

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 21<sup>st</sup> ~~2nd~~ day of May, 1999

Original Application No. 632 of 1988

District : Deoria

CORAM :-

Hon'ble Mr. S. L. Jain, J.M.

Hon'ble Mr. G. Ramakrishnan, A.M.

Begum Kaneez, Fatima Siddiqu

W/o A. H. Khan  
R/o 51, Mewatipur,  
Gorakhpur.

(Sri A.K. Sinha, Advocate)

..... Applicant

versus

1. Union of India  
Through Secretary Ministry of Railway,  
Rail Bhawan, New Delhi.
2. General Manager,  
N.E.R., Gorakhpur.
3. Chief Personnel Officer,  
N.E.R., Gorakhpur.

(Sri A.V. Srivastava, Advocate)

..... Respondents

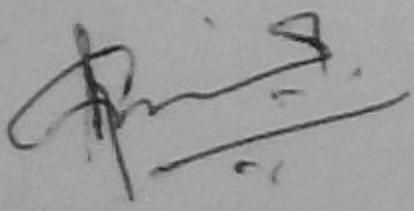
ORDER (O r

By Hon'ble Mr. G. Ramakrishnan, A.M.

This is an application under Section 19 of the Administrative Tribunals Act, 1985, against the order dated 29-4-1988, issued by the General Manager, North Eastern Railway, Gorakhpur in pursuance of the letter No. E(DA) 81AE 11-5 dated 15-4-1988, issued by the Deputy Director, Establishment, Railway Board, New Delhi, withholding 50% of the monthly pension of the applicant for a period of 5 years.

Of the case

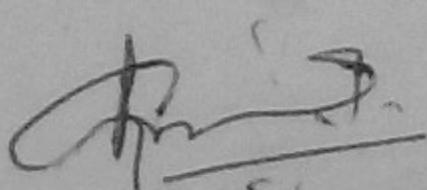
2. The facts which are not in dispute are that the applicant retired on superannuation from N.E. Railway on 31-12-1980 while working as Senior Personnel



Inspector Grade I. In pursuance of the sanction accorded by the President under Rule 2308 of the Indian Railway Establishment Code vol II for instituting departmental proceedings against the applicant vide Ministry of Railways' order NO. E(D&A) 181 AENLS dated 12-1-83, an enquiry was ordered against the applicant under Rule 9 of the Railway Servants (D&A) Rules, 1968. A notice to this effect was published in the "Northern India Patrika" on 15-9-1984. After publication of this notice the applicant reported in the office on 29-9-1984 and received the memorandum alongwith the Annexures and order of the President dated 12-1-1983. The applicant received a show cause notice dated 27-3-1987 issued by the Railway Board alongwith the copy of the enquiry report under Senior Personnel Officer (Traffic)'s letter dated 14-4-1987. The applicant submitted his reply on 26-5-1987. On 9-5-1988 the applicant received a letter dated 29-4-1988 issued on behalf of the General Manager, N.E.R., Gorakhpur alongwith a copy of the recommendation of the Union Public Service Commission intimating the decision of the President that 50% of the monthly pension admissible to the applicant be withheld for a period of 5 years. The applicant filed this OA on 19-5-1988 challenging the above order dated 29-4-1988.

3. The applicant stated as follows in the OA:-

- (i) On receipt of the charge sheet on 29-8-1984, the applicant submitted a representation dated 8-10-84 before the enquiry officer for copies of the documents referred to in Annexure-3 to the memorandum issued to him as well as other documents considered relevant by him to enable him to submit



his reply. The enquiry dates were fixed as 10-12-84, 31-12-84, 29-1-85. The proceedings were initiated on 10-12-1984 and adjourned to 31-12-1984. On 31-12-1984 the Inquiry Officer (IO) asked the applicant to submit the list of documents on which the applicant reiterated his request earlier made of 8-10-1984. On 29-1-1985 no sitting of enquiry was held. On 18/19-11-1985 a letter was issued by the Inquiry Officer refusing to supply copies of documents asked for by the applicant. Further with regard to the documents relied upon and included in the charge-sheet the applicant was advised to inspect the same within 3 days in the office of General Manager (Vigs), Gorakhpur. The applicant claimed that no separate authorisation was issued to him and, therefore, he could not inspect the documents in the office of General Manager (vigs). The applicant again represented for giving him the documents asked for on 11-12-85 which was rejected by the Inquiry Officer on 28-1-86, but no enquiry was held and ultimately the applicant received a letter dated 11-7-1986 on 19-7-1986 intimating that the enquiry would be held on 16th and 17th July, 1986. On 4-8-1986 the applicant received a letter dated 17-7-1986 from the Inquiry Officer advising that ex-parte enquiry proceedings were held on 16 & 17th July, 1986. The applicant stated that he represented against the same vide his representation dated 17-8-1986, 20-9-1986 and 30-9-1986. He received the show cause notice dated 27-3-1987 which was replied by him on 14-4-1987 and the punishment notice dated 29-4-1988 was received by him on 9-5-1988.

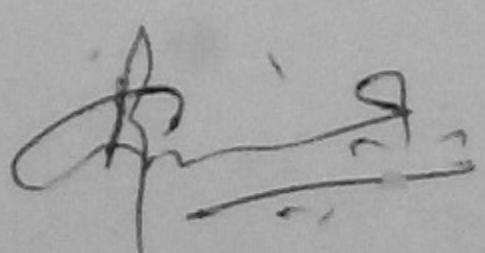
4. The applicant challenged the above order on the following grounds :-



(i) Non-supply of copies of relied upon documents and the additional documents asked for by him and conducting ex parte enquiry violating the principles of natural justice.

(ii) The action taken was based on a false incident which is alleged to have taken place on 7-7-1980. According to the applicant on 7-7-1980, while returning from Lucknow to Gorakhpur, the train was overcrowded and the applicant somehow got a seat in 1 class coach. The coach attendant, Sri B.P. Srivastava conductor and Sri R.L. Mishra, Vigilance Inspector insisted upon the applicant vacating his seat for making arrangement for Sri J.N. Tripathi, Vigilance Officer, N.E.Rly and on the applicant objecting to the request the said officials misbehaved with him and the Vigilance Officer also got annoyed with him. The applicant stated that he reported the incident to the Chief Personnel Officer sent under Postal Registration No.810 dated 16-7-1980. The applicant claimed on the above basis that the entire allegations pertaining to the incident dated 7-7-1980 were fabricated, false and prepared in a malafide manner to cause harm to the applicant.

(iii) When he has retired on 31-12-1980 and his pensionary benefits have been paid after necessary clearance certificates the respondents are estopped and precluded from initiating any disciplinary proceedings.



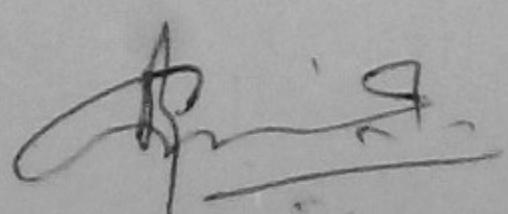
(iv) Proceedings under para 2308 could be initiated only within a specific time frame and as he had been served the charge sheet on 29-9-1984, the entire proceedings are vitiated and beyond statutory time limit.

(v) Proceedings under paragraph 2308 could be initiated only in case of any pecuniary loss to the Government. In the absence of any allegation or proof <sup>of</sup> any pecuniary loss to the Government by any action on the part of the applicant, the proceedings were without jurisdiction and illegal.

(vi) Initiation of disciplinary proceedings on a superannuated employee who has a right to property in his pensionary benefit, more so when the pensionary benefits were sanctioned after due verification/certification is illegal and violative of Articles 14 and 16 of the Constitution.

(vii) In case para 2308 of the Railway <sup>Code</sup> Establishment is interpreted so as to the institution of disciplinary proceeding against a retired employee with regard to an alleged misconduct of a date prior to his superannuation, the provision of para 2308 would be clearly arbitrary, unreasonable and violative of Articles 14, 16 and 21 of the Constitution.

(viii) His prayer for personal hearing made in the reply to the show cause notice had not been afforded, in violation of principles



of natural justice and Rly Servants( D&A) Rules, 1968.

(ix) His request for payment of Travelling Allowance and actual expenses incurred had not been decided, therefore, he could not effectively participate in the enquiry proceedings.

(x) The passenger alleged to have been carried by the applicant without ticket had not been examined. The entire action had been taken on the basis of non-substantiated and one sided evidence malafidely given by some Railway servants.

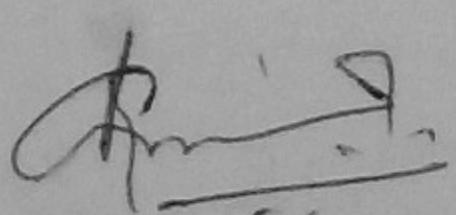
(xi) The finding recorded by the Inquiry Officer are wholly unsubstantiated by the evidence adduced before him.

(xii) The applicant was not given an opportunity to place his view points on the advice given by the Union Public Service Commission before the order was passed placing reliance on that advice and hence this action was arbitrary, unreasonable and violative of Article 14 of the constitution.

(xiii) The impugned order did not contain any reason nor any discussion nor did it mention the objections raised by the applicant in his reply to the show cause notice.

(xiv) The enquiry was conductd with reference to memorandum No. E( D&A)81/8/11-5 dated 12-1-1983 but the same was not supplied to him.

5. In view of the above the applicant sought the following reliefs:-



(i) An order of suitable nature quashing the letter No. E(D&A) 81AE 11-5 dated 15-4-1988 issued by Dy Director, Establishment (D&A), Railway Board, New Delhi.

(ii) An order of suitable nature quashing the order dated 29-4-1988 issued by the Chief Personnel Officer on behalf of the General Manager(P) N.Rly, Gorakhpur.

(iii) An order of suitable nature declaring para 2308 of the Railway Establishment Code as being violative of Articles 14 and 16 of the Constitution.

(iv) An order of suitable nature quashing the entire proceedings initiated against the applicant on the basis of the memorandum served upon the applicant on 29-9-1984.

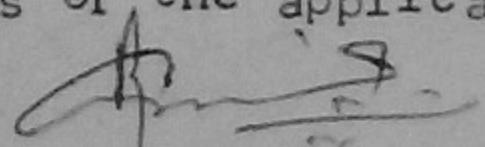
(v) An order of suitable nature commanding the respondents not to make any deduction from the petitioner's monthly pension in pursuance of the impugned order and in case any deduction so made the same to refund forthwith.

(vi) An order of suitable nature commanding the respondents to refund the applicant's expenses incurred by him in appearing before the enquiry officer.

(vii) Any other writ, order or direction as the applicant be entitled in law.

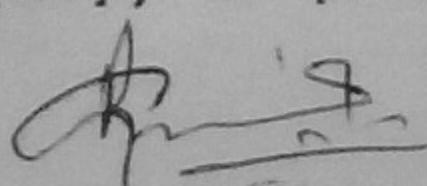
(viii) Costs may be awarded in favour of the applicant.

6. Respondents filed reply and contested the claims of the applicant. They stated that Memorandum



dated 12-1-1983 containing 4 Annexures viz. Statement of Articles of Charges, Statement of Imputations, List of Documents, and List of Witnesses alongwith order of the President according sanction for the institution of the Departmental Proceedings against the applicant was sent to the applicant on 27-1-1983 through registered post with Ack. Due at the address given by the applicant but the same was returned undelivered and that, thereafter twice in March and April, 1983, a Personnel Inspector was deputed to serve the said memorandum but the same could not be done due to the absence of the applicant at the residence. They further stated that the above papers were again sent on 27-5-1983 by Regd. Post A. D., but the same was again returned with the remark that he had gone out and having no other option the charge memorandum was published in Northern India Patrika on 15-9-1984 and copy of the same was also pasted in the notice board. They stated that after publication of the notice in the Newspaper the applicant reported on 29-9-1984 and received the same.

Regarding the conduct of the enquiry respondents gave the following details. The applicant was informed by the Inquiry Officer through letter dated 17-2-1986 sent by Registered Post A. D. that the enquiry was fixed for 3-3-1986 and since the applicant had not submitted his defence, he may do so and attend the enquiry. As applicant did not attend on 3-3-1986, next date was fixed on 7-4-1986 and intimation was sent. On 7-4-1986 enquiry proceedings were postponed to 13-5-1986 and intimation was sent by Registered Post A. D. to the applicant. On 13-5-1986, the applicant did not attend the enquiry, the proceedings were adjourned for 16th and 17th



July, 1986 and intimation was again sent to the applicant by Regd. Post A.D. When the applicant did not attend the enquiry on 16th & 17th July, 1986, the enquiry officer having no other option proceeded to finalise the same ex parte and recorded the statements of the witnesses present. However, in order to give another opportunity to the applicant, the Inquiry Officer sent the copies of the proceedings held on 16th & 17th July, 1986 along with the statement of witnesses requesting the applicant to submit his written defence and to inform his intention to cross-examine any witnesses within 15 days. On receipt of the applicant's detailed representation, the Inquiry Officer requested the applicant to attend the enquiry on 3-10-1986 and submit his defence and papers. When the applicant did not attend, the Inquiry Officer submitted his report to the competent authority on 16-11-1986. According to the respondents the allegation that the applicant was not afforded adequate opportunity during the enquiry proceedings and no information was given to him were unfounded, self-contrary and against record. They stated that the Railway Board on 27-3-1987 advised of the President's agreement with the findings and his tentative decision to withhold 50% of the Pension for a period of 10 years and asked the applicant to show cause against the decision. Respondents stated that the applicant replied on 26-5-1987 and the President after taking into account the reply submitted by the applicant, and the advice of the Union Public Service Commission decided that 50% of the Pension admissible to the applicant be withheld for a period of 5 years and the same was communicated to the applicant, vide letter dated 29-4-1988 (Annexure RA-6).

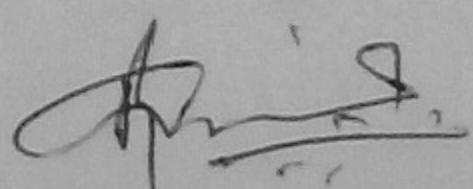


7. Respondents denied that there was any violation of Rule 2308 of R-II and averred that all actions were taken within the prescribed period. They stated that the charges levelled against the applicant amounted to serious misconduct and warranted action under the rule.

8. The applicant filed rejoinder affidavit and reiterated the contents of the OA. He stated that when the letter dated 17-2-1986 was received at his residence, the applicant was out of station with regard to his cataract operation because of which he could not attend the enquiry on 3-3-1986. He stated that he received the letter fixing 13-5-1986 for enquiry on 17-5-1986 by Regd. Post. He stated that similarly, the notice fixing 16th & 17th July, 1986 for enquiry was received by him on 19-7-1986. He also stated that alongwith letter dated 17-7-1986, he received only two sheets of papers instead of 8 sheets and he had mentioned the same in his representations dated 17-8-1986 to 30-9-1986. The applicant also referred to Section 69, 112 and 113 of the Indian Railways Act, which provide for production of Railway Ticket on demand and also for charging of without ticket passengers. It was stated that the charging of the alleged passenger under Section 113 IRA hit the allegations made in the charge sheet.

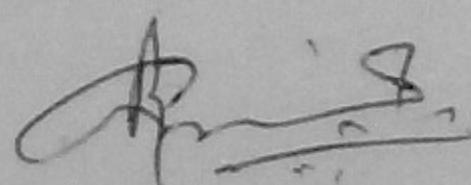
9. During the pendency of the OA, the applicant expired on 8-4-1993 and the widow of the applicant was allowed to be substituted.

10. During hearing, learned counsel for the applicant took us through the various pleadings made in the OA. He stressed on the aspect of denial of principles of natural justice first in the form of non-supply of



copies of relied upon documents and additional documents requested and secondly holding ex parte enquiry on the plea of non-attendance when the notice of the date of enquiry itself was received late by the applicant. He stated that action under Rule 2308 is to be invoked when grave misconduct was committed by the Railway Servant or pecuniary loss caused to the Government and neither condition is fulfilled in this case. Before imposition of punishment the applicant had prayed for interview in his reply to the show cause notice which had not been granted. The learned counsel argued that in the enquiry neither the alleged passenger Sri S. A. Khan nor any other passengers/persons were examined as witnesses for establishing the charges. Further he has argued that the charge sheet was served after 4 years of the alleged incident viz. 7-7-1980 on 29-8-1984 which was against the provisions of Rule 2308. The learned counsel for the applicant also argued that there was no proof that the President's sanction was obtained and the letter dated 12-1-1983 was signed by a Deputy Director of the Railway Board. Further the punishment order was signed for GM/N.E Rly and seven sheets said to have been enclosed therewith was not available.

11. Learned counsel for the respondents argued that the charge memorandum was issued after the President's sanction on 12-1-1983 and, therefore, the departmental proceedings were initiated within 4 years of 7-7-1980 the date of the incident. The learned counsel further argued that the applicant's request for copies of the relied upon documents and additional documents were considered and the applicant was given a detailed reply by the Inquiry Officer on 18/19-11-85



and again on 28-1-1986 in response the applicant's letter dated 11-12-1985. He argued that the applicant has to state as to what prejudice had been caused to him by the non-supply of documents. As regards the ex parte enquiry he took us through the pleadings in para 13 of the CA and argued that all reasonable opportunities were given to the applicant participate in the enquiry but the applicant for his own reason chose not to do so. Further, he argued that no new points can be advanced by the learned counsel for the applicant, which were not raised in the pleadings.

12. We have given careful consideration to the submissions made by the learned counsel for the parties, the rival pleadings and have perused the files pertaining to the D&A proceedings against the applicant of the N.E.Rly HQ Office submitted by the learned counsel for the respondents.

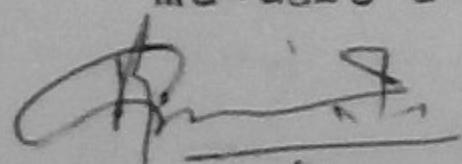
13. We find from the files that even though the alleged incident was said to have been taken place on 7-7-1980, intimation of the same for the first time was sent to the Personnel Branch by the Vigilance Branch on 7-1-1981 after retirement of the applicant on 31-12-1980. In fact the files disclose that the CPO raised this issue with the Dy CO for which it was replied that the applicant did not attend the enquiry which was being done by the vigilance organisation during the period and hence intimation was delayed. It would be expected that if an employee's presence in an enquiry being conducted by the vigilance was essential and the concerned employee was trying to evade, the same, the controlling officer of the said employee would have been approached.



But this was not done in this case. It is also revealed from the files that no any additional information was included in the final vigilance enquiry report which was not available with them immediately after the alleged incident on 7-7-1980.

14. The charge memorandum after sanction was issued on 12-1-1983 and the respondents sent the same through registered post AD on 27-1-1983, through Personnel Inspectors in March and April, 1983 and again through registered post A.D on 27-5-1983, when the same was also returned undelivered, the publication in the news papers was done on 15-9-1984, pasting it in the notice board also. This is after more than four years of the alleged incident on 7-7-1980. But as per Rule 2308, a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the Railway Servant. In the present case, the charge sheet was issued on 12-1-1983 but it could not be served till 29-9-1994. The date of service of the charge sheet cannot be taken to be the date of issue of the charge sheet, when necessary attempts were made to serve the same as early as possible.

15. We find from the pleadings that the applicant after receipt of the charge memorandum had requested for supply of copies of relied upon documents and additional documents. By a letter dated 18/19-11-1985 he was given a reply by the Inquiry Officer in which it had been stated that he may attend the GM(Vig) Office and take copies of the relied upon documents. It was also mentioned that all the other documents asked for as 'not relevant' or "are available in codes and manuals and the applicant was asked to get the same."

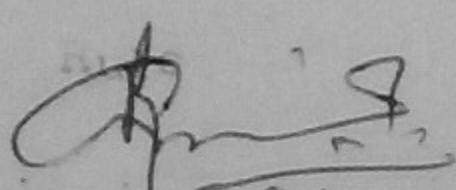


we find from the reply that the Inquiry Officer failed to appreciate that he was dealing with a retired railway employee and it would be difficult for him to get access to railway codes and manuals even if they are published documents. We further find that when the applicant again approached the Inquiry Officer by his letter dated 11-12-1985 for supply of the documents stating that the relevance of the documents had to be seen from the defence point of view and that he may be supplied with the copies of the documents relied upon as he was suffering from eye problem. the reply given by the Inquiry Officer vide his letter dated 28-1-1986 was relying more on technicalities rather than by application of mind. In fact the last para of this letter would give an indication of the Inquiry Officer's thinking on the subject.

"From your application under reference, it is evident that you are only applying the delaying tactics avoiding forcing the enquiry. You are requested to submit your defence if any, to the undersigned and also nominate your defence counsel as per extant rules and arrange your presence before the enquiry officer on the date fixed by him so that the case may be finalised by the enquiry officer early."

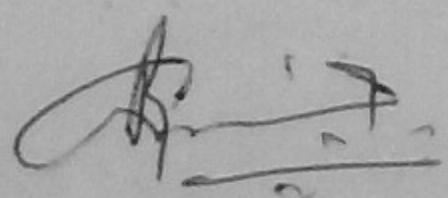
16. We are unable to appreciate as to why the respondents insisted on the applicant perusing the documents and taking extract in the office. The applicant stated that he had eye problem even then copies of the relied upon documents had not been given which were also not very bulky, for more than one year.

17. According to the note under subrule(8) under



Rule 9 of Railway Servants (D&A) Rules, 1968, if the Railway Servant applies in writing, for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule(6), the disciplinary authority shall furnish him with a copy of each such statement as early as possible and in any case not later than 3 days before the commencement of the examination of the witnesses on behalf of the disciplinary authority. Even with this express provision of the rules, copies of relied upon documents were not given. Further the additional documents demanded with brief indication of their relevance had also been rejected by the enquiry officer stating that each of them as 'not relevant'. The advice regarding conducting enquiry had also been received late by the applicant. In any case the intention to hold ex parte enquiry by way of notice had not been given to the applicant. In the above backdrop if we apply the test "all things taken together whether the delinquent officer/employee had or did not have a fair hearing" as laid down by the Hon'ble Supreme Court in State Bank of Patiala Vs. S.K. Sharma reported in (1996) 3 SCC 364, we come to the conclusion in the negative in that the applicant did not get a reasonable opportunity to defend himself perhaps because of some mention in some report that the without ticket passenger was allegedly the applicant's son.

18. Next point raised by the learned counsel for the applicant was the need for application of Rule 2308 R II in the case. According to this rule, "The President further reserves to himself the right of withholding or withdrawing a pension or any part of it,

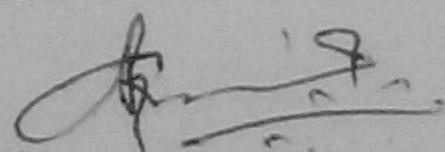


whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement."

19. As per the various statements of the witnesses in this enquiry, the monetary loss incurred by the Railway in this case is Rs. 71 and this cannot be stated to have taken place by the action of the applicant in the due performance of his duties. Moreover, this money had been collected by the EFT. In view of the above we are of the view that this is not a case where action under Rule 2308 was called for.

20. The applicant had stated that he did not receive the Railway Board's order imposing the punishment. From a perusal of the file, even though we found that a letter dated 15-4-1988 of Railway Board, was available, we did not find an order of the President duly authenticated by an officer imposing the punishment of withholding 50% of the pension for a period of 5 years. In any case such an order was not issued to the applicant. While we do not accept the learned counsel for the applicant's plea that the President himself should sign the orders, authenticated order duly signed by the competent officer is necessary as the same are governed by the rules made under Article 77 of the Constitution.

21. As regards the payment of Travelling allowance bills are concerned neither any specific amount is mentioned nor any rule under which the same are payable had been stated.



22. In the result the OA is allowed in part as follows :-

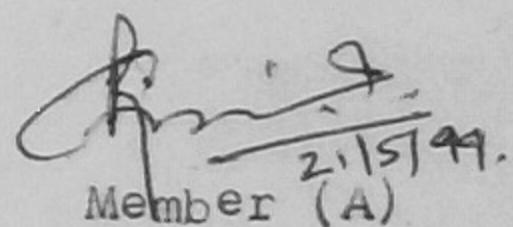
(i) General Manager (P) 'N.E. Rly, Gorakhpur's letter No. E/74/14/144(Con)/Loose dt. 29-4-88

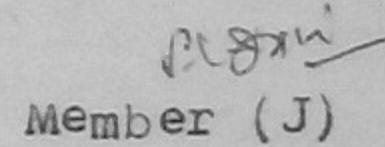
(Annexure-RA-6) and Dy Director, Est, Railway Board, New Delhi's letter No. E(D) & A) 81 AE 11-5 dated 15-4-88 are set aside.

(ii) The proceedings initiated against the applicant on the basis of the memorandum served upon the applicant on 29-9-1984 are quashed.

(iii) Respondents are directed to restore the pension of the applicant to its full value from the date it was denied and make payment of arrears thereof within a period of three months from the date of receipt of the copy of this order.

(iv) No order as to costs.

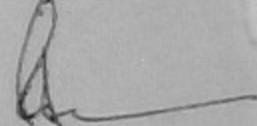
  
Member (A) 21/5/99

  
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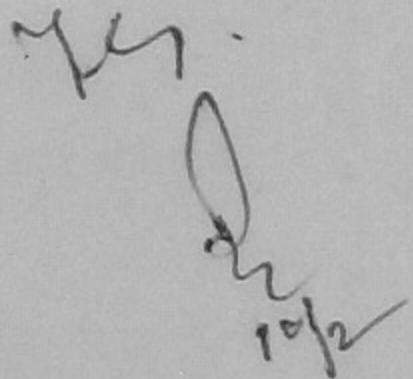
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Recently when I perused this case for writing the Judgment I found that Sri Ashok Khare represented the applicant now deceased and substituted by his legal heirs and the pleadings were drafted by him. Although, at the time of hearing Sri A.K. Sinha represented the substituted applicants, I did not realise that Sri Ashok Khare was a counsel from 'B' file. I do not consider it proper that a bench of which I am a member should deliver judgment in this case. If you ~~do~~ agree, it may be <sup>rehearing and</sup> listed before another Bench for re-hearing in which I am not a member, and the ~~above~~ following order in the order sheet may be recorded:-

\* This bench had reserved the Judgment in this case on 7.8.96 after hearing the counsels. This bench releases this case for re-hearing because of re: personal nature express by one of us (Mr. S. Dayal)

  
(S. Dayal)  
Member-A

Dr. R.K. Saxena, JM

  
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