन्द्रीय प्रशासनिक न्यायालय
Contd... P/2

NOV. 2009

Guwahati Bench



Annexure-III : List of documents :

1. DRM/LMG's NOTE No. LMG/DRM/71.40, dated: 30.06.2005.
2. Copy of Draft Office Note regarding Ensuring better availability and utilization of MG Hopper wagons.
3. Letter No. T/MISC/LM (TD), dated: 08.07.2005.

Annexure-IV : List of Witness : NIL.

(III). NOMINATION OF INQUIRY OFFICER:

The undersigned was nominated to act as Inquiry Officer to enquire the charges as framed against Shri Bikash Roy, Steno to Sr.DOM/LMG vide Sr.DOM/LMG's order under Standard Form No.7 bearing No. T/MISC/LM/TD (BR), dated: 10.7.2007.

(IV). DOCUMENTS EXAMINED:

1. DRM/LMG's NOTE No. LMG/DRM/71.40, dated: 30.06.2005.
2. Copy of Draft Office Note regarding Ensuring better availability and utilization of MG Hopper wagons.
3. Letter No. T/MISC/LM (TD), dated: 08.07.2005.
4. The explanation of Shri Bikash Roy, Steno to Sr.DOM/LMG dated: 26.7.05.
5. The representation of Shri Bikash Roy, Steno to Sr.DOM/LMG dated: Nil.
6. Reply to the questionnaires made by Shri Bikash Roy, Steno to Sr.DOM/LMG in the DAR enquiry held on 30.5.08.
7. Earlier DAR enquiry report of Shri T. Medhi, AOM(C)/LMG, dated: 14.7.06.

(V). REASONS FOR FINDINGS:

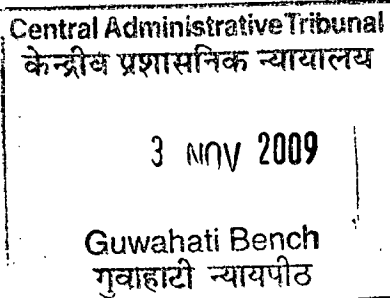
1. The explanation of Shri Roy, dated: 26.7.05 addressed to Sr.DOM/LMG, was duly examined and found that the explanation of Shri Roy was made in a wrong procedure. Any individual employee under office letterhead should not make any explanation or representation.
2. Shri Bikash Roy, Steno to Sr.DOM/LMG, in his representation dated: Nil, against the charged major memorandum No. T/MISC/LM/TD (BR), dated: 25.10.2006 addressed to Sr.DOM/LMG, had stated that he had failed to take dictation of DRM/LMG properly due to nervousness. Shri Roy had requested to give him one more chance so that he can improve himself in future.
3. Shri Bikash Roy, Steno to Sr.DOM/LMG was asked to submit at least two names of Defence Counsels, if any, to defend his case, and to submit their consent letters vide Sr.DOM/LMG's order under S.F. No.7 bearing No. T/MISC/LM/TD (BR), dated: 10.7.2007 and letter dated: 06.02.2008 and 31.3.2008. But neither Shri Roy submitted any name (s) of his Defence Counsels nor refused to get the help of Defence Counsel.
4. The date of DAR enquiry was fixed to be held on 15.02.2008 at 11:00 hrs. in the chamber of AOM(C)/LMG and accordingly Shri Bikash Roy, Steno to Sr.DOM/LMG was intimated vide letter No. T/MISC/LM/TD (BR), dated: 06.02.2008 which was duly acknowledged by him on 06.02.2008. But Shri Roy had neither attended the enquiry nor he gave any intimation regarding his non-attendance in the enquiry.
5. Again, the date of DAR enquiry (2nd) was fixed to be held on 17.4.2008 at 11:00 hrs. in the chamber of AOM(C)/LMG and accordingly Shri Bikash Roy, Steno to Sr.DOM/LMG was intimated vide letter No. T/MISC/LM/TD (BR), dated: 31.3.2008, which was duly acknowledge by him on 31.3.08. But, this time, also neither Shri Roy had attended the enquiry nor he gave any intimation regarding his non-attendance in the enquiry.

6. The final date of DAR enquiry was fixed to be held on 30.5.2008 at 11:00 hrs. in the chamber of AOM(C)/LMG and accordingly Shri Bikash Roy, Steno to Sr.DOM/LMG was intimated vide letter No. T/MISC/LM/TD (BR), dated: 21.5.2008, which was duly acknowledge by him on 22.5.08. Shri Roy had attended the enquiry and accordingly DAR enquiry was held on 30.5.2008.
7. There were 03 (three) numbers of dates of DAR enquiry fixed on three consecutive occasions i.e. on 15.02.2008, 17.4.2008 and 30.5.2008. Shri Roy did not attend on first two occasions i.e. on 15.2.2008 and 17.4.2008. Shri Roy had attended in the final date of DAR enquiry i.e. on 30.5.2008.
8. Shri Bikash Roy, Steno to Sr.DOM/LMG, in reply to Q.No.1, has stated that he has gone through the charges leveled against him vide Major Memorandum No. T/MISC/LM/TD (BR), dated: 25.10.06.
9. Shri Bikash Roy, Steno to Sr.DOM/LMG, in reply to Q.No.2, has stated that he will face the DAR enquiry without any assistance of defence counsel.
10. Shri Bikash Roy, Steno to Sr.DOM/LMG, in reply to Q.No.3 has stated that he has accepted the charges as leveled against him vide Major Memorandum No. T/MISC/LM/TD (BR), dated: 25.10.06.
11. Shri Bikash Roy, Steno to Sr.DOM/LMG, in reply to Q.No.4, has stated that he was appointed as Stenographer on Compassionate Ground on 11.4.03 and being it was very hard on his part to take dictation in short hand, which was dictated by DRM/LMG on 30.6.05 due to nervousness. Now he can take dictation in short hand and also can type easily with no mistake as told by the Charged Official.

(VI). **FINDINGS:** After carefully having gone through the details of the case history, the charges and the representation of Shri Bikash Roy, Steno to Sr.DOM/LMG and the relevant documents in support of the charges and other relevant records, the undersigned has come to the conclusion that Shri Bikash Roy, Steno to Sr.DOM/LMG had failed in taking dictation in short hand which was dictated by DRM/LMG on 30.6.05 and also made several mistakes in typing of the draft of dictation, which also the Charged Official has admitted in his reply to Q.No.4 due to nervousness. Therefore, the undersigned find that the charge of violation of Railway Service (Conduct) Rule No. 3.1 (ii) & 3.1 (iii) of 1966 as brought against Shri Bikash Roy, Steno to Sr.DOM/LMG in the Major Memorandum No. T/MISC/LM/TD (BR), dated: 25.10.2006 is found justified.

(VII). **MATTER BROUGHT TO LIGHT:**

Shri Bikash Roy was appointed as Stenographer on 11.4.2003 on compassionate ground. But Shri Roy could not take dictation in short hand, which was dictated by DRM/LMG on 30.6.2005 even after passing of two years service in the capacity of Stenographer. Since the category of Stenographer who deals all the confidential matters of respective department, should required to be conversant and sound in taking dictation in short hand as well as in typing. As such, clarification may be asked from the DRM(P)/LMG regarding judgment of abilities in this regard. It is also requested to be ensured that each and every formality should be taken into account carefully while giving appointment of such an important category.

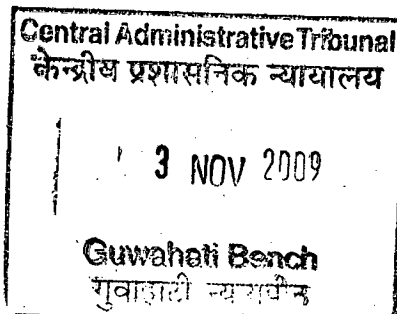


le 18.6.08
(A. K. DEY)
AOM(G)/LMG
Inquiry Officer.

41

Answer - I

To,
Sr. DOM / N. F. Railway
Lumding



Sub:- Representation.

Ref:- Your letter No. T/MISC/LM/TD(BR), Dtd. 14.07.08.

Sir,

With due respect and hum'ble submission I would like to lay before you the following few lines for your kind consideration and sympathetic order please.

That Sir, I was appointed as Stenographer on Compassionate ground on 11.04.03 and as new comer (Junior Stenographer), it is very hard on my part to take dictation from such Higher Graded Officer (i.e. DRM/LMG).

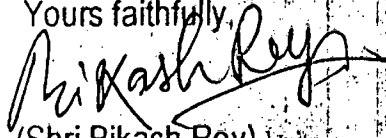
That Sir, on 30.06.05, due to my nervousness, I could not take dictation correctly which was given by DRM/LMG.

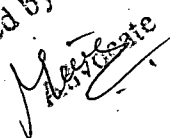
That Sir, now, I have improve myself and take dictation in shorthand without any mistake in typing also and assured you that such activity will not be happened in future and I will be a capable Stenographer within a short time.

May I therefore pray and request your honour to kindly consider my case sympathetically and exonerate me from the charges framed against me and give me a chance to improve myself.

Thanking You,

Lumding
Dated:- 14.07.08

Yours faithfully,

(Shri Bikash Roy)
Steno to Sr.DOM/LMG

Certified by true copy


42 - Annexure - 2

Notice of imposition of penalties under items (i), (ii) & (iii) of Rule 1707(1) and items (i) and (ii) of Rule 1707(2)-RI (Ref. SR-9 Under Rule 1716-RI).

No. T/MISC/LM/TD (BR).

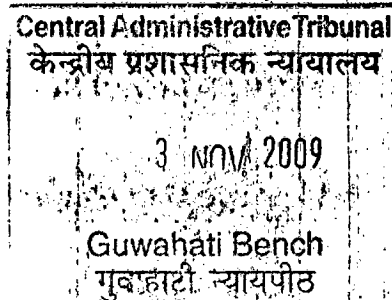
Date: 29.8.2008

Name of the Railway Administration: Northeast Frontier Railway.

From: Divisional Railway Manager (O), N.F. Railway, Lumding.

To:

Shri Bikash Roy,
Steno to Sr.DOM/LMG (at Office).



With reference to the Major Charge Sheet (SF-5) No. T/MISC/LM/TD (BR), dated: 25.10.06, you are hereby informed that your explanation against the said major charge sheet is not considered satisfactory and that the undersigned has passed the following order:

" Major penalty charge sheet was issued to Sri Bikash Roy, Steno to Sr.DOM/LMG on 25/10/06.

Articles of charge was that "Sri Bikash Roy, while functioning as Steno on 30.6.05 has been given small dictation by DRM/LMG. During dictation it was noticed by DRM/LMG that Sri Roy was incapable of taking dictation in short hand. On producing the draft of note dictated, it was further noticed by DRM/LMG that Sri Roy have made various mistakes in typing."

Sri Roy was charged for violation of rule No. 3.1 (i), 3.1 (ii) & 3.1 (iii) of Railway service (Conduct) Rules, 1966.

Representation on above charge received by this office where he stated that he is a junior stenographer & he don't have experience to work with higher grade officer such as DRM. On 30/6/05 when DRM/LMG called him for taking dictation, he become very nervous and could not take dictation properly.

He did not accept the charge clearly so enquiry was ordered. Sri A.K. Dey, AOM(G)/LMG was appointed as Inquiry Officer.

Inquiry Officer in his enquiry report given finding that " Sri Bikash Roy, Steno to Sr.DOM/LMG had failed in taking dictation in shorthand which was dictated by DRM/LMG on 30/6/05 & also made several mistakes in typing of the draft of dictation. " So Inquiry Officer found that charge of violation of railway service (Conduct) Rule No. 3.1 (ii) & 3.1 (iii) of 1966 brought against Sri Bikash Roy Steno to Sr.DOM/LMG is proved.

Enquiry report was given to Sri Roy on 14/7/08. And Sri Roy has given his final defence. He again reiterated in the defence about the nervousness while taking dictation from DRM/LMG.

Certified by the
Advocate

Contd... P/2...

43

P/2

72

Sri Bikash Roy was appointed as Stenographer on 11.4.2003 on compassionate ground. Sri Roy could not take dictation in shorthand on 30/6/05 even after passing of two years service in the capacity of Stenographer. His defence is not satisfactory. He does not deserve to hold the post of Stenographer.

Charge brought against him is proved. So penalty is imposed to commensurate with the offence as per D&A rule –

He is removed from service with immediate effect. Any dues with railways will be paid as per establishment manual/code in due time. "

Please acknowledge receipt.

Signature:

(BIJAY KUMAR)

Senior Divisional Operations Manager,
Lumding Division / N.F. Railway.

(Name & Designation of the Disciplinary Authority)

पू. सी. रेल, लामडिंग
N. F. Rly., Lumding

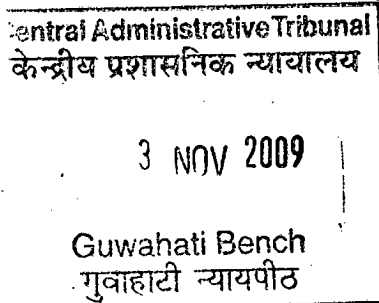
- * When the notice is signed by an authority other than the Disciplinary authority here quote the authority passing the order.
- ** Here quote the acceptance or rejection of explanation and the penalty imposed.

INSTRUCTIONS:

- (i). An appeal against this order lies to Addl. Divisional Railway Manager/N.F. Railway/Lumding (the next immediate superior to the authority passing the orders) within 45 days.

Copy to: DPO/IC/LMG for information & necessary action.

Copy to: OS/Optns. at Office for necessary action accordingly.



Senior Divisional Operations Manager,
Lumding Division / N.F. Railway.

44

Annexure - K

Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय 3 NOV 2009 Guwahati Bench गुवाहाटी न्यायपीठ
--

To,
The Addl. Divl. Rly. Manager
N. F. Railway / Lumding

Through :: Proper channel.

Sub :- An appeal regarding the consideration against imposition of penalties under Rse 1716-(RJ) (i) (ii) & (iii) and (i) (ii) of Rule 1707(2) RJ Ref.

SR - 9 under Rule 1716 - RJ.

Ref :- (SF - 5) No. T/MISC/LM/TD(BR), 14.07.08.

Respected Sir,

With due respects and hum'ble submission in obedience to the above memorandum at the very outset I beg to place the following few lines for your kind consideration please.

That Sir, I was called in front of Hon'ble Sir DRM/LMG's chamber on date 30.06.05 for taking dictation regarding ensuring better availability and utilization of MG Hopper wagons in supporting of letter No. T/MISC/LM (TD), Dtd. 08.07.05.

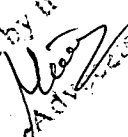
That Sir, at the time of giving dictation by Hon'ble Sir DRM/LMG, I failed to follow the dictation because I felt severe ache in my stomach and I got nervousness at that moment and I was unable to take the dictation correctly.

That Sir, after the sudden expiry of my father, my self was appointed as Stenographer on 11.04.03 on compassionate ground and my self is only one male member to take the whole responsibilities of my poor family along with my 65 years old age mother who is always remains in bed sick,

In fact, I have done a grate mistake during the dictation period in front of Hon'ble Sir DRM/LMG on 30.06.05 for which I have been fall under violation of Railway service (Conduct) Rules, 1966 and for that I am sorry that I could not follow the necessary dictation properly and for that incapability has comes out in favour of me due to my sudden filling of sickness and remaining cense of absenting mind at the very moment was of the nature beyond of my control.

That Sir, I beg pardon to excused for delay in submitting my representation in time and I accented the all charges i.e. annexure - I article-I, annexure - II article-I whatever the charges brought against me by the administration has found correct. Actually due to sudden feeling of un-easiness, I had done wrong in taking the dictation given by Hon'ble Sir DRM/LMG dtd. 30.06.05.

Contd...2

Certified by true copy

 Addl. Divl. Rly. Manager

-45-

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
3 NOV 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

= 2 =

In view of the above, it is my earnest submission that I never neglected my duty nor irregular in my duty intentionally.

Sir, on looking the economical hardships, I am requesting you kindly save me and exonerate me from the punishment of removal from service, as I am not finding any way to live at present situations, which have been striking in my mind.

Therefore, I beg pardon to your good office to consider my case with humanitarian ground so that, I can remain free from the mental anxiety for which act of your kindness I along with my family shall remain ever grateful to you.

Thanking you,

Lumding

Dated :- The 10th Sept/2008

Yours faithfully,

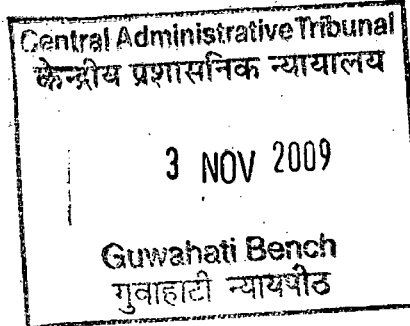
(Bikash Roy)
10/09/08

Ex. CS to Sr.DOM/LMG

(Signature)

(Signature)
10/09/08

46 -
N. F. Railway



Amexure - L
Divisional Office
Operations Branch
Lumding
Date: 13/10/2008

No. T/MISC/LM/TD (BR).

To,
Shri Bikash Roy,
Ex. Steno to Sr.DOM/LMG;

Sub: Notice of Imposition of Penalties of even No. dated: 29.8.2008.
Ref: Your appeal No. Nil, dated: 10.9.2008.

In reference to above, you are hereby informed that the ADRM/LMG (Appellate Authority) has gone through your appeal dated: 10.9.2008 against the punishment of "Removal from service with immediate effect", which was imposed by Sr.DOM/LMG (Disciplinary Authority) vide NIP No. T/MISC/LM/TD (BR), dated: 29.8.2008. The Appellate Authority has passed the following orders -

" I have gone through the entire case carefully and also appeal dated: 10.9.2008 of Shri Bikash Roy. Shri Bikash Roy was issued major penalty chargesheet by Sr.DOM/LMG vide Memo. No. T/MISC/LM/TD (BR), dated: 28.7.2005 but the same was cancelled by Sr.DOM/LMG vide letter No. T/MISC/LM/TD (BR), dated: 19.10.06 and issued another major penalty chargesheet vide letter No. T/MISC/LM/TD (BR), dated: 25.10.2006. Disciplinary Authority (DA) has imposed punishment as "He is removed from service with immediate effect and dues with railway will be paid as per establishment manual/code in due time" vide letter No. T/MISC/LM/TD (BR), dated: 29.8.2008. Shri Bikash Roy was given one small dictation by ex-DRM/LMG on 30.6.2005 and he was found incapable of taking dictation in shorthand and he had taken the dictation in long hand and various mistakes were found in the typing. The enquiry was conducted by AOM(G)/LMG. During the enquiry all reasonable opportunities were given to Shri Bikash Roy to defend himself. He was given the opportunity of taking the assistance of defence counsel by DA as well Inquiry Officer thrice but Shri Bikash Roy did not avail the assistance of any defence counsel. Shri Bikash Roy in reply to question No.2 during course of inquiry on 30.5.2008, stated that he will face the DAR enquiry without any assistance of defence counsel. He has not made any complaint regarding not providing reasonable opportunities to him to defend himself in his appeal dated: 10.9.2008. In reply to question No.3, during the enquiry Shri Bikash Roy has accepted the charges leveled against him vide major penalty memorandum no. T/MISC/LM/TD (BR), dated: 25.10.2006. Shri Bikash Roy had submitted a certificate from "The Assam Institute of Professional Studies, Hojai, Nagaon, Assam Registration No. - 2872" issued on 12.2.2001, in which his speed in Stenography has been shown as 81 (eighty one). With this speed, it is not impossible to take dictation in the shorthand. Shri Bikash Roy was appointed as stenographer on 11.4.2003 on compassionate ground and he could not take dictation in shorthand even after passing two years service in the capacity of stenographer. It has been proved that Shri Bikash Roy was not capable of taking dictation in shorthand. Since Shri Bikash Roy is incapable of taking dictation in shorthand, he does not deserve to hold the post of Stenographer.

Keeping in view the above, punishment imposed on Shri Bikash Roy by Disciplinary Authority is considered adequate and commensurate with the offence and still holds good. "

Please acknowledge receipt of the same.

Certified by true copy
Advocate

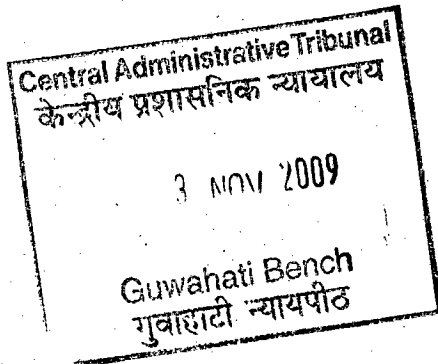
(BIJAY KUMAR)
Sr. Divl. Optns. Manager,
N. F. Railway, Lumding.
(Contd...P/2...)

INSTRUCTIONS:

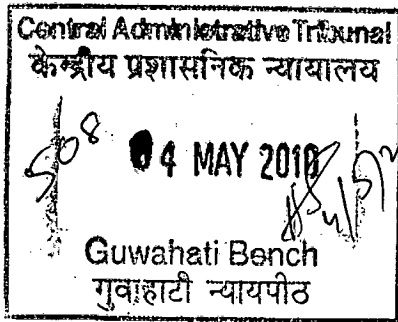
- (i). A Review appeal against this order lies to Chief Operations Manager/N.F. Railway/Maligaon (the next immediate superior to the authority passing the orders) within 45 days.

Copy to:

1. DPO/IC/LMG for information & necessary action. This is in reference to Notice of Imposition of Penalties bearing No. T/MISC/LM/TD (BR), dated: 29.8.2008 issued in favour of Shri Bikash Roy, ex. Steno to Sr.DOM/LMG.
2. OS/Optns. at Office for information & necessary action. This is in reference to Notice of Imposition of Penalties bearing No. T/MISC/LM/TD (BR), dated: 29.8.2008 issued in favour of Shri Bikash Roy, ex. Steno to Sr.DOM/LMG.
3. ADRM/LMG for kind information.



13/11/08
Sr. Divl. Optns. Manager,
N. F. Railway, Lumding.



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

O.A. No. 228 of 2009

Sri Bikash Roy

.....Applicant

-Vs-

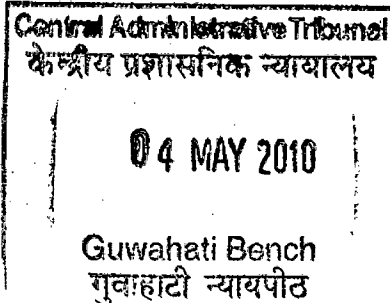
Union of India & others

..... Respondents.

INDEX & LIST OF DATES

<u>SL.No.</u>	<u>PARTICULARS</u>	<u>PAGE NO.</u>
1.	Written Statement	1-6.
2.	Verification	7
3.	Annexure- 1 (Dated 30.6.05)	8
4.	Annexure -II (Dated 26.7.05)	9
5.	Annexure- III (Dated 23.08.05)	10
6.	Annexure - IV(Dated 14.7.08)	11

Filed by
Rashmi Rekha Borah
Advocate, Guwahati



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH AT GUWAHATI

O.A. No. 228 of 2009

Sri Bikash Roy

..... Applicant

-Vs-

Union of India & others

..... Respondents.

The Written Statements of the Respondents are as follows: -

1. That a copy of the Original Application No.228/2009 (hereinafter) referred to as the " application" has been served upon the respondents. The respondents have gone through the same and understood the contents thereof.
2. That save and except the statements which are specifically admitted by the respondents, the rest of the statements made in the application may be treated as denied.
3. That the statements made in paragraph 4(A) to the application the deponent has nothing to comment unless contrary to the records.
4. That in regard to the statements made in paragraph 4 (B) & 4(C) to the application the answering respondent begs to state that the applicant's initial entry in the service as Stenographer - Grade III was effected on compassionate ground temporarily and posted under Sr. Divisional Operating Manager/Lumding on certain terms and conditions as incorporated in the appointment letter vide Annexure- A to the O.A. and after completion of two years of probation period the applicant was treated as a regular employee.
5. That the statements made in paragraph 4 (D) and 4(E) to the application are not acceptable at all and has denied the correctness of the same by the answering respondent. On 30.6.2005 the Divisional Railway

Filed by: 83
Rashmi Rekha Borah,
Adv., ghy. on behalf
of the respondents.
04/05/10

वरिष्ठ विद्वत् प्रयासन प्रबंधक
Sr. Divl. Operation Manager
पू.सी. रेल, लुमदिंग
N.F. Ry. Lumding

04 MAY 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

Manager /LMG gave a small dictation to the applicant. During the period of dictation it was noticed by the DRM/LMG that the applicant Sri Bikash Roy was incapable of taking dictation in shorthand. When the draft note of the said dictation was submitted before the DRM/LMG it was further noticed that the applicant made various typographical mistakes. The DRM/LMG vide his letter Memo dated 30.6.05 advised the Sr. DOM/LMG to call for explanation from the applicant as to why no action should be taken for his not being able to take dictation and /or incompetence in taking dictation in shorthand as well as not being able to produce a draft with reasonable corrections. Accordingly the Sr. DOM/LMG issued a letter dated 08.07.2005 calling explanation to Sri Bikash Roy as to why no action should be taken against him for not being able to take dictation in shorthand as well as not being able to produce a draft with reasonable corrections and to submit the said reply within 7 (seven) days from the date of receipt of the letter. The applicant received the said letter on 11.7.05

Mention may be made herein that the applicant was counseled on several times for improvement in dictation as well as drafting of letter. Personnel counseling and practice dictation was also given. He was also sent for training for improving the skill but after constant effort no improvement was seen.

A copy of the letter of DRM/LMG dated 30.6.05 is enclosed herewith and marked as Annexure- I

6. That in regard to the statements made in paragraph 4(F) and 4(G) to the application the answering respondent begs to state that although the applicant replied the explanation put to him admitting his incapability and poor performance but in his reply explanation submitted on 26.07.2005 (not within 7 days) the Sr. DOM/LMG was not fully convinced and Charge-sheet was issued against the applicant on 28.7.05 as per relevant rules of the Railway Service(Conduct) Rules, 1966. The applicant was given opportunity to submit his written statement of his defense within 10(ten) days and accordingly the applicant filed his written statements vide his letter dated 23.08.2005. After receiving the defense reply an inquiry was

conducted nominating Sri T.Medhi Assistant Operating Manager/Lumding as an Enquiry Officer.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

04 MAY 2010

Guwahati Bench
गुवाहाटी न्यायपीठ

A copy of the reply explanation submitted on 26.07.05 and a copy of the defense reply submitted on 23.8.05 by the applicant are annexed herewith and marked as Annexure- II & III respectively

वरिष्ठ प्रशासनिक प्रबंधक
Sr. Divl. Operation Manager
यु. सी. रंज, लुमदिंग
N.E. Ry. Lumding

7. That the statements made in paragraph 4 (H) to the application are untrue allegation and the same are stoutly denied by the answering respondent. The Enquiry Officer vide his letter dated 11.11.05 intimated the applicant for preliminary hearing fixed on 25.11.2005 and the applicant received the said letter on 14.11.05. The applicant /C.O. requested the I.O. to refix another date after 30.11.2005 instead of 25.11.05 as he was on leave for 15 days w.e.f. 16.11.2005

Again by a letter dated 14.3.2006 the I.O. informed the applicant the date of hearing fixed on 22.03.2006 at 10.00 hours which was duly received by the C/O on 14.3.06 but he did not attend the hearing on 22.03.06. The I/O fixed another date of hearing on 18.04.06 at 11.00 hours and intimated the same by his letter dated 28.3.06 duly received by the applicant on 05.04.06 but he did not attend the hearing so fixed. Another letter was issued on 24.04.06 to the applicant /C.O for attending final hearing on 08.05.06 with defense counsel, if any, the applicant acknowledged the receipt of the said intimation letter on the same date, but he did not participate the hearing on the said schedule date. The Inquiry Officer after repeatedly intimating the applicant/C.O. in four successive date of hearing, submitted his report before the Disciplinary Authority on 14.7.06

8. That the applicant has nothing to make any comment in regard to the statements made in paragraph 4 (I) to the application.

9. That in regard to the statements made in paragraph 4 (I) and 4(K) to the application the deponent begs to state that a fresh Charge-sheet was issued on 25.10.2006 after cancellation of the earlier Charge-sheet dated 28.7.05 due to some procedural informalities. The applicant was

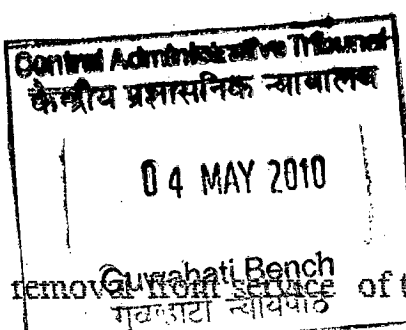
given opportunity to submit his defense within 10 days but the applicant did not respond and did not submit his reply to the fresh Charge-sheet within the stipulated time.

10. That the deponent has denied the correctness of the statements that contended in paragraph 4(L) and 4(M) to the application. The fresh Inquiry Officer Sri A.K.Dey, AOM(G)/LMG was appointed on 10.7.07 to conduct inquiry in connection with the fresh Charge sheet dated 25.10.2006. The inquiry date was fixed on 15.2.08 by an intimation letter dated 06.02.08. The C/O received the said letter but he did not participate the hearing. The applicant intentionally did not respond the second sitting of the DAR enquiry schedule to be held on 17.4.08 although he received the intimation letter dated 31.3.08

11. That in regard to the statements stated in paragraph 4 (N) to the application the deponent begs to state that however, in the final date of DAR enquiry ie on 30.5.08 the applicant was present and the Inquiry Officer asked him some questions which the applicant/C.O. replied and after that he signed on the questionnaires and the answers sheet voluntarily. It is absolutely false and baseless allegation of the applicant/C.O. stated in the 2nd part of the said paragraph along with others that "if the applicant accept the charges leveled against him it would be ended with a minor penalty, otherwise the departmental proceeding will continue for long time.....voluntarily". Hence the applicant's allegation that the Inquiry Officer stated him to accept the charges with an assurance to impose minor penalty is completely denied by the deponent.

12. That in reply to the statements made in paragraphs 4(O), 4(P) & 4 (Q) to the application the answering respondent begs to state that the finding of the I/O (Inquiry report) was furnished to the applicant/C.O. vide letter dated 14.7.08 and he was advised to submit his representation within 15 days from the date of receipt of the Inquiry report. In the Inquiry report, the I/O stated that the charges leveled against the applicant Sri Bikash Roy Steno. Grade-III to Sr. DOM/LMG were proved. The C/O filed his defense reply on 14.7.08. The Disciplinary Authority after considering the defense reply, Inquiry report and all other aspects passed the Order on 29.8.2008

वरिष्ठ निदेश प्रयात्तन प्रबंधक
Sr. Dir. Operation Manager
प. सी. रेल, लामडिंग
- 3009



- 53 -

5

83

imposing penalty of removal from service of the applicant with immediate effect and the said NIP was communicated to the applicant vide letter dated 29.8.2008.

13. That in response to the statements made in paragraph 4 (R) to the application the answering respondent begs to reply that the Appellate Authority vide his order dated 13.10.08 rejected the appeal of the applicant and upheld the order of the Disciplinary Authority considering the same to be adequate and commensurate with the offence. The appellate authority passed the reasoned order considering the facts and circumstances of the case as well as the enquiry report and the order of the Disciplinary authority.

14. That it may be pertinent to mention herein that the applicant was appointed on compassionate ground on 11.4.2003. Even after passing two years service in the capacity of stenographer he could not take dictation in shorthand and typed properly which proved that the applicant was most inefficient and not capable of taking dictation in shorthand and as such it is a serious misconduct on his part and it tantamount to lack of devotion to his duty and unbecoming of a Railway Servant.

15. That the deponent further begs to state that the applicant was given several opportunities to improve his skill in the matter of taking dictation as well as drafting letter, but after constant effort no improvement has been seen so far. The Sr. DOM/LMG (Bijay Kumar) issued a letter dated 14.7.2008 to the DPO/IC/LMG for replacement of Stenographer Sri Bikash Roy who is unable to take any dictation in shorthand (Stenography).

A copy of the aforesaid letter of Sr. DOM/LMG dated 14.7.08 is Annexed herewith and marked as Annexure-IV.

16. That the submissions made by the applicant in the ground portion of the application are not admitted by the answering respondent.

17. That there is no bar on the part of the respondent /authority to issue a fresh charge memo and initiate proceeding against the charged official. The disciplinary proceedings have been conducted fairly without causing prejudice to the applicant/C.O.

18. That in the instant case the applicant/C.O. has admitted the charges leveled against him. The C.O was given the opportunity of taking

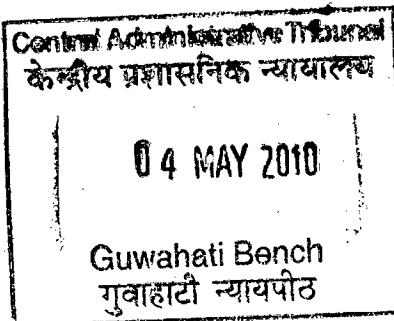
वर्तमान प्रबंधक
Sr. Divl. Operation Manager
पु.सी. रेल, लार्मिंग
पु.सी. लार्मिंग

the assistance of defense counsel by the D/A and the I/O but he did not avail the assistance of defense counsel. There is no procedural illegality or irregularity in conducting departmental enquiry and the charges against the C.O. stood proved. The order of removal from service of the applicant due to unsatisfactory work of the applicant is justified and can not be termed as arbitrary, excessive, whimsical and vindictive in nature. Hence the judicial interference is unwarranted.

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

20. That the applicant is not entitled to any relief as prayed by him.

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

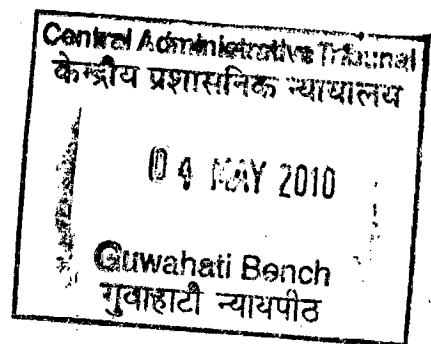


In the premises aforesaid, it is, therefore, prayed that Your Lordships would be pleased to dismiss the application, after hearing the parties, with cost. And pass such other order/orders as to the Hon'ble Tribunal may deem fit and proper considering the facts and circumstances of the case and for the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

And for this the Respondent as in duty bound shall ever pray.

VERIFICATION


वर्तमान में
Sr. Div. Operation Manager
यु. सी. रत, लुमदिंग
यु. सी. रत, लुमदिंग



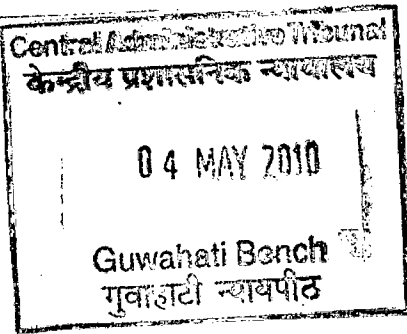
VERIFICATION

I, Shri. RAJNEESH KUMAR Son of
..... Sh. R. Chand resident of Lumding, Distt. Nagaon,
Assam, at present working as the Sr. Divisional Operations
Manager, Lumding, N.F.Rly. being competent and
duly authorized to sign this verification on behalf of all the
Respondents do hereby solemnly affirm and state that the
statements made in paragraph 1 to 14 are true to my knowledge
and belief, and the statements made in paragraph 15 are true to
my information derived from records which I believe to be true and
the rests are my humble submission before this Hon'ble Tribunal. I
have not suppressed any material fact.

And I sign this verification on this 03 day of May,
2010 at Lumding.


DEPONENT
वरिष्ठ मंडल प्रचालन प्रबंधक
Sr. Divl. Operation Manager
पू.सी. रेल, लामदिंग
N.F. Rly. Lumding

वरिष्ठ मंडल प्रचालन
Sr. Divl. Operation Manager
पू.सी. रेल, लामदिंग
N.F. Rly. Lumding



N. F. RAILWAY

Office of the,
Divisional Railway Manager,
Lumding, Dated: 30.06.2005.

No. LMG/DRM/71.40

NOTE

Sub: - Incompetence in taking dictation in shorthand by
Shri Bikash Roy, Steno.

On 30.6.05, one small dictation was given to Shri Bikash Roy, Steno to Sr.DOM. During dictation it was noticed that Shri Bikash Roy is incapable of taking dictation in shorthand. On producing the draft of the note dictated, it was further noticed that he has made various mistakes in typing.

A copy of the dictation taken by Shri Bikash Roy (in longhand) as well as the draft of the note dictated, produced by the above employee is enclosed herewith.

You are advised to call for the explanation from Shri Bikash Roy as to why no action should be taken for his not being able to take dictation in shorthand as well as not being able to produce a draft with reasonable correctness. His explanation should reach within 10 days of the receipt of this note by him.

DA: As above.


(M.S.SHARMA)
DRM/LMG.

Sr.DOM

① The explanation of Steno to be called for.

② Issue SF-5

③ He was counselled several times for improvement in dictation as well as drafting letter but no improvement

④ Personnel counselling and practice department was also given but after constant effort the improvement point is not

⑤ He was also sent for training to improve the skill.

Put up the case along with on file asking the explanation of Sh. B. Roy.

Man
7/7/05

COS/DPTg.

NORTHEAST FRONTIER RAILWAY

Divisional Office
Operations Branch
Lumding

Date: - 26.07.05

No.T/

To,
Sr.DOM / N. F. Railway
Lumding

Sub: - Explanation.

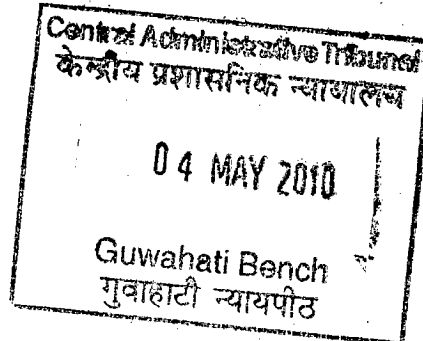
Ref: - Your letter No. T/MISC/LM/TD (BR), Dtd. 08.07.05.

It is a fact that on 30.06.05 I was asked by DRM/LMG to take dictation. As, I did not enter in to DRM's chamber since my employment in Railways, I was quite nervous and could not take dictation properly. I admit, because of this reason my work was not satisfactory.

It is also a fact, that you have given me ample opportunity to improve my work. I have been trying my best to improve myself and you might have noticed some improvement in my working.

I am trying hard to better my performance and working hard to become perfect. I assure you that there will be no complaint against me within a short time.

Bikash Roy
(Shri Bikash Roy)
CS to Sr.DOM/LMG



Annexure - II

Sr-13

Recd on
23.8.05
B. 23/8/05

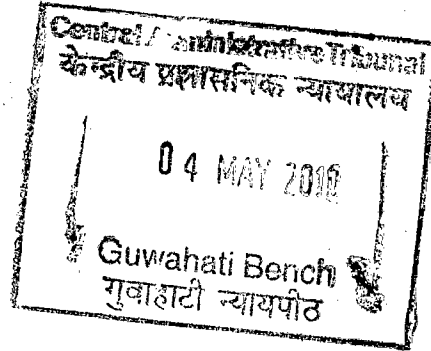
NORTHEAST FRONTIER RAILWAY

Divisional Office
Operations Branch
Lumding

Date:- 05.08.05
23

No.T/MISC/LM

To,
Sr.DOM / N. F. Railway
Lumding



Sub:- Representation.

Ref:- Your letter No. T/MISC/LM/TD (BR), Dtd. 28.07.05.

Sir

With due respect I beg to state that I am trying hard to better my performance and working hard to become perfect. I assure you that there will be no complaint against me within a short time.

I request you to give me an only chance so that I can develop my work and exonerate me from the charges.

Thanking you,

Yours faithfully,

Bikash Roy
(Shri Bikash Roy)
CS to Sr.DOM/LMG

N.F. Railway

Divisional Office
Operations Branch
Lumding

NOTE:

No. T/MISC/LM/TD (BR).

Date: 14.7.2008

Sub: Replacement of Stenographer under Sr.DOM/LMG.

Sr.DOM/LMG is required to make various urgent correspondences with the FCI, IOC & HPC authorities and with the traders also. In addition, he is to make close liaison with the Civil administration of different states like Assam, Meghalaya, Manipur, Mizoram, Nagaland, Tripura etc.

✓ On my joining at LMG, I called my Steno. Shri Bikash Roy, to take a simple dictation with the idea to issue the urgent letters immediately. But I find that Shri Bikash Roy, Steno, is unable to take any dictation in shorthand (Stenography). Since my Steno cannot take any dictation, urgent official correspondences are getting delayed, which are becoming later out of sight.

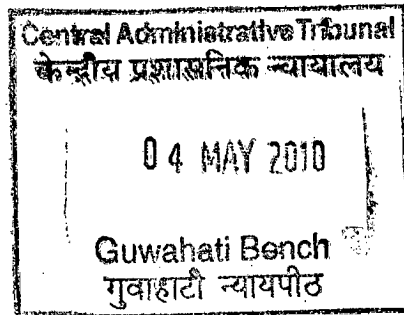
I prefer replacement of my Steno immediately. A suitable Stenographer may please be provided to me immediately.

[Signature]
14/7/08

(BIJAY KUMAR)
Sr.DOM/LMG

DPO/IC/LMG

Copy to: APO/II/LMG.



(Enclosure)
R/sr DOM/LMG
Bijay
14.07.08

[Signature]
14/7/08