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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

*O.A. NO. 2/2009*  
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R.A./CP/NO.....2015  
E.P./M.P./NO.....2015

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*Done 17/7/2015*

SECTION OFFICER (JUDL.)

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH;

1. Original Application No.

2/109

2. Misc Petition No.

3. Contempt Petition No.

4. Review Application No.

Applicant(S). Manoj Kr. Borman VS- Union Of India & Ors

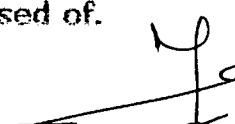
Advocate for the Applicant(S). P. Sarmah, Ms. B. Chakrabarty

Advocate for the Respondent(S). Railways advocate

Notes of the Registry

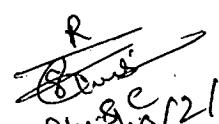
	Date	Orders of the Tribunal
This application is in form is Filed/C. P. for Rs. 50/- and posited vide LPO/ED No. 390.376.924 Dated 9.1.09	12.01.2009	Heard Mr P. Sarmah, learned Counsel appearing for the Applicant, and Dr J.L. Sarkar, learned Counsel appearing for the Respondents/Railways, and perused the materials placed on record.

For the reasons recorded separately,  
this O.A. stands disposed of.

  
(M.R. Mohanty)  
Vice-Chairman

nkm

Received true copy of  
the order dtd. 12.1.09  
Parash Sarma  
2/2/09.

  
R. Lewis  
For Rly. & C. 10/2/09

12/2/09

Copy of the order  
22/12/09 along-  
with copy of the  
petition send to  
the Dsec. for  
draw the same  
to the Respo no 1 to 5  
and copy of the order  
to the Appellate by  
post.

12/2/09

copy issued  
vide DPO 823 to  
828 22/2/09.  
K.S. 575/09

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

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

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



a

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Original Application No.02 of 2009

Date of Order: This the 12<sup>th</sup> day of January 2009

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

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

.....Applicant

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

- versus -

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

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

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

12.01.2009

**M.R. MOHANTY, VICE-CHAIRMAN**

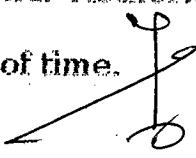
Heard Mr P. Sarmah, learned Counsel appearing for the Applicant, and Dr J.L. Sarker, learned Standing Counsel appearing for the Respondents/Railways (to whom a copy of this O.A. has already been supplied), and perused the materials placed on record.

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

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

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

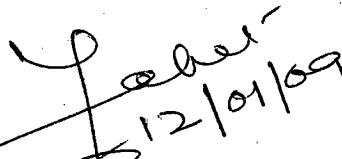


4. Dr J.L. Sarkar, learned Counsel appearing for the Respondents/Railways, vehemently opposed the stand of the Applicant and submitted that in all fairness of things the matter should be remanded back to the Revisional Authority for passing of the orders on the revision petition of the Applicant.

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

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

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

  
(M. R. MOHANTY)  
VICE-CHAIRMAN

9 JAN 2009

गुवाहाटी न्यायालय  
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI  
BENCH: GUWAHATI

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

O.A. No. 2 of 2009

Sri Manoj Kumar Barman .... Applicant

- Vs -

Union of India and Others .... Respondents

S Y N O P S I S

The applicant joined the N.F. Railway on 29.01.1975 and posted at New Guwahati. While he was working at Guwahati as Head Goods Clerk, he received office memorandum dated 10.05.2004 issued by the respondent No. 4 directing him to submit his written statement in defence against two charges levelled against him vide Annexure-I. Accordingly, the applicant submitted his reply on 15.07.2004. Thereafter one Sri A.K. Sen was appointed as Enquiry Officer to conduct the enquiry against the applicant who on 08.09.2004 made a preliminary enquiry and then made regular enquiry on 20.09.2004 and 21.09.2004. The applicant duly attended in the enquiry with his defence assistant. Thereafter the Enquiry Officer submitted his enquiry report before the Disciplinary Authority holding the charge No. 1 was not proved and charge No. 2 as partially proved. The said enquiry report was forwarded to the applicant on 07.12.2004 directing him to submit his representation within 10 days. The applicant on 16.12.2004 submitted his representation stating that he accepted the findings of the Enquiry Officer in respect of charge No. 1 and that the findings in respect of charge No. 2 was suffers from surmises and conjectures and that there is no place of finding of " partially proved" in a departmental proceeding. Thereafter the Disciplinary Authority

*Contd.....*

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Filed by the applicant  
Manoj Kr. Barman.  
Through: Prasenjit Sarmah  
2/1/09

R  
For Dr. J.L. Sankar  
9/01/09

9 JAN 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

- 2 -

(respondent No. 5) issued notice of imposition of penalty dated 09.06.2007 thereby imposing major penalty of reduction to the lower stage in the time scale of pay by one stage lower for a period of three years (without lossing the benefit of future increment). The Disciplinary Authority imposed the said punishment holding both the charges against the applicant were proved without issuing any disagreement letter with the findings of the Enquiry Officer's report in respect of charge No. 1. The above NIP was communicated to the applicant on 05.07.2007 with a further information that his pay was fixed at the lower stage. The applicant having received the above NIP, submitted his statutory appeal before the Appellate Authority on 21.09.2007. When the said appeal was pending before the Appellate Authority for consideration, the respondent No. 5 issued Memorandum of Disagreement dated 23.11.2007 in respect of charge No. 1 directing the applicant to submit his representation. Since the appeal was pending before the Appellate Authority, the applicant on 07.12.2007 informed the Disciplinary Authority that during the pendency of the appeal <sup>he</sup> is not in a position to submit any representation/reply to the said disagreement letter. Then the respondent No. 5 issued letter dated 08.12.2007 purportedly on the order passed by the Appellate Authority (respondent No. 3) thereby enhancing the penalty on the applicant on the statutory appeal submitted by him. The said order was passed in violation of Rule 22 (v) of the Railway Servants (Discipline and Appeal) Rules, 1968. Thereafter the applicant on 21.01.2008 submitted a revision petition under Rule 25 of the Rules against the above orders of penalty dated 09.06.2007 and 08.12.2007 before the respondent No. 2. There was no response from the respondent No. 2 and as such the applicant on 03.10.2008 submitted a reminder representation before the respondent No. 2 but there is no response till date. As such the applicant is approaching this Hon'ble Tribunal by filing this application for appropriate relief.

Filed by  
Pranab Debnath  
Advocate  
9/1/09

9 JAN 2009

গুৱাহাটী ন্যায়পীঠ  
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI  
BENCH : GUWAHATI

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

O.A. No. 2 of 2009

Sri Manoj Kumar Barman .... Applicant

- Vs -

Union of India and Others .... Respondents

L I S T   O F   D A T E S

10.05.2004 : Respondent No. 4 issued charge memorandum No. C/VIG/GHY-NGC/4/04 directing the applicant to submit his written statements within 10 days.

Para- 3, Page- 4

Annexure-I, Page - 18 .

15.07.2004 : The applicant submitted his defence against the above charge memorandum dated 10.05.2004.

Para -4, Page- 4,

Annexure-II, Page- 24 .

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

Para -5, Page- 5,

Annexure-III, Page- 25 .

Contd.....

File by the applicant  
Manoj Kumar Barman  
Jorhat, District, Sonitpur, Assam - 783 009

19 JAN 2009

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Guwahati Bench

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

Para -6, Page- 5,  
Annexure-IV, Page- 26 .

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

Para -7, Page- 5,  
Annexure-V, Page- 27 .

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

Para -8, Page- 6,  
Annexure-VI, Page- 36 .

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

Para -9, Page- 6,  
Annexure-VIII, Page- 39 .

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

Para -9, Page- 6,  
Annexure-VII, Page- 38 .

Contd.....

Manoj Kr. Barman

9 JAN 2009

গুৱাহাটী ন্যায়পীঠ  
Guwahati Bench

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

Para -10, Page- 7,

Annexure-IX, Page- 42 .

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

Para -11, Page- 8,

Annexure-X, Page- 75 .

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

Para -11, Page- 8,

Annexure-XI, Page- 78 .

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

Para -12, Page- 9,

Annexure-XII, Page- 79 .

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

Para -14, Page- 10,

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

Para -12, Page- 10,

Annexure-XIII, Page- 82 .

Filed by

Pranash Baruah

Advocate

9/1/09

19 JAN 2009

Guwahati Bench  
Guwahati BenchIN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI  
BENCH, GUWAHATI(An application under Section 19 of the Administrative Tribunal  
Act, 1985)O.A. No. 2 of 2009

Sri Manoj Kumar Barman .... Applicant

- Vs -

Union of India and Others .... Respondents

I N D E X

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Filed by  
*Prakash Sarmah*  
 Advocate  
 9/1/09

Filed by the applicant  
 M/s. Mr. Barman.  
 Date: Prakash Sarmah, Advocate  
 9/1/09

9 JAN 2009

गुवाहाटी न्यायघीठ  
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI  
BENCH : GUWAHATI

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

O.A. No. 2 of 2009

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

..... Applicant

- Vs -

1. Union of India,  
Represented by the General Manager,  
N.F. Railway  
Maligaon, Guwahati - 11  
District- Kamrup, Assam.

2. Chief Commercial Manager,  
N.F. Railway Maligaon,  
Guwahati - 11  
District- Kamrup(M), Assam.

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

Contd.....

Filed by the applicant.  
Manoj K. Barman,  
Advocate  
Thrust - Barasat 01/1/09

9 JAN 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

- 2 -

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

5. Senior Divisional Commercial  
Manager,  
N.F. Railway, Lumding, PIN- 782 447  
District - Nagaon, Assam.

.... Respondents

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

- i) Notice of imposition of penalty (N.I.P. in short) No. C/VIG/GHY-NGC/04/04 dated 09.06.2007 passed by the respondent No. 5 hereby imposing major penalty of reduction to the lower stage in the time scale of pay by one stage lower for a period of three years (without losing the benefit of future increment) on the applicant.
- ii) Order No. C/VIG/GHY-NGC/4/04 dated 08.12.2007 issued by the respondent No. 5 purportedly on the order passed by the respondent No. 3 on the appeal preferred by the applicant against the order of penalty dated 09.06.2007 thereby enhancing the penalty to reduction to lower stage in time scale of pay by two stages for a period of three years and six months and after expiry of the said period the same would have effect of postponing the future increments of pay and that the said enhancement order was passed without hearing the applicant in violation of prescribed law.
- iii) Illegal and arbitrary action of the respondent no. 2 authority in not disposing the revision petition dated 21.01.2008 submitted by the applicant under Rule 25 of the Railway

*Contd.....*

*Manoj Kr. Barman*

9 JAN 2009

गुवाहाटी न्यायदीठ  
Guwahati Bench

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Servants (Discipline and Appeal) Rules, 1968 against the above orders of penalty dated 09.06.2007 and 08.12.2007 inspite of his reminder dated 03.10.2008.

## 2. JURISDICTION OF THE TRIBUNAL

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

## 3. LIMITATION

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

## 4. FACTS OF THE CASE :

1. That the applicant is a citizen of India by birth and permanent resident of Guwahati in Kamrup District of Assam. After rendering more than 30 years of loyal and faithful service in the N.F. Railway Department, the applicant has been subjected to major punishment by the respondent No. 5 being the disciplinary authority in a most illegal manner. As directed in the N.I.P., the applicant preferred an appeal before the respondent No. 3 under the provisions of Railway Servants (Discipline and Appeal) Rules, 1968. The appeal so filed has also been dismissed in a most illegal manner and enhanced the penalty without giving the applicant any opportunity to represent against such action in violation of the prescribed law in this respect. Then the applicant filed a revision petition before the respondent No. 2 under the Rules but the same has not been disposed of till date inspite of the reminder submitted by the applicant. As such, the applicant is approaching this Hon'ble Forum for appropriate relief.

Contd.....

*Ademan*  
Manoj Kr. Ademan

9 JAN 2009

गुवाहाटी बायपरीठ  
Guwahati Bench

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

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

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

*Contd.....*

*Barman  
Manoj Kr. Barman.*

9 JAN 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

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

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

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

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

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

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

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

*Contd.....*

*Manoj Kr. Barman*

9 JAN 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

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

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

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

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

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

*Contd.....*

*Debman  
Manoj Mr. Debman*

9 JAN 2009

गुवाहाटी न्यायालय  
Guwahati Bench

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

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

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

Contd.....

*Manoj Kumar Bishman*  
Manoj Kumar Bishman

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

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

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

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

Contd.....

*Mangal Kr. Berman*

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Guwahati Bench

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

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

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

13. That the applicant begs to state that he had filed the appeal before the Additional Divisional Railway Manager, N.F. Railway, Lumding being the appellate authority. Unfortunately and in violation of the prescribed norms, the order dated 08.12.2007 has been signed by the Senior DCM/LMG who was the disciplinary authority of the applicant. Though it has been mentioned that the order was passed by the appellate authority (ADRM/LMG), he has not signed the order served on the applicant. As per prescribed norms the disciplinary authority can forward the order

*Contd.....*

*Balman*  
Manoj Kr. Balman

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

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

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

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

**5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :**

- i. For that from the observation as depicted at "Annexure-A" of the NIP, it is evident that the Senior DCM/LMG has never served the copy of his disagreement to the article of charge No. I on the applicant before passing the NIP and as such the order of imposition of penalty dated 09.06.2007 is illegal and the same is liable to be quashed and set aside.

*Contd.....*

*Manoj Kr. Barman*

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ii. For that the disciplinary authority while disagreeing with the findings of the Enquiry Officer regarding the article of charge No. I, failed to appreciate the evidence on record and without consulting the evidence in this respect held that the article of charge No. I established against the applicant in a most illegal manner and as such the order of imposition of major penalty dated 09.06.2007 is not sustainable in law and is liable to be quashed and set aside.

iii. For that while the statutory appeal of the applicant dated 21.09.2007 was pending before the appellate authority, the disciplinary authority after going through the grounds raised by the applicant that the disciplinary authority passed the impugned order of penalty dated 09.06.2007 without serving any memorandum of disagreement on the applicant, the memorandum of disagreement was served on the applicant on 23.11.2007 directing him to submit his representation. Since the disciplinary authority had no power to issue such memorandum of disagreement while the matter was pending before the appellate authority, the applicant submitted his reply stating his inability to file any representation in respect of such disagreement. Though in the order dated 08.12.2007 passed on the appeal it has been stated that the appellate authority has considered the same in its true perspectives but the same could not have been done. As such, the order dated 08.12.2007 is bad in law and is liable to be quashed and set aside.

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

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

Contd.....

*Manoj Kr. Basumatary*

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

- v. For that the enquiry officer while submitting his enquiry report before the disciplinary authority failed to appreciate the evidence in regards to the article of charge No. II in proper manner and held that the charge was partially provided. It is a settle law that an allegation/charge can be "proved" or "not proved" but it cannot be held to be partially proved which has no meaning whatsoever and as such the disciplinary authority ought to have exonerated the applicant from the charges which were not proved but that not having been done and the Sr. DCM/LMG passed the order of penalty arbitrarily, the same is not sustainable in law and is liable to be quashed and set aside.
- vi. For that from perusal of both the order of penalty dated 09.06.2007 and 08.12.2007, it is apparent that both the orders have been passed arbitrarily without following the due procedure of law and in violation of the principles of natural justice and as such both the impugned orders are liable to be quashed and set aside.
- vii. For that the disciplinary authority issued the memorandum of disagreement while the appeal was pending before the appellate authority. The disciplinary authority without having the power to issue the disagreement letter, had issued the same. In the order passed on the appeal of the applicant dated 08.12.2007, the said disagreement letter and the reply of the applicant were also considered in a most

*Contd.....*

*Basman  
Manoj Kr. Basman*

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Guwahati Bench

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perfunctory manner and enhanced the penalty arbitrarily.

As such both the impugned orders of penalty dated 09.06.2007 and 08.12.2007 are liable to be quashed and set aside.

viii. For that though the applicant submitted his representation on 16.12.2004 against the findings of the enquiry officer, the disciplinary authority failed to consider that representation while passing the impugned order of penalty dated 09.06.2007. Moreover, the applicant was not given the opportunity to file his representation against the proposed penalty by the disciplinary authority as well as the appellate authority. The said actions are violative of the principles of natural justice. As such both the orders of penalty are not sustainable in law and are liable to be quashed and set aside.

ix. For that the Sr. DCM/LMG has issued the impugned order dated 08.12.2007 enhancing the penalty on the applicant without having jurisdiction and as such the said order is not sustainable in law and is liable to be quashed and set aside.

x. For that the applicant filed a revision petition before the respondent No. 2 as far back as on 21.01.2008 followed by a reminder representation dated 03.10.2008 against the orders of penalty dated 09.06.2007 and 08.12.2007. Though more than 11 months have elapsed, there is no response from the respondent No. 2 authority to dispose of the said revision petition as such the said actions of the respondent No. 2 authority are liable to be quashed and set aside.

xi. For that the disciplinary authority while issuing the disagreement letter dated 23.11.2007 kept the order of penalty dated 09.06.2007 aside. The appellate authority

Contd.....

*Manoj Kr. Barman*  
Manoj Kr. Barman

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Guwahati Bench

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

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

**6. DETAILS OF REMEDIES EXHAUSTED :**

The applicant on 21.01.2008 has submitted a revision petition before the respondent No. 2 under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 against the order of penalty dated 09.06.2007 passed by the respondent No. 5 (Annexure- VIII) and the appellate order dated 08.12.2007 issued by the respondent No. 5 (Annexure- XII) through proper channel. Since there was no response from the respondent No. 2, in respect of the revision petition, the applicant on 03.10.2008 again submitted a remainder representation before him but without any yield and the same is still pending. From the conduct of the authorities, the applicant convinced that no useful purpose would be served by waiting any longer. The applicant has exhausted all the remedies available under the departmental Rules in respect of the matter.

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

The applicant further declares that he has not approached any other court in respect of the matter. As such no proceeding is pending in any other Court.

*Contd.....*

*Manoj Kr. Basumatary*

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Guwahati Bench

8. PRAYER :

In the aforesaid premises, it is, therefore, prayed that Your Lordships would be pleased to admit this application, call for the entire records of the case, ask the respondents to show cause as to why the impugned orders of penalty dated 09.06.2007 (Annexure-VIII) and 08.12.2007 (Annexure-XII) shall not be quashed and set aside and as to why a direction shall not be issued to release the entire service benefits to the applicant to which he is entitled and after perusing the causes shown, if any and upon hearing the parties be pleased to quashed and set aside the impugned orders of penalty dated 09.06.2007 (Annexure-VIII) and 08.12.2007 (Annexure-XII) with a further direction to release the entire service benefits to the applicant to which he is entitled and/or pass such other order/orders as Your Lordships may deem fit and proper.

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

9. INTERIM ORDER :

In the interim it is prayed that pending disposal of the application Your Lordships would be pleased to

*Contd.....*

*Barman*  
Manoj Kr. Barman

9 JAN 2009

गुवाहाटी अदायकरण  
Guwahati Bench

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suspend the operation of the impugned orders dated 09.06.2007 (Annexure-VIII) and 08.12.2007 (Annexure-XII) with a further direction not to continue in deducting the pay of the applicant and/ or pass such other order/orders as Your Lordships may deem fit and proper.

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

**10. DOES NOT ARISE :**

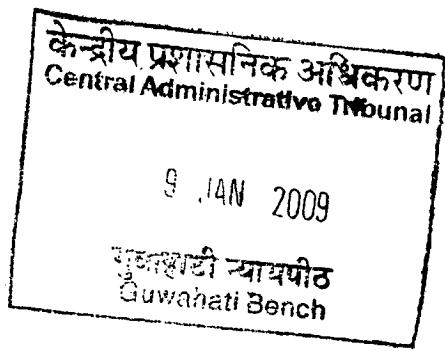
**11. PARTICULARS OF BANK DRAFT/POSTAL ORDER IN RESPECT OF THE APPLICATION FEE :**

- i) I.P.O. No. : 39 G - 376924
- ii) Date : 09-01-2009
- iii) Issued by Guwahati Post Office. (DISPUR BRANCH),
- iv) Payable at Guwahati.

**12. LIST OF ENCLOSURES :**

As stated in the Index.

*Abman  
Manoj Kr. Abman*



VERIFICATION

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

And I sign this verification on this the 9<sup>th</sup> day of January, 2009 at Guwahati.

Place : Guwahati  
Date : 09-01-2009

Manoj Kr. Barman

S I G N A T U R E

No. Chg/1/Gen-Nec/4/04

ANNEXURE - I

Dary/Geny (Name of Railway Administration)  
(Place of issue) Geny Dated 10-5-04

## MEMORANDUM

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

2. \* Shri M.K. Barman is hereby informed that if he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure:III) at any time ~~for~~ during 12 hours within 10(ten) days of receipt of this Memorandum. For this purpose he should contact Dary/Geny immediately on receipt of this Memorandum.

केन्द्रीय प्रशासनिक अधिकारी  
Central Administrative Tribunals

9 JAN 2009

3. Shri M.K. Barman is further informed that he may, if he so desired, take the assistance of any other Rly. Trade Union (who satisfies the requirements of Rly. Court of Appeal Bench rule:9(18) of the Railway servants(Discipline and Appeal)Rules 1968 and Note:1 and /or Note 2 w there under as the case may be) for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Railway servant(s) or Railway Trade Union Official(s) Shri M.K. Barman should obtain an undertaking from the nominee(s) that he (they) is (are) willing to assist him during the disciplinary proceeding. The undertaking should also contain the particulars of other case(s) if any, in which the nominee(s) had already undertaken to assist and the undertaking should be furnished to the undersigned Dary/Geny Dary/Geny along with the nomination.

4. Shri M.K. Barman is hereby directed to submit to the undersigned (through General Manager CGS(BG)/NRC (Railway) and a written statement of his defence (which should reach the said General Manager) within 10 days of receipt of this Memorandum if he does not require to inspect any documents for the preparation of his defence, and within ten days after completion of inspection of documents if he desires to inspect documents, and also

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

Contd.... 2

Attested by  
Suresh  
Advocate

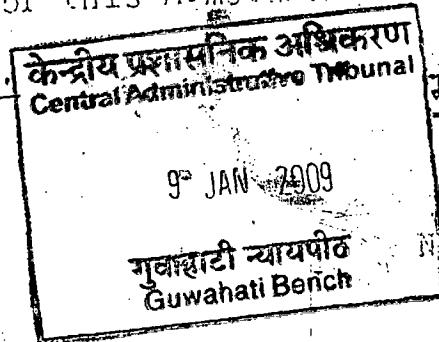
is informed that an inquiry will be held only in respect of those articles of charge as are not admitted, therefore, specifically admit or/ each article of charge

6. Shri M.K. Barman is further informed that, if he does not submit his written statement of defence within the period specified in para 2 or does not appear in person before the inquiry authority otherwise fails or refuses to comply with the provisions of Rules 9 of the railway servants (Discipline and Appeal) Rules 1968 or the order/directions issued in pursuance of the said rule the inquiring authority may hold the inquiry ex parte.

7. Shri M.K. Barman is invited to rule 20 of the Railway service (conduct) Rules 1968, under which no Rly servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceeding, it will be presumed that Shri M.K. Barman is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of rule 20 of the Rly. services (conduct) Rules 1968.

8. The receipt of this Memorandum may be acknowledged.

Encl:-4 (Form)



Under and in the name of the  
President

anil

(A. Barman)

Name and designation of the  
competent authority. DR. G. N. GUPTA

To  
Shri M.K. Barman, 3d. GC/NAC

Replies to CGS(BG)/NAC

Desig: and place

(Name and designation of

① Copy to Shri \_\_\_\_\_ the leading authority for information.

② Strike out which ever is not applicable.

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

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

③ Where the President is the disciplinary authority.

④ To be retained wherever President or the Rly. Board is the competent authority.

⑤ To be used where ever applicable See Rule 16(1) of the RS (DA) Rules 1968. Not to be inserted in the copy sent to the Rly. servant.

Ad 19693

Received on  
05/1/04

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

9 JAN 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench**ANNEXURE-I****ARTICLE-I**

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

**ARTICLE-II**

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

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

W 115  
A. D. Barman  
D. M. A. D.  
Commercial Manager  
R. R. W.

9 JAN 2009

গুৱাহাটী ন্যায়পীঠ  
Guwahati Bench

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

**ARTICLE-I**

**ANNEXURE-II**

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

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

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

**ARTICLE-II**

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

W.M.S  
Acting Manager  
Commercial Dept  
R.R. Guwahati  
RAILWAY, GUWAHATI

LIST OF RELIED UPON DOCUMENTS.

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

9 JAN 2009

গুৱাহাটী ন্যায়ধীষ  
Guwahati Bench

## ANNEXURE-IV

LIST OF WITNESS

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

11/3  
A. Horner  
D. G. H. Manager  
W. A. G. A. M.

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

Dated, 15<sup>th</sup> July'2004.

Sir,

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

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

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

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

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

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

With regards,

Encl - 4 (four) Sheets  
 as above.

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal	
Yours faithfully,	
9 JAN 2009	<i>Manoj Kr. Barman</i> (M. K. Barman) 1577/04 Hd. GC/BG/NGC.
गुवाहाटी न्यायपीठ Guwahati Bench	



Attested by  
 Faruq  
 Advocate



NORTHEAST FRONTIER RAILWAY

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

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

Dated: - 20/08/2004

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

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

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

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

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

1  
A. K. Sen  
Enquiry Officer

Copy forwarded for kind information and necessary action to:-

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

(A. K. Sen)  
Enquiry Officer/HQ

Attested by  
J. Barman  
Advocate



NORTHEAST FRONTIER RAILWAY

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

Dated: - 08/09/2004

NC Z/CON/VIG/08/04(2)

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

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

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

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

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

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

*(A. K. Sen)*  
Enquiry Officer

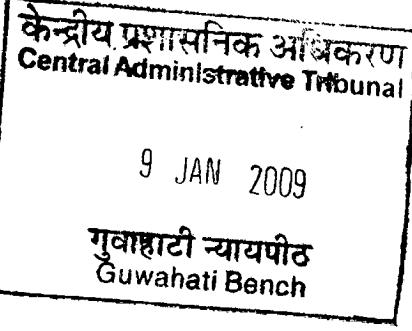
Copy forwarded for kind information and necessary action to: -

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

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

*Attested by  
A. K. Sen  
Pro. C. O. C. O.*

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ANNEXURE- V

(Typed Copy)

N.F. Rly.

Office of the Sr. ARM/Guwahati

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

Dt. 7.12.04

To

Shri M.K. Barman

Hd. GC/NGC

Through : CGS/BG/NGC

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

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

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

Enclose 8 (eight)

Sd/- Illegible

Divisional Commercial Manager,  
Guwahati

7.12.04

Copy to - CGS/BG/NGC for information please

Sd/- Illegible

Divisional Commercial Manager,  
Guwahati

Rd.

8.12.04

*Attested by  
Saral  
Advocate*

N.F. Rly.

S. P. 12/2004

No. c/rg/ig/fty-NAC/4/0 ~~केन्द्रीय प्रशासनिक अधिकारपा~~  
Central Administrative Tribunal  
Office of the  
ARM/Guwahati  
7-12-04.

S.

Shri M. K. Basumatary,

Hd. Gc/NAC  
Almora-CGS/BG/NAC

9. JAN. 2009

Guwahati Bench

Sub:- Final enquiry report of departmental  
enquiry of DAR case into the charged  
memorandum no. c/rg/ig/fty-NAC/4/04  
dt. 10-5-04.

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

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

Ends - 8 (eight)

Divil. Control Manager,  
Guwahati  
D.P. B.

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

Divil. Control Manager  
Guwahati  
D.P. B.

Attested by  
S. C. S.  
D. B.



For C.O. Shri M. K. Barman, Hd GC/NGC -28-

-28-

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

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## INTRODUCTION

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

## THE ARTICLE OF CHARGE

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

### Article - I

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

### Article - II

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

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Central Administrative Tribunal

9 JAN 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

Attested by  
Parimal  
Advocate

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- 29 -

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

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

Central Administrative Tribunal  
(Conduct)

9 JAN 2009

गुवाहाटी न्यायालय  
Guwahati Bench

### THE CASE ON BEHALF OF THE DISCIPLINARY AUTHORITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Therefore, the charge against Article -II is also stands established. 9 JAN 2009

#### THE DEFENCE OF THE CHARGED OFFICIAL

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Guwahati Bench

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

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

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

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

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

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

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

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

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

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

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

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Central Administrative Tribunal

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गुवाहाटी न्यायालय  
Guwahati Bench

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

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

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

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

#### ASSESSMENT OF EVIDENCES

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

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

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

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Guwahati Bench

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

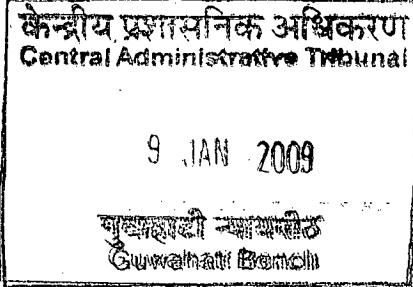
As per the procedure, Book Delivery is to be given first & thereafter the Consignment is to be unloaded, tallied by Tally Clerk & after unloading the Consignment, the damaged portion are required to be segregated & details of the damaged received are highlighted through the tally and after finalization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

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

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

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

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





(7) -34-

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

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

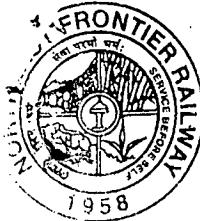
केन्द्रीय प्रशासनिक अ  
Central Administrative

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

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



- 2 -

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

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

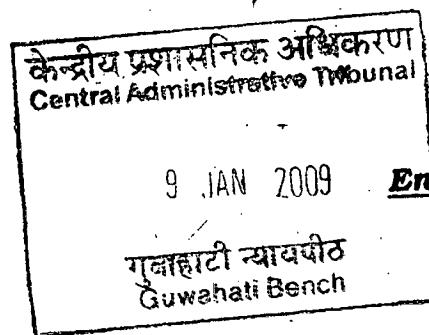
#### FINDINGS

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

ARTICLE - I  
ARTICLE - II

NOT PROVED  
PARTIALLY PROVED

Dated: - 17/11/2004



0338912

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

Dated: 16/12/2004

Sir,

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

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

केन्द्रीय प्रशासनिक अधिकारी  
Central Administrative Tribunal

9 JAN 2009

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Guwahati Bench

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

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

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

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

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

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

Attached by  
Karan  
D. S. Coli

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

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

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

With regards,

Yours Faithfully.

Mangal Kr. Barman

(M.K. Barman)

(Charged Official)

Ex.Hd.Gc/NGC now

Hd.Gc at Dharmanagar.

केन्द्रीय प्रशासनिक अधिकारण  
Central Administrative Tribunal

9 JAN 2009

गुवाहाटी न्यायालय  
Guwahati Bench

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

ANNEXURE- VII

(Typed Copy)

N.F. Rly.

No. ES/96-M(T)

Office of the  
DRM(P)LMG

Dt. 5.7.07

To

Shri Manoj Kumar Barman  
HCC (Goods) DMV

Through :- SS/DMV

Sub : Implementation of punishment.

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

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

Sd/- Illegible  
for DRM (P) LMG

N.F. Rly

5.7.07

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

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

Received on 10.8.07

Sd/- M.K. Barman

10.8.07

*Petalled by  
J. Barman  
Associate*

88-ES/96-M(T)

Dr. F. R.

-38(A) -

OFFICE OF THE  
DEPARTMENT OF LABOR  
DOL-5 17/07

## ANNEXURE - VII

To Shri Manoj Kumar Barman.  
HEC (Goods) DMV.

Thru - 5812 m.

Thru - 5812 m.

## Sub-Implementation of punishment.

Ref! - 37, Dem / Eng's nippm. c/101447-N44  
04/04 d. 9-6-07.

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

✓ D2M (P) Lm 44  
or F. R. 44

copy to OS/ET till at office to draw the salary  
of the staff accordingly.

YDAM (P) Lm. 1  
K. F. R.

Received Oct. 10/8/07  
Detained by ~~Parwan~~  
10/8/07  
Detained by  
Afghan  
Police

Received  
dd. 10.8.07  
Barman

- 39 -

ANNEXURE - VIII

Northeast Frontier Railway

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

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

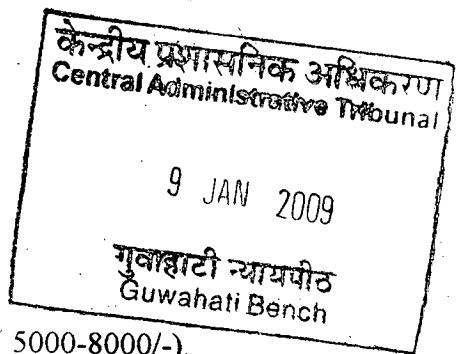
No.C/VIG/GHY-NGC/04/04

Dated 09.06.2007

To,

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

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



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

Charges (s)

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

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

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

affected by  
General  
order

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

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

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

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

2. Dy.CVO/T/Maligaon for kind information in reference to letter No.Z/VIG/94/1/19/2004 dated 05-02-2007

3. SM/DMV for information. He is advised to hand over this NIP to the staff concerned obtaining acknowledgement and send the same to this office.

केन्द्रीय प्रशासनिक अधिकार  
Central Administrative Tribunal

9 JAN 2009

(S. C. Kumar)  
Sr DCM/LMG

Please note the instructions below:-

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

If:-

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

Contd---3

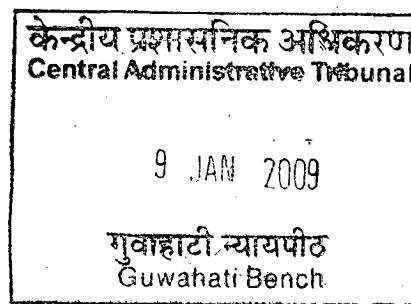
## O B S E R V A T I O N

### Annexure 'A'

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

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

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



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

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

b2

In the matter of :

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

--: AND :-

In the matter of

केन्द्रीय प्रशासनिक अदायकरण  
Central Administrative Tribunal

9 JAN 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

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

--: AND :-

In the matter of

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

Appellant

Attested  
by  
Param  
Dwivedi

The appellant above named

MOST RESPECTFULLY BEGS TO STATE:

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

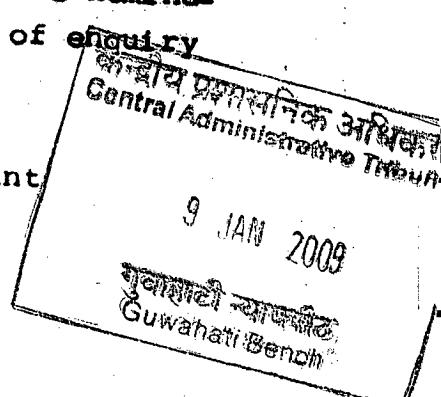
2. That the Divisional Commercial Manager, Guwahati, issued Office memorandum dated 10.05.2004 thereby directing the appellant to submit his written statements in defence within 10 days from the date of the receipt of the memorandum against two charges levelled against him vide Annexure-1 to the said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

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

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

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

Contd. on p/3



/p/3/

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

A copy of the above letter dated 20.08.2004

.....Annexure-III

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

The appellant duly attended the hearing before the Enquiry Officer.

9 JAN 2009

गुवाहाटी आयोडी  
Guwahati Board

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

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

Contd...p/4

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

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

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

8. That the appellant begs to state that after submitting his representation dated 16.12.2004 he was in the hope that the authorities would consider his representation in a favourable manner and he shall be exonerated from the charges. Moreso, there was no response from the authorities for a long time. Contrarily, the appellant was shocked and surprised having received the office letter No: ES/96-M(T) dated 05.07.2007

**केन्द्रीय प्रशासनिक अधिकारी**  
Central Administrative Tribunal  
Guwahati Bench  
9 JAN 2009  
Issued by the DCM(P)LMG, N.F. Railway on 10.08.2007 whereby the appellant was informed that the Sr.DCM/LMG has imposed the penalty of reduction to the lower stage in the time scale of pay by one stage lower for a period of three years (without using the benefit of future increment). Accordingly, his pay Guwahati Bench has been fixed at lower scale of pay w.e.f. 09.6.2007 to 08.06.2010. With the said letter copies of Notice of imposition of penalties dated 09.06.2007 and the observation of the Sr.DCM/LMG were also enclosed. From the perusal of the Sr.DCM/LMG it is appearant that he had disagreed with the report of the Enquiry Officer in connection with Articles of charge No: 1 and held that the said charge has been established and accordingly imposed the major penalty on the appellant without giving an opportunity to the appellant in connection with his disagreement with the findings of the Enquiry Officer. Moreover from the very begining of issuing the charge Memorandum  
Contd. on p/5

10.05.2004 the Sr.D.C.M was not involved with the proceedings against the appellant. It may also be mentioned here that though it was informed that the pay of the appellant has been fixed at lower scale of Rs.6800/- with effect from 09.06.07 to 08.06.2010 and the appellant may file an appeal against the imposition of penalty before the appellate authority, the authorities has already materialised the N.I.P from & started pay cut from the Month of July, 2007, August, 2007 though the appellant received the N.I.P. only on 10.08.2007 which itself shows that the punishment has been imposed on the appellant in a pre-determined motive and in violation of the settled laws in this respect visa-vis the principles of natural justice.

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

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

- G R O U N D S -

9 JAN 2009  
Guwahati Bench  
i) For that from the 'Observation' as depicted at Annexure 'A' of the NIP it is evident that the Sr.DCM/LMG has never been issued a charge sheet against the appellant as his disciplinary authority and as such the 'Observation' is attained by the Sr.DCM/LMG and consequent order of imposition of penalty dated 09.06.07 is illegal and as such the same is liable to be quashed and set aside.

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

Contd. on p/6

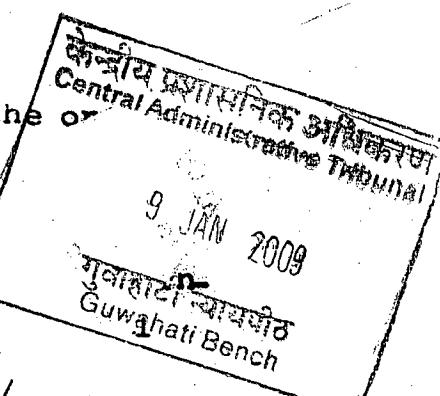
/p/6/

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

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

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

Contd....p/



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

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

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

viii) For that, the Hon'ble Apex Court in a recent case has settled the law in respect of the view of the disciplinary authority to the matter of disagreement with the findings recorded by the Enquiry Officer in a departmental Enquiry holding that while disciplinary Authority take view different to the one taken by the enquiry officer, procedure to be followed by the Disciplinary authority in such a case and hearing must be given to the delinquent.

In this respect the Disciplinary Authority is bound to give a notice setting out his tentative conclusions to the charged employee. It is only after hearing the delinquent the Disciplinary Authority can arrive at a final

Contd. on p/8

केन्द्रीय प्रशासनिक अधिकारी  
Central Administrative Officer

Central Administrative Officer

9 JAN 2009

गुवाहाटी न्यायालय  
Guwahati Bench

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

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

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

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

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

Contd. on p/9

19 JAN 2009

Guwahati Bench

/p/9/

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

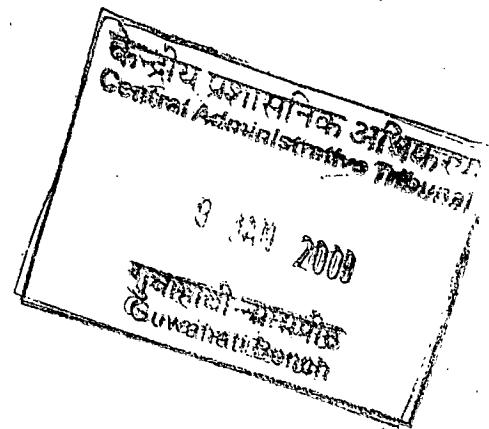
AND for which act of kindness, the appellant, as in duty bound, shall ever pray.

Yours faithfully,

Dated:-

Mangal Kr. Barman  
HSC/SMV

Dt. 21-09-2007



## FORM CHARGESHEET

(STANDARD FORM NO. 5)

(Rule 9 of the Railway servants(Discipline and appeal rules 1969))

No. C/Gen/Guy/NCC/4/04

Dcm/Guy (Name of Railway Administration)  
(Place of issue) Guy Dated 10-5-04

## MEMORANDUM

The President/Railway Board/undersigned propose(s) to hold an inquiry against Shri M.K. Barman 21d. G.C.W.C. under rule-9 of the Railway servants(Discipline and appeal)Rules 1968. The substance of the imputations of misconduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement or articles of charge (Annexure-I). A statement of the imputations of misconduct or mis-behaviour in support of each articles of charge is enclosed (Annexure-II). A list of documents by which and a list of documents by whom, the articles of the charge are proposed to be substantiated are also enclosed (Annexure-III and IV). Further copies of documents mentioned in the list of documents as per Annexure-III are enclosed.

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

3. Shri M.K. Barman is further informed that he may, if he so desired, take the assistance of any other Rly. servant or official or Rly. trade Union (who satisfies the requirements of rule 9(18) of the Railway servants(Discipline and Appeal)Rules 1968 and Note 1 and / or Note 2 as there under as the case may be) for inspecting the documents and assisting him in presenting his case before the Inquiring Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Railway servant(s) or Railway Trade Union Official(s) Shri M.K. Barman should obtain an undertaking from the nominee(s) that he (they) is (are) willing to assist him during the disciplinary proceeding. The undertaking should also contain the particulars of other case(s), if any, in which the nominee(s) had already undertaken to assist and the undertaking should be furnished to the undersigned/General Manager & Dcm/Guy Railway along with the nomination.

4. Shri M.K. Barman is hereby directed to submit to the undersigned (through General Manager CES(B)/NCC/Railway) and a written statement of his defence (which should reach the said General Manager) within 10 days of receipt of this Memorandum if he does not require to inspect any documents for the preparation of his defence, and within ten days after completion of inspection of documents if he desires to inspect documents, and also-

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

Contd. .... 2

केन्द्रीय प्रशासनिक अधिकारी  
Central Administrative Tribunal

16.5.2009  
General Manager  
Guwahati Bench

6. Shri M.K. Parman is informed that an inquiry will be held in respect of those articles of charge as are not admitted, therefore, specifically admit or/ each articles of charge, therefore, specifically admit or/ each articles of charge.

6. Shri M.K. Parman is further informed that if he does not submit his written statement of defence within the period specified in para 2 or does not appear in person before the inquiry authority or otherwise fails or refuses to comply with the provisions of rules 9 of the railway servants (Discipline and Appeal) Rules 1968 or the order/directions issued in pursuance of the said rule the inquiring authority may hold the inquiry ex parte.

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

Shri M.K. Parman is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of rule 20 of the Rly. services (conduct) Rules 1968.

8. The receipt of this Memorandum may be acknowledged.

Encl:-4 (font)

in order and in the name of the  
President

Signature (A. Horain)  
Name and designation of the  
competent authority DCMG

To Shri M.K. Parman, Std. GC/NGC

Designation CDS (P&G) / NGC

Designation and place

(Name and designation of

9. Copy to Shri the leading 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.

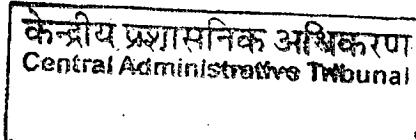
\*\* Name of the authority (This would imply that whenever a case is referred to the Disciplinary authority by the investigating authority or any authority who are in the custody of the listed document or who would be arranging for inspection of the documents to enable this authority being mentioned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

✓ Where the President is the Disciplinary authority.

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

✓ To be used where ever applicable See Rule 10(i) of the Rly. (DA) Rules 1968. Not to be inserted in the copy sent to the Rly. servant.

Ad19093



10. 2009

राष्ट्रीय न्यायीक बोर्ड  
Guwahati Bench

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

**ANNEXURE-I**

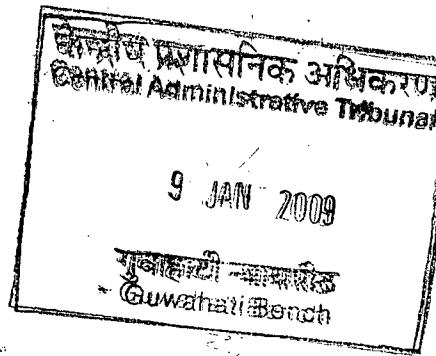
**ARTICLE-I**

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

**ARTICLE-II**

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

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



W 118  
A-3102009  
Dec 10/09  
Guwahati Bench

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

ARTIC

## ANNEXURE-II

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

As per invoice no. 220/351 bags of onion

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

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

## ARTICLE II

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

the party to write the false के स्वीय प्रशासनिक अधिकारी  
onion kept for A/D without Central Administrative Tribunal

Delivery clerk on 1.12.01  
as he delivered onion  
to the party. This was also  
failed to take signature of  
No. 256 RR No. 140248

11/15  
A-10 (no name)  
DCW/fit/la

ANNEXURE-III

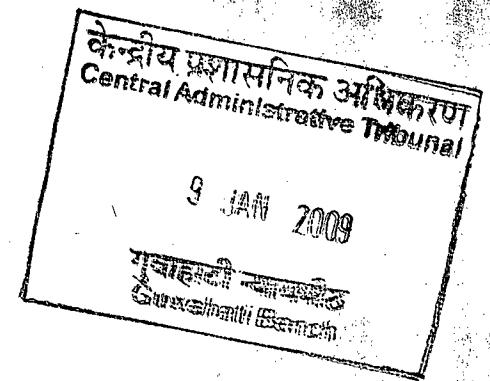
LIST OF RELIED UPON DOCUMENTS.

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

ANNEXURE-IV

LIST OF WITNESS

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

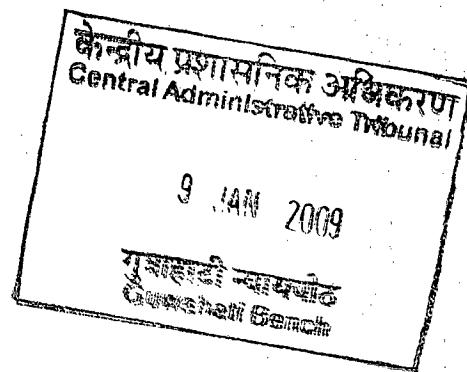


participants of such violation of rules are furnished below.

Model ID	Model Name	Model Description	Model Type	Model Status	Model Version	Model Last Update	Model Created Date
MLP-221	MLP-221	MLP-221	Classification	Active	1.0	2023-09-15	2023-09-15
RF-101	RF-101	RF-101	Classification	Active	1.0	2023-09-15	2023-09-15
LSTM-100	LSTM-100	LSTM-100	Classification	Active	1.0	2023-09-15	2023-09-15
GRU-110	GRU-110	GRU-110	Classification	Active	1.0	2023-09-15	2023-09-15
TF-100	TF-100	TF-100	Classification	Active	1.0	2023-09-15	2023-09-15
DL-101	DL-101	DL-101	Classification	Active	1.0	2023-09-15	2023-09-15
CV-101	CV-101	CV-101	Classification	Active	1.0	2023-09-15	2023-09-15
MLP-222	MLP-222	MLP-222	Classification	Active	1.0	2023-09-15	2023-09-15
RF-102	RF-102	RF-102	Classification	Active	1.0	2023-09-15	2023-09-15
LSTM-101	LSTM-101	LSTM-101	Classification	Active	1.0	2023-09-15	2023-09-15
GRU-111	GRU-111	GRU-111	Classification	Active	1.0	2023-09-15	2023-09-15
TF-101	TF-101	TF-101	Classification	Active	1.0	2023-09-15	2023-09-15
DL-102	DL-102	DL-102	Classification	Active	1.0	2023-09-15	2023-09-15
CV-102	CV-102	CV-102	Classification	Active	1.0	2023-09-15	2023-09-15

It is, by the above acts said Shri M.L. Barman (D.G.C.B.A.C) exhibited lack of integrity, he often to duty and acted in a manner sub-contrarie of a Police Officer and thereby violated the provision of para 3 (i) (ii) and (iii) of Section 8 (1) of Schedule (cluded) Rules, 1950.

11/11/19  
A. Storaeng  
DCM GHD



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

Dated, 15<sup>th</sup> July 2004.

Sir,

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

-o(O)o-

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

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

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

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

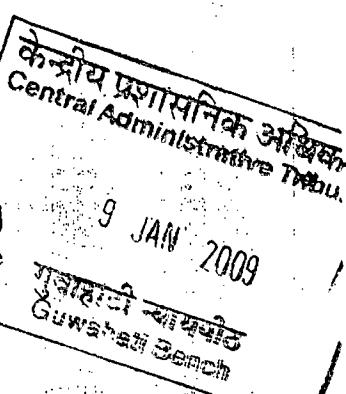
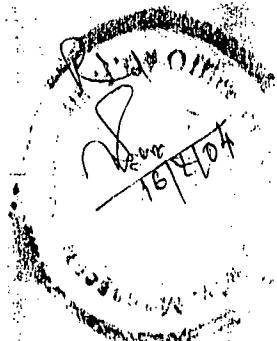
The consent letters of the above named two individuals are enclosed herewith for your kind perusal and disposal please. The arrangement may kindly be done for their sparing during enquiry.

With regards,

Encl - 4 (four) Sheets  
as above.

Yours faithfully,

Manoj Kr. Barman  
( M. K. Barman ) 17/7/04  
Hd. GC/BG/NCC.





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NORTHEAST FRONTIER RAILWAY

ANNEXURE = III

Office of the  
Enquiry Officer/HQ  
Maligaon, Guwahati - 781011

8

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

Dated - 20/08/2004

To  
✓ Shri M. K. Barman  
Hd. CC/NGC  
N.E. Railway

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

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

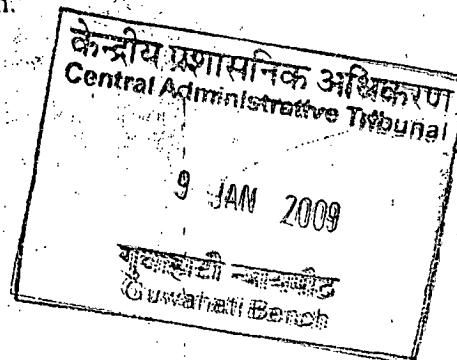
It has now been decided to conduct the Preliminary Hearing of the above case on 08/09/2004 at 10.00 hrs in the chamber of the undersigned at Maligaon HQ.

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

A. K. Sen  
Enquiry Officer

Copy forwarded for kind information and necessary action to:-

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



(A. K. Sen)  
Enquiry Officer/HQ



NORTHEAST FRONTIER RAILWAY

ANNEXURE - 1

Office of the  
Enquiry Officer/HQ  
Maligaon, Guwahati - 781011

Dated: - 08/09/2004

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

Shri M. K. Barman

Hd. GC/NGC

N.E. Railway

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

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

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

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

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

(A. K. Sen)  
Enquiry Officer

Copy forwarded for kind information and necessary action to:-

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

(A. K. Sen)  
Enquiry Officer/HQ

0352710

9 JAN 2009  
Guwahati Bench

Administrative Tribunal

cfwq/2004/4/04.

N.F. Ry.

Sp/2004 - 60 -

ANNEXURE B = ✓

Office of the  
Govt. of Assam  
21. 1. 2004.

M. R. Bowman,

State Ac/NAC  
Dibrugarh/BG/NAC

Subject: Formal Enquiry referred by Government  
enquiry of DAR case into the charges  
submitted from N.F. Ry. cfwq/2004 NAC/4/04  
dt. 10-5-04.

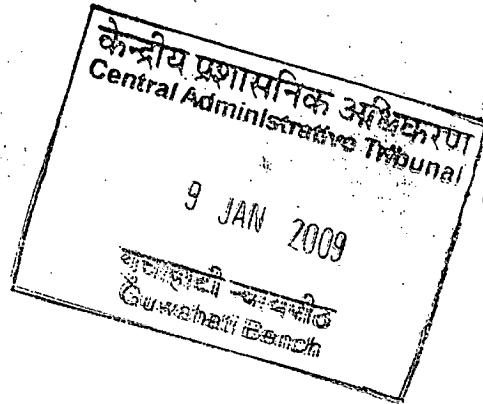
The formal enquiry report of above enquiry  
is enclosed with this Enquiry letter (A.K. Sen)  
and sent herewith.  
Please submit your representation  
in this connection within 10 (ten) days from  
the date of receipt of this letter.

Yours etc (right)

Sub: Dated: 10/01/05  
Enquiry letter

(Copy to - c/o B.G/NAC for information)

D. G. Cormal, Manager  
A. K. Senapati  
S. C. Bhattacharya  
G. D. Bhattacharya



- 61 -  
For CO. Shri M. K. Barman, Hd. GC/NGC



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

**1.0. INTRODUCTION**

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

**2.0. THE ARTICLE OF CHARGE**

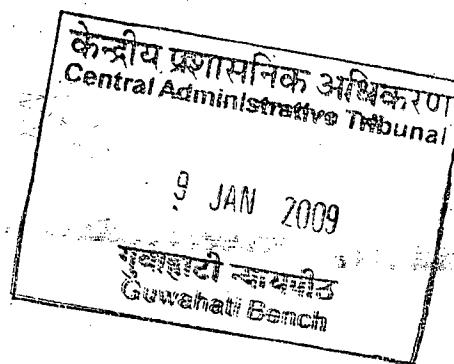
2.1. The DA has framed Two (02) Article of Charges against Shri M. K. Barman, Hd. GC/NGC, which are mentioned below:-

**Article - I**

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

**Article - II**

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





(2) - 62 -

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

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

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

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

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

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

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

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

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

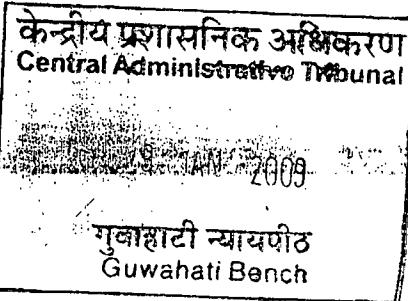
3.6 PD - 6 is the copy of the Gate Pass Khata of RPF/NGC containing pages for the date of 01/12/2001.

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

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

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

3.10 PD - 10 is the copy of the Railway Receipt's (32 nos) mentioned that Presenting Officer in his brief submitted on 28/09/2004 mentioned that Shri M. K. Barman on 01/12/2001 commenced his duty as Delivery





(3) - 63 -

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

In regard to Article - II of the Charge, it has been mentioned that as per delivery book, Consignment under Invoice No. 110248/256 was delivered without obtaining the signature of the party i.e. without verifying the genuineness of the party and the same of delivering the Consignment was admitted by Shri Barman in reply to Q No. 9 is his statement.

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

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

#### THE DEFENCE OF THE CHARGED OFFICIAL

Charged Official in his Defence Brief received on 26/10/2004 mentioned that the Charge against Article - I is far from the fact as the CO was on duty at the Delivery Counter on the day from 06.30 hrs to 13.30 hrs and he left the Counter at 14.30 hrs on completion of his duty and it cannot be denied that CO did not close the Book Delivery since the Consignment started lifting from 09.15 hrs and completed unloading at 15.00 hrs indicates that the party was allowed by the CGS/NGC to remove the good portion of the Consignment from the Railway premises and the damaged portion was kept for A/D and after granting A/D by DCM/GHY, the Consignment was finally removed at 18.10 hrs which did not fall within the duty hours of the CO.

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

0338922



(9) - 64 -

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

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

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

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

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

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

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

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

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

सेन्ट्रल एडमिनिस्ट्रेटिव ट्रिब्यूनल  
Central Administrative Tribunal

9 JAN 2009

गुवाहाटी ब्रॉन्च  
Guwahati Branch

0338920



(S) - 65 - 25

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

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

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

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

#### ASSESSMENT OF EVIDENCES

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

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

5.3 As per Invoice No. 220, 331 bags of against Invoice No. 251, 361 bags total of which 712 bags of Onion were booked. As per tally, the Consignments were tallied & unloaded at 15.00 hrs & 14.00 hrs respectively but 712 bags of Onion were delivered & removed from

0338918



(6) - 6 -

on the premises at 10.00 hrs, 17.45 hrs, 10.00 hrs. & 10.00 hrs by  
trucks bearing Nos. AMX - 6384/153, AMZ - 1143/199, AMH -  
1377/180 & NLA - 1898/180 as per Gate Pass Register maintained by  
RPT Personnel & Goods Office/NGC which resulted the fictitious A/D of  
the Consignment on 01/12/2001.

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

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

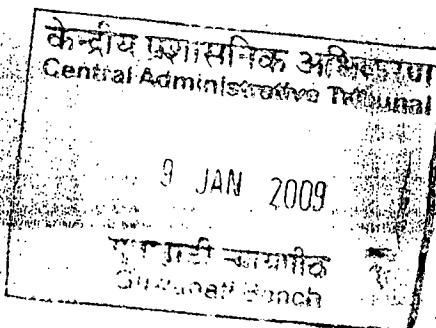
5.2 While claiming A/D, the same was claimed for 514 bags as per tally and after finalization of A/D, the damaged bags must have been lifted/removed from the Railway premises.

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

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

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

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



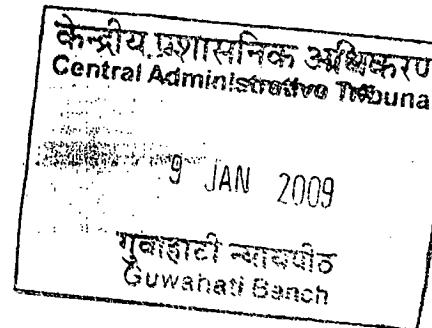


As the details furnished under Annexure - II of the statement of facts where particulars of violation made were mentioned, it is seen that against Invoice No. 221 (PD - 9/17) Consignee was U. C. Lakhani & the same was endorsed to Sunrise Trader and delivery was taken by Sunrise Trader but the signature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

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

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

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





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

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

#### FINDINGS

Thus, from the above discussions and the evidences taken on record, it is concluded that the Article of Charge framed against the CO Shri M. K. Baruah, Hd. GC/NGC vide Memorandum of Charge Sheet No. C/NG/GHY - NGC/4/04 dated 10/05/2004 issued by C. M. Gavai/

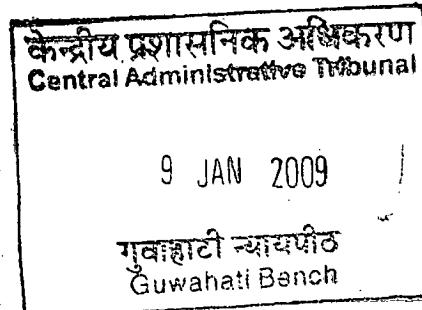
are as under:-

ARTICLE - I  
ARTICLE - II

NOT PROVED  
PARTIALLY PROVED

17/11/2004  
(H. M. Sen)  
Enquiry Officer/HQ/MLG

Dated: 17/11/2004



0338912

To

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

Dated 16/12/2004.

Sir,

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

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

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

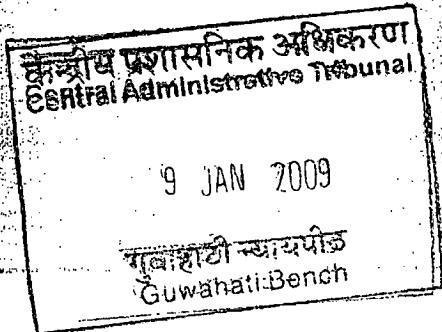
1.0 That sir, regarding findings of the Hon'ble EO on Article-I (one) I would like to submit that I accept the findings fully; but I totally disagree with the findings on Article-I (two), for the reasons submitted below:-

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

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

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

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



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

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

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

With regards,

Yours Faithfully,

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

R. J.

W.M.  
16/12/04  
Sh. 06/0

केन्द्रीय प्रशासनिक अदायकरण  
Central Administrative Tribunal

9 JAN 2009

गुवाहाटी अदायकरण  
Guwahati Bench

80. ES 196-M/T.

PC-FR12

-7/

OFFICE OF THE  
DEPARTMENT OF  
DEFENSE

To Shri Manoj Kumar Basu

See (Good) Inv

Two - 55 / DMV

3rd - 90% violation of punishment.  
4th - 33% of TAP M.C (visiting-NYC)

In terms of the demands M.P.M. under reference, it is to inform you that the penalty of reduction to the lower stage in the time scale 2. pay by one stage lower in a period of 3 (Three) years without losing the benefit of future increments has been imposed upon you. Accordingly your pay has been fixed at Rs. 6800 - M.D. 09-6-07 to 8-6-2010.

copy to OS/ET before change to draw the salary  
of the sum accepted 8/1

YDAn (P) LmL  
K. F. Rly

Riccardi d. 10/31  
P. 100

Receiver  
dtd. 10-8-07  
Barman

-72-

ANM BXvRB = MINI or

Northeast Frontier Railway

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

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

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

Dated 09.06.2007

To,

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

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

केन्द्रीय प्रशासनिक अधिकारण  
Central Administrative Tribunal

19 JAN 2009

गुवाहाटी अधिकारण  
Guwahati Bench

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

Charges (s)

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

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

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

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

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

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

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

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

(S. C. Kumar)  
Sr DCM/LMG

Please note the instructions below:-

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

If:-

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

Contd--3

संविधान नगरी  
Guwahati Bench

74  
OBSERVATION

Annexure 'A'

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

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

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

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



N.F.Railway

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

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

To,

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

Sub: - Memorandum of Disagreement.

केन्द्रीय प्रशासनिक अधिकारण  
Central Administrative Tribunal

9 JAN 2009

गुवाहाटी न्यायालय  
Guwahati Bench

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

Till such time the decision is taken on receipt of representation, the penalty imposed vide this office NIP No. C/VIG/GHY-NGC/04/04 dated 09.06.2007 is kept aside.

*23/11/07*  
(S. C. Kumar)  
Sr.DCM/LMG

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

*23/11/07*  
Sr.DCM/LMG

Received on 23/11/07  
*(Signature)*

*Shubh  
Gaurav  
Adhikari*



9 JAN 2009

गुवाहाटी न्यायालय  
Guwahati Bench

Memorandum of Disagreement

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

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

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

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

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

*S.C.Kumar*  
(S.C.Kumar)  
Sr.DCM/LMG  
(DISCIPLINARY AUTHORITY)

To,

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

9 JAN 2009

गुवाहाटी न्यायालय  
Guwahati Bench

ANNEXURE -1



- 77 -

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

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

St. DCM/LMG

9 JAN 2009

गुवाहाटी न्यायालय  
Guwahati Bench

ANNEXURE-XI

(Typed Copy)

To

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

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

Sir,

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

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

Dated : 05.12.07

Yours faithfully

Sd/- Manoj Kumar Barman  
HGC/DMV

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

Attested by  
J. Barman  
Advocate -

To,

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

Ref:

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

Sir,

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

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

Dated : 05-12-07

Yours faithfully,

*Manoj Kr. Barman*

(MANOJ KR. BARMAN)  
HGC/DMV.

*Attested by  
Farukh,  
Advocate*

*R.  
Aljaj  
27/12/07  
Ch. 03 (c)*

(1)  
N.F.Railway

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

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

केन्द्रीय प्रशासनिक अधिकारण  
Central Administrative Tribunal

9 JAN 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

To,

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

(Through:- SM/DMV)

Sub:- Order of Appellate authority.

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

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

Order of Appellate authority

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

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

Cond.---2

Attended by  
Jasur  
Advocate

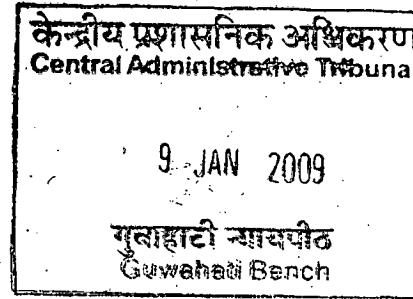
*Jasur*  
परिषद भैडल व्यापार जब  
प्रमील रेलवे/सामर्थ्य  
Divl. Comml. I  
P. Rly. H. m. P.

(2)

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

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

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



Cond---3

*drandre*  
राज्य बड़ा वायिडब्लू प्रबंधक  
पू. सी. रेलवे/आमदाद  
Civil Comm. Manager  
N P Rly. Lumding

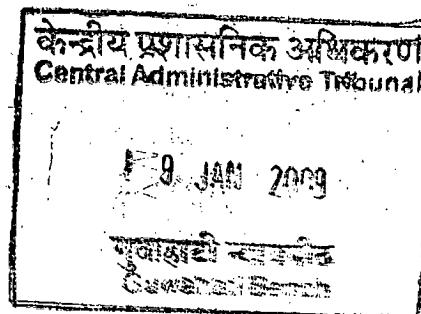
(3)

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

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

*Shandur*  
2127

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



रिष्ट अड्डा बांधिज  
पू. सी. रेलवे/आमडिय  
Divl. Commr. M.  
N. F. Rly. N.

ANNEXURE-XIII

(Typed Copy)

To

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

Sub : Reminder representation.

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

Sir

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

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

Yours faithfully,  
Sd/- Manoj Kr. Barman  
3.10.08  
(MANOJ KR. BARMAN)  
HGC/DMV  
N.F. Railway, Dimapur.

Enclosed :

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

Copy to :

S.S./DMV for information

Attested by  
Jagannath  
Arocali

केन्द्रीय प्रशासनिक अधिकारण  
Central Administrative Tribunal

9 JAN 2009

गुवाहाटी बैच बैठक  
Guwahati Bench

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

Sub : Reminder representation.

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

केन्द्रीय प्रशासनिक अधिकारी  
Central Administrative Tribunal

9 JAN 2009

गुवाहाटी न्यायालय

Sir,

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

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

Yours faithfully,  
Monoj Kr. Barman  
3/10/08.  
(MONOJ KR. BARMAN)  
HGC/DMV  
N.F. Railway, Dimapur.

Enclosed :

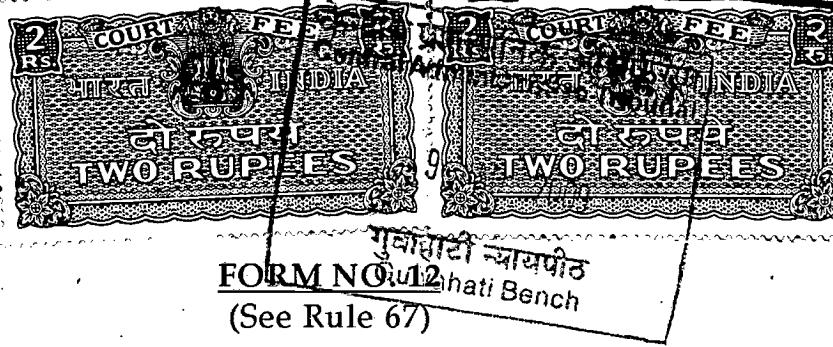
A copy of the above mentioned revision petition signed by me on 11-01-2008 with its annexures.

Copy to :

S.S./DMV for information.

Attached by  
J. Barman  
A. D. Scale

21/1/08  
65/10/08



## VAKALATHNAMA

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH, GUWAHATI

O.A./R.A./C.P./M.A./P.T/

/ NO

OF 2009

Sri Manoj Kr. Barman

Applicant

- Versus -

Union of India and others

Respondents

I, Sri Manoj Kr. Barman Applicant in the above application/petition do hereby appoint and retain Sri Prakash Sarmah, Biswajit Chakravarty Advocate/s to appear, plead and act for me in the above application/petition and to conduct and prosecute all proceedings that may be taken in respect thereof including Contempt of Court Petitions and Review Applications arising therefrom and applications for return of documents, enter into compromise and to draw any moneys payable to me/us in the said proceeding.

Place Guwahati  
Date 09-01-2009  
Executed in my presence

Manoj Kr. Barman

Signature of the party  
"Accepted"

Prakash Sarmah  
Biswajit Chakravarty  
Signature with date  
(Name of the Advocate)

Signature with date  
(Name and Designation)

Name and address of the  
Advocate for Service.  
Mr. Prakash Sarmah, Advocate  
Gauhati High Court, Guwahati  
R/o Kharghuli (Near Post Office),  
Guwahati-4, Kamrup(M), Assam.

The following Certification to be given when the party is unacquainted with the language of the Vakalathnama or is blind or illiterate :

The contents of the Vakalath were truely and audibly read over/translated into \_\_\_\_\_ language to the party executing the Vakalath and he seems to have understood the same.

Signature with date  
(Name and Designation)