

5

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

0/100
O.P-53/97 ordersheet pg-1

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Disposed Date-14/3/97

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SECTION OFFICER (Judl.)

DA No. 73/96
MP No. (DA)
RA No. (DA)
CP No. (DA)

Member

D. C. Dey

APPLICANT(S)

Uo 9 & ors

RESPONDENT(S)

Mr. P.K. Tiwari, B. Mehta Advocate for the applicant.

J. L. Sarkar, Mr. B.K. Sharma R. G. Advocate for the Respondents.

Office Notes

Court's Orders

Application in form and within time
C. F. of Rs. 50/-
Deposited vide
IPO/PS No. 345857
Dated 14-5-96

B.T.
14/5

15.5.96

Learned counsel Mr P.K.Tiwari moves this application on behalf of the applicant. Learned Railway counsel Mr B.K.Sharma is present for the respondents.

Heard Mr Tiwari for admission. Perused the contents of the application and reliefs sought. Application is admitted. ~~Written~~ Issue notice on the respondents under registered post. Written statement within six weeks.

List on 28.6.96 for written statement and further orders.

Member

pg

28-6-96

None present. Written statement has not been submitted. List on 23-7-96, for written statement and further orders.

Member

pg

The Requisites has not been filed for issuing notices.

Statement has not been filed

27/6

27-6-96

Memo of appearance filed by Mr. J L Sarkar, Rly Adv.

23.6.96

None present. Written statement

STANDARD SUBJECT

has not been submitted.

The requisites for issuing notices has not submitted

List for written statement and further orders on 19.8.96.

W/ statement - has not been filed

BA
Member

nkm

19.8.96

Written statement has been submitted.

W/ statement has not been filed

List for written statement and for further orders on 18.9.96.

29.8.96

Notices issued to the vide D. No. 2995 dt. 3.9.96.

trd

m
19/8

BA
Member

18.9.96

Learned counsel Mr J.L. Sarkar for the respondents. Written statement has not been submitted.

Service reports are still awaited W/ statement - has not been filed

List for written statement and further orders on 1.10.96.

W/ written statement has not been filed till now.

nkm

m
18/9

BA
Member

m 30/9/96

20.10.96

1.10.96

Mr. S.Sarma for Mr. B.Mehta for the applicant.

Notice duly returned on receipt No. 1, 3, 4.

Mr. J.L.Sarkar, Railway counsel for the respondents.

Written statement has not been submitted.

List on 20.11.96 for written statement and further orders.

W/ statement - has not been filed

BA
Member

trd

m

20.11.96

None for the applicant. Learned Railway counsel Mr J.L. Sarkar for the respondents. Written statement has not been submitted.

List for written statement and further orders on 17.12.96 as submitted by Mr Sarkar.

The matter is to be placed before the Division Bench as it relates to disciplinary proceeding.

ba
Member

*written statement has not been filed.
m
16/12*

nkm
*M
20/11*

17-12-96

None is present. List for written statement and further order on 10-1-96.

ba
Member

lm

10-1-97

Learned counsel Mr.J.L.Sarkar for the applicant. Written statement has not been submitted.

List for written statement and further order on 11-2-97.

ba
Member

lm

11.2.97

Adjournd to 17.2.1997 for written statement and further orders.

ba
Member

LB
Vice-Chairman

20-3-97

1) Notice duly served on R.No. 1,3 & 4

2) written statement has not been submitted

pg

17.2.97

No written statement has been filed. There is no representation on behalf of the Railways The order sheets show that several adjournments have been granted. We are not inclined to grant any further time.

List it for hearing on 21.3.97 without written statement at the risk of the respondents.

ba
Member

LB
Vice-Chairman

20/3

4

21.3.97

Heard Mr B. Mehta, learned counsel for the applicant. Also heard Mr J.L. Sarkar, learned Railway Counsel, appearing on behalf of the respondents. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is disposed of. No order as to costs.

10.6.97

Copy of the judgment has been sent to the S/Sec. for issuing in name to the parties through Reg. office A/D.

Issued vide

D.No. 2110 to 2119
d. 16.6.97.

sh


Member


Vice-Chairman

nkm
sh
2/6

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

O.A. NO. 73 of 1996
T.A. NO.

DATE OF DECISION 21.3.1997

Shri Dilip Chandra Dey

(PETITIONER(S))

Shri B. Mehta

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India and others

RESPONDENT (S)

Shri J.L. Sarkar, Railway Counsel

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI D.N. BARUAH, VICE-CHAIRMAN

THE HON'BLE SHRI G.L. SANGLYINE, ADMINISTRATIVE MEMBER

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

Judgment delivered by Hon'ble Vice-Chairman



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.73 of 1996

Date of decision: This the 21st day of March 1997

The Hon'ble Justice Shri D.N. Baruah, Vice-Chairman

The Hon'ble Shri G.L. Sanglyine, Administrative Member

Shri Dilip Chandra Dey,
Senior Store Watchman,
Office of the Inspector of Works,
Line Office, N.F. Railway,
Lumding.

.....Applicant

By Advocate Shri B. Mehta.

- versus -

- 1, The Union of India,
Through the General Manager,
N.F. Railway,
Maligaon, Guwahati.
2. The Divisional Railway Manager (Works),
N.F. Railway,
Lumding.
3. The Divisional Engineer (I),
N.F. Railway,
Lumding.
4. The Assistant Engineer (L),
N.F. Railway,
Lumding.

.....Respondents

By Advocate Shri J.L. Sarkar, Railway Counsel.

.....

O R D E R

BARUAH.J. (V.C.)

In this application the applicant has challenged the punishment awarded by the Disciplinary Authority on the basis of the article of charges framed against him. According to the applicant a chargesheet was issued and thereafter, the Disciplinary Authority himself made an enquiry. After the enquiry the Disciplinary Authority awarded punishment by way of stoppage of increment for a period of two years with cumulative effect. Against that penalty, an appeal was filed by the applicant before the Appellate Authority. The said appeal was dismissed affirming the order passed by the Disciplinary Authority awarding penalty. Hence the present application.

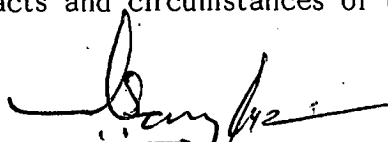
2. In the application before this Tribunal, the applicant has taken several grounds, namely, (i) the enquiry report was not served on him after the enquiry; (ii) the appellate order was not a speaking order.

3. We have heard Mr B. Mehta, learned counsel for the applicant, and also Mr J.L. Sarkar, learned counsel for the respondents. Mr Sarkar, candidly submits that the enquiry report was not supplied to the applicant and in the absence of such report the entire proceeding is vitiated as held by the Apex Court in Ramjan Khan -vs- Union of India, reported in (1991)1 SCC 588. He, however, does not admit that the appellate order is not a speaking order. It is now a settled law in view of the decision of the Apex Court in Ramjan Khan's case (Supra) that a copy of the enquiry report ought to be furnished to the delinquent employee. The Apex Court further held that in the absence of such enquiry report the proceeding is vitiated. The judgment of the Apex Court in Ramjan Khan's case (Supra) was delivered on 20.11.1990 and the said law became effective from that day. The present case is after the date of delivery of the judgment by the Apex Court and therefore, the applicant was entitled to get a copy of the enquiry report. As no copy of the enquiry report was served on the applicant, the impugned order imposing penalty can not sustain in law.

4. We have perused Annexure-5 appellate order dated 26.4.1995. On going through the order we do not agree with the submissions of Mr Sarkar that it was a speaking order. In our opinion Annexure-5 is not a speaking order. Considering all these we set aside the penalty awarded as per Annexure-3 order dated 24.8.1993.

5. As we have already said that non-furnishing of a copy of the enquiry report to the applicant vitiates the proceedings we direct the respondents, namely, the Disciplinary Authority, to decide the case anew after furnishing a copy of the enquiry report to the applicant. This must be done as early as possible, at any rate within a period of three months from the date of receipt of the order.

6. The application is accordingly disposed of. However, in the facts and circumstances of the case we make no order as to costs.


(G. L. SANGLI)


(D. N. BARUAH)

9

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
91(A)
26 APR 1996
[Signature]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
(An application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the Case : O.A. No. **73** of 1996

Shri Dilip Chandra Dey :... Applicant

- Versus -

Union of India and Ors. :... Respondents

I N D E X

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For use in Tribunal's office :

Date of filing : 26.4.96
 Registration No.: OA73/21

[Signature]
 REGISTERAR

Copy of the application has been handed over to Shri B.K. Sharma, St. Counsel of the Railways P.K. Misra Advocate. 26.4.96

Filed by the applicant
through the advocate
P.K. Tiwari.
22.4.96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

O.A. No. 73 of 1996

BETWEEN

Shri Dilip Chandra Dey,
Senior Store Watchman,
office of the Inspector of Works,
Line Office, N.F. Railway,
Lumding,

... Applicant

AND

1. The Union of India,
through the General Manager,
N.F. Railway, Maligaon,
Guwahati-11.
2. The Divisional Railway Manager (Works),
N.F. Railway, Lumding.
3. The Divisional Engineer (I),
N.F. Railway, Lumding.
4. The Assistant Engineer (I),
N.F. Railway, Lumding.

..... Respondents

DETAILS OF APPLICATION

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

The instant application under Section 19 of the Administrative Tribunals Act, 1985 is being made against the order of disciplinary authority i.e. the Divisional Engineer (I), N.F. Railway, Lumding vide No.E/14/2/(LM-E) 324 dated 24.8.95 imposing penalty of stoppage of increments for two years with cumulative effect under Rule 11 of the Railway Service (Discipline and Appeal) Rules, 1968 and against the appellate order No.E/74/2(LM-E)

dated 26.4.95 pursuant to which punishment ~~was~~ imposed upon the applicant by the disciplinary authority was confirmed.

2. JURISDICTION OF THE TRIBUNAL :

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

3. LIMITATION :

In the instant case, the appellate order was passed on 26.4.95 and it was received by the applicant few days thereafter. Since the instant application is being filed within a period of one year from the date of issuance of the appellate order which is the final order, therefore, it is stated that the instant application fulfils the legal requirements of limitation as laid down under Section 20 and 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the applicant is a citizen of India and he is presently working as Senior Store Watchman in the office of the Inspector of Works at Lumding, N.F. Railway.

4.2 That the subject matter of the instant case relates back to 1989 when this applicant was working as Valveman in the office of the IOW (Water Supply). It was during this year of 1989 that an unfortunate incident involving this applicant occurred pursuant to which the memorandum

of charges vide No.E/74/2(LM-E)132 dated 27.10/11.89 was issued to the applicant by the Asstt. Engineer (Hqr.) Lunding. The memorandum contained the statements of allegations wherein it was stated that the applicant on 10.6.89 at about 8.30 hours entered into the office of the IOW(WS)/LMG for proper justice as he was gheraoed "by the colony women" of South Hill Colony due to non-supply of water. It was further alleged that the applicant was advised by IOW(WS)/LMG to come later on but instead of obeying the order of IOW, the applicant used filthy languages at the top of his voice and became unruly. He thus created a bad atmosphere hampering the normal office works. It was further alleged that the applicant attempted to assault Shri S.K. Sinha, the then IOW(WS)/LMG. It was further stated that the staff waiting obstructed the applicant from assaulting the IOW and as a result of which when Shri Chittaranjan Bhattacharjee, Fitter, Grade-III was injured by the applicant. On the face of the statements of the allegations it was stated in the memorandum that the behaviour of the applicant tantamounts to serious misconduct and violation of Rule 3(iii) of Railway Service Conduct Rules, 1966.

The memorandum thus proposed to hold an enquiry against the applicant under Rule 9 of the Railway Service (Discipline & Appeal) Rules, 1968 and called upon the applicant to submit his written statement of defence within 10 days of the receipt of the memorandum of charges.

Contd....P/4.

A copy of the memorandum of charges alongwith statement of allegations dated 27.10/11.89 is annexed hereto and marked as ANNEXURE-1.

4.3 That on receipt of the memorandum of charges the applicant submitted his written statement of defence to the disciplinary authority viz. Divisional Engineer (I) Lunding. In his written statement, it was stated by the applicant that on 10.6.89 he was on Railway duty upto 6 A.M. and prior to completion of duty he was gheraoed by some women for non-supply of water to certain Railway quarters. It was further stated by the applicant that after 6.00 A.M. he came to the office of the IOW(WS) to inform his officer about the non-supply of water to few quarters. The applicant also stated that he ~~was~~ met mistry there and reported him about the matter. Then he advised the applicant to inform the IOW(WS) about the position. The applicant also stated that he met and informed the IOW(WS) when he was available at his office at 7.30 P.M. However, on seeing the applicant, the IOW got furious and ~~asked~~ two office subordinates viz. Shri Chittaranjan Bhattacharjee and Bijoy Dhar took the applicant away from IOW's office. At the initiative of the IOW(WS), they started beating the applicant mercilessly outside the IOW(WS)'s chamber. The applicant also stated that earlier to this incident, he had difference of opinion about the duty hours when he had submitted oral as well as written objection. The applicant thus plead total innocence and instead charged the other two subordinates of the IOW(WS) for physically assaulting him.

A copy of the written statement submitted by the applicant is annexed herewith and marked as ANNEXURE-2.

4.4 That in his annexure-2 written statement, the applicant also raised three relevant legal issues viz. :

- (a) That the date of occurrence is 10.6.89 and the applicant was charge-sheeted after five months period which indicates that the initiation of the disciplinary enquiry against the applicant is a mere after thought.
- (b) That the copy of the documents ~~wh~~ by which the articles of charges were framed against him i.e. letter of IOW/WS/LMG dated 10.6.89 was not furnished to the applicant, denying the fair chance to reply.
- (c) That the AEN/HQ/LMG Mr. M.R. Das could not have framed charge-sheet against the applicant as he himself was one of the complainants.

4.5 That however, after receipt of the written statement filed by the applicant for a long ~~xx~~ period of time, the disciplinary authority maintained a total silence in the matter and did not take any initiative to proceed with the enquiry against the applicant. But after a lapse of nearly more than a year, the disciplinary enquiry was proceeded with after appointment of Enquiry Officer and its first sitting took place on 20.1.91. After starting of the disciplinary enquiry on 20.1.91 the same continued with intervals upto 11.2.92 after which there was again a period of long interregnum.

4.6 That when the applicant realised that the finalisation of the disciplinary enquiry is taking a very long time, he made an appeal dated 29.6.92 before the competent authority for finalising the disciplinary ~~enquiry~~ enquiry because due to the pendency of the disciplinary proceeding, the promotion of the applicant were withheld and his service career as a result of this was adversely affected. However, notwithstanding the request of the applicant for expeditious finalisation of the disciplinary enquiry, no appropriate step was taken by the competent authority for the expeditious finalisation of the same.

It is noteworthy that though the disciplinary proceeding was held last on 11.2.92. It was expected that after the conclusion of the same, the Enquiry Officer must have prepared the enquiry report and he must have submitted the same to the disciplinary authority. However, the applicant had absolutely nothing about it and he never received any enquiry report.

4.6 That since there was total confusion as to what has happened to the disciplinary proceeding and as to when it would be completed finally, the applicant ~~has~~ as stated above made an appeal ~~xxxxxx~~ dated 29.6.92 before the competent authority for expeditious finalisation of the disciplinary proceeding. Even after submission of the appeal for expeditious finalisation of the disciplinary proceeding for nearly one year, the applicant did not hear anything from the competent authority. He was, therefore

surprised when vide order No.E/24/2(LM-E) dated 24.8.93 the disciplinary authority ~~kk~~ imposed the penalty of the stoppage of increment for two years with cumulative effect upon the applicant. What is astonishing is that though the memorandum of charges were issued under Rule 9 of the Railway Services (Discipline and Appeal) Rules, 1968, meaning thereby, that a procedure of imposing major penalty is being followed in the case of the applicant, the order of imposition of penalty dated 24.8.93 was passed under Rule 11 of the Railway Services (Discipline and Appeal) Rules, 1968 meaning thereby that the procedure of imposition of minor penalty has been followed in case of the applicant.

A copy of the order of imposition of penalty dated 24.8.93 is annexed herewith and marked as ANNEXURE-3.

4.7 That it is stated that since in case of applicant was carried out it was obvious that there must have been an enquiry report submitted by the Enquiry Officer to the disciplinary authority. However, in this case no copy of the enquiry report was submitted to the applicant and disciplinary authority after finalisation of the enquiry on 11.2.92 preferred to remain silent for nearly a period of one year and straightway imposed a penalty purportedly under Rule 11 of the Railway Services (Disciplinary and Appeal) Rules upon the applicant.

4.8 That being aggrieved by the order of imposition of penalty dated 24.8.93, the applicant filed an appeal dated 5.10.93 before the appellate authority. However, when the same appeal did not evoke any response, the applicant filed further appeal dated 3.11.93, 25.11.93, 17.2.94, and 29.3.94. However when even those appeals did not evoke any response, the applicant also addressed a letter dated 27.6.94 to the General Manager (P), Lumding for appropriate action on the appeals submitted by him.

Copies of the applicant's appeals dated 5.10.93, 3.11.93, 25.11.93, 17.2.94, 29.3.94, 16.5.94 and 27.6.94 are annexed hereto and marked as ANNEXURE-4 series.

4.9 That after prolong procrastination, the appellate authority ~~has~~ at last vide order No.E/74/2(LM-E) dated ~~26.4.95~~ 26.4.95 disposed of the appeals of the applicant with the observations that the punishment imposed upon the applicant by the ~~disciplinary authority/appellate authority~~ ~~Divisional Engineer(I)/Lumding~~ for stoppage of increment for two years with cumulative effect is hereby confirmed.

Copy of the appellate order dated 26.4.95 is annexed hereto and marked as ANNEXURE-5.

4.10 That in the instant case, orders of the disciplinary authority and of the appellate authority are in flagrant violation of the provisions of the Railway Servants (Disciplinary and Appeal) Rules, 1968. In the instant case

though the disciplinary enquiry was initially started against the applicant in terms of Rule 9 which contains procedure for imposing major penalty but when the order of imposition of ~~major~~ penalty was passed the same was stated to be under Rule 11 which is a procedure prescribed for imposition of minor penalty. From the nature of penalty also it is not very clear as it is a minor penalty inasmuch as it does not specify whether the imposition of such a penalty on the applicant would have any effect upon his future promotion.

4.11 That the applicant files this application bonafide and to secure the ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 That once the enquiry was initiated under Rule 9 of the Railway Servants(Discipline and Appeal) Rules and detailed enquiry was conducted by appointing the Enquiry Officer, it was not open for the disciplinary authority to convert the same at a belated stage into procedure for imposition of minor penalty inasmuch as procedure for imposition of ^{minor} penalty was never complied in case of the applicant and for imposition of major penalty was observed.

5.2 That since the enquiry was conducted ~~by~~ against the applicant by the disciplinary authority by appointing the Enquiry Officer it is obvious that the Enquiry Officer must have submitted the enquiry report. However, the copy of the enquiry report was never handed over to the applicant and the disciplinary authority imposed the

penalty upon the applicant without giving any opportunity to the applicant on perusing of the enquiry report and to submit his explanation against the finding contained therein.

5.3 That the order of imposition of penalty withholding the increments of the applicant is in violation of the Rule 1717 of the Railway Establishment Code inasmuch as the ~~withholding of the increment, the authority~~ rule 1717 of the Railway Establishment Code specifically provides that in order to withhold increment, the authority passing the order shall state the party in which it has withheld the increments and whether the postponement shall have the effect of postponing the future increment. Since the order of withholding the increment does not state whether postponement shall have the effect of postponing the future increments, therefore, it violates rule 1717 of the Railway Establishment Code.

5.4 That the Railway Code No.E(D&A) 66 RG/6-13 dated 19.4.69 has given the understanding that although the withholding of increment temporarily is a minor penalty yet an enquiry in the manner as laid down for major penalty must always be held for withholding of the ~~an~~ increment ~~is~~ with cumulative effect. It is also observed that the disciplinary authority shall ~~not~~ in such a case strictly observe the procedure for imposition of major penalty and shall before passing of the order of imposition of penalty take into consideration not only the written statement of defence submitted by the delinquent Railway

servant but also the record of the enquiry. However, in the instant case the procedure for imposition of major penalty was never held and the disciplinary enquiry imposed the impugned penalty upon the applicant arbitrarily.

5.5 That the order of disciplinary authority is a non-speaking order. It is cryptic and displays non-application of mind by the disciplinary authority in passing the impugned order of penalty.

5.6 That the order of the appellate authority is non-speaking and cryptic and displays total non-application of mind.

5.7 That the disciplinary authority imposing the penalty must apply its mind to the facts, circumstances and record of the case and they record findings of each imputation of misconduct or misbehaviour. The disciplinary authority shall give number of reasons for its findings to show that it ~~ix~~ has applied its mind to the case. However, in the instant case, the disciplinary authority failed to observe this basic formalities.

6.8 That the orders of the disciplinary authority and of the appellate authority are in violation of the requirements of both Rules 9 and 11 of the Railways Servants (Discipline & Appeal) Rules, 1968.

6.9 That the orders of the disciplinary authority and the appellate authority are perverse not being on evidence.

6. DETAILS OF REMEDIES EXHAUSTED :

That the applicant declares that he has no other alternative remedy except by way of filing this application.

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

The applicant further declares that he has not filed any application, writ petition or suit in respect of the same subject matter of this application before any other Court, Authority or any other Bench of this Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT :

In the premises aforesaid, the applicant prays for the following reliefs :

- 8.1 Quash and set aside the order of imposition of penalty contained in order No.E/74/2(LM-E) dated 24.8.93 passed by the Divisional Engineer/I/LMG
- 8.2 Quash and set aside the appellate order vide No. E/74/2 (LM-E) dated 26.4.95 passed by the Divisional ~~Engineer~~ Railway Manager (Works), N.F. Railway Lunding.
- 8.3 Direction to the respondents that the applicant be restored with consequential benefits which would have been entitled to in the absence of the order of the disciplinary authority and the appellate authority.

8.4 Any other or further order or orders as may be deemed fit and proper in the facts and circumstances of the instant case.

8.5 Cost of this application.

9. INTERIM ORDER PRAYED FOR :

The applicant, in the above facts and circumstances, does not pray for any interim relief.

10.

The application is filed through the Advocate.

11. PARTICULARS OF THE I.P.O. :

(i) I.P.O. No. : 09 345857
(ii) Date : 14.5.96
(iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

Verification.....

VERIFICATION

I, Shri Dilip Chandra Dey, aged about 36 years, son of Shri Prabhakar Dey, presently working as Senior Store Watchman, office of the Inspector of Works (Water Supply), Bunding, N.F. Railway, do hereby verify and state that the statements made in the accompanying application in paragraphs 1 to 4 and 6 to 12 are true to my knowledge ; those made in paragraph 5 are true to my legal advice and I have not suppressed any material facts.

And I sign this verification on this the 22nd day of April 1996.

Dilip Chandra Dey

(Staff copy)

Annexure

STANDARD FORM NO. 5
STANDARD FORM OF CHARGESHEET.

G-174C

(Rule 9 of the Railway Servants Discipline & Appeal Rules, 1981)
No. E/24/2 (M-F) 132

..... (Name of Railway Administration)
(Place of issue) Ludhiana dated 27.10.80

MEMORANDUM

1. The undersigned propose(s) to hold an inquiry against Sri Dilip Singh under Rule 9 of the Railway servants (Discipline and Appeal) Rules, 1968. The substance of the imputations of mis-conduct of 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 each imputations of mis-conduct of mis-behaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which and a list of witness by whom, the articles of charge are proposed to be substantiated are also enclosed (Annexure III & IV).

2. Sri Dilip Singh 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 Ten days of receipt of this Memorandum. For the purpose he should contact Mr. H.S./L.C. immediately in receipt of this memorandum.

3. Sri Dilip Singh is further informed that he may, if he so desires, taken the assistance of any other Railway servant/an official of a Railway Trade union (who satisfied the requirement of Rule 9/(13) of the Railway 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 being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Railway servant(s) or Railway Trade Union official(s).

Dilip Singh should obtain an undertaking from the nominee(s) that he (they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other case(s) if any, in which the nominee(s) has already undertaken to assist and the undertaking should be furnished to the undersigned/General Manager.....

..... Railway along with the nomination.

forwarded to Mr. Dilip Singh dated 27.10.80

Asw
28/10/80

Dilip Singh
28-11-80

Attended
P.K. Grew
Advocate.

4. Sri Dilip Deej..... is hereby directed to submit to the undersigned a written statement of his defence (which should reach the undersigned) within ten days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of his defence, and within ten days after completion of inspection of documents if he desires to inspect documents, and also -

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

5. Sri Dilip Deej..... 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 article of charge.

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

7. The attention of Shri Dilip Deej..... is invited to Rule 20 of the Railway service (Conduct) Rules, 1966 under which to Railway servant shall be of attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Shri Dilip Deej..... is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of rules 20 of Railway service (Conduct) rule, 1966.

8. The receipt of this Memorandum may be acknowledged.

(Signature)
 (Signature)

Name and designation of competent authority.

Encl:
 To: Shri Dilip Deej.....
(Signature)
 (Place etc.)

Copy to Shri.....
 of the lending authority) for information.

(a) To be used wherever applicable under rule (16) of the Rly. servants (Discipline & Appeal) rules, 1968. Not to be inserted in the copy sent to the Railway servant.

====

Imputation of charges.

Shri Dilip Ray, CL/CFC (Valve-man) under ICW(S)/LAC entered in ICW(S)/LAC's office during office hours of 10-6-69 at about 10:30 a.m. for proper justice as he was "Gharawed" by colony women due-to non-supply of water. ICW(S)/LAC advised him to come later on hut, instead of obeying the order of superior he used filthy language in presence of the staff waiting for looking at that time and subsequently he attempted to assault Shri S. K. Sinha, ICW(S)/LAC but, the staff present there obstructed him from impending danger. One of the staff Shri Chitta - Ra. Bhattacharjee, Fitter Gr. III obstructed him first for which he was injured by Shri Dilip Ray, CL/CFC (Valve-man).

Handwritten signature

2/11/89

ABN-21/LE/DIG.

...

Statement of articles of charges framed against
Shri Dilip Dey, CL/CPC (valveman) under IOW(WS)/LMG
has attempted to assault Shri S. K. Sinha, IOW(WS)/LMG.

.....

That the said ~~Shri~~ Dilip Dey, CL/CPC (Valveman) on 10-6-89 at about 8.30 hrs. entered in the office of IOW(WS)/LMG for proper justice as he was "Gharaved" by the colony woman of South Hill Colony due to non-supply of water. He was advised by IOW(WS)/LMG to come latter on but, instead of obeying the order of IOW(WS)/LMG he used filthy language at the top of the voice, turned un-rully and created bad atmosphere by which normal office work hampered. Beside this, he attempted to assault Shri S. K. Sinha, IOW(WS)/LMG. At that time staff waiting for booking obstructed him from ^{the} impending danger. One of the staff Shri Chitta Bn. Bhattacharjee, Fitter, Gr. III obstructed him first for which he was injured by Shri Dilip Dey, CL/CPC (Valveman). This is tantamounts serious misconduct and violation of Rule 3 (III) of Rly. Service conduct rules 1966.

~~XXXXXXXXXX~~

Kras
21/11/89
(M. R. DAS)
AEN(HQ)/LMDING.

SECRET
M. R. DAS, LMDING

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KCS
-P. (11/8)

Attested
P. K. Lina
Advocate

To
A.E.N(H.Q)/Lumding
Nagaon, Assam.

Written statement of Sri Dilip Dey

I Sri Dilip Dey, earlier CL/CP (Valve man) now Gangman under PWI (Plain) begs to file the W/S as follows:-

That first of all I declare that I am always willing to assist the Authority during the disciplinary proceeding. on 10.6.89 I was on Rly. duty upto 6 A.M. and prior completion of my duty I was gharowed by some of women for non-supply of water to some particulars Rly. Quarters.

After 6 A.M. I have come to I.O.W (water supply) office to inform my Boss I.O.W. (W.S) about non-supply of water to few quarters. I met work-mistry there and reported him about the matter. Then he advised me to inform IOW (W.S) about the position. I have met & informed him when he was available at office at 7-30 A.M. seeing me he got furious and two of his sub ordinates namely Sri Chitta Bhattacharjee & Sri Bijoy Dhar took me away from IOW (W.S) office at the initiative of IOW (W.S.) and started me beating mercilessly outside the IOW's (W.S.) chamber. It will not be out of place to mention here that earlier to this incident I had a difference of opinion about duty hours when I have submitted oral as well as written disssatisfaction of my colleagues whom I have represented as a ~~committee member~~ of Majdoor Union, Lumding Branch, and out of these prior enimity I.O.W. in collusion with other persons having vested interest done all this things.

After assault when there was severe bleeding was going on being threatened of my collapse said I.O.W. (W.S) issued me written order of doing due rest on 10.6.89 though he know well that I have enjoyed my due rest on 7.6.89. Being puzzled said I.O.W. (W/S) has even gone to temper the office records. I was admitted to Rly. Hospital on 10/6/89. My father informed about the incident to Local police. Police came to I.O.W. (W.S) office in search of culprits at 9 A.M. on 12.6.89 but I.O.W. (W.S) has obstructed the police investigation by saying that he will not be able to spare the culprits if not spared by the Higher Authority and on the other hand at the instances of IOW (W.S) one of the culprits Sri Chitta Bhattacharjee got admitted in Rly. Hospital at 12/30 noon by calling Ambulance at his office by Telephone message. In this way I.O.W. (W.S) was able to save the culprits. On 14.6.89 I.O.W. Sri S. K. Singha, A.E.N. H.Q. /Lmg. M. M.R. Das, along with Sri C.M. Roy, Secretary, employee, Union went to Local P.S. to save the Culprits and to get my case spoiled.

Yours goodself also requested to consider the following points in the light of above facts:-

contd.....2

Attested
P. K. D. J. wa
Advocate

- 21 -
- 2
1. That the alleged Date of occurrence is 10.6.89 and I was charged sheeted after 5 months period which is highly illegal & AFTER THOUGHT Story.
 2. That the copy of documents by which the articles of charge was framed against me i.e. letter of IOW /WS/ENG letter Dt. 10.6.89 were not furnished to me denying the fair chance to reply the charge & please supply me the above documents dt. 10.6.89.
 3. That from records it is seen that my duty hours started from Evening 6 p.m. of 9.6.89 and after 12 hours i.e. ends on 6 A.M. of 10.6.89.

I am still not fully recovered from the internal injury caused due to assault by the above name staff on that date from which I was shifted from Rly. Medical authority to their hospital for better treatment.

The individual complain submitted by the above party on 14.6.89 with copies with the recognised Unions of Rly/LMG were delivered through official Peen beek of IOW/LMG which indicate IOW/WS/ himself involved to instigate them to assault me in front of office courtyard.

According to allegation no occurrence took place during duty hours.

4. That copy of statement of articles of charged framed against me and copy of Imputation of charge show different time about the time of occurrence.
5. That the whole fact is a conception to put me in trouble as I am member of other union said IOW has inclination to wards other Union.
6. That AEN/HQ/LMG Mr. M.R.Das, can not legally frame charge sheet against me as he himself went to than a with one Sri C.M.Roy on behalf of the interested parties i.e. culprits as such he can not be the judge of his cause.
7. That according to Rest order issued by IOW/WS on the date of occurrence I was absent at the relevant time on the other hand according to IOW/WS, AEN/HQ Charge Sheet issuing Authority. I was on duty at the relevant time which is contradicting to each other.
- 8.

I therefore request your goodself to be good enough to consider the above facts and exonerate me from the allegations levelled against me for the ends of justice & oblige.

Thanking you.

Yours faithfully,

(Sri Dilip Ch.Dey)
Gangman PWI/P/LMG.

Attended
P.R. Das
Advocate

N. F. RLY.

NOTICE OF IMPOSITION OF PENALTIES UNDER (RULE - 11) OF R.S. (D&A) RULES/1968.

No. F.147(L.M.E.) 324
FROM... DM/LMG
To... Shri. Pilla. Ch. Rev. S.M.
THROUGH... IDW/LMG/ LMG/DM

DT... 24.08.93

With reference to your explanation to the charge sheet No. F.147(L.M.E.) 133..... Dt. 27.11.92.... you are hereby informed that your explanation not considered satisfactory & ~~that the undersigned has~~ passed the following orders.
DM/LMG

Hence, Your next increment is stepped for 2 (two) years with cumulative effect.

- copy to :
- 1) IDW/L/MG.
 - 2) P/Case.
 - 3) IRM(P)/LMG.
 - 4) DM/LMG.
 - 5) Sr. DM/LMG.

Q. No. 21/8/93

Assistant Engineer (I)
& P. Railway, Lucknow
Sr. S. Officer (I)
S. M. L. Rly.

Signature & Designation of the Disciplinary authority.

Forwarded.

P. K. L. 26/8/93

When the notice is signed by an authority other than the disciplinary authority where quote the authority passing the order.

Here quote the acceptance or rejection of explanation and the penalty imposed.

I N S T R U C T I O N S

1. An Appeal against these orders lies to DM/LMG.....
.....Next Immediate Superior to the authority passing the orders.

*Attested
P.K. L. 26/8/93
Advocate*

To
The Senior Divisional Engineer,
N.F. Railway/Lumding.

Through Proper Channel.

Sir,

Sub:- Appeal against the imposition of penalty of stoppage of increment for 2 years with Cumulative effect.

Ref:- DEN/I/IMG's Order communicated by AEN/I/IMG vide No. E/74/2(IM-E)324 dated 24-8-93.

I beg to submit the following appeal against the irregular imposition of penalty by DEN/1/IMG without completing the DAR enquiry and following D.A. Rules.

That I was served with a charge memorandum for major penalty by AEN/HQ/IMG under his No. E/74/2(IM-E)132 dated 27-10-89 where no definite charge had been framed as required under D.A. Rules.

That, a DAR enquiry was held beginning from 25-2-91 to 11-9-92.

That, the report and findings of the Enquiry Officer, if any, has not been supplied to me as yet.

That, in the order for the imposition of alleged punishment, there is no mention of the DAR enquiry and its findings.

That, even the mention of non-acceptance of my explanation against the charge memorandum is vague and carries no reasons for non-acceptance which is obligatory under D.A. Rules.

Since the penalty of stoppage of increment with Cumulative effect is a major penalty it cannot be imposed without DAR enquiry and following its findings.

In view of the above, the penalty imposed is illegal and cannot take any effect hence should be cancelled forthwith.

Yours faithfully,

Dilip Chandra Deo

(DILIP CHANDRA DEY)

SWM/IOW/Line/IMG.

Date:- 5-10-93

A. H. S. 10/93
A. H. S. 10/93
P. K. Tiwari
Advocate.

To
The Senior Divisional Engineer,
N.F. Railway. Lunding.

(Through Proper Channel.)

Sir,

Sub : Appeal against imposition of penalty.

Ref : DEN/I/LMG's order communicated by
AEN/I/LMG vide No. E/74/2 (LM - EY
324 dt. 24.8.93.

.....

With due respect I beg to state the following facts for your kind & favourable consideration please.

That Sir, I preferred an appeal on 5.10.93 against the imposition of penalty for your kind & judicious judgement. In this connection my appeal No. Nil dt. 5.10.93 may be connected where in all the details have been mentioned.

But I am sorry to inform you that I have not received any decision from your end till date.

In view of the above circumstances I would once again request you to kindly review the case as per normal rules.

Yours faithfully,

Dilip Ch. Dey

(Dilip Ch. Dey.)
SWM under
IOW/L/LMG.

Dated, Lunding.
The 3.11.93

3/11/93
10/11/93

To
The Senior Divisional Engineer,
N.F. Railway/Luding.

(Through Proper Channel)

Sub:- Appeal against imposition of penalty
(Second reminder).

Ref:- DEN/I/IMG's Order communicated by AEN/I/IMG's
No. E/74/2(IM-6)/324 dated 24-8-93.

Sir,

I am sorry to inform you that inspite of my several appeals, I have not received any reply or action on the above issue under reference.

I fervently appeal to you once again to kindly finalise the case.

If I do not get any reply or action within a reasonable time I will have no other alternative but to approach the matter to higher authority for early finalisation of the same.

With regards.

Yours faithfully,

Dilip Chandra Deb

(DILIP CHANDRA DEB)

SWM under IOW/L/IMG.

Date:-25-11-93

*Received
25/11/93*

To

The Senior Divisional Engineer,
N. F. Railway / Lunding.

(Through proper channel)

Sub : Appeal against imposition of penalty
of stoppage of increment for 2 years
with cumulative effect.

Ref : My application dt. 5.10.93, 3.11.93
and 25.11.93 respectively.

Sir,

I beg to state that inspite of my several
appeals against the imposition of penalty, I have not
received any judicious judgement from your end. In
this connection, you are requested to connect my
previous application dt. 5.10.93 which is endorsed
herewith.

However, I am submitting another appeal
reminding you to take appropriate decision at an
early date please.

DA/ 3 previous appeal
for your ready
reference.

Yours faithfully,

Dilip Chandra Dey

(DILIP CHANDRA DEY)
SR. SWM, Under
IOW/Line/LMG.

Date : 17-2-94

No- E/1-94 Dt- 17-2-94

Forwarded for
disposal please

Dhandu
-IOW/Line/LMG.
17/2/94

5th REMINDER

To
The ^{Sr} Divisional Engineer,
N. F. Railway / Lunding.

(Through proper channel)

Sub : Appeal against imposition of penalty
of stoppage of increment for two years(c).

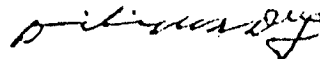
Ref : My appeal dt. 5.10.93, 3.11.93, 25.11.93,
& 17.2.94.

Sir,

Inspite of my several appeal against the
imposition of penalty, no decision or action has
communicated to me till date.

However, I am submitting 5th appeal to you
with the hope to get ~~jurisdiction~~ judicious decision
from your end without further delay and a copy of
the finding of the enquiry report may also be issued
to me.

Yours faithfully,



(DILIP CH. DEY)

SR. S.W.M.

Under IOW/L/LMG

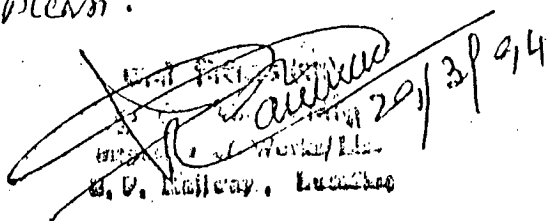
Date : 29-3-94

Copy to :-

1. DRM/LMG for information and necessary action please.
He is requested to inter~~cede~~ into the matter, so
that a Grade-IV employee may not be compelled to
submit appeal one after another.

No. E/1-94 dt. 29.3.94

Forwarded for
need full action
please.



29/3/94

Yours faithfully,



(DILIP CH. DEY)

SR. S.W.M.

Under IOW/L/LMG

To
The Divisional Railway Manager,
N. F. Railway / Lunding

(Through proper channel)

Sub : Appeal against imposition of penalty of stoppage of increment for 2 (two) years cumulative.

Ref : DEM/I/LMG's Order communicated by AEM/T/LMG vide his No. E/74/2(LM-E)324 dt. 24.8.93.

Sir,

In the above context, I beg to submit the following for favour of your kind appreciation please.

- Procedure :
- 1) That the "Penalty of stoppage of increment with cumulative effect" has been classified as "Major One" under DAR Rules-1968.
 - 2) That such "Penalty" can be imposed only after conducting a DAR. Enquiry on issue of a Memorandum framing the alleged charge.
 - 3) That on completion of DAR enquiry conducted by disciplinary authority himself and or by his nominated Enquiry Committee- the Enquiry Committee submits a finding and the disciplinary authority after considering the findings if proposes to impose any penalty will forward the findings to the charged employee and on receipt of his representation if any from the charged employee a penalty then is imposed.

What happened in my case in the matter of violations.

- 1) That the DAR enquiry was conducted by the nominated E/O i.e. Enquiry Committee during the period from 25.2.91 to 11.9.92 in several sessions.
- 2) That the disciplinary authority then imposed the major penalty without any reference to the findings of the Enquiry Committee.
- 3) That the DAR enquiry conducted has been bypassed and or declared immaterial by the disciplinary authority.
- 4) That no findings and or enquiry report has been forwarded to me.

Appeals preferred by me to the next higher authority against the penalty imposed.

- 1) That, I preferred my 1st appeal against the penalty imposed to Sr. DEM/LMG (The penalty was imposed by DEM/I/LMG) on 9.10.93 but without any results.
- 2) That, reminders were sent to him on 3.11.93, 25.11.93, 17.2.94 & on 29.3.94 respectively but with no response.

Relief sought for.

You may like to cancel the irregular punishment imposed by DEM/I/LMG and thus oblige.

Date : 16-5-94

Yours faithfully,

Dilip Chandra
(DILIP CHANDRA DEY)
SR. S.M.K. Under
IOE/Line/Lunding.

No. E/1199 dt. 16-5-94

Forwarded for disposal please

[Signature]
16/5/94

To
The General Manager(P),
N. F. Railway / Maligaon.

(Through proper channel)

Sub : Disposal of my appeal against the
punishment imposed by DEN/I/LMG.

Sir,

I may be excused to bring to your kind
notice that against the punishment imposed on me
in relation to the DAR Rules, 1968 by the DEN/I/LMG.
I ^{preferred} proposed appeal to Sr. DEN/LMG and then to DRM/LMG
followed by renewal reminders but the said appeal
remained un-attended so far.

I do not know from what sources I could
get relief. With my utmost hope I am referring the
matter to you by endorsing a copy of my appeal to
DRM/LMG for your kind appreciation please.

DA/AS above.

DAI - 2 (Part)
Copies-enclosure

Yours faithfully,
Dilip Chandra Dey

(DILIP CHANDRA DEY)
Sr. SWM/ Under
IOI/Line/Lunding
N. F. Railway.

Date : 27-6-74

No. E/1-94 Dt- 27-6-74

Forwarded for *****
necessary disposal
please

[Signature]
27/6/74
Officer in Charge
Maligaon, N.F. Railway

Attested
P.K. Tiwari
Advocate

30 - Annexure: 5
9
H. P. Railway

OFFICE OF THE
DM (W) LUNDING.

NO. B/74/2(IH-B)

dt. 4.95.

To
Shri Dilip Ch. Dey. ✓
Sr. SMI
IOW/L/Lunding.

Sub:- Appeal.

Ref:- Your letter No. Nil. dt. 29.3.94.

In reference to above it is to inform you that the punishment imposed upon you by DM/I/LMG for stoppage of increment for 2(two) years with cumulative effect is hereby confirmed.

The first para of the findings related with the delinquent employee, furnished below for information please.

Primarily Shri Dilip Ch. Dey is responsible for attempting assault to Shri S.R. Sinha IOW/WS and violating the rule No.3(iii) of Railway service (conduct) rules/1966.

[Signature]
for Divl. Mly. Manager (Works)
Lunding.

Copy to DM (P) LMG, AM/I/LMG, IOW/L/LMG - for information please.

for Divl. Mly. Manager (Works)
Lunding.

Forwarded
to Dilip Ch. Dey.

[Signature]

10/5/94 umh
29/7/85

Attended
P.K. Tiwari
Advocate