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6
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::::::: GUWAHATI

ORIGINAL APPLICATION NO. 39096

MISC. PETITION/CONT EMPT PETITION/REVIEW APPLICATION NO.

(D A).

N. Laskar

APPLICANT(S)

VS.

K.O.I. Pow

RESPONDENT(S)

Mr. H. Rahman, N. Bora, I.B.Jam Advocate for
Applicant(s)

Mr. B.K. Sharma

Advocate for
Respondent(s)

OFFICE NOTE	DATE	O	R	D	E	R
-------------	------	---	---	---	---	---

7.3.96

None present. List for considera-
tion of admission on 13.3.96.

This application is in
form and within time
C. F. of Rs. 50/-
deposited vide
IPO/BID No. 3415384
Dated 27-2-96

60
Member

pg

Sh. Upadhyay
fw Dr. Basumatary
PD

13-3-96

Mr. A. K. Choudhury Addl. C.G.S.C.
for the respondents. None for the
applicant. However list again for
consideration of admission on 15-3-96.

Member

lm

OFFICE NOTE

DATE.

O R D E R

18-3-96

Learned counsel Mr. H. Rahman for the applicant. None is present for the respondents.

Heard Mr. Rahman for Admission.

The appeal against imposition of major penalty had been submitted by the applicant before respondent No. 2 on 24-6-95 and according to copy of Acknowledgement Card it was received on 10-7-95. It has been submitted by Mr. Rahman that no order has been passed till now on the appeal.

Issue notice on the respondents to show cause as to why the application should not be admitted and relief sought should not be granted. List on 15-5-96 for show cause and consideration of Admission.

Pendency of disposal of show cause and consideration of admission of this O.A. shall not be a bar to the respondents, particularly the appellate authority, to dispose of the aforesaid appeal submitted by the applicant on 24-6-95. It is in the fitness of things for the respondents to keep the operation of the order dated 10-5-95 in abeyance pending disposal of the appeal if it has not already been given effect to.

60
Member

lm

Requisites are given
on 21-3-96 & issued
to No. 626 & on 25-3-96
to

2/3

Notice duly served
on R. No. 1, 2, 3 & 5

True copy

15.5.96

None for the applicant. Mr. B.K. Sharma for the respondents.

List for hearing on 21.5.96
List for admission on 21-5-96.

60
Member

OFFICE NOTE	DATE	ORDER
	22-5-96	None for the applicant. No Show cause has been submitted. Mr.B.Mehta for Mr.B.K.Sharma request for one month time to file show cause. List for hearing on 18-6-96, for show cause and consideration of admission.
2) Notice duly Served on Respondents No, 1, 2, 3 & 5.	1m	<i>60</i> Member
3) Show Cause has not been filed?	18.6.96	Mr H.Rahman for the applicant. None for the respondents. Show cause has not been submitted, though notice duly served. Application is admitted. Written statement within 6 weeks. List on 2.8.96 for written statement and further orders.
w/ statement has not been filed.		Pendency of disposal of the application shall not be a bar for the respondents to dispose of the appeal of the applicant.
	pg	<i>60</i> Member
w/ statement has not been filed.	2.8.96	Mr N.Barua for the applicant. None for the respondents. List on 29.8.96 for written statement and further orders.
	pg	<i>60</i> Member
w/ statement has not been filed.	29.8.96	None present. Written statement has not been submitted. List for written statement and further orders on 25.9.96.
	pg	<i>60</i> Member

OFFICE NOTE

DATE

ORDER ..

25.9.96

None present. Written statement has not been submitted.

List for written statement and further orders on 13.11.96.

60
Member

pg

W/25/9

13.11.96

None present. Written statement has not been submitted.

List for written statement and further orders on 6.12.96.

60
Member

pg

W/14/11

6.12.96

None present.

Written statement has not been submitted.

List for written statement and further orders on 7.1.1997.

60
Member

trd

W/6/12

7-1-97

None for the applicant. Learned counsel Mr. B.K. Sharma for the Railway respondents seeks six weeks time to submit written statement.

List for written statement and further order on 5-2-97.

60
Member

lm

w/s filed - hs not been filed.

60
Member

1) Notice duly served on Respondent no. 1, 2, 3 & 5...

2) w/s filed - hs not been filed

60
Member

60
Member

2-1-97

w/s filed on behalf of Respondents.

4-2-97

1) Notice duly served on Respondent no. 1, 2, 3 & 5

2) w/s filed on behalf of Respondent, at page

60
Member

(5) OA/TA/CP/RA/MP No. 19 of 19 O.A.No.39/96

OFFICE NOTE

DATE

ORDER

5.2.97

List the case for hearing on 5.3.97.

Member

Vice-Chairman

nkm

W
6/2

5.3.97

On the prayer of Mr. N. Barua learned counsel appearing on behalf of the applicant, hearing adjourned to 27.3.1997.

List on 27.3.1997 for hearing.

Member

Vice-Chairman

trd

W
11/3

27.3.97

Mr N. Barua, learned counsel appearing on behalf of the applicant informs that the applicant is no longer interested to proceed with the case and he does not press the application. Heard Mr B.K. Sharma, learned Railway counsel also. He has no objection. In view of the submissions of the counsel for the parties, the application is dismissed as not pressed.

Member

Vice-Chairman

pg

Issued vide D.No.
1280 to 1284 D.122/97S.H.
2/5

27 FEB 1996

Guwahati Bench

GUWAHATI BENCH AT GUWAHATI

39
ORIGINAL APPLICATION NO. 9/1996

NIRMALENDU LASKAR

...APPLICANT

-vrs-

UNION OF INDIA & ORS. ...RESPONDENTSI N D E X

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH AT GUWAHATI

(An application Under Section 19
of the Administrative Tribunals
Act, 1985).

O.A. NO. 37 /1996.

Mr Nirmalendu Laskar,
S/O Late Nalini Kanta Das Laskar,
Working as CPWI/S/N.F. Railway,
Lumding.

... APPLICANT

-Vs-

1. The Union of India,
Represented by the General Manager,
N.F. Railway, Maligaon,
Guwahati-11.
2. The General Manager,
N.F. Railway, Maligaon,
Guwahati-11.
3. The Divisional Railway Manager,
Lumding.
4. The Divisional Engineer(Co-ordinate),
N.F. Railway, Lumding.
5. The Divisional Railway Manager(Works),
N.F. Railway, Lumding.

... RESPONDENTS

...contd...2/-

Nirmalendu Laskar
Applicant

Mr. Boring Advocate

(1) PARTICULARS OF THE ORDERS AGAINST WHICH THIS APPLICATION IS MADE :

This application is made against the office Order No.W/12/LM/136/W-5/156 dt.10/12-5-95 issued under the signature of Divisional Engineer(1)/ Works LMG imposing the penalty of % reduction of pay to lowest stage in the same time scale for a period of 2 years 6 months with (NC) effect" upon the applicant.

(ANNEXURE-3)

(2) JURISDICTION OF THE TRIBUNAL:

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

(3) LIMITATION :

The applicant further declares that the application is within the limitation period prescribed under the Act.

(4) FACTS OF THE CASE :

(a) That the applicant is a citizen of India and is at present working as the Chief Permanent Way Inspector (Safety) and posted at Lumding under the N.F. Railway, Lumding Division.

...contd...3/-

(b) That the applicant joined his service in the Jodhpur Division of the Northern Railway as APWI on 16-10-'70 and since then he has been serving the organisation in various capacity.

(c) That on 16-12-'77 the applicant was transferred from the Northern Railway to the Northeast Frontier Railway and was posted at Damcherra under the Lumding Division as PWI(III).

(d) That the applicant was promoted as PWI(II) on 12-4-'79 and he was transferred to Lower Halflong under the Lumding Division. Thereafter, in the year 1981 the applicant was promoted to PWI(I) and posted at Lumding as PWI(Plain), Lumding.

(e) That in the year 1985 the applicant was transferred to Dharmanagar and subsequently in the year 1986 he was again transferred to Bdarpur as PWI(CTR). Thereafter, in 1989 the applicant was transferred to Katakhali - Lalbazar from where he was again transferred to Bardarpur as PWI(I).

(f) That in August, 1989 the applicant took charge as CPWI, Badarpur from where he was subsequently transferred to Lumding as CPWI (safety) in September, 1994, the post which he is at present holding.

(g) That in 19-8-'94 while the applicant was posted at Badarpur as CPWI, he was served with a memorandum of charge issued under the signature of Shri Rajiv Kumar, Divisional Engineer (Co-ordinate), N.F. Railway, Lumding. The said Memorandum which was issued under Rule 11 of R.S. (D&A) Rules, 1968 under Memo No.W/12/LM/136/W-5/202 dated 19-8-'94 contained the following charge against the humble applicant.

" While working as In-charge PWI Sri N. Laskar was supposed to maintain P-way under his jurisdiction in safe condition as per ISPWI/1966.

On 7-11-'93 UP SCL STG met with an accident between DPD-PNIM and as per findings of the Enquiry Committee accident occurred due to irregular variation in cross level.

Being an In-charge PWI Sri N. Lasker has failed to maintain the track within safety tolerances which tantamounts to serious misconduct and thereby violation of article 3.1(ii) of Railway Service Conduct Rules, 1966."

The applicant was therefore, directed

to submit his representation before the appropriate authority within 10(ten) days of the receipt of the memorandum.

A copy of the memorandum of charge dated 19-8-'94 is enclosed herewith as ANNEXURE-I.

(h) That upon receipt of the memorandum of charge dated 19-8-'94, the humble applicant filed a defence representation dated 15-9-'94 before the Divisional Engineer (Co-ordination) N.F. Railway, Lumding, denying the charges levelled against him in the said memorandum and prayed that he may be exonerated from the charges levelled against him as he was in no way guilty of the said charges.

A copy of the representation dt. 15-9-'94 is enclosed as ANNEXURE-2.

(i) That the applicant ~~applicant~~ after filing his representation on 15-9-'94 was waiting with a hope that his representation has been accepted by the concerned authorities and accordingly he has been exonerated from the charges. However, most surprisingly enough all of a sudden the applicant was served upon with a notice dated 10/2.5.'95 issued under

Memo No. W/12/ALM/136/W-5/156 dated 10/12-5-'95
under the signature of the Divisional Engineer/
I/LMG vide which the applicant was informed that
his representation has been disallowed and
accordingly a penalty of "reduction of pay to
lowest stage in the same time scale for a
period of 2 years 6 months with (NC) effect"
has been imposed upon him.

A copy of the notice dated 10/12-5-95
is enclosed as ANNEXURE-3.

(J) That the humble applicant was very much surprised at receiving the notice of penalty dated 10/12-5-'95 in as much as the applicant was under the impression that his defence statement dated 15-9-'94 wherein he has explained in detail his innocence by pointing out the actual facts of the case, ~~has~~ has been accepted, by the concerned authorities as almost 8 months had elapsed since he had filed the same.

(k) That the humble applicant further begs to state that the memorandum of charge dated 19-8-'94 which was issued to him under Rule 11 of RS(D&A) Rules, 1968 was for imposing of minor penalty, Whereas, the penalty imposed upon him vide the notice dated 10/12-5-'95 is a major penalty as laid down in Rule 6(V) of

the Railway Servants Disciplinary and Appeal Rules, 1968. The said Rule is quoted below as follows :-

Rule 6(v) " Reduction to the lowest stage in the time scale of pay for a specified period with further direction as to whether on the expiry of such period the reduction will or will have the effect of postponing the future increments of his pay."

(1) That the humble applicant upon receipt of the notice of penalty dated 10/12-5-'95 submitted an appeal before the General Manager, N.F. Railway, Maligaon on 24-6-'95 by pointing out the actual facts of the case and also the irregularities in imposing a major penalty upon the applicant on the basis of a charge sheet issued for the purpose of imposing minor penalty. The humble applicant prayed before the Appellate Authority to take into consideration the grounds put forward by him in his appeal and prayed for being exonerated from the charges levelled against him and thus withdraw the notice of penalty.

A copy of the appeal dated 24-6-'95 is enclosed herewith and marked as ANNEXURE-4.

(m) That the humble applicant begs to state that Rule 9(1) of the Railways Servant Disciplinary and Appeal Rules, 1968 clearly states that no order imposing major penalty shall be made except after holding an enquiry as per the procedure laid down in the said Rules. However, in the instant case no such enquiry was held before imposition of the penalty upon the applicant and also no charge-sheet for imposing of a major penalty was issued upon the applicant. The provisions laid down in Rule 9(1) of the Railways Servant Disciplinary and Appeal Rules, 1968 is quoted below as follows :-

"No Order imposing any of the penalties specified in clauses (v) to (ix) of Rule 6 shall be made except after an enquiry held as far as may be in the manner provided in this rule and Rule 10 or in the manner provided by the Public Servants (Inquires) Act, 1950 (37 of 1850) where such inquiry is held under that Act."

(n) That the humble applicant in his appeal dated 24-6-'95 had clearly pointed out the above mentioned irregularities as well as the fact of his innocence in connection with the

charges levelled against him. But most surprisingly enough the concerned authorities instead of disposing of the appeal by passing a reasoned order has preferred to remain silent over the matter.

(o) That finding no other alternative and seeing no hope of a positive response from the respondents, more particularly, the Respondent No.2, the humble applicant has no other alternative but to file this application before this Hon'ble Tribunal for redressal of his grievances.

(p) That this application is being filed bonafide and for the ends of justice.

(5) DETAILS OF REMEDIES EXHAUSTED :

The humble applicant declares that he has exhausted all the departmental remedies which were available to him within the Department.

(6) MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY COURT OR TRIBUNAL:

The humble applicant further declares that the subject matter against which the applicant seeks remedy is not pending before any Court or Tribunal.

(7) RELIEF SOUGHT:

In view of the facts and circumstances mentioned above, your humble applicant prays for the following relief :-

(a) to set aside and quash the impugned Office Order No W/12/LM/136/W-5/156 dated 10/12-5-'95 issued under the signature of the Divisional Engineer/ I/LMG imposing a penalty of "reduction of pay to lowest stage in the same time scale for a period of 2 years 6 months with (NC) effect."

(8) GROUND FOR RELIEF WITH LEGAL PROVISION:

(a) For that the action of the respondents in imposing the penalty of reduction of pay upon the applicant is highly illegal, improper and unreasonable in as much as the applicant was issued a memorandum of charge-sheet dt.19-8-'94 for imposition of minor penalty whereas the penalty imposed upon him vide the impugned order dated 10/12-5-'95 is a major penalty as laid down in Rule 6(v) of the Railway Servants Disciplinary and Appeal Rules, 1968.

(b) For that Rule 9(1) of the Railway Servants Disciplinary and Appeal Rules, 1968 lays down

that before imposition of a major penalty, the authorities are bound to hold an enquiry against the delinquent. Whereas, in the instant case no such enquiry was held before imposition of the said major penalty upon the applicant. As such the impugned order of penalty is highly illegal and improper and as such is liable to be set aside and quashed.

(c) For that as no enquiry was conducted as per the provisions of law, the applicant had no opportunity to defend his case properly and as such the order of penalty is highly arbitrary, illegal and unjust, and as such is liable to be set aside.

(d) For that the respondents while passing the impugned order of penalty did not apply its mind by going into the records of the case and the said action of the respondents has caused great injustice to the applicant in as much as he was denied the principle of natural justice and administrative fair play. As such the action of the respondents in issuing the impugned order of penalty smacks of a malafide intention which needs to be interferred upon by this Hon'ble Tribunal for giving due relief to the applicant.

(e) For that the action of the respondents being violative of the provisions laid down in the statutory rules, the same needs to be set aside and quashed.

(f) For that the Railway Servants Disciplinary and Appeal Rules, 1968 provides that before imposition of a major penalty, a charge-sheet for the same has to be issued and after which an inquiry is also to be conducted before imposing any major penalty upon a delinquent. However, in the instant case the said provision has been grossly violated by the respondents for reasons best known to them. As such, this action of the respondents in imposing a major penalty upon the applicant on the basis of a charge-sheet issued for imposing minor penalty is liable to be set aside and quashed.

(g) For that the punishment imposed by the respondents upon the applicant is defined as a major penalty under Rule 6(v) of the Railway Servants Disciplinary and Appeal Rules, 1968. As such the respondents have no authority to impose the said penalty upon the applicant on the basis of a memorandum of charge issued for imposing minor penalty and that too, without holding any inquiry.

(h). For that the impugned order of penalty was issued upon the applicant after about almost 8(eight) months of his filing a defence statement which itself smacks of a malafide intention of the respondents to make the humble applicant a scape-goat.

(i) For that in any view of the matter, the impugned order of penalty dated 10/12-5-'95 is liable to be set aside and quashed.

(9) INTERIM RELIEF PRAYED FOR :

Pending disposal of the application, the humble applicant prays that a direction may be issued upon the respondents not to give effect to the impugned order of penalty issued vide Memo No W/12/LM/136/W-5/156 dt.10/12-5-'95.

(10) PARTICULARS OF BANK DRAFT/POSTAL ORDERS:

Indian Postal Order No. 345084
dated 27-2-96 for Rs.50/- (Rupees fifty) only
payable at Guwahati in favour of the Registrar,
Central Administrative Tribunal, Guwahati.

---verification---

VERIFICATION

I, Shri Nirmalendu Laskar, S/O Late Nalini Kanta Das Laskar, Working as Chief Permanent Way Inspector (Safety) N.F. Railway, Lumding in the District of Nagaon, Assam do solemnly hereby affirm and declare as follows :-

That I am the applicant in the accompanying application and I do hereby verify and state that the statements made therein are true to the best of my knowledge, belief and information.

And I sign this verification on this the 27th day of February, 1996 at Guwahati.

Nirmalendu Laskar
DECLARENT

NORTHEAST FRONTIER RAILWAY

STANDARD FORM NO. 11

G 1741

Standard Form of Memorandum of charge for imposing minor penalties
(Rules II of RS (D & A) Rules, 1968)

No. W/12/LM/138/4-5.

(Name of Railway Administration)

(Place of issue) Lumding, date 8-94.

MEMORANDUM

Shri N. Laskar (Designation) CPWI/BPB
which working CPWI/BPB is hereby informed that the President/Railway
undersigned propose(s) to take action against him under Rule 11 of the Railway
(Discipline and Appeal) Rules, 1968. A statement of the imputations of mis-
behaviour to which action is proposed to be taken is mentioned above, is en-

2. Shri N. Laskar is hereby given an opportunity to make such representation
as he may wish to make against the proposal. The representation, if any, should be submitted
to the undersigned (through the General Manager) Railway, so as
to reach the said General Manager within ten days of receipt of this Memorandum.

3. If Shri N. Laskar fails to submit his representation within
the period specified in para 2, it will be presumed that he has no representation to make
and orders will be liable to be passed against Shri N. Laskar by the party.

4. The receipt of this Memorandum should be acknowledged by Shri N. Laskar,
CPWI/BPB.

" (By order and in the name of the President).

Signature..... (RAJIV KUMAR)
Name..... Divisional Engineer
Coordinate Lumding.

Name and Designation of
Competent Authority

To CPWI/BPB (Through AEN(II)/BPG, if admissible)
Shri N. Laskar, (Name, Designation and Office of the Railway)
C/o AEN(II)/BPG, DEM(P)/AMG.

To be retained wherever this Memorandum is issued by the authority making the proposal
where the competent is the disciplinary authority.

N.E.R.Y. Press—1/65/9102/115-May, 92—40,000 Forms

ATTESTED

ABM
86/1196
Adiyeah.

छोटी शास्त्रियां अधिरोपित करने के लिए आरोप के ज्ञापन का मनक फार्म
(रेल सेवक (भनु० और अष्ट्री०) नियम, 1968 का नियम 11)

स०

(रेल प्रशासन का नाम)

(नियम स्थान) दिनांक

ज्ञापन

श्री (पदाम) (कार्यालय जिसमें काम करता हो) को एतद्वारा सूचित किया जाता है कि राष्ट्रपति/रेलवे वॉर्ड नियन्त्रित अकारा दसके विषद् रेल सेवा (अनुशासन और अधीन) नियम, 1968 के अन्तर्गत कार्यालय दसके प्रस्थापना की गई है। अर्यवहार या अवचार के नांछनों का एक विवरण संलग्न है, जिस पर उपर्युक्त नियम की वस्त्रा दी है।

2. श्री का एतद्वारा यह नियम या जाता है कि प्रस्थापना के विषद् वह जो भी अभ्यावेदन देना चाहे, देव। अभ्यावेदन यदि देना हो, नियन्त्रित अकारा को (रेलवे के महाप्रबंधक के माध्यम से), इस तरह प्रस्तुत किया जाना चाहिए ताकि वह इस ज्ञापन को प्राप्ति के दस दिन के भीतर उक्त महाप्रबंधक के पास पहुँच जाये।

3. यदि श्री पंश 2 में विनिर्दिष्ट अवधि के भीतर अभ्यावेदन प्रस्तुत नहीं करते तो यह मान लिया जायगा कि उन्हें कोई अभ्यावेदन नहीं देना है और श्री के विषद् एक पर्याय आदेश पारित किये जा सकेंगे।

4. श्री इस ज्ञापन की पावनी द।

% (राष्ट्रपति के आदेश द्वारा भी उनके नाम से)

हस्ताक्षर

ताम

नवम प्राचिनार्थी नाम पर वटनाम

सेवा में

श्री (लिखक वाले की शह सात पदनाम प्राप्त कार्यालय)

*जहाँ काही वर्तु ज्ञापन रेलवे वॉर्ड राष्ट्रपति द्वारा जारी किया जाता है।

%जहाँ राष्ट्रपति अनुशासन प्राप्तिकारी हो।

Imputation of charges against Sri N. Lakkar,
ODME/BPD in connection with the derailment
of UP SCL STG on 7-11-93 between BPL-PNM at
KM. 2/6-76

While working as In-charge PWI Sri N. Lakkar
was supposed to maintain Railway under his jurisdiction
in safe condition as per IEPWM/1966.

On 7-11-93 UP SCL STG met with an accident
between BPL-PNM and as per findings of the Enquiry
Committee accident occurred due to irregular variation
in track level.

Being an In-charge PWI Sri N. Lakkar has failed
to maintain the track within safety tolerances which
amounts to serious misconduct and thereby violation
of article 3.1(11) of Railway service conduct rules, 1966.

ATTESTED

ABM
28/12/96
Advocate.

✓
DEN/Commed/Leaching.

To

The Divisional Engineer (Co-ordination)
N.P.Railway, Lumding.

Subj :- D E F E N C E.

Ref :- Your Memorandum No. W/12/LM/136/W-5/202 dated
19/8/94 (Received by me on 22/8/94)

Respected Sir,

In obedience to your above Memorandum I beg to submit my defence as under.

As per Para No. I of allegation of charge brought against me that " Working as in-charge P.W.I. Shri R. Laskar was supposed to maintain P-way " As per IRPWM 1966".

Here I condemned the above quoted charge that I am not a in-charge P.W.I, I am only was P.W.I. (in overall charge) i.e., a Senior Supervisor but not an in-charge. In-charge is AEN/BPG who is responsible for safe maintenance of Track As per IRPWM 1986 Chapter 102-(1).

As per Chapter 2 of Allegation of charge sheet accident occurred due to irregular variation in cross level, this cross levels are not maintained due to the following facts.

(1) Due to shortage of Ballast having deficiency beyond maximum permissible limit. As per IRPWM 0.75 M³/meter length of Track required but in actual field is only 0.25 M³/meter maximum. Also this 0.25 M³/meter all are packed unscreened ballast. It will not be irrelevant to mention here that due to shortage of Ballast, Ballast Tender was issued vide Re. DE/28
Dated 23.7.92 which may kindly be perused.

(2) "Picking up slack" It is stated in the book of M.M. Agarwal for maintenance Indian Railway Track, at page No. 314, (i) Due to stretching of yielding formation, (ii) section having poor maintenance of Track like loose packing, (iii) Section with inadequate or unclean Ballast cushion.

Contd to P.....(2)

TESTED

1. Bendangwadi Samir
Advocate

26/2/96

(3) Section i.e. (derailed portion of track) not running smooth due to miscellaneous reason, like on the up direction, less powerful engine. Specially work out steam Engine (in that time) when run over the said portion of track infacing gradient, Engine fails to ride up then wheels of the Engine slips over the track. This was one of the main cause for variation of cross level.

(4) Creation of Resistances due to combined effect of the above and ~~over~~ reaction. Due to variable wind being a River Track area. Due to gradients, due to curvature. Due to sudden application of brake irrespective of any speed by the drivers of the Engine while passing through the curve surface as there is a gate signal. These are also the factor resulting ~~in proper~~ maintenance of cross level.

(5) Track was being maintained old, broken and unserviceable sleepers due to shortage of serviceable sleepers. C.R. work already done at that time in the face of T S R work.

(6) Tolerances of cross level allowed \pm 3 mm after every 4th sleeper for Track lead with new materials as per IRPWM Chapter 316 (at considerable high speed). But this said track lead in British period ^{to 30th June 1966 - 67} so how to maintain that tolerances.

In connection of this of mention as per the investigation of Derailments book page No. 168 para 1 and 2 of cross level headings.

"Just like to gauge parameter, a uniform defect in cross levels but within practical limits does not have any adverse effect on safety, stability or comfort."

"Here again, what are the practical limits for safety are not known. The tolerances which have been laid down from time to time for this parameter are for good riding and are not safety tolerances".

(7) Due to the above unfavourable factors super elevation also cannot be maintained and reduced keeping from the safety point of view.

Contd to P.....(3)

ATTESTED

1. Bendangwah Somie
Advocate

26/2/96

portion of Track in such a way that in one side petty hills a-nd road above the rail Road and other side is Barak river that is why all the rain water and disposal are passes over the track like as drainage of water. This is natural and beyond maintainable. This is one of the vital cause of not to maintained cross level. (Here mention that this locality is ever rained are also rain in every months in a year).

Under the above facts and circumstances the cross level could not maintained properly which are circumstantial and not intentional. Here of mention that after incident of derailments at long past when AEN & DEN arrived at spot then of raised the above mention factor for which cross level ~~not to maintain~~ in that time AEN & DEN both agreed the above mentioned facts and told me there is no questioned ~~arise to issuing charge sheet against me for this. Due to issuing charge sheet against me I am very much upset and sorry for this.~~

Hence, considering all the above aspects from the eye of justice will be very kindly exonerate me from the charges as levelled against me and for which act of your kindness I shall remain ever grateful to your honour.

Yours faithfully.,

Dated : Badarpur.
The : 15/9 1994.

15/9/94
(N. Laskar),
CPWI/EPB.

ATTESTED

1. Bendangsalji Jamir
Advocate

26/2/96

* जब अनुशासनिक प्राधिकारी के सिवा अन्य प्राधिकारी द्वारा सूचना पर आदेश देनेवाले प्राधिकारी का उल्लेख करें। /When the notice is signed by the Disciplinary authority here quote the authority passing the

** यहां स्पष्टीकरण की स्वीकृति या अस्वीकृति और दिये गये दण्ड का उपर्युक्त विवर देनेवाले प्राधिकारी का उल्लेख करें। /Acceptance or rejection of explanation and the penalty imposed by the authority passing the

हिदायत/INSTRUCTIONS

(1) इन आदेशों के विरुद्ध अपील (आदेश देनेवाले प्राधिकारी से टीक ऊपर का प्राधिकारी) के पास की जा सकती है। orders lies to the authority passing the next (immediate passing the orders),

N. F. Ry. Press-1/5/9101/109/June '92-10,000 Forms

To : The General Manager,
N. P. Railway,
M A L I G A O N.

Sub : Appeal against Order of D.R.M./Lumding, N.P.Railway,
Reducing my pay to the lowest stage of the time scale
for a period of 24 years with (NC) effect, As
Communicated by the DEN/ II/Lumding Vide his Order No:
W/12/LM/136/W-5/156 dated: 10/12-06-1995. (10/12.5.95)

Respected Sir,

- (1). I beg to invite a reference to the above cited order of the D.R.M./Lumding which has been communicated to me by the DEN/ II/LMG with his letter No.W/12/LM/136/W-5/156 dated: 10/12-06-1995 which I received on 30-05-1995.
- (2). Before awarding the above mentioned punishment the D.R.M./Lumding has not considered the speed restriction in the derailed portion, the speed was restricted as 15 K.M./hour. For this restricted speed the variation of cross level limit not to be exceed 20mm/3 metre, speed being then restricted to 20 m/hour or less for slow speed tracks Vide Rly. Board's Letter No: 61/W6/TK/6 dated: 22-12-1961. This was not considered before awarding the punishment by D.R.M./Lumding. The Cross level variation measured also are within permissible limit as per Rly. Board letter mentioned in the para, moreover no safety tolerances for cross level mentioned in the P-Way manual or any guide Book of Indian Railway.
- (3). In this connection I may kindly be allowed to state that the DEN/Lumding is not my disciplinary authority. As per procedure my disciplinary is ~~Sr.~~ Sr. DEN/LMG But seems the penal order has been passed by the DEN/Lumding. I also submitting this appeal against the order of D.R.M./Lumding to you for your kind consideration.
- (4). The Penalty of reduction of pay to the lowest stage of time scale is a major penalty as per rule 6 of the Railway Servants Disciplinary and Appeal Rules 1968. But no charge Sheet for such major penalty was even issued to me before imposing this punishment. Hence the order appealed against now does not seems to be legally valid.
- (5). In the Context a memorandum of minor charges in Form No. S.P.-II was issued to me by the DEN Co-Ordination Lumding Vide his memo no. W/12/LM/136/W-5/202 dated: 19-8-1994, the full contents of that charge sheet is re-produced below for your kind perusal.
- * Imputation of charges against Sri N.Laskar, CPW IV/SPB in connection with the derailment of UP SCL STU on 7-11-1993 between BPB-PNOM at 3/6-7 K.M. while working

ATTESTED

ABZ/2000
26/2/95
Advocate

Contd.....Page(2).

Amrit
21/6/95

While working as in-charge P.W.I. Sri N.Laskar was supposed to maintain P-Way under his jurisdiction in safe condition as per IRPWH/1966.

On 7-11-1993 UP SCL STG met with an accident between BPS-PNGM and as per findings of the enquiry committee accident occurred due to irregular variation in cross level.

Being an in-charge P.W.I. N.Laskar has failed to maintain the track within safety tolerances which tantamounts to serious misconduct and thereby violation of article 3.1(11) of Railway Service Conduct rules, 1966. »

- 6). That Sir, on receipt of that charge sheet I submitted my explanation in a written statement to DSN - Co. Ordination / Lumding on 19-09-1994. A copy of which submitted herewith. In my written statement I explained the difficulties to maintain track parameters for various reasons stated therein since a minor penalty matter is ordinarily disposed of quickly on receipt of the written statement of the charged employee. I was under the impression that my case has also been disposed of by dropping these charges.
- 7). But Sir, the heaven has almost fallen on me on finding that the learned D.R.M./Lumding has thought it fit to impose a major penalty on me without conducting any DAR enquiry which is a must for imposing a major penalty. I am surprised that even no notice for conversion of a minor charge to a major charge was also issued to me.
- 8). That Sir, your honour will certainly realised that the authorities at Lumding have attempted to ~~accuse~~ incriminate me without following the Disciplinary rules, just to make me scape goat. Had there been a DAR enquiry, my innocence would have come out through the process of enquiry, cross examination etc. For these inherent defects the penalty order of the DRM loses all its force and the same deserves to be quashed.

In the premises it is most fervently prayed that your honour being the appellate authority endowed with enough discretion will be kind enough to appraise the submissions made above and will issue order declaring the penal order of DRM/LMG communicated on 10/12-05-1995 as illegal inoperative and untenable in the eye of Law and I may kindly be exonerated of the charge.

And for this act of kindness your humble appealant will be ever remain grateful to you.

Yours faithfully,

P. N. Laskar
C.P.W.I./Safety/BPS
Ex, C.P.W.I./Bedarpur.

ATTESTED

26/11/95
Advocate

Contd....Page(3).

Copy to:- A. Kachari, DEN/II/Lumding,
for necessary intimation to D.R.M./Lumding
and to take necessary action please.

Yours faithfully,

21/6/95

(N. LASKAR)

Ex. C.P.W.I./Badarpur.

List of Enclosures:- (Xerox copy) for your ready reference.

- (1). Standard Form No. 11 of Memorandum of Charge for imposing minor penalties Vide No: W/12/LM/136/W-5/202 Dated: 19-08-1994.
- (2). My Written Statement No: N I L Dated: 15/09/1994 as a Reply of Memorandum Vide No: W/12/LM/136/W-5 Dated: 19-05-1994.
- (3). Notice of imposition of penalties Vide Nos: W/12/LM/136/W-5/156 Dated: 10/12.05.95 which was received on 30.5.95

21/6/95

(N. LASKAR)

Ex.C.P.W. I./Badarpur.

ATTESTED

*Abonil
26/1/95
Adi sehat*

Expo

Acknowledgement Card

NO. NL/136/W-5/95-10

10/7/95

ATTESTED

ABORNA
26/1/96
Advocate

To The General Manager

PO. Maligaon

10/7/95 D-1 Guwahati - II

Guwahati
Assam
Post Office
Railway, Mal
Date - 28/1/96

Central Administrative Tribunal
Guwahati Bench
21/1/1997
Guwahati Bench
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

File for
Mr. J. M. Laskar
for P.L.
J. M. Laskar

IN THE MATTER OF :

O.A. No. 39/96

Shri Nirmalendu Laskar

.... Applicant.

Vs.

Union of India & Others.

.... Respondents.

AND

IN THE MATTER OF :

Written statements for and on
behalf of the respondents.

The answering respondents beg to state as follows :-

1. That the answering respondents have gone through a copy of the application filed by the applicant and have understood the contents thereof.
2. That save and except the statements which are admitted hereinbelow, other statements are categorically denied. Further, the statements which are not borne on records are also denied, and the applicant is put to the strictest proof thereof.

3. That with regard to the statements made in paragraphs 4(A) to 4(J) of the application, the answering respondents do not admit anything contrary to relevant records of the case.
4. That with regard to the statements made in paragraph 4(K) of the application, while denying the contentions made by the applicant, it is stated that the penalty imposed on the applicant vide Annexure '3' order dated 10/12.5.95 is legally valid and the same was imposed as per provisions of Rule 6(III)(b) of the Railway Servants (Discipline & Appeal) Rules, 1968. The said penalty is a minor penalty and was imposed on the applicant as per the provisions of Rule 11 of the aforesaid rules. Rule 6(III)(b) is quoted below :-
- "Reduction to a lower stage in the time scale of pay for a period not exceeding 3 years without cumulative effect and not adversely affect his pension".
- Authority: E(D&A)96 RGT 6-12 of 16.11.90.
5. That with regard to the statements made in paragraph 4(L) of the application, the answering respondents do not admit anything contrary to relevant records of the case.
6. That with regard to the statements made in paragraph 4(M) of the application, the answering respondents state that the applicant has made misleading statements contrary

to the relevant rules. Rule 9(1) of the RS(D&A) Rules, 1968, was not applied in the instant case. The applicant was issued minor penalty charge-sheet under Rule 11 of the Rules. Accordingly, the contentions made by the applicant are devoid of any merit.

7. That with regard to the statements made in paragraphs 4(N) to 4(P) of the application, while reiterating and re-affirming the statements made here-in-above, the answering respondents do not admit anything contrary to relevant records.

8. That the answering respondents submit that the applicant has preferred the instant application entirely on a wrong notion of the matter. He has misled and mis-interpreted the order of penalty imposed under Rule 6(III)(b) of the aforesaid rules. The penalty imposed upon him was proper and reasonable. The question of enquiry before imposing such a penalty does not arise as he was charge-sheeted under Rule 11 of the aforesaid rules as already indicated above. The provisions cited by the applicant are not at all applicable to the facts and circumstances of the instant case and the same are inconsistent with the facts involved. As already clarified above, the penalty imposed upon him is a minor penalty as defined under Rule 6(III)(b) of the aforesaid rules imposition of which does require any holding of enquiry like that of a major penalty charge-sheet.

9. That the answering respondents submit that the order of penalty imposed upon the applicant is legally valid and there is no justiciable reason to interfere with the same and accordingly, the Hon'ble Tribunal would be reluctant to do so.

10. That under the facts and circumstances stated above, the instant O.A. is not maintainable and liable to be dismissed with cost.

VERIFICATION.

I, Shri C. Sankar, aged about 32 years, by occupation Railway Service, working as the Deputy Chief Personnel Officer of the N.F. Railway administration, do hereby solemnly affirm and state ~~ment~~ that the statements made in paragraphs 1 and 2 are true to my information, those made in paragraphs 3 to 9 are matters of record derived from the records of the case which I believe to be true and the rests are my humble submission before this Hon'ble Tribunal.

And I sign this Verification on this 2nd day of Dec., 1976.

✓ C. Sankar 21/12/76
DEPUTY CHIEF PERSONNEL OFFICER
NORTHEAST FRONTIER RAILWAY
MALIGAON :: GUWAHATI
FOR & ON BEHALF OF
UNION OF INDIA
Dy. Chief Personnel Officer (N.F.R.)
P.O. Box No. 22, Guwahati-781011.
N.F. Ray., Guwahati-781011.