

01/00
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

M

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 196/96.....
R.A/C.P No.....
E.P/M.A No.....

1. Orders Sheet..... Pg. 1 to
MP 282/97 order Pg. 1 for 282/97 order
2. Judgment/Order dtd. 6.11.97 Pg. X to
No. 282/97 order
3. Judgment & Order dtd. Received from H.C/Supreme Court
4. O.A. 196/98 Pg. 1 to 4.2
5. E.P/M.P. 282/97 Pg. 1 to
6. R.A/C.P. Pg. to
7. W.S. Pg. to
8. Rejoinder Pg. to
9. Reply Pg. to
10. Any other Papers Pg. to
11. Memo of Appearance
12. Additional Affidavit
13. Written Arguments
14. Amendment Reply by Respondents
15. Amendment Reply filed by the Applicant
16. Counter Reply

SECTION OFFICER (Judl.)

Shakti
30-1-98

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

OA No. 196/96.

Shri S. B. Chakraborty Applicant(s)
vs
Union of India & Ors. Respondent(s)

Mr. R. Dutta Advocates for the applicant(s)

Mr. J. L. Sarker, R.C. Advocates for the Respondent(s)

Office Notes	Date	Courts' Orders
This application is in form and within time C. P. of Rs 50/- dated 10.9.96 IPO SD No 5245/00 Dated 20.8.96 <i>J. L. Sarker</i> 6/99 6/99	17.9.96	Mr R. Dutta for the applicant. Mr J. L. Sarker for the respondents. Heard Mr R. Dutta for admission. Perused the contents of the application and the relief sought. The application is admitted. Issue notice on the respondents by registered post. Written statement within six weeks. List for written statement and further orders on 12.11.1996.
Notice prepared and issue vide despatch dated 20.9.96.		6/99 Member
<u>29.9.96</u> Notice issued to the concerned parties vide No. 3158 of 20.9.96.	12.11.96	Mr R. Dutta for the applicant. None for the respondents. Written statement has not been submitted. List for written statement and further orders on 4.12.96.
<u>24.10.96</u> Notice despatched on receipts No. 1, 2, 3, 4 Print - has not been Writting - has not been done	pg 12/11	6/99 Member

4.12.96

Learned Railway counsel Mr J.L. Sarkar for the respondents seeks time for filing written statement.

List for written statement and further orders on 13.12.96.

nkm

m
5/12

Member

13.12.96

None for the applicant. Mr J.L. Sarkar for the respondents.

Written statement has not been submitted.

List for written statement and further orders on 9.1.97.

pg

N
16/126
Member

9.1.97

Leave note of Mr R. Dutta for the applicant. Mr J.L. Sarkar for the respondents, seeks six weeks time to file written statement. ~~kk~~

List for written statement and further orders on 18.2.1997.

pg
N
9/116
Member

18.2.97

Further 2 weeks time extended as a last chance to file written statement. No further extension will be granted.

List on 3.3.97 for written statement and further orders.

6
Member

Vice-Chairman

pg
N/20/2

(3) O.A. 196 of 1996

3.3.97

Mr. J.L.Sarkar, learned Railway counsel prays for further extension of time to file written statement. By order dated 18.2.97 the Tribunal has made it clear that no further extension would be granted. In view of the above we are unable to give any further adjournment.

Let this case be listed for hearing without written statement on 24.4.1997.


Member


Vice-Chairman

trd
M/6/3

24.4.97

Let the case be listed on 7.5.1997 for hearing.


Member


Vice-Chairman

trd
M/30/4

7-5-97

Passed over for the day.


Member


Vice-Chairman

lm

8.5.97

Left over. List on 8.7.97 for hearing.


Member


Vice-Chairman

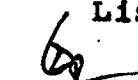
pg

Tr
9/5

8-7-97

Mr.J.L.Sarkar learned counsel appearing on behalf of the Railway Administration prays for short adjournment as he has to receive instructions. The other side has no objection.

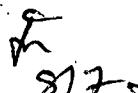
List on 14-8-97 for hearing.


Member


Vice-Chairman

8.7.97

Memorandum of appearance
as been filed.


F
8/7/97

lm

④ O.A 196/91

14-8-97

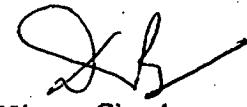
Division Bench is not sitting.
Let this case be listed for hearing
on 6-11-97.

B Y ORDER

6.11.97

In view of the order passed in
Misc.Petition No.287/97 this case
is dismissed on withdrawal.

60
Member


Vice-Chairman

pg
RB
311

129
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWALIATI BENCH : GUWALIATI

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

D. A. NO. 196 /1996.

Shri Sunil Baran Chakraborty : Petitioner

- Versus -

Union of India & Others : Respondents.

INDEX

S1.No.	Description of Documents	Annexure	Page.
1.	Application	-	1 to 15.
2.	Rly Board's letter No.E/11/ 91/HER/1-11 dt. 03.04.92	A/1.	- 16 -
3.	Memorandum of Charges.	A/2.	17 to 20
4.	Copy of statement of defence.	A/3.	21 & 22
5.	Rly Board's letter No.E(D&A) 90 RG6-106 dt. 08.10.90.	A/4.	23 to 25
6.	Applicants representation to the Enquiry Officer dt. 4.9.95.	A/5.	26 & 27
7.	Letter dt. 10.10.95 from Shri L. Haque to the Enquiry Officer.	A/6.	- 28 -
8.	Postal Certificate.	A/7.	- 29 -
9.	Copy of Enquiry Report.	A/8.	30 & 31
10.	Applicants representation dated 8/11.12.95.	A/9.	32 to 35
11.	Notice of imposition of penalty.	A/10.	36 to 38
12.	Rly Board's letter No.E(D&A) 86 RG6-1 dt. 20.01.86.	A/11.	39 & 40
13.	Applicants appeal dt. 13.4.96	A/12.	41 & 42
14.	Divisional Mechanical Engineer N.F. Railway, Lumding ^{under} letter No.TP/95/LM/1 dt. 12.6.96	A/13.	43

Recd
22-12-96
a. a. 96
A.P.

20

21 Dec 1996
Guwahati, Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI

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

O. A. No. 196 /1996.

Shri Sunil Baran Chakraborty, Son of
Late Pratap Ch. Chakraborty, driver
goods Lumding under Loco Foreman, N.F.
Railway, Lumding, P.O. Lumding, District-
Nogaon(Assam) Pin - 782447.

..... Applicant.

- Versus -

1. Union of India, represented by the
General Manager, N.F. Railway, Maligaon
Guwahati - 781011.
2. The Divisional Railway Manager, N.F.
Railway, Lumding, P.O. Lumding,
District - Nogaon(Assam), Pin - 782447.
3. The Divisional Mechanical Engineer (P)
N.F. Railway, Lumding, P.O. Lumding
District - Nogaon(Assam) Pin - 782447.
4. Shri A.K. Roy Choudhury (Inquiry Officer)
Asstt. Mechanical Engineer (C & W), N
Lumding, P.O. Lumding, District - Nogaon,
ASSAM. Pin - 782447.

..... Respondents.



Cont 2.

1. Particulars of the Orders against which the application is made :-

(a) Notice of imposition of penalty issued under No. TP/95/LM/1 dt. 23.1.96 by the Divisional Mechanical Engineer(P), N.F. Railway, Lumding(Annexure-A/10).

(b) The Divisional Mechanical Engineer(P), N.F. Railway, Lumding's letter No. TP/95/LM/1 dt.12.6.96 intimating the applicant that the Divisional Railway Manager, Lumding has reviewed the applicants case and rejected the appeal(Annexure - A/13)

(c) The Enquiry Report furnished to the applicant under letter No. TP/95/LM/1 dated 15.1.95 (Annexure - A/8)

2. Jurisdiction of the Tribunal :-

The applicant declares that the subject matter of the application is within the jurisdiction of the Tribunal.

3. Limitation :-

The applicant submit that the application is made within the period of limitation.

4. Facts of the Case :-

4.1. That, the applicant is a citizen of India and entitled to rights and privileges guaranteed to the citizen of India by the Constitution and laws framed thereunder.

Cont ... 3.

4.2. That, the applicant is at present working as Goods Driver in scale Rs. 1350-2200/- and he is now posted at Lumding under the Divisional Mechanical Engineer(P), N.F. Railway, Lumding Respondent No.3.

4.3. That, the driver and every engine crews are running staff, the duty of the goods driver has been classified as intensive. Railway Board under letter No. E/LL/91/11/HERI-11 dated 3.4.92 ~~etc~~ prescribed the duty that can be given at a strass to running staff under which the over all duty at a strass of running staff exceed from signing ^{on} should not ordinarily ~~be~~ 12 hours and they should ^{be} entitled to claim relief thereafter. It was also laid down that the running duty at a strass should not ordinarily exceed 10 hours from the departure of the train and staff should be entitled to claim relief thereafter.

- A copy of the said instruction is annexed herewith as ANNEXURE - A/1.

4.4. That, on the 15.5.95 the applicant was booked to work, train No. UP/DKZ paper special with Loco No. 6174 YDM-4 Ex. Lower Halflong to Lumding of Badarpur-Lumding section of N.F. Railway. He took up the duty at 8.45 hours by signing on at 8.45 hours and taking charge of the Engine.

4.5. That, the applicant left Lower Halflong at 9.30 hours and arrived Mandardisa (one Station short of Lumding) at 16 hours(4 p.m.). But the train did not move

and it was detained at Mandardisa from 16 hours. On enquiry by the applicant he was informed by the Station Master Mandardisa that the train was detained for want of room in the Lumding yard.

4.6. That, as the applicant detained at Mandardisa for 3 hours and as there was no prospect of getting line-clear for the train, and as no ~~order~~ order was served on him to work beyond 12 hours. The applicant requested the control at 19.00 hours(7 p.m.) for arranging his relief after completion of his 12 hours duty.

4.7. That, the applicant also talked to the power controller for his relief or the path and ultimately a relief Engine No. LE 6366 YDM-4 was sent at 12.40 hours to Mandardisa for clearing the said train. The applicant again served a memo regarding taking over the charge of his Engine, but no reply was received and he was requested to travel in the same Loco to Lumding.

4.8. That, vide the Divisional Mechanical Engineer(P), N.F. Railway, Lumding under letter No. TP/95/LM/1 dt. 23.05.95, the applicant was placed under suspension with effect from 22.5.95. Subsequently, vide Divisional Mechanical Engineer(P), N.F. Railway, Lumding's letter No. TP/95/LM/1 dt. 01.06.95 the said suspension was revoked with effect from 1.6.96.

4.9. That, the Divisional Mechanical Engineer/P N.F. Railway, Lumding under No. TP/95/LM/1 dt. 23.5.95

served a memorandum of charges to the applicant, the charge framed against the applicant is as under :-

That, the said Shri _____ while functioning as _____ EMR during the period on 15.5.95, while Shri S.B. Chakraborty, Dr/Gds/LMG was working up DKZ(here enter definite and distinct article of charge) paper/Spl with L/No. 6174 MEM YDM(leading) Ld 3 0/530, Ex.LFG C.F. 8.45 hrs. Accordingly, train left LFG at 9.30 hrs. but on arrival at MYD Shri Chakraborty claimed for relief as the train was detained at MYD for want of path and room at LMG/Sub-yard. As such on duty PRC/LMG booked Dr. Sri M.K. Bose with LE/No. 6366 DM4 to MYD to clear the section. Sri Bose put Loco on train at 22hrs, but on getting LC he could not start the train as the driver Shri Chakraborty created obstruction by applying a A-9 brake valve on Locomotive 6174. Then as per advise of PRC/LMG Sri Bose recreate vac. But he again failed to start because Dr. Shri Chakraborty get down from the Loco. Finally, the train left MYD at 1.05 hrs. at 16.5.95 Because of obstruction caused by Shri Chakraborty got detained at LGT for 03 hrs and 5mls.

So, Shri Chakraborty is responsible for creating onstruction on smooth Railway operation willfully for which he is charged.

4.10. That, no statement of imputation of mis-conduct or mis-behaviour in support of the article of charges framed has been furnished and imputation has been shown to be same as article of charges.

A copy of the said memorandum of charges is annexed herewith as
ANNEXURE - A/2.

4.11. That, the applicant submitted his statement of defence on 12.6.95 explaining the circumstances and requesting for exonerating him from the charge.

A copy of the said statement of defence dt. 12.6.95 is annexed herewith as ANNEXURE - A/3.

4.12. That, the Divisional Mechanical Engineer/P N.F. Railway, Lumding appointed Shri A.K. Roy Choudhury, Asstt. Mechanical Engineer(C & W), N.F. Railway, Lumding respondent No.4 as Inquiry Officer under letter No. TP/95/LM/1 dt. 21.6.95 and the applicant nominated one Shri L. Haque, Guard, Malda under Divisional Operating Manager, N.F. Railway, Katihar to act ^{as} his defence council.

4.13. That, Railway Board's under letter No. E(D & A)90/RG6-106 dt. 8.10.90 laid down, interalia, that where the defence council is serving Railway servant, the disciplinary authority and the enquiry authority should ensure his release and attendance by timely communication in writing and ~~by~~ phone to the controlling Officer of the defence council.

A copy of the said Circular is annexed herewith as ANNEXURE - A/4.



4.14. That, the applicant was not supplied with the copies of listed documents or the statement of witness as required under the Railway Servant(Disciplinary and Appeal) Rules 1968 as such he applied to the enquiry Officer for supply of copies of these documents under his letter dated 4.9.95. In response the enquiry Officer supplied the copies of the listed documents on 21.9.95 but the copy of the statement of the listed witnesses was not supplied. The next date of the enquiry was fixed on 18.10.95.

A copy of the said letter dated 4.9.95 is annexed herewith as

ANNEXURE - A/5.

4.15. That, the attendance of the defence council Shri L. Hague, passenger Guard, Malda was arranged by the Divisional Railway Manager(O), Katihar letter dated 5.10.95 for attending the enquiry on 18.10.95. But Shri L. Hague, passenger Guard, the defence council informed the learned enquiry Officer Respondent No.4 vide his letter dt. 10.10.95 sent under certificate ~~xxx~~ of posting that his mother has expired on 21.9.95 for which he was observed ~~to~~ certain religious rituals for the peace of soul of his mother and as such he would not be in a position to attend the enquiry on 18.10.95 and requested for postponement of DAR enquiry fixed on 18.10.95 and refixed the date save and except in between 20th ^{Nov to 2nd} and ~~2nd~~ Dec. 1995. The applicant also submitted on 18.10.85 for short adjournment of the enquiry as requested by Shri L. Hague informing that without the defence council he cannot defend ~~xxxxxxxxxxxxxx~~ his case and therefore his participation in the enquiry is not possible.

A copy of the letter from Shri L. Haque Defence Council with Postal Certificate are annexed herewith as ANNEXURE - A/6 and A/7.

4.16. That, the learned enquiry Officer did not comply with the request and submitted his report to the Disciplinary authority a copy which was furnished to the applicant by the Divisional Mechanical Engineer (P) N.F. Railway, Lumding Respondent No.3 under letter No. TP/95/LM/1. dt. 15.11.95 for submission of his representation in respect of the report within 15 days.

A copy of said inquiry report is annexed herewith as ANNEXURE - A/8.

4.17. That, the applicant submitted his representation on the enquiry report on 8/11.12.95 pointing out the serious irregularities committed, violation of the rules by the enquiry Officer and the inconsistency in the finding.

A copy of the said representation dated 8/11.12.95 is annexed herewith as ANNEXURE - A/9.

4.18. That, the Divisional Mechanical Engineer (P), N.F. Railway, Lumding by his order No. TP/95/LM/1 dt. 23.1.96 punish the applicant by reducing his pay to Rs. 1,760/- from Rs. 1850/- in his existing scale of pay Rs. 1350-2200/- for a period of 2 years without assigning any reason or without issue any speaking order.

A copy of the said letter dated 23.01.95 is annexed herewith as ANNEXURE - A/10. Cont ..9

4.19. That, the Railway Board's vide letter No. E(D & A)86RG6-1 dated 20.1.86 circulated the Govt. of India's decision for issue of speaking order by competent authority ~~in~~ ⁱⁿ disciplinary cases instructing that the orders issued in disciplinary cases are quasi-judicial in nature and as such it is necessary that orders in such proceedings are issued only by the competent authorities who have been specified as disciplinary/appeal/reviewing authorities under the relevant rules. It was also indicated that it is essential that the decision taken by ~~the~~ ^{es} such authority are communicated by the competent authority under their own signature and they cannot delegate their power to their subordinates. It was also further instructed that the authorities exercising the disciplinary powers should issue self-contained speaking and reasoned orders.

✓

A copy of the said Circular is annexed herewith as ANNEXURE - A/11.

4.20. That, the applicant submitted an appeal to the Divisional Railway Manager, N.F. Railway, Lumding (Respondent No.2) ~~ex~~ against the unjustified punishment imposed on him by the Divisional Mechanical Engineer(P), N.F. Railway, Lumding on 13.4.96 and prayed for re-opening of the DAR so that the applicant could have reasonable opportunity to defend himself.

A copy of the said appeal is annexed herewith as ANNEXURE - A/12.

4.21. That, in response to his appeal dated 13.4.96 addressed to the Divisional Railway Manager N.F.

Railway, Lumding, the applicant ~~had~~ received a cryptic reply from the Divisional Mechanical Engineer (P) N.F. Railway, Lumding, respondent No.3, the disciplinary authority, under No. TP/95/LM/1 dt. 12.6.96 communicating that the applicant's appeal was reviewed by the Divisional Railway Manager, N.F. Railway, Lumding and rejected the appeal submitted by ~~him~~ ^{to} the applicant.

A copy of the said letter is annexed herewith as ANNEXURE -A/13.

5. Grounds for Relief :-

5.1. That, the applicant was denied the service of the defence council by the learned enquiry Officer even though the defence council requested for a short adjournment to.

5.2. That, the applicant was denied reasonable opportunity to defend himself as the copy of the statement of the witnesses was not furnished to him.

5.3. That, the learned enquiry Officer took into consideration the listed documents without the same being admitted by the applicant or produce and verified by the Power Controller who is alleged to have made the diary.

5.4. That, the applicant was not supplied with the copies of the proceedings which and thereby he cannot point out the defects in the proceedings.

5.5. That, the learned Enquiry Officer did not follow the rules and procedure laid down in the Railway Servant(Disciplinary and Appeal) Rules 1968 and therefore the entire proceeding is violative and ultra vires to the Railway Servant(Disciplinary and Appeal) Rules 1968.

5.6. That, the Rule 9(25) of the Railway Servant(Disciplinary and Appeal) Rules 1968 provides that the enquiry report to be prepared ~~thereon~~ ^{should} contain.

- (a) The article of charges of the Statement of imputation of mis-conduct or mis-behaviour;
- (b) The defence of the Railway Servant in respect of each article of charge;
- (c) An assessment of the evidence in respect of each article of charge; and
- (d) The finding on each article of charge and the reason therefor.

The enquiry report (Annexure -A/8) is not in conformity with rules as neither the assessment of evidence in respect of each articles of charge was made nor the defence of the Railway Servant was considered nor the reason for the finding was recorded.

5.7. That, the enquiry report is also violative as extraneous materials, which were neither in the memorandum of charge nor document mentioned therein, were held to have been violated and in

~~was suspended~~ and the applicant held guilty for violation of it.

5.8. That, the enquiry report is based on no evidence but only on conjecture and surmises.

5.9. That, the disciplinary authority did not apply his mind nor recorded any reason nor ~~said~~ issued a speaking order before ordering reduction of the pay of the applicant, the punishment order(Annexure -A/10) is clearly contrary to the Govt. of India's instruction in its letter No.E(D & A) 86RG6-1 dt. 20.01.86(Annexure-A/11)

5.10. That, the punishment imposed is very severe and disproportionate to alleged offence.

5.11. That, the Rule 22(2) of the Railway Servant(Disciplinary & Appeal) Rules 1968 provides interalia as under :-

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

- (a) Whether the procedure laid down in these rules has been complied with, and if not whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice ;
- (b) Whether the findings of the disciplinary authority are warranted by the evidence on the record : and

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

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

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

5.12. That, the appellate authority (respondent No. 2) failed to appreciate the violations of the Rule by the enquiry authority in holding the enquiry in drawing the findings as well as coming to the conclusion of ~~guilty~~ of the applicant. The appellate authority also failed to appreciate the violation of rules by the disciplinary authority in awarding punishment and the severity of the punishment, and thereby violated normsⁱⁿ rule 22(2) of the Railway Servant(Disciplinary and Appeal) Rules 1968.

5.13. That, the appellate authority did not grant any personal ~~marking~~ hearing to the applicant before passing his ^{order} ~~appeal~~ as is ^{required} to be done under ^{law} ~~letter~~ laid down ~~is~~ by the Hon'ble Supreme Court.

5.14. That, the appellate authority did not record a speaking order in disposing of the appeal of the applicant nor the communication of the decision of the appellate authority was communicated under signature of the appellate authority and therefore, the order is violative of Govt. of Indias instruction communicated under

Railway Board's No. E(D & A)86 RG6-1 dt. 20.01.1986
(Annexure - A/11)

6. Details of remedies exhausted :-

That, the applicant preferred the appeal to the Divisional Railway Manager, N.F. Railway, Lumding Respondent No.2 on 13.04.96(Annexure - A/12), ~~u~~ which has been rejected by the Divisional Railway Manager, N.F. Railway, Lumding on 12.06.96.

7. Matters previously filed or pending before any other Court :-

The applicant further declares that he had not previously filed any application, Writ Petition or any other Suit regarding the matter in respect of which this application is made, before any other Court/Tribunal.

8. Relief Sought :-

That, under the circumstances stated in this application the applicant humbly pray for :

That, the Hon'ble Tribunal may be kind enough ^{to} ~~call~~ for the records of disciplinary proceedings from Respondent No.3 namely the Divisional Mechanical Engineer, N.F. Railway, Lumding and quash the enquiry Report(Annexure - A/8), notice of imposition of penalty issued by Divisional Mechanical Engineer, N.F. Railway, Lumding under No. TP/95/LM/1 dt 31.1.96 (Annex 10) and decision of his appellate authority ^{Contrary to}.

✓ I communicated under NOTP/95/LM/1

dt. 12.06.96 (Annexure -A/13) for which
act of kindness the applicant shall
ever pray.

9. Interim Relief :-

N I L L

10. Particulars of Application fees :-

Indian Postal Order No. 524500
dated - 20.8.96 for Rs. 50/- (Rupees
fifty) only in favour of Registrar,
Central Administrative Tribunal, Guwahati
Bench, Guwahati.

-: VERIFICATION :-

I, Shri S.B. Chakraborty, Son of late
P.C. Chakraborty, aged about 59 years working
as Goods driver under Loco Foreman, N.F. Railway, Lumding
do hereby verify the contents of Para 4, 6, 7 & 10 of
this application is true to my knowledge and belief and
the rests are my humble submission before this Hon'ble
Court and I have not suppressed any material facts.

Suril Baran Chakraborty

Signature of the Applicant.

Dated : 8.9.96

Place : LMG

Subject : Duty at a stretch of Running Staff.

No.E/LL/91/HERI-11 dt.3.4.1992.

Attention is invited to this Ministry's letters No.(E)(LWA)68HER/56 dated 15.7.68, No.E(LL)77HER/29 dated 31.8.1978, No.E.E(77)78/HER/29 dated 3.4.1981 wherein instructions have been issued in regard to running duty at a stretch of the running staff.

2. In suppression of instructions contained in the above letters, it has been decided to amend subsidiary instructions No.17(iii). The amended instructions be read as under :-

17(iii) - The following will be the duty at a stretch :-

- (a) The overall duty at a stretch of running staff from 'signing on' should not ordinarily exceed 12 hrs. and they should be entitled to claim relief thereafter.
- (b) The running duty at a stretch should not ordinarily exceed 10 hrs. from the departure of the train and the staff should be entitled to claim relief thereafter.
- (c) In operational exigencies the running duty may be extended beyond 10 hrs. within overall limit of 12 hrs. provided a due notice has been given to her staff by the controller before the completion of 8 hrs. of running duty.
- (d) If a train does not reach, within the overall limit of 12 hrs. its normal crew changing point/ destination of the train/or the place where a relief has been arranged and such point is approximately one hour's journey away, the staff shall be required to work to that point.
- (e) In exceptional exigencies of accidents, of agitations, & equipment failure act. the state may be required to work beyond the limits prescribed above, In such cases, the Controller should suitably advise the staff.

3. In order that the running staff are aware of their beat, at every crew Headquarters/Stations and normal crew changing point the normal beat of the running staff for Mail and Express/Passengers and Steam/Diesel and Electric Goods Trains should prominently displayed on the notice board. Such notices should be put up in each lobby of the Loco Shed/Station or any of the places where running staff are required to sign on or sign off.

4. Board desire that necessary arrangements may be made for complying with these instructions.

AMR
R. Datta
R. Datta, (Advocate)
Malligaon, Guwahati-781011

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

No. TP/95/LM/1

N.F. Rly

(Name of Railway Administration)

Place of issue, DME(P)/LMG/Office Dated 23-5-95

MEMORANDUM.

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

2. * Shri S. B. Chakroborty is hereby informed that he so desires, he can inspect and take extracts from the documents mentioned in the enclosed list of documents (Annexure: III) at any time during office hours within 10(ten) days of receipt of this Memorandum. For this purpose he should contact ** DME(P)/LMG/Office/LM immediately on receipt of this Memorandum.

3. Shri S. B. Chakroborty is further informed that he may if he so desired, take the assistance of any other Rly. servant an Official or Rly. Trade Union who satisfies the requirements of rule 9(13) of the Rly. servants (Discipline and Appeal) Rules, 1968 and Note: 1 and/or Note: 2 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 held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Rly. servant of Rly. Trade Union Official(s), Shri S. B. Chakroborty should obtain an undertaking from the nominee(s) that he(they) is/are willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other cases, if any, in which the nominee(s) had already undertaken to assist. The undertaking should be furnished to the undersigned General Manager, N.F. Railway along with the nomination.

4. Shri S. B. Chakroborty is hereby directed to submit to undersigned (through General Manager) proper channel Railway for 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, 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.

Cc:td

AKR/RS
R. Dasgupta, T.M.
Mulgapur, Gurugram 122111

25/5/95

5. Shri S. B. Chakraborty is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each articles of charge.

6. Shri S. B. Chakraborty is further informed that if no does not submit his written statement of defence within the period specified in Para: 2 or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rules: 9 of the Rly. servants(Discipline and Appeal) rule: 1968 or the order/directions issued in pursuance of the said Rule, the inquiring authority may hold the inquiry ex parte.

7. The attention of Shri S. B. Chakraborty is invited to Rule 20 of the Rly. service(Conduct) Rules: 1966, under which no Rly. servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceeding, it will be presumed that Shri S. B. Chakraborty 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: 1966.

8. The receipt of this Memorandum may be acknowledged.

Enclo: 2

By order and in the name of
the President.

To: Shri S. B. Chakraborty

Designation and Place.

Signature,
Name and designation of the
competent authority.

S. SRINIVAS
DME(P)/LM6

23/3/51

- ① Copy to Shri _____ (Name and designation of the leading authority) for information.
- ② Strike out which ever is not applicable.
- ③ To be deleted if copies are given/not given with the Memorandum as the case may be.
- ④ Name of the authority. (This would imply that whenever a case is referred to the Disciplinary authority by the investigating authority or any authority who are in the custody of the listed documents or who would be arranging for inspection of the documents to enable this authority being mentioned in the draft memorandum.)
- ⑤ where the President is the Disciplinary authority.
- ⑥ To be retained where ever President or the Rly-Board is the competent authority.
- ⑦ To be used where ever applicable See Rule: 16(i) of the RS(DA) Rules: 1968-Not to be inserted in the copy sent to the Rly. Servant.

ANNEXURE TO STANDARD FORM NO.5.

Memorandum of charge sheet under Rule: 9 of the RS(DA) Rules: 1968.

Annexure: I

Statement of articles of charge framed against Shri S. B. Chakraborty
Driver/Gds/LMC.

Article I.

That the said Shri

while functioning

as

during the period ON 15-5-95, while
(here enter definite and

Shri S.B. Chakraborty, Dr/Gds/LMC was working up DKZ
and distinct articles of charge)
 Paper/SPL with L/NR- 6174YDM4 (Leading) Ld 30/530
 ex LFG C.F. 8/45 hrs. Accordingly train left LFG cdg 3 hrs
 but on arrival at MxD Shri Chakraborty claimed for relief as
 the train was detained at MxD for want of Path and zoom
 at LMC/Subyard. As such on duty PRC/LMC booked Dr
 Shri M.K. Basu with LE NR- 6366YDM4 to MxD to clear the
 Section. Shri Basu put Loco on train at 22 hrs, but on getting
 LC he could not start the train as the driver Shri Chakraborty
 created obstruction by applying A-9 brake valve on
 Locomotive G174. Then as per advise of PRC/LMC Shri
 Basu recreated vac. But he again failed to start,
 because Dr Shri Chakraborty got down from the Loco.
 Finally the train left MxD at 1/10 hrs of 16-5-95. Because
 of obstruction caused by Shri Chakraborty train got detained
 at LST for 03 hrs and 5 mts.

So Shri Chakraborty is responsible for
 creating obstruction on smooth Railway operation willfully for
 which he is charged.

Annexure: II.

SOMO 23/5/95

Statement of imputations of misconduct or mis-behaviour in
 support of the articles of charge framed against Shri S.B. Chakraborty
Driver/Gds/LMC.

Article II

— Same as above —

Shri S.B. Chakraborty

P. Datta

B. Datta
 Maldas, Sub-Station, Mysore

SOMO 23/5/95

P.O.

- 20 -

Annexure: III

List of documents by which the articles of charge framed against:

Shri S. B. Chakraborty, Dr./Bds./Lmc. proposed to be sustained.

- ① PRC/Lmc's diary extracts no - 101 & 107
- ② ~~PRC/Lmc's~~ Extracts of memo of Shri S. B. Chakraborty, Dr./Lmc.
- ③ Extract of memo of driver Sri M. K. Basu/Lmc of Locono - 636640m/1

*S. B. Chakraborty
23/5/95*

Annexure: IV.

List of witnesses by whom the articles of charge framed

against Shri S. B. Chakraborty, Dr./Bds./Lmc. proposed to be sustained.

- ① Shri M. K. Basu, Dr./Bds./Lmc.

*S. B. Chakraborty
23/5/95*

To
The DME(P)/Lumding,
N.F.Railway.

Through Proper channel

Sir,

Sub:- Representation against memorandum
No.TP/95/LM/1 dated 23.5.95.

In response to the above mentioned memorandum, I like to state the following for your consideration please.

That Sir, I have been charged with for creating obstruction on smooth running of train is completely baseless as well as incorrect.

Sir, in course of working Up DKZ-Paper/Spl. with Loco No.6174 YDM/4 Ex.LFG-LMG CF.8/45 hrs. accordingly I signed on duty at 8.15 hrs. and train started at 9.30 hrs., arrived MYD at 16.00 hrs. and my train was controlled by traffic.

After detaining for 3 hrs. at MYD, I went to station to enquire the reason of detention when it has come to know that line clear not received from Lumding as there was no room in the LMG yard. It was also known that train may suffer more detention.

Sir, as I was feeling unwell I served memo asking relief at 19.00 hrs. After passing the MYD station 5801 Dn. the on duty Controller requested me to work in the train upto LMG and I agreed to though I was feeling un-easy. But no A/P was served to proceed the train upto LMG. I was waiting for A/P. But after some time relief engine No.6366-YDM/4 came from LMG and attached in my train without any prior information, though relief Engine was not asked for.

Then I asked Station Master/MYD to let me know how the relief engine has been attached in my train and what is the decision about the matter was taken, but on duty station master(MYD) did not inform me anything.

In this connection I like to mention here that I was the original Driver of the train. Though I served memo for relief, but on request of on duty controller to continue my duty and to proceed the train upto LMG and I agreed to proceed the train and I was waiting for A/P. But relief engine arranged and attached in my train without any prior information to me, how it would be allowed by me (on duty Driver of the train) to attach another relief engine without my any proper information.

It is noticed through PRC's diary that I was instructed through phone by DME/P/LMG to release the train but I was unwilling which is a imported fact. Actually when I was talking through phone with DME(P)/LMG, voice of the DME(P)/LMG could not be recorded due to disturbance of phone.

contd...2

A. Datta
A. Datta, C.I.D. Jtly,
Mysore, Gu...
1995.01.11

-22-

page-2

From the above fact it is clear that no obstruction was created by me - if the obstruction was created by me how the relief engine attached with my train?

I like to bring to your notice that the memo which was issued to the Driver of relief engine but not to me. But if the said memo would have issued to me I could have release the A/D and detention could have been minimised.

In this connection I like to here mention that all these contradictions had been created due to non-maintenance of proper procedure in respect of serving memo to the Driver by the authority concerned.

No Doctor was arranged by the authority either at NYD or at LG though I issued memo at NYD which is ~~if~~ inhuman.

Under the above circumstances it is stated that the charges that have been brought against me was not at all based on actual fact and figures. As such you are requested to exonerate me from the above charges and oblige thereby.

Yours faithfully,

Sunil Baran Chakraborty
(Sunil Baran Chakraborty)
Driver Goods under
LF/Lumding.

2-6-95

6-96.

Dated

Received on 8/6
W/96
2/6

Attn:

D. D. S.

2. Dated, T. D. S.
Malgao, Goa - 403011

Subject : Choice of Assisting Railway Servant
(Defence Helper) in major penalty
disciplinary proceedings.

No. E(D&A)90RG6-106, dated 8.10.90

Item(a) of Rule 9/13 of the Railway Servants (Discipline & Appeal) Rules provides that a charged Railway servant may present his case with the assistance of any other Railway servant employed on the same Railway Administration on which he is working. If the Railway servant is employed in the Office of Railway Board, its attached Office or subordinate Office, he may present his case with the assistance of any other Railway servant employed in the Office of the Railway Board, attached Office or subordinate office, as the case may be, in which he is working. Item(b) of Rule 9/13 also provides that a charged Railway servant may present his case with the assistance of a retired Railway servant subject to such conditions as ~~may be~~ may be specified by the President from time to time by general or special order in this behalf. In the special orders which have been in this behalf vide Board's letter No. E(D&A)77RG6-33, dated 9.12.77 and E(D&A)83RG6-19, dated 13.5.84, it is provided that the retired Railway servant, who is to act as Defence Helper should have retired from Railway service under the same Railway Administration on which the charged Railway servant is working.

2. Representations have been received that the above restrictions are causing hardship in the matter of getting an effective Defence Helper (a) for those charged Railway servants where the delinquency occurred on a certain Railway, but they are transferred to a different Railway on which the disciplinary enquiry is processed, (b) in cases of retired Railway servant facing action under para 2308-RII where they settle far off from the Railway on which they retired and (c) those working in small Railway Administrations, i.e. Railway Administrations other than ~~the~~ Zonal Railway, CLW, DLW and ICF. After careful consideration, it has been decided to give the following relaxation in the matter of choice of Defence Helper. These relaxations in the matter of choice of Defence Helper. These relaxations will be applicable to both gazetted and non-gazetted charged office staff.

- (a) If the delinquency for which the Railway servant is charged occurs on a certain Zonal Railway/CLW/DLW/ICF, but he is transferred to another such Railway Administration, the concerned charged Officer may, if he so desire, be allowed a ~~servant~~ serving or retired Railway servant belongs to the Railway Administration on which the delinquency occurred.
- (b) In the case of disciplinary inquiry against retired Railway servants for pension cut under para 2308-RII, if they are settled down in a

Cont ... 2.

M.S.J.
D. Datta
D. Datta, (Advocate)
Gangaram, Guwahati-781011

a remote area away from the Railway Administration from which they retired, such persons may also be allowed, if they so desire, the choice of having a serving or retired Railway Servant working on any Railway Administration within those jurisdiction the ~~xxx~~ place of their present residence falls. They may also be allowed Defence Helper from amongst retired Railway servants irrespective of the Railway Administration from which they retired, who have settled in the vicinity of the place where the charged officer is also settled.

(c) In the case of Railway Board's office, its attached Office or subordinate office or small Railway Administration other than Zonal Railway CLW/DLW/ICF, the charged Railway servants may, if they so desire, have as Defence Helper a Railway servants who is serving or has retired from a continuous Railway Administration from amongst Zonal Railways/CLW/DLW/ICF. If a retired Railway servant belonging to a small Railway Administration (other than Zonal Railways CLW/DLW/ICF) is being taken up for pension cut, he may have the option of having a serving or retired Railway servant belonging to one of the bigger Railway Administration, viz. Zonal Railways/CLW/DLW/ICF within whose jurisdiction the place of his present residence falls. He may also be allowed Defence Helper from amongst retired Railway servants irrespective of the Railway Administration from which they retired who have settled in the vicinity of the place where the charged officer has also settled.

3. The Board are also anxious that this liberalisation should not result in delay in the finalisation of disciplinary inquiries on account of charged Officials restoring to delaying tactics on this account. It is, therefore, desired that in the case of charged Officers belonging to the gazetted category, the liberalisation should be extended only in cases where the General Manager is personally satisfied on the facts of the case, that such liberalisation is warranted. Similarly, in the case of charged Railway servant belonging to the non-gazetted category, the liberalisation should be allowed only with the personal satisfaction of the Divisional Railway Manager in the case of Divisional staff or the Head of the Workshop Incharges in the Workshops. In the case of those working in other extra Divisional Offices/Units as also those working in the Headquarters Office, the liberalisation should be permitted in the Zonal Railway Headquarters.

4. It should be made clear to the charged Officers that if the Defence Helpers are retired persons, it is their responsibility to ensure the attendance of such Defence Helper on the appointed days for the disciplinary inquiries. Postponement of the inquiry for non-appearance

Amrit

Cont ... 3.

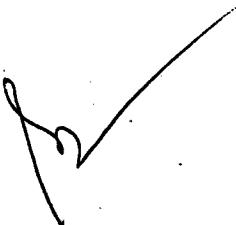
D. Datta
B. Datta, Advocate
Mangon, Guwahati, 781011

of the Defence Helper cannot be allowed saye in exceptional circumstances like sickness, which is certified by authorised Railway Medical Attendant etc. So far as cases ~~xxxx~~ where the Defence Helper are serving Railway servants, the disciplinary authority and the inquiring authority should ensure by timely communication in writing and over the phone to the Controlling Officer of such nominated Defence Helper, that they are relieved in time ~~to~~ to act as Defence Helpers so that no delay takes place.

5. The decisions mentioned in paragraphs 2 above has the approval of the President. Formal amendment to the rules and administrative instructions mentioned in paragraph 1 above shall be made in due course.

xxxx

R. Deka
R. Deka, (A/4/36816)
Majlis, Guwahati-781011



To
Shri A.K.Roy Chowdhury,
Inquiry Officer,
AMC/C&W/Lumding.

Through Proper channel

Sub:- Supply of relied-upon and/or additional documents, statement of prosecution witness and production of Court witness & defence witness/witnesses.

Ref:- DME(P)/LMG's letter No. TP/95/LM/1 dated 21.6.95.

Sir,

In terms of the letter under reference you have been appointed as Inquiry Officer, but preliminary enquiry not yet started though date was fixed two times and strange to note that you had fixed the date of conducting regular DAR enquiry. First the date of preliminary enquiry should be fixed and my defence counsel should be called for at that enquiry to work-out the modalities of conducting DAR enquiry.

- 2) That after my representation on the DAR enquiry had been ordered by the D.A. Though in Part-I of the memorandum it had been stated "Further copies of documents mentioned in the list of documents as per Annexure-III are enclosed", no such documents had been enclosed with the memorandum. Therefore, these relied upon documents should be supplied.
- 3) That the statement submitted by the prosecution witness mentioned in Annexure-IV of the memorandum should be supplied to defend imperatively and effectively.
- 4) That the name of PRC/LMG had been mentioned in Annexure-I and Annexure-III in the memorandum. For fairness of justice he should have been a prosecution witness but his name was omitted. Therefore, he should be produced as Court-witness for examination and cross-examination.
- 5) That in my statement dt.17.05.95 I stated clearly that on occasion I talked with PRC in presence of the Guard Sri P.C.Das/BPB and SM/MYD. In order to establish the fact Sri P.C.Das, Gd/BPD and on duty SM/MYD should be called for as defence witness. In addition, my DAD should also be called for in the DAR enquiry as defence witness.

contd...2

Atish
D. Dutt (Atish)
Manglore, Karnataka. 781019

27-

Annex-A/3 (Contd).

-2-

6) That as per public servant inquiries Act of 1950, all relied-upon documents and statement of witness should be supplied atleast 2 days before the commencement of PAR enquiry. And PWD/LIC no Court witness and Col.Sri P.C.Das, PWD and WYND and IAD of my train or defence witness to provide reasonable opportunity analogous to the principle of natural justice should be called for before the PAR enquiry to examine and cross-examination.

In conclusion you are requested to provide reasonable opportunity to defend and prove innocence with the aid of defence counsel. In respect of sparing of my AR, the letter of his sparing may finally be rouled through his controlling authority, Sr.RO/KIR to ensure his attendance.

Thanking you,

Dated, LMG

1-9-95

Yours faithfully,

Sankar Rayan Chakraborty
(S.P.Chakraborty)
Driver Goods/LIC.

Page 1/1

7.9.95

Mr. S. B. Chakraborty
(S.B.Chakraborty)
Driver Goods/LMG.

-28- Annex - A/f 37
Under Certificate of Posting.

FROM:-

L. Haque

Pass.Guard, MUDI
Otherwise Defence Council
Under SS, (N.P.), MUDI
Dated 11.10.95

To

The Asst. Mech. Engr. (C+w),
Otherwise Inquiry Officer
N.P. Ry, Lumding.

Re:- DAR enquiry on 18.10.95 at LMG.

ReF:- Your L/No TP/95/LM/1 dt. 22.09.95 communicated
In terms of DRM(O)/KTR's L/No. 1/05/R/Misc dt
05.10.95.

sir,

In terms of DRM(O)/KTR's letter of even No. dt 05.10.95
it has brought to my knowledge on 10.10.95 that the date of DAR
enquiry against Sri S.B Chakravarty, Dr. Goods/ LMG, has been fixed
on 18.10.95 at LMG.

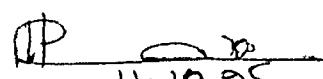
That I would like to inform you that my mother has left
this world on 21.09.95 for which I have to observe certain rituals
for the peace of soul of my mother. In addition the recent cyclone
followed by rain has brought untold miseries to the family. Naturally
I have no scope to attend enquiry on 18.10.95 at LMG under the pre-
vailing circumstances.

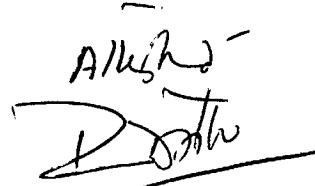
That a paid message has already been issued requesting
to postpone the enquiry on 18.10.95.

In view of the above I request you to postpone the DAR
enquiry on 18.10.95 and fix the next date save and except in between
20th NOV to 2nd DEC, 1995 provide opportunity to defend the delin-
quent Sri S.B Chakravarty, Dr. Goods/ LMG,

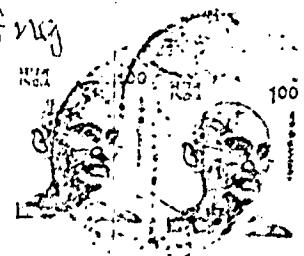
Thanking you,

Yours faithfully,


(L. HAQUE 11.10.95
PASS. GD./MUDI
Otherwise defence
Counsel.


A. Haque
Maligaon, Guwahati/310011

Certificate of Posting



1. The Asst. Mech. Engr (C&W)
otherwise Inquiry offices,
N.F. Rly. Lumding,
P.O. Lumding 782447
Dist. Nowrangpur, Assam

2. Sri S. M. Chatterjee,
Retd. Mail Driver,
R.N. Encl. 4/77 A
Loco Colony,
P.O. Lumding,
Dist. Nowrangpur, Assam
Pin 782447

two covers only

8/10

एम. आर. 48

M. R. 48

क्रम संख्या/Serial No. 6326

भारत सरकार द्वारा दिया गया

DEPARTMENT OF TELECOMMUNICATIONS INDIA

ग्रन्थालय तारीख: 10/10/1977 दिन: 10 वर्ष: 1977
असाम राज्य तारीख: 10 दिन: 10 वर्ष: 1977

Received Rupees P. / 5/-
being the cost of inland Telegram No. 5/-
classed 10 booked at hrs 10/10/1977
to (Office of destination)

तारीख दिन: 10

मोहा:



Date-Stamp
of Office

द्वारा दिया गया क्रमांक
Signature of booking clerk

History of the Case

Up DKZ paper Spl was called at 8-45 hrs. at LFG on 15.5.95 the Loco No. 6174 Driver (G) Shri S.B. Chakraborty and banking Loco No. 6765 driver (MU) Sri R.C. Sarkar/LMG. The train left LFG at 9-30 hrs. and arrived MXD at 16.00 hrs. and detaining for path and no reception being at LMG sub-yard. At 19 hrs. both the drivers claimed CFR at MXD, though they were coming towards their Hd. Qrs. Moreover not completed 10 hrs. running duty at a stretch. PRC on duty request them to come their Hd. Qrs. but they refused to come. Then one L/Eng No. 6366 was sent to MXD which left LMG at 21.15 hrs. and arr. MXD at 21-45 hrs. and attached on up DKZ paper Spl. at 22 hrs. But due to A/I of 6174 & 6765 was in applied condition. So. vac. was not created. Accordingly R/Eng. Driver Sri M.K. Bose told both the driver to release the A/I valve but they refuse to do it. Then Sri Bose served a memo to CHC/PRC through ASM/MXD regarding non creating of vacuum. ASM/MYO issued one memo as per advice of PRC/LMG to Sri Bose to release A/I valve of both the Loco and create vac. Accordingly Sri Bose did it and Vac. OK at 00.05 hrs. Train could not start as both the Driver were in the station office who was demanding regarding taking over charge of their Loco. Then PRC served memo at 00.30 hrs. to Sri Chakraborty and Sarkar to come with the Loco. Finally the train left MYD at 1-05 hrs. and arr. LMG Sub-yard at 1-45 hrs.

Findings.

I have gone through the statement & cross ques. and answer of concerning staff carefully and come to the conclusion that :-

- (1) Both the Driver Shri S.B. Chakraborty Dr(G) and R.C. Sarkar Dr(MU)/LMG should not claim CFR at MYD as per operating manual 1983, rule 1810 (B) (III) so they have violated the rules claiming CFR when they were coming towards their Hd. Qrs. LMG and MYD is just one station ahead.
- (2) It is also proved that both the driver has obstructed to create vacuum from their Loco 6174 & 6765 by applying A/I valve though they were advised by driver Shri Bose PRC and ASM/MYO to creat Vac: releasing A/I valve. Then both the Loco 6174 & 6765 were released by Sri Bose, Driver to create vac: as per memo of ASM/MYO &

Contd...2...

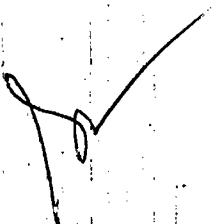
Ansar
Dorth
R. Dorth
Mallikarjun, Gwalior, 15.5.95

& statement of Sri Bose Driver (G) of relief engine.

(3) Shri S.B. Chakraborty has given attendance on 21-7-95, 29-8-95, 21-9-95 and 19-10-95 but he refused to sit in Enquiry time showing cause that without D.C. he would not sit in the enquiry. I did not get any letter from D.C. Shri Haque regarding his mother expire, Shri Chakraborty Driver told me on 19-10-95 that mother of Sri Haque expired on 21-9-95 which is about one month ahead so without D.C. he would not sit. But further date was not given already 5 dates were given to him and every time he served memo without D.C. he would not sit in Enquiry.

Alfred

D. D. Haque



To
The Divl. Mech. Engineer(D),
N.F.Railway, Lumding.

Through Proper Channel.

Sub:- Submission on Inquiry Report.

Ref:- Your L/No.TP/95/LM/1 dated 15.11.95 recd. on 30.11.95.

Sir,

In connection with the above I beg to prefer to submit the following submissions on the alleged Inquiry Report of Inquiry Officer (hereafter to be referred as I.O.) enclosed with your letter of even No. dt. 15.11.95 (Recd.on 30.11.95) for due consideration and justice please.

1.00. ~~tx22~~ On the alleged Inquiry Report.

1.01 That there is neither signature nor date of I.O. on the Inquiry Report. Further, the Disciplinary Authority should authenticate the Xerox copy of alleged Inquiry report to validate the same by signing thereon. The unsigned Xerox copy has no validity.

1.02 That on examination of the alleged Inquiry Report it was observed that it was the same ^{hand}writing who had prepared the Memo. even No. dt. 23.05.95 and signed by the Disciplinary Authority (hereafter to be referred as D.A.). When there was no signature of the I.O. on the Inquiry Report, it can be taken for granted that the alleged Inquiry Report had been prepared as per guidance and direction of the D.A.

1.03 That there was no reference of submission of the alleged Inquiry Report by I.O. when it was submitted to the D.A. (i.e. there was no date).

1.04 That the alleged Inquiry Report contains only the history of the case and findings but there is no proceedings of conducting the DAR enquiry. The I.O. stated in (iii) of its findings "further date was not given". It was apparent that he conducted ex parte inquiry as the defence expressed his inability to defend without time, but the proceedings of ex parte-enquiry had not been supplied to make submission having reasonable opportunity.

contd....p/2'

Alleged
D. D. D.
R. Datta, 10/2001
Malgun, Guwahati-781011

:: (2) ::

2.00 On conducting of DAP enquiry:

2.01 That the I.O. in (iii) of its findings referred date of enquiry fixed 21.07.95, 29.08.95, 21.09.95 and 19.10.95 respectively i.e. 4 days while in the latter portion he referred of 05 days which was self-contradictory.

2.02. That the I.O. had communicated only one occasion through the controlling Authority of the ARE to relieve i.e. on 19.10.95. Rest occasions he intimated to SS, N.P.Rly. MUDT, who is not the Controlling Authority of ARE.

2.03 That the ARE had issued paid message to the I.O. on 11.10.95 (XEROX copy of DOT R/No. 6326 dt 11.10.95 ~~enclosed~~) followed by a letter dt 11.10.95 under certificate (XEROX copy of under Certificate of Posting enclosed) in which the ARE expressed his inability to attend due to expiry of his mother and natural calamities faced by his family. ~~XEROX copy of DOT R/No. 6326 and under Certificate of Posting as Annexure-A.~~

2.04 That it was travesty of the fact to deny reasonable opportunity to defend. Rly. Bd. in their L/No. E(D&A)90 RG-106 dt 08.10.90 ^{Enclosed marked as Annexure-B} had clearly stated that for working railway servants working as defence helper, the enquiry officer and disciplinary Authority shall ensure by timely communication in writing and over- phone to the Controlling Officer of the helpers that they are required to be relieved in time. Neither the I.O. nor the D.A can claim that they made efforts to relieve the ARE as per Rly. Bd's instruction referred above.

2.05 That there is a provision of holding Ex-parte * inquiry vide Rule 9(23) but no proceedings of ex-parte inquiry had been supplied. So the scope of the charged official was limited to prepare his submission on the alleged Inquiry Report. It should be noted that there were procedural requirements in ex-parte proceedings but there was no evidence that it was complied by the I.O.

2.06 That no order sheet for preliminary hearing in terms of Rule 9(11) of RS (D&A) Rules, 1968 and regular hearing had been supplied though the charged official attended on 21.07.95, 29.08.95, 21.09.95 and 19.10.95 respectively. It is obligatory on the part of the I.O. to deliver one copy of the daily order sheet but it was not complied with by the I.O.

contd.....3

J

A. M. S.
D. S. R.
R. M.
Mallgaon, Commr. 1995.

::(3)::

3.00 On Findings of the alleged Inquiry Report :

3.01.01 That in para (i) of the findings of the alleged Inquiry Report there were reference of violation of Rule 1910(b)(iii) of Optg. Manual 1983 but there was no reference of violation of rule in the statement of articles of charge (Annexure-I) and the statement of imputations of misconduct or misbehaviour (Annexure-II) in the charge sheet though the Rly Bd. in their L/No. E(D&A) 66 RG 6-7 dt 30.12.68 had specified to mention violation of rule, if any, but it was not complied with by the D.A during issuance of charge-sheet.

3.01.02 That no document had been supplied to the delinquent on conducting DAR Proceedings for which there was no opportunity to examine and/ or judge the findings as to how the I.O. arrived at such conclusion of violation of rule 1910(b)(iii) of Optg. Manual. It was extraneous matter incorporated by the I.O. Further, it was apparent that I.O. weighed the fact by intruding his personal knowledge which was against the rule as held by the Court of law in the case of state of U.P v Mohd. Nooh, AIR 1958 SC 86.

3.01.03 That the I.O. arrived at such conclusions without going the instruction contained in para 2(b)&(c) of Rly. Bd's L/No. E/11/9/1/HER-II dated 03.04.92 in which it had been specified that the crew controller should advise the crew before the completion of 08 hrs of running duty within overall limit of 12 hrs. There was no evidence that the crew-controller had complied the said instruction.

3.02.01 That in respect of para (ii) of the findings it stated that neither PRC nor ASM/MYD had intimated and/or conveyed any instruction in writing to the delinquent. It was concocted and fabricated to harass and punish. There was a reference in CPRC's diary that DME(P) himself talked with the ~~mix~~ driver. According to the norms and procedures DME(P) was witness in this instant case as such he had no jurisdiction to issue the charge-sheet. For interest of justice DME(P) should refer the case to higher authority to institute Disciplinary proceedings. In this connection Rly. Bd's L/No E(D&A) 91RG6-32 dated 19.03.91 may kindly be referred to.

contd....4

A/9/

Smt

R. D. M. 1/1/1992
Malgudi, Bangalore

::(4)::

3.02.02 That the I.O. had not supplied the proceedings of D.A.R enquiry even ex-parte D.A.R proceedings as he proceed to conduct D.A.R enquiry without the attendance of A.R.E. The fact recorded was nothing but repetition of charge. It was prepared as per direction of the D.A.

3.03.01. That in respect of para (iii) of the findings it is stated that the I.O. had closed the case of prosecution without giving reasonable opportunity to defend. It was already stated that it was the failure on the part of the I.O. to ensure attendance of A.R.E through his controlling officer Sr. D.M./KIR- Save and except for the date fixed on 19.10.95. Therefore, the claim of the I.O. had no basis. Moreover, the I.O. failed to comply the instruction of Rly. Bd's letter even No dt. 08.10.90. The findings had been prepared out of biasness and as per direction of the D.A since D.M.R(D) was personally witness ^{and} interested party in this case.

On consideration of all facts and circumstances to it was apparent that all norms and procedures as well as Constitution of India have been ignored to prepare concocted findings. There was no basis as such I may kindly be let off from the charge for ends of justice, equity and fair play.

Thanking you,

Encs: Annexite - A, B & C.

Yours faithfully,

Dated: LMG

08.12.95

Sunil Baner Chakravarty

(S.B. Chakravarty)

Driver(G), LMG

11/12/95

Alka
DDmt.
R. P. 10/12/95
Malgudi, Bangalore

✓

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

(Ref : SR-21 under Rule 1715-R1)

No. T.P/95/LM/1

Date 23-1-96

To

Name Sri Sunil Baran Chakroborty

Father's Name Late Pratap Ch. Chakroborty Department Mechanical

Designation Driver/Gds/LMG Date of appointment 2-5-63

Ticket No. Scale of pay 1350/- - 2200/-

Station LMG (Through WF/LMG)

1. Your explanation dated 12-6-95 to the charge sheet dated 23-5-95 has not been accepted by DME(P)/LMG. Your reply date 8/11-12-95 to the "Show Cause Notice" dated 15-11-95 has also been considered by DME(P)/LMG and the following charge/s has/have been held to be proved against you:—

Charge (s)

Charge attached vide annexure I

2. You are hereby informed that in accordance with the orders passed by DMI-CP/LMG, you are reduced to:—

* The lower post of in scale of Rs
* The lower grade of Rs
* The lower stage of Rs 1760/- in your existing scale of pay of Rs 1350/- 2200/- for a period of 2(two years) years in time scale of pay months until you are found fit, after a period of years months from the date of this order to be restored to the higher post/grade of in scale of Rs

3. The above penalty shall not operate to postpone your future increment or restoration to your former post/service/scale of pay/stage in the existing scale of pay.

Alleged

R. Borthakur

Malligaon, Guwahati, Assam

(P. T. O.)

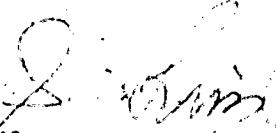
4. £ You are also informed that on restoration to your former post/grade/time scale, your seniority will be refixed as follows :—

- If the reduction is not to operate to postpone future increments, your seniority will be fixed in the higher service, grade or post or the higher time scale at what it would have been but for your reduction.
- If the reduction is to operate to postpone future increments, your seniority will be fixed by giving credit for the period of service rendered by you in the higher service, grade or post or, higher time scale prior to your reduction.

5. @@ Your pay will be fixed at Rs. 1760/- on and from the date of your reduction.

Copy to:- DPG/LMC for information & info.

LF/LMC. , , , ,


Signature.....

Designation..... DME(P)/LMC

Station..... महाल प्राचीक लाईफ्स

Divisional Mechanical Engineer
N. F. Railway, Lumding

Score out whichever is inapplicable.

% This is applicable when restoration is automatic.

@ This is applicable when restoration is not automatic.

@@ This is not applicable in cases of reduction to a lower stage in a time-scale of pay.

£ This is not applicable in cases of reduction to a lower stage in a time-scale

N. B. :—Please note the instructions below :—

1. An appeal against these orders lies to..... DPM/LMC..... (next immediate superior to the authority passing the order.)

2. The appeal may be withheld by an authority not lower than the authority from whose order it is preferred if,

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

Annex A/10 Contd.

CHARGES

Sri S.E.Chakraborty Driver (Goods)/Lumding was working Up DKZ paper SpI. with Loco No.6174 YDM4(Loading) Lade-30/530 Ex.LFG. CF 8.45 hrs. Accordingly train left LFG at 9.30 hrs but on arrival at MYD Sri chakraborty claimed for relief as the train was detained at MYD for want of path and room at LMG/Sub yard. As such on duty PRC/LMG booked Driver Shri M.K.Bose with L/Eng: No. 6366 YDM4 to MYD to clear the section. Sri Bose put Loco on train at 122/- hrs but on getting L/C he could not start the train as the Driver Shri Chakraborty created obstruction by applying A/9 brake valve on Locomotive 6174 YDM4. Then as per advise of PRC/LMG shri Bose recreated Vac. But he again failed to start because Driver Shri Chakraborty got down from the Loco. Finally the train left MYD at 1.05 hrs of 16.5.95. Because of obstruction caused by Shri Chakraborty train got detained at LGT for 03 hrs and 5 mts.

So Sri Chakraborty is responsible for creating obstruction on smooth railway operation will-fully for which is is charged.


N. F. Railway, Lumding

Divisional Mechanical Engineer (P)
N. F. Railway, Lumding

Subject : Disciplinary cases-Need for issuing speaking orders by Competent authority.

No. E(D&A)86RG6-1, dated 20-1-1986.

A copy of O.M. No. 134/12/85-AVD.1 dated 5.11.85, received from the Department of Personnel and Training is sent herewith for guidance. A copy of the Department of Personnel earlier O.M. No. 134/1/85-AVD-1 dated 13.7.1981 referred to in paras 1 and 2 of the O.M. ibid is also sent herewith.

Copy of D.O.P & Trg.O.M.No.134/12/85/A.V.D.I dt. 5-12-1985.

Subject : Disciplinary cases-Need for issuing speaking orders by Competent authorities-Reiteration of instructions regarding.

OFFICE MEMORANDUM

The undersigned is directed to refer to this Department's O.M. No. 134/1/81-AVD.I dated 13-7-1981 (copy enclosed for ready reference) and to state that in spite of the instructions contained herein, it has come to notice that speaking orders are not issued while passing final orders in disciplinary cases. It is an essential legal requirement that, in the case of decision by quasi-judicial authorities, the reasons should be recorded in support thereof. As orders passed by disciplinary authorities are in exercise of quasi-judicial powers, it is necessary that self-contained, speaking and reasoned orders should be issued while passing final orders in disciplinary cases.

2. The instructions contained in this Department's O.M. dated 13-7-1981, referred to above, are accordingly reiterated and it is requested that the contents thereof may be brought to the notice of all concerned for their information and guidance.

Copy of D.O.F & Admn. Reforms O.M.NO.134/1/81-A.V.D.ID. dated 13-7-1981.

Subject : Disciplinary cases-need for issuing. Speaking orders by Competent authorities.

The undersigned is directed to state that as is well known and settled by Courts, disciplinary proceedings against employees conducted under the provisions of C.C.S (C.C.A)Rules 1965, or under other corresponding rules, are quasi-judicial in nature and as such, it is necessary that orders in such proceedings are used only by the competent authorities who have been specified as disciplinary/appellate/

A16/75
D.D.T.
S. Datta, (Advocate)
Malgachan, Guwahati-781011

Cont ... 2.

WS

reviewing authorities under the relevant rules and the orders issued by such authorities should have the attributes of a judicial order. The Supreme Court, in the case of *Mahavir Prasad v. State of U.P* (AIR 1970SC 1302) observed that recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of Policy or expediency. The necessity to record reasons is greater if the order is subject to appeal.

2. However, instances have come to the notice, of this Department where the final orders passed by the competent disciplinary/appellate authorities do not contain the reasons on the basis whereof the decisions communicated by that order were reached. Since such order may not confirm to legal requirements, they may be liable to be held invalid, if challenged in a Court of law. It is, therefore impressed upon all concerned that the authorities exercising disciplinary powers should issue self-contained speaking and reasoned orders conforming to the aforesaid legal requirements.

3. Instances have also come to notice where, though the decision in disciplinary/appellate cases were taken by the competent disciplinary/appellate in the files, the final orders were not issued by that authority but only by a lower authority. As mentioned above, the disciplinary/appellate/reviewing authorities, exercise quasi-judicial powers and as such, they cannot delegate their powers to their subordinates. It is therefore, essential that the decision taken by such authorities are communicated by the competent authority under their own signatures, and the order so issued should comply with the legal requirements as indicated in the preceding paragraphs. It is only in those cases where the President is the prescribed disciplinary/appellate/reviewing authority and where the Minister concerned has considered the case and given his orders that an order may be authenticated by an Officer, who has been authorised to authenticate orders in the name of the President.

4. The contents of this O.M. may kindly be brought to the notice of all concerned for their information and guidance.

XXXX

Alle. M.
D. D. T.
S. Datta, (10136918)
Bulgaon, Guwahati-781011

To
The Divisional Rly. Manager,
N. F. Rly/Lumding.

Through Proper Channel.

Sub : Appeal against composition of unjustified punishment by DME(P)/Lumding.

Ref : DME(P)/LMG's C/No. TP/95/LM/1 dt. 23.1.96

Sir,

With profound respect most humbly I beg to invite your pin-pointed attention to the following facts for favour of your kind consideration and justice please.

That Sir, DME(P)/LMG issued memorandum No. TP/95/LM/1 dt. 23.5.95 alleging me with charges for creating obstruction on smooth running of train in course of my working up DKZ paper special with Loco No. 6174 YDM 4 Ex LFG to LMG on 15.5.95 and I was asked for submission of my defence within the stipulated time.

That Sir, in compliance with the instruction as laid down in the memorandum of charges I submitted my representation against memorandum in time (copy of my representation is enclosed herewith 1 in two).

That Sir, DME(P)/LMG's passed his order under his No. TP/95/LM/1 dt. 21.6.95 proposing DAR inquiry nominating Shri A.K. Roy Choudhury AME(C&W)/LMG as Inquiring Officer and I also nominated Shri L. Haque Guard/MLDT as O/C and submitted consent letter of Shri Haque in time being asked for in connection with the above.

That Sir, without completing the proposed DAR inquiry, the DME(P)/LMG under his letter dt. even No. dt. 15.11.95 proposed to take decision Ex-part and asked for my representation against ex-party decision if any. According I submitted my submission on inquiry report dt. 11.12.95 submission one in four along with photo copy of relevant 5 documents are enclosed herewith).

That Sir, the DME(P)/LMG without giving any consideration to my representation has passed his order imposing an unjustified punishment on me reducing my pay at the lower stage of Rs. 1760/- in my existing scale of pay of Rs. 1350/- - 2200/- for a period of 2 (two) years

A. Chakraborty

D. Chakraborty
A. Chakraborty
Mallapan, Government of West Bengal

Contd...2...

A/12 Contd. v8

in time of pay.

However he (DME/P/LMG) has very kindly allowed me with the opportunity to make an appeal before your goodself against the punishment order under his letter of even No. dt. 23/1/96 which I received on 3.3.96, hence this humble submission of mine before you for favour of kind consideration and justice please to vacate.

The punishment from me which is unjustifiably imposed on me without allowing me with the scope to defend myself and I pray to you to be kind enough to communicate your valued order to re-open the DAR enquiry to find out the fact and allow me with the opportunity to defend myself and such an act of your kindness I shall remain ever grateful to you.

Yours faithfully,

Sunit Baran Chakraborty

(S. B. Chakraborty)
Driver (G)/LMG.

Dated, 13-11-96

DA : ~~0~~ (None)

2 page

Received - with D.A.
 12 13/4/96

A/12 Red
 DDA
 A. D. S. (Adm. Dept.)
 Meligaon, Dibrugarh - 781011

- 43 -

Annexure A/13.

N.F.Railway.

No. TP/95/LM/1.

DRM(M)'s Office,
Lumding, dt. 12-6-1996.

To : Shri S. D. Chakrabarty,
Dr./Gds./LMG.
Through iLF/LMG.

Sub:- CFR case of UP DKZ/Spl.
at MYD on 15.6.95.

Ref:- Your appeal dt. 13.4.96.

In reference to the above it is intimated that
DRM/LMG has reviewed your case and rejected the appeal
submitted by you.

Please note accordingly.

12.6.96
DRM(P)/Lumding.

Copy to:LF/LMG for information and a/a.

DRM(P)/LMG.

100/