

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH



O.A./350/1894/2015

Heard on 20.11.2019

Date of Order: 13.12.19.



Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Sushanta Kumar Sarkar, Son of Late Khitish Chandra Sarkar,  
residing at C/o- Mantulal Adhikari, 25, Suresh Chandra Pal  
Road, Post Office and Police Station- Naihati District- North 24  
Parganas, PIN- 743165.

.....Applicant

Vrs.

1. Union of India, Service through the General Manager,  
Eastern Railway, having office at 17, Netaji Subhas Road,  
Fairie Place, Kolkata-700001.
2. The General Manager, Eastern Railway, having his office at  
17, Netaji Subhas Road, Fairie Place, Kolkata-700001.
3. The Chief Personnel Officer, Eastern Railway, having his  
office at 17, Netaji Subhas Road, Fairie Place, Kolkata-700001.
4. The Chief Workshop Engineer, Eastern Railway, having  
his office at 17, Netaji Subhas Road, Fairie Place, Kolkata-  
700001.
5. The Chief Work Manager, Kanchrapara Railway Workshop,  
having his office at Kanchrapara Railway Workshop, District-  
North 24 Parganas, PIN- 743145.
6. The Workshop Personnel Officer, Kanchrapara Railway  
Workshop, having his office at Kanchrapara Railway  
Workshop, District- North 24 Parganas, PIN- 743145.
7. The Senior Section Engineer, Shop NO. 03, Kanchrapara  
Railway Workshop, having his office at Kanchrapara Railway  
Workshop, District- North 24 Parganas, PIN- 743145.

.....Respondents

For the Applicant(s): Mr. B.C.Deb, Counsel

For the Respondent(s): Ms. C.Mukherjee, Counsel



## ORDER

Bidisha Banerjee, Member (J):

Applicant has filed this O.A. to seek the following reliefs:

*"a) Order or orders thereby directing the respondent authorities to disburse the applicant's admissible settlement dues for the service rendered by him on and from September 09, 1975 to December 07, 1984 at Kanchrapara Railway Workshop, Eastern Railways in terms of Railway Pension Rules, 1993 and 12% interest per annum over and above such amount;*

*b) Order and Orders directing the respondent authorities issue service certificate as well as family identity card to the applicant for availing complementary pass;*

*c) An order directing the respondents to give effect the benefits under the third MACP to the applicant with all consequential benefits to the applicant;*

*d) An order thereby directing the respondents to produce all original records before this Hon'ble Tribunal for the purpose of proper adjudication of the present case;*

*e) Any other or further order....."*

2. The admitted fact that emerge from the reply of the respondents is that the applicant was appointed as Substitute Khalasi under SSE/3/KPA vide E.O.No. E/R/355 dated 09.09.1975 in the pay scale of Rs. 196-232/-. Subsequently, he was promoted as Welder Grade-III. Vide punishment order No. S/3/3999 dated 27.09.1988, he was removed from service w.e.f. 07.12.1984 on the ground of his conviction in connection with Session Trial No. 2(5) of 1984 under Section 302/84



IPC passed by Ld. Addl. Session Judge, 1<sup>st</sup> Court, Alipore. Long thereafter, in the year 2011 and, thereafter in 2012, the applicant represented for payment of terminal benefits. According to the respondents, in a devastating fire accident, hundreds of service records of the workers got destroyed and, subsequently, they were reconstructed. Presuming the applicant's service record might have been destroyed, since the SR of the applicant was not traceable, as a last resort, a search notice dt. 27.07.2012 was issued. The search being not fruitful, applicant was asked to submit necessary documents relating to his academic qualifications and Date of Birth proof, vide communication dated 30.10.2012, which was a pre-requisite to reconstruct the Service Record of the applicant. The Transfer Certificate produced by the applicant being not genuine, as intimated by the then Head Master of Bandel Vidya Mandir, applicant was further requested to produce necessary documentary evidence relating to his academic qualifications and Date of Birth proof but the applicant made no further communication.

3. Ld. Counsel for the applicant, at hearing, would submit that age proof certificate should not stand in the way of release of pension for the period he has served the railways prior to his removal from service, since the respondents have already admitted that he served the Railways from 1975 and served jail term between 1984-1988 whereafter he was removed from service. Ld. Counsel would submit that the removal order dated 27.09.1988, removing him from service retrospectively w.e.f. 07.12.1984 was bad in law. The respondent authorities had placed the applicant under suspension w.e.f. 23.11.1983. The applicant had suffered the penalty of rigorous imprisonment of 5 years until 02.05.1988 ought

to have been taken back in service. Instead, the respondents have issued removal order from back date, which was not permissible in law.



4. We heard Ld. Counsels for both the parties and perused the materials placed on record.

5. We note that applicant has not challenged the removal order of 1988, which being retrospective in operation is bad in law. In the case of **Sri Pal Jain Vs Union of India & Ors., O.A.No. 685/2011**, decided on 03.01.2014, Principal Bench of this Tribunal has observed as under:

*"As held by this Tribunal in Satendra Jeet Singh's case (supra), neither Article 311 of the Constitution of India nor Rule 19 of the CCS (CCA) Rules, 1965 empowers the Disciplinary Authority to make an order of dismissal with retrospective effect. Further, it has been stated in the said judgment that Employment of a Government servant stands terminated by the order of dismissal or removal and such an order being an executive or administrative, can only be operative from the date it is passed or if the rule so lays down from which it is communicated."*

Accordingly, we dispose of this O.A. with a direction upon the respondent authorities to issue a fresh order to treat the applicant as removed from service w.e.f. 27.09.1988, i.e. the date of removal order, and to grant him all benefits of pension as would be admissible to the applicant for his service from 1975 till removal. Let appropriate orders be issued by three months. No costs.

(Dr. Nandita Chatterjee)  
Member (A)

(Bidisha Banerjee)  
Member (J)