

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Misc. Application No. 040/00047/2020  
In  
Original Application No. 040/00135/2020

Date of Order: This, the 11<sup>th</sup> Day of February, 2021

**THE HON'BLE SMT. MANJULA DAS, MEMBER (J)**

**THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)**



Shri Ranjan Kumar Nag  
Station Superintendent  
Guwahati Railway Station  
N.F. Railway, Guwahati  
Assam, Pin – 781001.

**... Petitioner**

-Versus-

1. The Union of India  
Represented by the General Manager  
N.F. Railway, Maligaon  
Guwahati – 781011.
2. The Additional Divisional Railway Manager  
Lumding Division  
N.F. Railway, Lumding  
Pin – 782447.
3. The Divisional Operational Manager  
N.F. Railway, Lumding Division  
Lumding, Pin – 782447.

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4. Sumit Kumar  
The Divisional Operational Manager (IC)  
N.F. Railway, Lumding Division  
Lumding, Pin – 782447.

**...Opposite Parties.**

For the Petitioner : Sri M. Chanda & Smt. U. Dutta

For the Opposite Party : Ms. U. Das, Railway counsel

**ORDER (ORAL)**



**MANJULA DAS, MEMBER (J):-**

By this M.A., petitioner prays for condonation of delay of 519 days in filing O.A. No. 040/00135/2020 where Ms. U. Das, learned railway counsel representing the respondents has filed objection. Reply to the said objection (filed by respondents) has also filed by the petitioner through Sri M. Chanda, learned counsel.

2. We have heard Sri M. Chanda, learned counsel for the petitioner and Ms. U. Das, learned railway counsel for the respondents.

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3. Sri M. Chanda, learned counsel for the petitioner while praying for condonation of delay, basically raised the following points:-



- (i) That delay is inordinate which is not in the instance of the petitioner.
- (ii) That there are some compelling circumstances why the petitioner could not approach in time particularly due to sickness of his wife.
- (iii) That although allegation of charge sheet was levelled against the petitioner, however, the respondent authorities have not levelled any charge sheet upon the main two culprits i.e. Pointsman and Shunter namely Shri B. Bordoloi and Suman Sen on the basis of whose statement, charge sheet was issued and the applicant was imposed with a minor penalty where they were not even witnesses.
- (iv) That no documents have been provided to the petitioner so as to enable him to establish his case by preparing statement of defence on the basis of said required documents.
- (v) That Penalty has been imposed upon the applicant solely on the basis of presumption as well as on the basis of the report of preliminary enquiry.
- (vi) That due to Covid-19 pandemic in the world also, petitioner could not approach before this Tribunal.
- (vii) There is no imputation of misconduct or misbehaviour on the basis of which action could be proposed for conducting inquiry.

4. It was submitted by Sri Chanda that the charges in the charge sheet have been held to be proved

against the petitioner solely on the basis of the Joint Inquiry Committee's report dated 05.05.2017. But the said preliminary fact finding inquiry report has neither being furnished nor proved. The Pointsman and the Shunter namely Sri B. Bordoloi and Sri Suman Sen on the basis of whose statement, the charge sheet has been issued, were not examined. The allegation of insisting and persuading, by the Pointsman and the Shunter have not been proved and not even verified by any other witnesses.



5. According to the learned counsel, in the present case, none of the grounds taken by the petitioner in his appeal has been considered by the Appellate Authority. The action of the Disciplinary Authority and Appellate Authority in not giving reason for not holding an enquiry under Rule 11(1)(b) of RS (D&A), 1968, is subject to judicial review and the same is violative of the principles of natural justice. The action of the respondent No. 4 issuing the charge sheet in absence of the regular Divisional Operating Manager and

thereafter, imposing penalty upon the petitioner solely relying on the fact finding inquiry report, without any inquiry and without any findings, is arbitrary and smacks malafide. Sri Chanda has relied the decision of (1) **V.K. Mohan Vs. The Secretary to Govt. of India & Ors. reported in 2003 (3) SLJ 82**, (2) **Mahabir Prasad Santosh Kumar Vs. State of U.P. (AIR 1970 SC 1302)**, (3) **Nirmala J. Jhala Vs. State of Gujarat (2013) 4 SCC 301**, (4) **Vijay Singh Vs. State of UP & Ors. [(2012) 5 SCC 242]** and (5) **O.K. Bhardwaj Vs. UOI & Ors. [(2001) 9 SCC 180]**.



6. On the other hand, Ms. U. Das, learned railway counsel representing the respondents vehemently objected for allowing the M.A. for condonation of delay petition and submitted that medical certificate which has been annexed there with the instant M.A. is of 2019 and at that time, no such Covid-19 pandemic situation was there in the country from debarring the petitioner to approach this Tribunal. According to Ms. Das, no sufficient ground has been set forth in this M.A. so as to interfere by this court to allow the condonation petition.

Ms. Das submitted that in view of the judgment passed by the Hon'ble Apex Court, since the petitioner could not make out any good grounds for not approaching this Tribunal within the prescribed period of one year i.e. within 11.10.2018 and for condoning the delay, the instant petition be dismissed. In support of her contention, Ms. Das has relied some decisions of the Hon'ble Supreme Court:-



1. **Saithalavi Vs. Kerala State Electricity Board (1998) 2 AllCJ 1078; (1998) 9 SCC 557, Civil Appeal No. 745 of 1998 arising out of SLP (C) No. 11777 of 1997.**
2. **P.K. Ramachandran Vs. State of Kerala and Another, Civil Appeal No. 6514 of 1997, (1997) 2 UJ (SC) 747.**
3. **Government of Andhra Pradesh Vs. Y.K. Parkashrao and another, Civil Appeal No. 1459 of 1974, (1982) 1 SCALE 435; (1982) 2 SCC 385.**
- (4) **Pankajakshi (Dead) through L.Rs. and ors. Vs. Chandrika and Ors., Civil Appeal No. 201 of 2005 with S.L.P. (Civil) No. 34457 of 2010 and SLP (C) No. 17700 of 2008, (2016) 6 SCC 207.**
- (5) **Mohd Sahid and Ors. Vs. Raziya Khanam (D) Thr Lrs and another, Civil Appeal No. 10379 of 2018.**
6. **Balwant Singh (Dead) Vs. Jagdish Singh and Ors., Civil Appeal No. 1166 of 2006.**

7. **Hindustan Steel Works Construction Ltd. Vs. Union of India (UOI), Civil Appeal No. 1908 of 2016 (Arising out of Special Leave Petition (C) No. 30570 of 2014), and**
8. **State of Tamil Nadu, represented by Chief Secretary Vs. Union of India, Review Petition (Criminal) Nos. 560-564 of 2016 in Writ Petition (Criminal) Nos. 48, 185, 150 and 66 of 2014 and Criminal Appeal No. 1215 of 2011.**



7. In reply to the submissions made by Ms. U. Das, learned railway counsel for the opposite side, Sri M. Chanda, learned counsel appearing for the petitioner submitted that prayer for condonation of delay is on the ground of wife's sickness as well as prevailing of Covid-19 pandemic. He further replied that there are serious infirmities in the departmental proceeding instituted vide impugned memorandum of charge sheet dated 18.05.2017 and the penalty has been imposed without holding any regular inquiry. According to Sri Chanda, memorandum of charge sheet was issued on 18.05.2017 which was served upon the petitioner on 06.06.2017 when the petitioner due to his serious ailment undergone medical leave w.e.f. 07.06.2017 to

16.06.2017 and necessary sick certificate was issued on 16.06.2017. On receipt of the charge sheet, the petitioner submitted his written statement/reply on 21.06.2017 and immediately on receipt of the written statement, penalty was imposed on the same day mechanically without application of mind as well as without considering the requirement of holding a regular inquiry on the face of categorical denial of the article of the charges.



8. It was further replied by Sri Chanda that the technical pleas of limitation cannot be sustained in the eyes of law when there are serious illegalities, irregularities and infirmities in the departmental proceeding instituted against the petitioner which was concluded with the imposition of penalty, when the petitioner is quite innocent and the actual guilty persons have been made witnesses and based on their statements, the penalty of withholding of increment was imposed upon the petitioner.

9. Sri Chanda further submitted that although present M.A. has been filed praying for condonation of delay for 605 days, however, in view of the order passed by the Hon'ble Supreme Court in suo moto writ petition No. (s) 3/2020, the delay which is occurred until 15.03.2020, is liable to be condoned. Hence, in that view of the matter, the actual delay occurred only 519 days i.e. 1 year and nearly 6 months and this Tribunal may be pleased to condone the delay as prayed by the petitioner in the present M.A.



10. Having heard the learned counsel for the parties, perusal of the pleadings and materials placed before us, we are in hand Memorandum of Charge sheet dated 18.05.2017 issued by the Disciplinary Authority wherein Statement of Allegation reads as under:-

"Shri Ranjan Kumar Nag was performing duty as SS/GHY on 22.04.17. At about 00:15 hrs of 22.04.2017 Loco No. 20069 WDP-4 got derailed by front trolley LHS 3 wheels & RHS 2 wheels over point No. 107X at KYQ end of GHY Yard/Station during shunting. Shri Nag had programmed for attachment of two VPU from L/No. 2 to L/No. 6 in rear of 15669UP. During shunting, the shunter had refused to give movement without any shunt signal

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but Shri Nag insist him to give movement from L/No. 2 to L/No. 6 without shunt signal and resulting which said loco No. 20069 got derailed. He had also persuaded piloting pointsman as well as shunter for undergoing the shunting activity, moreover, it is also seen that Shri Nag has no idea about CSL of lines.

Shri Ranjan Kumar Nag has been held Primary responsible for the derailment and for violation of rule No. 312 of operating manual 2005 edition and GSR Rule 5.14 & S.R.5.14/2(a)(ii).

Thus, by the above act, on the part of Shri Ranjan Kumar Nag, SS/GHY exhibited negligence of duty & lack of devotion to duty and thereby contravened the Rule No. Rule No. 3.1(ii) & (iii) of Railway Services (Conduct) Rules, 1966."



11. It appears from the above that the applicant got derailed during shunting the train and he was found to be primary responsible and on the basis of statement of two persons namely Sri B. Bordoloi and Sri Suman Sen, enquiry was initiated. Undisputedly, the applicant did make statement of defence on 21.06.2017.

12. We have also gone through medical certificate which has been annexed by the petitioner in the instant M.A. and we do not find that it is acceptable in case of condonation of delay inasmuch as same is certified in the year of 2019 and at that time, there was no such Covid pandemic in the world and the applicant easily

could approach this Tribunal if there was other reasons. On the other hand, we cannot ignore the legal point as narrated by the learned counsel for the petitioner that enquiry was conducted only on the basis of statement made by two individuals mentioned above who were even not held to be secondarily responsible person.



13. Since the petitioner has held primary responsible for derailment of train during shunting and charge sheet was issued to him where other two individuals held not responsible, in view of that, we need to see whether examination/cross examination to negate the statement of person who acted to move the rail has been made or not inasmuch as enquiry was conducted and concluded. However, it is seen that no such opportunity was provided to the petitioner at least to make some statement from his side as he is alleged to be primarily responsible offender.

14. We have also perused so many judgments as placed by both parties. We have seen that the applicant's main contention is that while fact finding

inquiry was conducted and punishment was imposed that was only on the basis of statements made by the Pointsman and the Shunter namely Sri B. Bordoloi and Sri Suman Sen. But we are confused how this point could be clarified and whether the statement is correct or not. Accordingly, we want to see the statement made by two individuals who are not charge sheeted. However, Ms. U. Das, learned railway counsel for the respondents submitted before the BAR that instant petition is hopelessly barred by limitation and the case of the petitioner is well-founded where Shri Chanda submitted that minor penalty of withholding of two increments of pay for 02 years 11 months without cumulative effect was effected after 12.10.2018 and that has not yet completed and it will be completed in the month of October 2021.



15. It is found that the claim of the petitioner is well founded and if condonation of delay is not allowed, the petitioner may suffer irreparable loss and injury. Keeping in view of the above, we deem it fit and proper to

condone the delay of 519 days in filing the O.A. No. 040/00135/2020. Ordered accordingly.

16. M.A. stands allowed. Notice be issued in the O.A. No. 040/00135/2020 accordingly.



**(NEKKHOMANG NEIHSIAL)  
MEMBER (A)**

**(MANJULA DAS)  
MEMBER (J)**

**PB**

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