

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

M.P-37/95 ordersheet pg-1
disposed date 05/6/95

INDEX

O.A/T.A No. 93/95
R.A/C.P No.
E.P/M.A No. 37/95

1. Orders Sheet. OA-93/95 Pg. 1 to 2
2. Judgment/Order dtd. 05/6/95 Pg. 1 to 7 allowed
3. Judgment & Order dtd. Received from H.C/Supreme Court
4. O.A. 93/95 Pg. 1 to 37
5. E.P/M.P. 37/95 Pg. 1 to 6
6. R.A/C.P. NIL Pg. to
7. W.S. NIL Pg. to
8. Rejoinder. NIL Pg. to
9. Reply. NIL Pg. to
10. Any other Papers. Pg. to
11. Memo of Appearance.
12. Additional Affidavit.
13. Written Arguments.
14. Amendement Reply by Respondents.
15. Amendment Reply filed by the Applicant.
16. Counter Reply.

SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI, 5

O.A.No. 93/95

Misc. Petn.

C.P. No.

R.Appl:

..... T. R. Chandhury APPLICANT'S
frs,

..... V. O. I. & ors RESPONDENT'S

Mr. J. H. ... FOR THE APPLICANTS

.....

.....

Mr. B. K. Sharma, N.R. FOR THE RESPONDENTS
Railway

OFFICE NOTE ----- DATE ----- ORDER -----

This application is in
form and within time.

C. F. of Rs. 50/-

deposited vide

IPO/BD No. 884/47

Dated 20/4/95

~~Signature~~

~~Signature~~

2.5.95

Issue notice to the respondents to
show cause as to why the application should
not be admitted. The respondents also to
state whether the appeal stated to have
been filed by the applicant on 13.7.92 to
the Senior DME(P)/LMG against the impugned
order has been decided or not and if
decided produce the copy of the order.
Returnable on 5.6.1995.

~~Signature~~
Member

~~Signature~~
Vice-Chairman

This application is in
form but not in time.

Condonation Petition is

filed / not filed. C. F.

for Rs. 50/- deposited

vide IPO/BD No. 884/47

Dated 20/4/95

pg

~~Signature~~ 15/5/95
By Registrar (A)

Requisite on 8/5

8/5/95 V-12-1982-86

8/5/95

8/5/95

6.7.95

copy of Indg/Order
dtd. 5.6.95 issued
to all concerned by
Regd. Post vide d/o,
3001-3004 dtd. 14.7.95.

5.6.95

Mr I.Hussain for the applicant.

Mr B.K.Sharma for the respondents.

Admitted. Notice waived.

By consent taken up for final
hearing. Arguments of both the counsel
heard and concluded. Judgment delivered
in open court. The application is partly
allowed in terms of the order. No order
as to costs.

Member

Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI -5.

O.A. NO. 93 of 1995.
I.A. No.

DATE OF DECISION 5-6-1995.

Shri Tutul Ranjan Chaudhury.

PETITIONER(S)

Shri I. Hussain.

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Shri B.K. Sharma.

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI M.G. CHAUDHARI, VICE-CHAIRMAN.

THE HON'BLE SHRI G.L. SANGLYINE, MEMBER (A)

1. Whether Reposters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether the Judgment is to be circulated to the other Benches?

yes

No

Judgment delivered by Hon'ble *M.G. Chaudhary* Vice-Chairman.

4

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 93 of 1995.

Date of Order : This the 5th Day of June, 1995.

Justice Shri M.G. Chaudhari, Vice-Chairman.

Shri G.L. Sanglyine, Member (Administrative).

Shri Tutul Ranjan Choudhury,
S/O Late Monoranjan Choudhury,
New Colony, Near Bani Vidya Mandir,
L.P. School, P.O. Lunding,
Dist. Nagaon (Assam)

. . . Applicant.

By Advocate Shri I. Hussain.

- Versus -

1. Union of India
represented by the Secretary,
Ministry of Railways,
New Delhi.
2. The General Manager,
N.F. Railway, Maligaon,
Guwahati.
3. The Sr. Divisional Mechanical
Engineer(P), N.F. Railway,
P.O. Lunding, Dist. Nagaon, Assam.
4. The Asstt. Mechanical Engineer(P)
N.F. Railway, P.O. Lunding.
Dist. Nagaon, Assam.

. . . Respondents.

By Advocate Shri B.K. Sharma.

O R D E R

CHAUDHARI J. (V.C.)

Mr B.K. Sharma, the learned counsel for the respondents has now produced the appellate order as directed earlier. After perusing the same we are satisfied that the application requires to be admitted. The application is accordingly admitted. Mr Sharma waives notice on behalf of the respondents. By consent taken up for final hearing.

2. The applicant was working as Khalasi in the Loco Foreman Office, Lunding, N.F. Railway from March 1984. He

contd.... 2/-

hll

was served with a charge sheet under Rule 9 of the Railway Servants (Discipline & Appeal) Rules 1969. The correct date of issuance of charge sheet is not clear. A copy of charge sheet produced in earlier O.A. mentioned the date as 9.12.86. Mr Hussain now produces a copy which according to him is the original copy served on the applicant. That shows the date as 9.12.85. In the previous application the date was mentioned as 10.12.85. The applicant appears to have submitted his reply to the charge sheet. However, a disciplinary enquiry was found necessary and by order dated 16.1.86 the disciplinary authority appointed Shri D.K.Chatterjee as the Enquiry Officer. Evidence was recorded at the enquiry and the charge was held proved and by order dated 6.7.87 major penalty of removal from service was imposed upon the applicant and he was removed from service with immediate effect. The order was challenged before this Tribunal in O.A.155/90. By order dated 19.9.91 in that O.A. the order of removal was set aside and the applicant was directed to be reinstated within 30 days. At the same time the disciplinary authority was directed to furnish a copy of the Enquiry Officer's report and findings to the applicant and thereafter considering the representation of the applicant to pass a fresh order. The disciplinary authority recorded fresh findings on 6.8.86 after having complied with the directions of the Tribunal for supply of documents and upon what is described as critical analysis of evidence and reasons for findings, once again held the article of charge brought against the applicant proved. The applicant preferred an appeal against the aforesaid findings. The Assistant Mechanical Engineer(P), N.F.Railway however

contd... 3/-

hll

X

accepted the findings of the Enquiry Officer and passed the order of removal from service with effect from the date of receipt of the order by the applicant. This order was passed on 29.6.92 (Annexure-9 to the instant application). Against that order the applicant preferred an appeal to the Senior DME(P)/LMG on 13.7.92. However, as no reply was received he filed the instant O.A. on 20.4.95.

3. On 2.5.95 we directed the respondents to state as to whether the appeal filed by the applicant was disposed of or not. As stated earlier Mr B.K.Sharma has produced the appellate order dated 4.12.92 rejecting the appeal. According to the applicant he had not received this order and he was not aware of the same when the O.A. was filed.

4. The applicant has challenged the order dated 29.6.92 (Annexure 9) and prays that same may be quashed and he may be reinstated as Khalasi under Loco Foreman together with consequential benefits treating him to have been in continuous service. Apprehending an objection of limitation by way of abundant caution he has prayed for condonation of delay in filing the O.A. in M.P.No.37/95. It is stated therein that since he was suffering from T.B and was under treatment he could not file the O.A. within time and there is a delay of about 1 year 3 months. Having regard to the said ground as also the fact that the appellate order does not appear to have been served upon the applicant we are inclined to condone the delay in the interest of justice. Delay is accordingly condoned.

5. The charge against the applicant was that while he was serving as Khalasi during the period from 18.4.85 he had issued sick/fit certificate No.37 to R.S.Bordoloi, HRK/7BN/RPSF/LMG and signed the certificate himself which tantamounts to serious misconduct.

bull

6. It appears that at the first enquiry two witnesses were examined namely Bordoloi and one Puran Singh. The statement of the applicant was recorded in question answer form. The applicant seems to have been given assistance of one Mr Nandi in conducting his defence. The conclusions of the enquiry were however not accepted by the Tribunal on earlier occasion. At the fresh enquiry the disciplinary authority reconsidered the evidence that was already recorded in the light of the representation of the applicant. However, as can be seen from Annexure-5 we do not find the evidence of Puran Singh discussed nor the statements made by the applicant in answer to the questions asked to him by the Enquiry Officer have been satisfactorily considered. The analysis of evidence at Annexure-5 gives the impression that what was done earlier was merely repeated. The reasons in support of the findings given by the Enquiry Officer do not appear satisfactory. There is no clear finding that the certificate in question was bearing the hand writing or signature of the applicant. Since the applicant had denied having signed the certificate or to have issued the same it was necessary for the prosecuting agency to establish that fact convincingly. The finding recorded by the Enquiry Officer thus cannot be accepted straight away.

7. The disciplinary authority has simply agreed with the findings without any discussion of evidence. It was necessary for the appellate authority to apply his mind to the record and evidence carefully and then to arrive at a conclusion whether the penalty imposed on the applicant was proper or not. We are however surprised to find from the order of the appellate authority dated 4.12.92 now produced that he has rejected the appeal stating thus : "The points

mentioned in your appeal are not accepted for the fact that you have yourself accepted in your statement during Fact Finding Enquiry conducted by Dr S.N.Mukherjee, ADMO/OPD/LMG on 18.4.83 that you had issued the sick/fit certificate to Shri R.S.Bordoloi, HRK/7th BN. Therefore your appeal is rejected. The punishment awarded by the disciplinary authority hold good." Now neither from the findings recorded by the Enquiry Officer nor from the order of the Disciplinary Authority we find that the statement of the applicant was recorded by Dr Mukherjee as part of the disciplinary enquiry. The appellate authority has himself referred to it as the fact finding enquiry. Annexure-5 states that Shri Mukherjee was entrusted to initiate the fact finding enquiry and that he had made the report holding the applicant responsible for issuing the certificate. That goes to show that the disciplinary authority and the appellate authority have based their conclusions on the basis of the statement recorded at the fact finding enquiry and not on the evidence recorded at the enquiry itself. That is not legally correct.

8. The so called statement recorded by Dr Mukherjee is not made available to us. That statement could possibly be introduced in evidence notwithstanding that the applicant had chosen to state that he had not been explained the contents of what was recorded and the statement imputed to him was not correctly recorded. If that statement were to be relied upon as evidence at the enquiry the applicant would have got an opportunity to cross examine the witnesses and to adduce his own evidence in that respect and if despite that the enquiry officer had found that the statements made

contd... 6/-

hull

before Dr Mukherjee could be relied upon as evidence that would have been a different matter.

9. Hence in order to avoid failure of justice we are inclined to direct the appellate authority to rehear the appeal and decide it afresh in the light of directions given below :

(i) The order of the Senior Divisional Mechanical Engineer(P), Lumding bearing No.M/CON/LOCO/Misc(85) dated 4.12.92 rejecting the appeal of the applicant dated 13.7.92 preferred against the order of removal dated 29.6.92 is hereby set aside.

(ii) The Senior DME is hereby directed to reconsider the appeal after giving an opportunity to the applicant of being heard.

(iii) The appellate authority will scrutinise the evidence recorded at the disciplinary enquiry and the statement of the applicant in defence and arrive at a conclusion as to whether the charge has been proved or not.

(iv) The said authority will give an opportunity to the applicant to explain the statement that was recorded during the fact finding enquiry by Dr Mukherjee and if thereafter he is of the opinion that it should have formed part of the evidence at the enquiry he shall record additional evidence to that limited extent giving an opportunity to the applicant to cross examine the witnesses and record a fresh finding taking that statement into account as regards the alleged misconduct of the applicant. The appellate authority if finds it necessary may call the findings from the Disciplinary Authority by remanding the matter to him

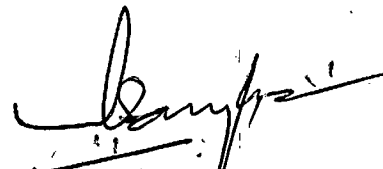
instead of carrying out the above exercise himself.


(v) During the course of hearing of appeal the appellate authority will peruse the original sick/fit certificate allegedly issued by the applicant in respect of which the action has been taken against him and determine whether it has been issued by the applicant or not.

(vi) The appellate authority will then apply his mind to the total evidence and thereafter decide whether the finding that the charge has been proved should be confirmed or set aside ^{and} he shall pass the consequential order ^{accordingly}.

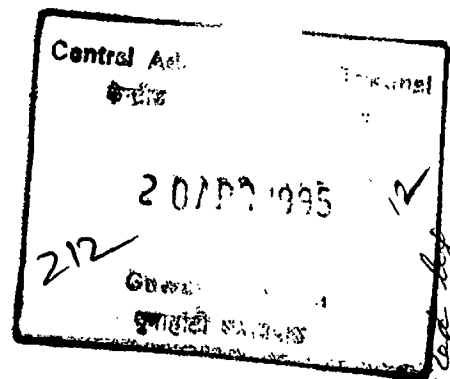
(vii) The appellate authority to decide the appeal within a period of 3 months from the date of receipt of this order. It will be open to the appellate authority to pass such order as he deems fit on merits and to make all consequential orders.

In the result the O.A. is partly allowed in terms of the aforesaid order. No order as to costs.


(G.L.SANGLYINE)
MEMBER (A)


(M.G.CHAUDHARI)
VICE CHAIRMAN

F O R M NO.1
(See Rule - 4)



*For Cd. of
Applicant
through
S. H. H. H.
Advocate
20.4.95*

APPLICATION UNDER SECTION 19 OF THE
ADMINISTRATIVE TRIBUNAL ACT, 1985

For use in Tribunal Office

Date of Filing :

Date of receipt by :
post

Registration : O.A. 93/95

Signature of Registrar.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT GUWAHATI

Between

Sri Tutul Ranjan Choudhury

.....Applicant

-And-

The Union of India & Others

.....Respondents.

DETAILS.....

DETAILS OF APPLICATION :

1. PARTICULARS OF APPLICANT :

- i) Name of Applicant : Shri Tutul Ranjan Choudhury
- ii) Name of Father : Late Monoranjan Choudhury.
- iii) Designation and Office in which employed : Sanitary Cleaner, KHALASI LOCO FOREMAN'S OFFICE. Lunding Railway Hospital
N.F. Railway,
P.O. Lunding,
Dist. Nagaon.
- iv) Office Address : LOCO FOREMAN'S OFFICE
Lunding Railway Hospital
N.F. Railway,
P.O. Lunding,
Dist. Nagaon.
- v) Name for service of all notices : Sri Tutul Ranjan Choudhury,
S/o. Late Mohoranjan Choudhury
New Colony, Near Bani, Vidya
Mandir L.P. School,
P.O. Lunding.
Dist. Nagaon.

2. PARTICULARS OF RESPONDENTS.

1. The Union of India,
represented by the Secretary,
Ministry of Railway,
New Delhi.
2. The General Manager,
N.F. Railway, Maligaon,
Guwahati.
3. The....

3. The Sr. Divisional Mechanical Engineer (P) N.F. Railway, P.O. Lumding, Dist. Nagaon.

4. The Asstt. Mechanical Engineer(P) N.F. Railway, P.O. Lumding, Dist. Nagaon.

3. OFFICE ADDRESS OF THE RESPONDENTS.

1. The Union of India, represented by the Secretary, Ministry of Railway, New Delhi.

2. The General Manager, N.F. Railway, Maligaon, Guwahati.

3. The Sr. Divisional Mechanical Engineer (P) N.F. Railway, P.O. Lumding, Dist. Nagaon,

4. Asstt. Mechanical Engineer(P) N.F. Railway, P.O. Lumding, Dist. Nagaon, Assam.

4. PARTICULARS OF THE ORDER AGAINST WHICH APPLICATION IS MADE

The application is made against the order No. M/CON/LOCO/Misc(85) dtd. 29.6.92 (Annexure No. 9) passed by Asstt. Mechanical Engineer (P) N.F. Railway, X Lumding (Respondent No. 4).

5. JURISDICTION....

5. JURISDICTION OF THE
TRIBUNAL

: The applicant declares that the subject of the order against which the applicant wants redressal is within the jurisdiction of this Hon'ble Tribunal relief prayed for.

6. LIMITATION

: The applicant declares that, this application is not within the limitation described in the section 21 of the Administrative Tribunal Act, 1985 and hence a separate petition for condonation of the delay is filed along with.

7. FACTS OF THE CASE :

1. That the applicant is a citizen of India, being the permanent resident of Lunding Town, District ~~Dhekri, NAGAN~~ Nagon, Assam and as such is entitled to the rights, privileges and protections guaranteed under the Constitution of India and other laws of the Country.

2. That.....

2. That the applicant states that, he was appointed as a sanitary Cleaner on 3.1.79 in Lunding Railway Hospital, vide an order dated 3.1.79 of the Divisional Personnel Officer, N.F. Railway, Lunding.

3. That, while he was working as Sanitary Cleaner in Lunding Railway Hospital, there was an advertisement for the post of Khalasi under Loco Forman, N.F. Railway, Lunding in the year 1984. The petitioner/applicant applied for the same, appeared in the interview etc. and was selected accordingly. As such he resigned from his earlier post of Sanitary Cleaner and joined as Khalasi on regular basis in March, 1984.

4. That, while he was working as Khalasi, it was alleged that, when he was working as Sanitary Cleaner in the Hospital, he issued a sick/fit certificate No. 37 to Shri R.S. Bordodoi, HRK/7EN/RPSF/LMG and signed the certificate himself (Sri Tutul Ranjan Chakaraborty) on 18.4.83 certifying Shri Bordoloi as fit person to resume his duty.

5. That, there was an enquiry conducted by the respondent authorities against the applicant on the charges made in the Statements of the allegations.

But....

But the enquiry was not properly conducted and as ~~such~~ per rule the applicant was neither given the full text of the inquiry proceeding nor the findings of the Investigating Officer.

6. That the Inquiry Officer after the aforesaid enquiry found the applicant guilty of the offences and vide an order dated 6.7.87, the Respondent No. 4 removed him from service. After that, the applicant preferred an appeal to the appellate authority. But the appellate authority upheld the punishment given to the applicant and rejected the same.

The copy of the order dated 6.7.88 passed by the Respondent No. 4 removing the applicant from service and the copy of the appellate order dated 21.8.87 passed by the Respondent No. 3 rejecting the appeal are annexed herewith as Annexure No. 1 and 2 respectively.

7. That, having no alternative, the applicant preferred an application before this Hon'ble Tribunal being the Original Application No.155 of 1990 alongwith

Misc.....

Misc. petition being No. 72/90. This Hon'ble Tribunal after going through the contents of the application and the case, passed an order dated 19.9.91 quashed the punishment order dated 16.7.87 and the appellate Order dated 21.8.87 and directed the Respondents to reinstate the applicant within 30 days of receipt of the order. It was further directed the disciplinary authority to furnish a copy of the Investigating Officer's report and findings within one month. The applicant was also given time to make such representation as he likes within 15 days of receipt of the documents from the disciplinary authority.

The copy of the Judgment dated 19.9.91 passed in Original Application No. 155 of 1990 is annexed herewith as Annexure No.3 .

8. That, applicant states that, as per direction of the Hon'ble Tribunal he was reinstated in service in the month of October 1991 and was continuing as Khalasi under Loco Foreman, Lumding. Further, as directed by the Hon'ble Tribunal, the Respondent No.3 along with a letter dated 23.12.91 sent the Investigating Officer's report and findings dated 6.8.85 to the applicant. It was further stated that, he (applicant) could file representation if he so desires within 15 days of receipt of the letter.

The....

The copy of the letter dated 23.12.91 and the copy of the findings of enquiry dated 8.4.85 are annexed herewith as Annexure Nos 4 & 5 respectively.

9. That , after receipt of the aforesaid letter, the applicant submitted representation dated 22.1.92 to Respondent No. 3 denying the charges and requested him to reply the copies of enquiry so that, he could defend his case. The applicant also prayed for reexamine the case and to give justice to him.

The copy of the representation dated 22.1.92 of the applicant submitted to Respondent No.3 is annexed herewith as Annexure No.6.

10. That, the Respondent No.3 vide a letter dated 10.2.92 made available the documents in original containing the statements and questions of the applicant, questions asked to the applicant, statements of Sri R.S. Bardoloi etc. and advised the applicant to submit his final defence within 15 days.

The....

The copy of the letter dated 10.2.92 of the Respondent No.3 undoing the documents are annexed herewith as Annexure No.7.

11. That, the applicant & filed his reply dated 4.4.92 denying all the charges that, he had issued the Medical Certificate to Sri R.S. Bordoloi. He also stated that, he was on leave when the incident alleged to have been occurred. As such he prayed for ~~xxx~~ dropping the charges against him.

The copy of the reply dated 4.4.92 submitted to the Respondent No.3 is annexed herewith as Annexure No. 8.

12. That, the applicant states that, inspite of the denying the charges and irregularities made at the time of earlier enquiry, the Respondent authorities did not consider to make any fresh inquiry regarding the alleged offences. But the Respondent No.4 vide an impugned order dated 29.6.92 removed the applicant from service on the plea that, the charges have been proved against him.

The....

: 10 :

The copy of the impugned order dated 29.6.92 passed by the Respondent No. 4 removing the applicant from service is annexed herewith as Annexure No. 9.

13. That, after receipt of the impugned order, the applicant submitted an appeal dated 13.7.92 to the Respondent No.3 with a prayer for a fresh inquiry as the charges were not proved beyond any doubt. Moreover, the sick/fitness certificate No.37 allegedly issued by the applicant could not be produced at the time of inquiry for which the allegations were brought against the applicant.

The copy of the appeal petition dated 13.7.92 submitted by the applicant to the Respondent No. 3 is annexed herewith as Annexure No. 10.

14. That, the applicant states that, but no action had been taken by the respondent authorities to ~~consider~~ consider/dispose of his appeal and the applicant is out of service and is facing acute financial hardship as he has got no other source of income to maintain his family.

GROUNDS.....

G R O U N D S

1. That the applicant submits that, he ~~was~~ was appointed as Khalasi after working as Sanitary Cleaner for couple of years without any adverse remark except for the alleged offence of issuing a medical fitness certificate.

ii) That, the applicant submits that, he was on sick leave, from 12.4.83 to 1.5.83 and the allegations against the applicant regarding issuance of a fit certificate on 18.4.83 to one Sri R.S. Bordoloi is far from truth. During the sick leave the applicant neither went to the record room nor issued any medical fit certificate as alleged. If he wanted to do so, he would ~~has~~ have signed in the name of the Medical Officer and not in his own name. From this it is amply clear that, the allegations is baseless and without any merit and any order passed on the basis of said allegation is liable to be set aside and quashed.

iii) That, the applicant submits that, the inquiry conducted by the respondent authorities was not done properly and as per procedure. The original certificate which the applicant had alleged to have issued on 18.4.83 was neither exhibited nor verified

during....

23

during the course of inquiry. The Investigating Officer, had miscreably failed to produce the same inspite of repeated request of the applicant. The reason for non production of the same is best known to the Respondent authorities and the applicant had been made to suffer. The inquiry conducted by the Respondents was not proper one and as such the impugned order ~~w~~ passed on the basis of the aforesaid inquiry is liable to be set aside and quashed.

iv) That, the applicant submits that, the appellate authority also dismissed his appeal and as such he had no alternative then to file an application before this Hon'ble Tribunal being No. O.A. No. 150/90. This Hon'ble Tribunal was pleased to pass an order reinstating the applicant and observed that the inquiry was not conducted in proper manner and many of the related documents were not furnished to him. The Hon'ble Tribunal as such directed as such directed the respondent authorities to make available all the related documents. As such it is evident that the inquiry was not conducted in proper manner, rule and procedure. As such the action of the respondent authorities removing the petitioner from service is illegal, arbitrary and in violation of equity, good conscience and administrative fairness.

v. That.....

v) That, the applicant submits that, in pursuance of the order of the Hon'ble Tribunal, he was reinstated in service and the documents relating to the inquiry were made available to him. The applicant also filed representation denying the charges and prayed for conducting fresh inquiry and prayed for allowing him to continue in service. But the respondent authorities without considering his case sympathetically, ~~passed~~ passed an order removing the applicant from service for the second time. The respondent authorities did not consider the case afresh and solely relied on the inquiry made earlier. They have only complied with the directions of the Hon'ble Tribunal to make available the original document. They made fresh inquiry for ends of justice, ~~They~~ This having not been done, the action taken against the applicant is in violation of the established procedure and rules in force.

vi) That, the applicant submits that, the punishment of removal from service is disproportionate to the offence allegedly proved against the applicant. The punishment of removal from service is too severe in regards to the alleged offence of issuing a fit certificate and it has taken away the lively hood of the applicant as well as his family. In this Hon'ble

Tribunal.....

Tribunal does not kindly interfere into the matter and direct the respondent authorities to reinstate the applicant, then the whole family will be ruined and shall die of starvation.

vii) That, the applicant submits that the respondent authorities ought to have considered his representation/appeal and allowed the ~~same~~ same. This action of the respondent authorities is against the principle of equity, good consciences and administrative fairness.

viii) That in any view of law, facts and circumstances of the case, the impugned order is bad in law and is liable to be set aside and quashed.

ix) That, if the connected records are carefully perused, it would be absolutely clear that the whole thing was done with malafide intention and on extraneous consideration.

x) That, in the circumstances, the applicant has no other alternative and efficacious remedy save and except by way of this application which would be just, adequate and proper if so granted.

xi) That....

xi) That, justice was demanded but the same had been denied to the applicant.

xii) That, the application is filed bonafide and in the interest of justice for enforcement of the applicants fundamental, constitutional, statutory legal and other rights.

Under the above circumstances, it is therefore prayed that Your Lordship^s would be pleased to admit this application, call for the records, issue notices upon the respondents and after perusing the same and hearing the parties would be pleased to pass an order setting aside the impugned order of removal/termination dated 29.6.92 (Annexure No. 9) passed by the Assistant Mechanical Engineer(P) N.F. Railway, Lumding (Respondent No.4) and reinstate the applicant as a 'Khalasi' under Loco Foreman, N.F. Railway, Lumding or in any other similar post and also pay his salary and other service benefits as per Rule from the date of removal i.e. 29.6.92 treating him to be in service in the interest of justice.

8. INTERIM ORDER IF PRAYED FOR -

Pending final disposal of the application the applicant seeks issuance of the following interim orders :-

The impugned order dated 29.6.92 (Annexure-No.9) passed by the Assistant Mechanical Engineer(P) N.F. Railway, Lumding (Respondent No.4) may kindly be stayed and direct the respondent authorities to allow the applicant to join and work as Khalasi and pay his salary and other benefits as per rule.

9. DETAILS OF THE REMEDIES EXHAUSTED :

The applicant declares that, he had availed of all the remedies available to him under the relevant service rules etc. and his representation/appeal dated 13.7.92 to the Respondent No. 3 has not yet been disposed off.

10. MATTER NOT PENDING IN ANY OTHER COURT ETC.

The applicant further declares that, the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of the Tribunal.

11. PARTICULARS.....

11. PARTICULARS OF POSTAL ORDER IN RESPECT OF THE
APPLICATION FEE.

- I. No. of I.P.O. B-03-884147.
II. Name of P.O. Gawaich.
III. Date of issue. 20.4.95.
IV. ^{P.O.}~~Post Office~~ at which payable. Gawaich.

12. DETAILS OF INDEX :

An index in duplicate containing the details of
~~which~~ the documents to be relied upon is enclosed.

13. LIST OF ENCLOSURES ENCLOSED :

Details of Index.

1. Particulars of Applicant :
2. Particulars of Respondent :
3. Particulars of Order :
Impugned.
4. Jurisdiction of Tribunal :
5. Limitation :
6. Facts of the case :
7. Relief sought :
8. Interim order :
9. Remedies exhausted :
10. Matter not pending in :
any other court.
11. Postal Order :

29

: 18 :

12. Annexure No. 1 : Copy of Order dated 6.7.87 passed by Respondent No. ~~4~~ removing the applicant from service.
13. Annexure No. 2 : Copy of letter dated 21.8.87 of the Respondent No. ~~3~~ dismissing the appeal filed by applicant.
14. Annexure No. 3 : Copy of the Judgment dated 19.9.91 in O.A. No. 155/90 passed by this Hon'ble Tribunal.
15. Annexure No. 4 : Copy of letter dated 23.12.91 of Respondent No. ~~3~~ to the applicant enclosing copy of Investigating Officer's report etc.
16. Annexure No. 5 : Copy of DAR enquiry dated 8.4.85
17. Annexure No. 6 : Copy of the representation dated 22.1.92 to the Respondent No. ~~3~~.
18. Annexure No. 7 : Copy of the letter dated 10.2.92 of Respondent No. ~~3~~ enclosing the relevant documents.
19. Annexure No. 8 : Copy of Appeal dated 4.4.92 to the Respondent No. ~~3~~.
20. Annexure No. 9 : Copy of impugned order dated 29.6.92 of the Respondent No. ~~4~~ ^{removing} ~~serving~~ the applicant from service.
21. Annexure No. 10 : Copy of appeal dated 13.3.92 of the applicant to the Respondent No. ~~3~~.

VERIFICATION...

: 19 :

VERIFICATION

I, Shri Tutul Ranjan Choudhury, son of late Monoranjana Choudhury, resident of New Colony, near Bani Vidya Mandir, L.P. School, Lumding, District Nagaon, Assam & aged about 37 years verify that the contents from para 1 to 14 are true to my personal knowledge and belief and that I have not suppressed my material facts.

And I sign this application on this 10th day of ~~March~~^{April}, 1995 at Guwahati.

PLACE : GUWAHATI

DATE : 11/4/95.

Tutul Rn. choudhury.
SIGNATURE.

N.P. Railway.

No. M/CON/LOCO/VISC (85).

SR. M.W.'s office,
Lumding, dt/- 6/7/1987.

To
Shri Tutul Banjan Chowdhury,
Khalasi under LF/LMG,
Through - LF/LMG.

Shri Tutul Banjan Chowdhury, Khalasi under LF/LMG while working as Sanitary Cleaner under DPO/IC/LMG had fraudulently issued sick/fit certificate there. A fact finding inquiry was conducted and on the basis of the fact finding inquiry a DAR inquiry was conducted by the appointed Inquiry Officer.

I have carefully gone through the enquiry proceedings and the findings drawn by the F.O. and I find that the charges have been proved against the delinquent employee. Now, I come to the conclusion that Shri Tutul Banjan Chowdhury, Khalasi is guilty of serious offence and misconduct for issuing sick/fit certificate fraudulently and consider that Shri Tutul Banjan Chowdhury on account of his responsibility for this case is not a fit person to be retained in Ely. service.

I, therefore, accepting the findings of the Enquiry Officer, pass the order that Shri Tutul Banjan Chowdhury, Khalasi under Loco Foreman, N.P. Railway, Lumding to be removed from Ely. service with immediate effect i.e., the date of receipt of this order by Shri Chowdhury.

However, Shri Tutul Banjan Chowdhury can prefer appeal against this order to Sr. Divisional Mechanical Engineer (P), N.P. Railway, Lumding within 45 days from the date of receipt of this order.

(P.C. Chakraborty)
Asstt. Mech. Engineer (P)
N.P. Railway/Lumding.

Copy to:-

- (1) DPO/LMG in duplicate (1 copy of P/case) for information & necessary action please.
- (2) DPO/IC/LMG for information please.
- (3) LF/LMG. He should handover this order to the ~~Staff concerned & get it acknowledged on the~~ other copy and return to this office.

(P.C. Chakraborty)
Asstt. Mech. Engineer (P)
N.P. Railway/Lumding.

etc.

*Mashed
J. Ansari*

....

No. AT/57

Dt. 21. 8. 87. 32

To, Shri Tintul Ranjan Chowdhury, Ex Khalaia.

Pho:- LF/LMG.Ref:- your appeal dt. 10.8.87 against
NIP for removal from service.Sr. DME(P)/LMG, the appellate
authority has gone through your above
quoted appeal & passed the following order:-"The appeal given by Shri Chowdhury
was gone into the punishment given to
him is considered adequate in view of
the offence committed."

Please note.

Man
Sd/- Div. Rly. Manager (P)
M. P. Rly. Lending.

Copy to:- LF/LMG for information Pl.

Sd/- Div. Rly. Manager (P)
M. P. Rly. Lending.Attested.
S. Hussain

Registered with AD

Judgement
Applicant 33CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: :: :: :: GUWAHATI

Despatch No. 2903

Dated Guwahati, the 30-9-91

~~Minor Petition/ Review Application No.~~~~Transfer Application No.~~

Original Application No. 155/90

T. R. Choudhury

APPLICANT/PETITIONER(S)

- Versus -

U. O. I. & Ors.

RESPONDENTS.

To

Shri Tutul Ranjan Choudhury,
Khulasi Office, 90 Loco Foreman,
N.F. Railway, Lumding,
Dist. Nagaon, Assam.

Sir,

I am directed to forward herewith a copy of Judgment and
~~Order~~ dated 19.9.91 passed by the Bench of this Tribunal
 comprising of Hon'ble Shri J.C. Roy, Member(A) and Hon'ble Shri
 J.P. Sharma, Member(J) in the above noted case, for information
 and necessary action if any.

Please acknowledge receipt.

Yours faithfully,

Encls : As stated.

A 25/9/91
DEPUTY REGISTRAR (JUDL).

Attended
 J. H. Mani

23 -

34

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

Original Application No.155 of 1990.

Date of decision:-The 19th day of September, 1991

✓ Shri Tutul Ranjan Choudhury, aged about 33 years
working as khalasi office of the Loco Foreman,
N.F.Railway, Lumding, Assam, P.O.&P.S. Lumding, Dist.
Nagaon.

-Versus-

...Applicant..

1. Union of India represented by the General
Manager, N.F.Railway, Maligaon, Guwahati-11.
2. The Assistant Mechanical Engineer(P), N.F.
Railway, Lumding, Assam.
3. The Senior Divisional Mechanical Engineer(P),
N.F.Railway, Lumding, Assam.

...Respondents.

For the applicant	...	Mr.N.Dhar, Advocate, Mr.A.S.Choudhury, Advocate.
For the respondents	...	Mr.B.K.Sharma, Railway Standing counsel.

CORAM:

THE HON'BLE SHRI J.C.ROY, MEMBER(A)

AND

THE HON'BLE SHRI J.P.SHARMA, MEMBER(J)

1. Whether reporters of local papers may be allowed
to see the judgment?
2. To be referred to the Reporters or not ? *No*
3. Whether Their Lordships wish to see the fair
copy of the judgment?

xxx

Md. S. Hussain

J U D G M E N TJ.C.ROY.

In this application under Section 19 of the Administrative Tribunals Act, 1985 the applicant has prayed for quashing the punishment order of removal dated 6.7.1987 passed by his disciplinary authority (Annexure-4) and the appellate order dated 21.8.1987 (Annexure-6) upholding the above mentioned punishment and all consequential reliefs.

2. Very briefly stated the facts of the case are that the applicant was appointed as a khalasi in the Loco Foreman's office, Lumding from March 1984. Prior to this he was working as a sanitary cleaner in the Lumding Railway Hospital. While he was working so working it was alleged that he ~~xxxxxx~~ issued sick/fit certificate to another Railway servant and later on utilised the same certificate for covering up his own absence. He was issued with a chargesheet under Rule 9 of the Railway Servants (Discipline & Appeal Rules, 1968) on 9.12.1968. He denied the charges and an inquiry officer was appointed. The applicant ~~xxx~~ raised several objections about the proceedings but we are not concerned with the same for the present. The inquiry officer is reported to have found the applicant guilty of the charges and the disciplinary authority, agreeing with the findings of the inquiry officer, ordered the removal of the applicant by the impugned order dated 6.7.1987 (Annexure-4). He preferred an appeal to the appellate authority but before that he represented to the appellate

contd.

*Advised
J. Roy*

authority in a letter dated 22.7.1987 in which amongst other things he demanded the report and findings of the I.O. A copy of this letter is available at Annexure-5. The appellate order was communicated to the applicant on 21.8.1987 wherein the appellate authority (Sr.D.M.E. (P), Lumding) was ^{written} ~~verbally~~ quoted as follows:

" The appeal given by Shri Chowdhury was gone into the punishment given to him is considered adequate in view of the offence committed."

3. The application was filed on 11.9.1990 and for condonation of delay a separate Misc. Petition being M.P.72/90 was filed by the applicant on the same day. The plea taken by the applicant for delay in filing the application was that the applicant had suffered from tuberculosis of the abdomen and in support of this he produced a medical certificate certifying that he was under the treatment of a Doctor for the period 20.7.1988 to 7.9.1990. At the time of ^{admission of} the O.A. no decision was taken by the Division Bench regarding condonation of delay and the order was that the Misc. Petition would be heard along with the O.A. In a counter filed on 1.4.1991 the Railways opposed the M.P. on the ground that the M.P. should be rejected as sufficient ground was not made in this to allow admission of the O.A. by relaxing the provisions of Section 21 of the A.T. Act. They feel that the delay in filing the application was not explained in the M.P. for the condonation of the delay. However, no further order was passed in the M.P. after that.
4. On the day of hearing of this case i.e. 11.9.91 nobody appeared on behalf of the applicant.

contd.

*Attested
J. Hansen*

Mr. B.K. Sharma, the learned counsel however argued the case on behalf of all the railway respondents and assisted us in going through the records. Mr. Sharma strenuously argued that the application cannot be heard without deciding the M.P. which he has already prayed for dismissal on the ground that the grounds are not sufficient for giving exemption from Section 21 of the A.T. Act. He stated even the delay has not been explained according to the requirement of Section 5 of the Limitation Act. Although these are ~~xxx~~ weighty arguments and in normal course should have weighed with us, since the application stands admitted unconditionally we thought it just and proper to go into the merits of this case. As already stated we did not want to dismiss this case for default even though on the day of hearing fixed through a weekly cause list sufficiently in advance applicant's side was not present on the day of hearing. This we decided because we did not want to deny the applicant ~~from the rules~~ of natural justice.

5. Turning to the merit of the case we find that the impugned orders of the disciplinary authority at Annexure-4 and the appellate order at Annexure-6 suffers from very serious infirmity. The applicant was given the ultimate punishment of removal from service at the beginning of his service career. A DAR inquiry by an I.O. other than the disciplinary authority was conducted. The applicant was not given either the full text of the DAR inquiry proceedings nor even the findings of the I.O.

contd.

*Attested
J. Humari*

before the order of removal was passed. This is against the ratio laid down by a three-Judge Bench presided over ^{by Hon'ble} ~~the present~~ Chief Justice of India in the case of U.O.I. -V- Md. Ramzan Khan reported in AIR 1991 SC 471. In this judgment their Lordships said that even after this 42nd amendment of the Constitution of India the delinquent officer has the right under Article 311 of the Constitution of India to get a copy of the entire report of the I.O. along with his finding. This copy has to be served on him before and not along with ^{the} order of the disciplinary authority where any of the punishment which attract Article 311 of the Constitution is imposed. This was not done in the present case and thus the punishment order dated 6.7.1987 is liable to be quashed. Additionally, even the appellate authority to whom a representation was made by the applicant on 22.7.1987 did not look into this grievance of the applicant. On the other hand he passed a cryptic order which was communicated to the applicant in Annexure-1 and has been quoted in full in the preceding paragraphs of this order. In our opinion this is not a speaking order. There is no pleading that the applicant was given an opportunity of hearing before the appellate order was passed or at any stage previous to this. Time and again the Apex Court has stated that it is the bounden duty of the appellate authority to rectify such infraction of fair play and natural justice before deciding an appeal. For our purpose it will be ^{enough} ~~only~~ to cite the case

contd.

*Attested
J. Hussain*

of Ram Chander -v- U.O.I.&Ors.(A.I.R.1986 SC 1173).The appellate order,therefore,at Annexure-6 is also liable to be quashed. We do not have before us the entire proceedings and we do not want to go into the merit of the charges levelled against the applicant in this case. But both settled law and natural justice require that we quash both the punishment orders at Annexure-4 and the appellate order at Annexure-6 for reasons given in the preceding paragraph .

6. In the result,we quash the punishment order at Annexure-4 dated 16.7.1987 and the appellate order at Annexure-6 dated 21.8.1987 and order that the applicant be reinstated to service within 30 days from the date of receipt of a copy of this order.We direct respondent no.2,who is the disciplinary authority,to furnish a copy of the I.O.'s report and findings also within one month from the date of receipt of this judgment.The applicant is given time to make such representation as he likes within 15 days of receipt of the above mentioned documents from the disciplinary authority.Thereafter, the disciplinary authority will be free to pass such order as he considers fit after considering such representation.The applicant will be at liberty to prefer an appeal according to the Railway Servants(Discipline & Appeal)Rules,1968. If he is dissatisfied with the appellate order he is given liberty to file another application before the appropriate forum, if so advised. Regarding the period which

contd.

7
Hesher
Humar

-: 6 :-

intervenes between his removal from service upto the date of reinstatement we pass no order as the treatment of this period will depend on the nature of order passed by his disciplinary authority and the appellate authority.

No costs.

Sd/-
(J.P.Sharma)
19.9.91
MEMBER(J)

Sd/-
(J.C.Roy)
19.9.91
MEMBER(A)

acs

TRUE COPY

AL-257/91
puty Registrar (Judicial)
Tribunal Administrative Tribunal
Gwahati Bopchi, Guwahati
25/9

Admitted
J.P.Sharma

30

AX. NO 4

N.F. Railway.

No. M/CON/LOCO/MISC (85). S.R.DME's office,
Lunding, dt/- 23/12/1991

To
 ✓ Shri Tutul Ranjan Chowdhury,
 Khalasi under LF/LMG,
 Through : LF/LMG.

Sub:- Major Memorandum No. M/CON/LOCO/Misc (85)
 Dated 08.04.1985.

As per directives of CAT/GHY's Judgement
 dt. 19.09.1991, a copy of the I.O's Report and
 Findings dated 6.8.86 in connection with the above
 Major Memorandum are sent herewith in original.

If you wish to make any representation or
 submission, you may do so in writing to the
 Disciplinary Authority within 15 days of receipt
 of this letter.

Please acknowledge.

DA/1 in 2 sheets (original).

(Shree Prakash)
 Sd. DIV. MECH: ENGINEER (P)

Copy to:-

- 1) CPO/MLG for kind information. This is in ref:
to his letter/XXR No. E/170/Legal Coll/33
dated 19.12.91 addressed to DDM(P)/LMG.
- 2) Law Officer, Maligaon for information in ref:
to CPO's XXR dated 19.12.91.
- 3) DDM(P)/LMG (M) for information please.
- 4) Loco Foreman, Lunding for information.
He is advise to handover this letter along
with the Findings (2 sheets) to Shri Tutul
Ranjan Chowdhury, Khalasi, Loco shed under his
clear signature and date of receipt.

(Shree Prakash)
 R. DIV. MECH: ENGINEER (P)
 N.F. RLY : LUNDING.

Attended.
S. Kumar

Findings of DAR enquiry in connection with Major memorandum No. M/CON/LoCo/Misc/(85) dt. 8.4.1985.

1. HISTORY OF THE CASE :-

Shri R.S. Bardoloi, HRK/7th BN. RPSF/LMG was unauthorised absent with effect from 15.2.83 to 18.4.83 and on 18.4.83 Shri Bardoloi attended Lunding Rly. Hospital OPD/Sec. and Dr. prescribed medicine but he did not tell anything to Doctor then after he went to OPD record section (Room No. 16) and had a conversation with Shri Tutul Banjan Chowdhury (Khalasi under LF/LMG) who had been working under Medical department in the OPD record section from OCT'81 to the last part of 1983 but originally Shri Tutul Banjan Chowdhury was S/Cleaner was working in OPD record section in the period mentioned above (As per ADMO Dr. S.N. Mukherjee & SR.VI/MLG's report).

During conversation with Shri Tutul Banjan Chowdhury Shri Bardoloi expressed his desire to resume duty and if possible on that very date.

Shri Tutul Banjan Chowdhury was in sick list from 12.4.83 to 1.5.83 but he was regularly attending Rly. Hospital to give his attendance of sickness and on 18.4.83 after a talk with Shri R.S. Bardoloi Shri Tutul Banjan Chowdhury ignoring all norms and procedures which are normally followed in respect of issuing sick/Fit certificate and signed it by himself and handedover it to Shri R.S. Bardoloi. This was detected by SR.VI/MLG in course of his special surprise preventive check conducted at Lunding Rly. Hospital from 18.8.83 to 20.8.83 as per complaint lodged by Commandant/7th BN. RPSF/LMG.

ADMO/OPD/LMG Dr. S.N. Mukherjee was entrusted to initiate the fact finding enquiry.

2. CRITICAL ANALYSIS OF EVIDENCE & REASONS FOR FINDINGS :-

2.1 In the statement of Shri R.S. Bardoloi, HRK, 7th BN RPSF and also in question to answer No. 3 it is clear that the certificate was obtained by Shri Bardoloi from Shri Tutul Banjan Chowdhury from OPD Record section whose name was not first known to him subsequently he came to know his name is Shri Tutul Banjan Chowdhury. As Shri Chowdhury was regularly attending the Hospital in his sick period from 12.4.83 to 1.5.83 from give his attendance he also use to go in OPD record section i.e. c's working place. As all the procedure and system of filling up the sick/Fit certificates was known to him there is every likelihood of getting scope to get the sick/Fit book within very little time of no man or absence mind of available persons in the section and no body suspect him and Shri Tutul Banjan Chowdhury took the opportunity to get the book and to issue certificate fraudulently.

2.2 There is so many staff of different category in the Rly. Hospital, Lunding there was no reason to declare specific the name of Shri Tutul Banjan Chowdhury by Shri Bardoloi against handingover sick/fit certificate to him if it was actually not the real fact. So it may be taken into consideration that it was Shri Tutul Banjan Chowdhury who prepared the Fit certificate and signed himself and handedover the same to Shri R.S. Bardoloi, HRK/7th BN/RPSF/LMG.

Dr. SN Mukherjee, ADMO/LMG also in his report has made responsible to Shri Tutul Banjan Chowdhury for issuing Sick/Fit certificate No. 43 to Shri Bardoloi which also may

Attested
J. Kumar

3. FINDINGS :-

The article of charges brought against Shri Tutul Ranjan Chowdhury, Khalasi under LF/LMG vide Memorandum No. M/CON/Loco/Misc/(85) dt. 9.12.85 have been proved.

D. K. Chatterjee
6.8.86
(D.K. Chatterjee)
ENQUIRY OFFICER,
SR.FI/LUMDING/NFR.

....

Attested
S. Kumar

To

Sr. DME (P)/LMG.

Ref :- Your L/No. - M/Con/Loco/Mise(85) dt. 23/12/91.

Sub :- Appeal against major memorandum No. M/Con/Loco/Mise(85) dt. 08-04-1985.

Respected Sir,

Most respectfully I have the honour to inform you the following few lines for your kind consideration please. as Justice was deriect.

That Sir the charge brought against me was far away from truth. I was working as a S/Cleaner under M.S./Lumding and was under such list from 12/4/83 to 1/5/83, and had no scope to sign to sick/fit certificate as the same is kept under the custody of record Room personnel.

That Sir, the I.O. without going through the merits of the case has passed order which full of biasing attitudes.

In this connection I pray to your honour to kindly go through the examination & cross examination of Shri R.S. Bordoloi HRK 7 Bn RPSF and Shri Puran Singh Record Room Clerk by my defence counsel. Neither Shri Bordoloi nor Shri Singh admitted that, I have signed the sick/fit certificate at DAR enquiry.

That Sir, the I.O. was not able to produce any documentary proof in support of his friends nor he was able to establish any motive for signing a sick/fit certificate to a such a person with whom I have no blood relation nor close friendship.

I shall remain ever grateful if you kindly enquire the case thoroughly and exempt me from the charge brought against me.

I shall be grateful if you kindly supply me with the copies of DAR. enquiry held so that I may defend the case properly.

I shall remain ever grateful for your kind achoo.

Dated : 20.1 / 1992

Yours faithfully,

Atul Pr. Choudhary
Khan Poo
L. m. g.

Atul Pr. Choudhary

-34
N.F. Railway.

AX. NO 7

No. M/CON/LOCO/MISC (85).

SR. DEAR's office,
Lumding, dt/- 10/02/92.

To
✓ Shri Tutul Ranjan Chowdhury,
Khalasi under LF/LMG,
Through : LF/LMG.

Sub:- This office Major Memorandum
No. M/CON/LOCO/MISC (85) Dt. 09.12.85.

As applied vide your letter dated 22.1.92, the following documents in original duly signed by you are sent herewith.

- | | |
|----------------------------------------------------------------------------------------------------------|-------------------|
| (1) Statement & Question/Ans. of Shri Tutul Rn Chowdhury, Kha: (20.5.86) | in 4 sheets. |
| (2) Questions by D.O. to Shri Tutul Rn Chowdhury (21.5.86) | in 2 sheets. |
| (3) Questions by Shri T.K. Nandy, D.O. to Shri R.S. Bardoloi, HRK/7 Bn./LMG. (20.5.86) | in 3 sheets. |
| (4) Statement of Shri R.S. Bardoloi HRK/7 Bn./LMG (20.5.86) | in 2 sheets. |
| (5) Statements & Questions by E.O. to Shri Puran Singh, R/Sorter/OPD/LMG (21.5.86). | in 4 sheets. |
| (6) Questions comments by Shri Nandy, Defence Counsel to Shri Puran Singh, R/Sorter/OPD/LMG. (21.5.86) | in 5 sheets |
| | <u>20 sheets.</u> |

You are hereby advised to submit your final Defence if any, within 15 days on receipt of this letter to this office.

DA/20 sheets in original.

Copy to:-

(Shree Prakash)
SR. DIV. MECH: ENGINEER (P)
is

- 1) CPO/MLG for kind information. This/in ref. to his XKR No. B/170/Legal Cell/33 dt. 19.12.91 to DIM(P)/LMG and this office letter of even No. dated 23/12/1991.
- 2) Law Officer, Maligaon for information. In ref. to CPO/MLG's above XKR dt. 19.12.91 & this office letter of even No. dt/- 23/12/91.
- 3) LF/LMG for information. He is advised to handover this letter along with the above documents to Shri T.R. Chowdhury, Khalasi under his clear signature & date.

Received On 11/2/92

(Shree Prakash)
SR. DIV. MECH: ENGINEER (P)

....

Aditya J. Hussain

-35-

Ax. NO. 8

To,

Sr. DME (P)/LMG.

Sub :- Appeal.

Ref :- Your L/No. M/CON/LOCO/Mise (SS)
dt. 31.3.1992.

Sir,

In reference to your letter No. Quoted above
I like to bring the following facts for your kind
consideration Pl-as justice was dealed.

That Sir, I eas removed from the service on
the plea that I have signed the fit certificate of Shri
R. S. Bordoloi HRK/7th Bn/RPSF/LMG.

That Sir, it is regratted the Inquiring Officer
without going through any documental proof or any eye
witness came to the conclusion that I have signed the paper.
From the statement of Shri R.S. Bordoloi and also from the
witness no where it was proved that I have signed the same.

That Sir, I was working as a sanitary cleaner
having no scope to deal with the official records.

Moreover, I was under sick list when the incident
happened it on 18.4.83. That Sir the statement of Shri
Puran Singh. Record sorter OPD/LMG may Pl be looked into.

That Sir, from the statement of shri R.S. Bordoloi
it is seen that Shri Bordoloi does not know me. What interest
have I got to give a certificate to a person, Who has got no
blood relation ~~one~~ who is known to me.

Under the circumstances, I shall request you honour
to kindly exempt me from the charge, as the charge brought
against me could not be established. The inquiry Officer had
bearing attitude in the case.

biassing

With regards.

Yours faithfully,

Dulal Pr. Chowdhury
Dt 4/4/92 (Khajaski)

M. S. D.
J. H. S.

36 -
N.F. Railway.

AX no 9

No. M/COM/LOCO/AISC (85).

31.000's office,
Lumding, dt/- 29/06/1992.

To
✓ Shri Tutul Ranjan Chowdhury,
Khalasi under LF/LMG,
Through : LF/LMG.

Ref:- Your Appeal Dated 4.4.92.

I have carefully gone through the Enquiry proceedings and considering the representation submitted by you on 4.4.92 and Findings drawn by the E.O., I find that the charges have been proved against you. I have come to the conclusion that Shri Tutul Ranjan Chowdhury, Khalasi under Loco Foreman, Lumding has fraudulently issued Sick/Fit certificate No.3711 on 18.4.83 to Shri R.S. Bordoloi, HAK/7th Bn., RPSE/LMG while working as Sanitary Cleaner under DMO/IC/LMG which has been established in the Enquiry. So, Shri Chowdhury is guilty of serious offence and misconduct for issuing sick/fit certificate fraudulently and consider that he is not fit person to be retained in the Railway service.

I, therefore, accepting the findings of the Enquiry Officer pass the order that Shri Tutul Ranjan Chowdhury, Khalasi under Loco Foreman, Lumding is removed from Railway service with immediate effect that is the date of receipt of the order by Shri Tutul Ranjan Chowdhury.

However, Shri Tutul Ranjan Chowdhury can prefer appeal against this order to Sr. Divisional Mechanical Engineer (P), N.F. Railway, Lumding within 45 days from the date of receipt of this order.

(A.K. Roy Chowdhury)
Asstt. Mech. Engineer (P)
N.F. Railway/Lumding.

Copy to:-

1. CPO/LMG for kind information. This is in reference to his letter/XIR No. E/170/Legal Cell/33 dt. 19.12.91 addressed to DMO(P)/LMG.
2. DPO/LMG for information and necessary action pl.
3. DAO/LMG.
4. Law Officer, Hailuon for information in reference to CPO's XIR dated 19.12.91.
5. CC/EM Cadre, OS/EM Bill, OS/PS Sec., DMO(P)'s office, Lumding.
6. LF/LMG. He is advised to handover this letter to Shri T.R. Chowdhury, Khalasi under his clear signature and date of receipt.
7. P/case of Shri T.R. Chowdhury, Khalasi/LF/LMG.

(A.K. Roy Chowdhury)
Asstt. Mech. Engineer (P)
N.F. Railway/Lumding.

Admitted
J. Hussain

To:-

Sr. DME (P)/LMG.
(Through Proper Channel.)

Sub :- Appeal.

Ref :- A.M.E. (P)/LMG's-Letter No. M/Con./LOCO
(85) dt. 29.6.92.

Sir,

Most respectfully I have the honour to inform you the following few lines as justice was denied.

That Sir, I was removed from the service vide AME(P)/LMG's above cited letter. It is very painful that before removing me from the service I was not given with the natural justice. That Sir, it was already pointed out that the Inquiry officer Shri D. Chattarjee had biasing attitude, and without going through any documentary proof he drew the conclusion (The finds of I.O. may PL be looked into).

That Sir, inspite of repeated approach, I.O. was not able to place the disputed Sick/fit-certificate No. 37 in presence of inquiring committee.

That Sir, it is also very surprising that the Sick/fit-book No. 97 was missed from safe custody of record section of Lunding Hospital.

In this connection the statement, Question & Answer of Shri Puran Singh, (Q.No. 20 & Q.No.23) the record from incharge may PL be looked into.

That Sir, without going through any proper test of the signature in Sick/fit-certificate No. 37 i.e. finger print ~~expert's~~ experts' report, forensic test how the I.O. has come to the conclusion was not clear.

That Sir, I.O. was not able to produce any witness, who can say that the disputed Sick/fit-certificate was signed by me.

That Sir, once more, I shall pray to your honour for proper enquiring so that justice may prevail.

That Sir, due to my sheer illuck, the disciplinary authority i.e. AME(P)/LMG has also not shown any sorte of justice, and depended simply on the decision of I.O.

That Sir, I am confident that this time your honour will give a scope, so that I may be able to establish the fact and acquitted honourably.

I shall remain evergrateful to your kind action.

Yours faithfully,

Devi Prasad Khatri
Loco Shed Lmg Khalesi
27/7/92

Copy to :-

- 1) DME/LMG for kind information & necessary action please
- 2) CPO/MG-for kind information please.

*Admitted
J. Humair*