

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH CUTTACK

Original Applications Nos. 333/92, 334/92 & 336/92

Date of Delicision: - 24.6.94.

B.J. Henry

**Applicant(s)**

## Versus

IN OA334/92

Padinayakan

**Applicant(s)**

## Versus

Union of India and others Respondent(s)

IN OA 336/92

Trinath Panda

**Applicant(s)**

## Versus

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Ans*
2. Whether it be circulated to all the Benches of the *ND* Central Administrative Tribunals or not ?

**VICE-CHAIRMAN**

KAU  
- 24.6.94

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH CUTTACK

Original Application Nos 333/92, 334/92 & 336/92

Date of Decision: 24.6.94.

IN O.A.No.333/92

B.J. Henry

Applicant

Versus

Union of India & Others Respondents

IN O.A.No.334/92

P.A dinarayan

Applicant

Vs.

Union of India & Others Respondents

IN O.A.No.336/92

Trinath Panda

Applicant

Versus

Union of India & Others Respondents

IN ALL THE OAS

For the applicant (s)

M/s. Devanand Mishra  
Deepak Mishra  
A. Deo, B.S. Tripathy,  
Advocates

IN ALL THE OAS

For the respondents

Mr. B. Pal,  
Sr. Standing Counsel  
(Railway Administration)

C O R A M:

THE HONOURABLE MR.K.P. ACHARYA, VICE - CHAIRMAN

JUDGMENT

MR.K.P.ACHARYA, VICE-CHAIRMAN: Petitioners, in all the above three applications were railway employees serving under the South Eastern Railway in different capacities. Allegations against the petitioners <sup>now</sup> were that they had joined the strike and behaved in a manner which was unbecoming on the part of the Government servants and thereby having misconducted themselves; for which proceeding under Rule 14 (2) of the Railway Servants Disciplinary (Appeal) Rules 1968 was



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initiated against each of them along with many others and ultimately the petitioners along with others were removed from service resulting from the disciplinary proceedings in which the regular enquiry was dispensed with on the basis of the principles laid down by the Supreme Court in the cases of Tulsiram Patel and Satyabir Singh. The petitioners along with others, who were similarly circumstanced had invoked the jurisdiction of the High Court of Calcutta under Article 226 of the Constitution praying before the High Court to quash the order of punishment; and ultimately the High Court of Calcutta disposed of all the applications by directing the petitioners and others to exhaust their remedies by filing an appeal before the departmental authorities. The petitioners along with others moved their appellate authority and ~~in~~ it the appellate authority upheld the order of punishment and thereafter the petitioners along with others moved this Bench by filing applications under Section 19 of the Administrative Tribunals Act, 1985. The applications of the present petitioners formed subject matter of Original Application Nos. 58/89, 60/89 and 62/89 respectively which were disposed of on 27.7.1990 by this Bench. This Bench quashed the order of punishment imposed on the petitioners in all the three applications referred to above. The Bench observed that since on the date of removal of the petitioners from service till the date of judgment, which was about nine years, the petitioners did not admittedly perform

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any work in the Railways, the above mentioned period be treated as "dies non".

Incidentally it may be mentioned that the Calcutta High Court, while passing an interim order in the cases of all these petitioners and others similarly circumstanced directed that the petitioners ~~be paid~~ some equivalent to their pay and other benefits in the meantime and accordingly in obedience to the directions given by the Calcutta High Court, the Railway Administration had paid certain amount of money during the period in question not only to these three petitioners, but others who were similarly circumstanced and had invoked the jurisdiction of the Calcutta High Court and had been enjoying the fruits of the said interim orders.



2. After the judgments were passed in O.A Nos. 58/89, 60/89 and 62/89 by this Bench holding that the period in question should be treated as "dies non", the opposite parties had issued notices to the petitioners, M/s. B.J. Henry in O.A. 333/92 for recovery of Rs. 33,183.98 and P. Adinarayan and Trinath Panda (petitioners in O.A 334/92 Rs. 62,11.30 and <sup>respectively</sup> 336/92 respectively) for realising Rs. 62,193.18, from each of these two petitioners as the period for which payment was made have been ordered to be treated as "dies non" by this Bench. Hence the petitioners in all the three applications have invoked the jurisdiction of this Bench praying to quash the order passed by the competent authority for realisation of the above mentioned amount.

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3. In their counter the opposite parties maintain that the opposite parties had no option in the matter to exercise their discretion in favour of petitioners in all the three cases as they were bound to carry out the directions of this Bench passed in the aforesaid applications and since the Bench had held the period in question to be treated as "dies non", the amount drawn by all the petitioners to the extent mentioned above has to be realised from them, and accordingly, the competent authority rightly issued notices to the petitioners which should not be unsettled - rather it should be sustained. In a crux it is maintained that the case being devoid of merit is liable to be dismissed.

4. In all the above mentioned three cases, we have heard Mr. Deepak Mishra, learned Counsel for the petitioners and Mr. B. Pal, learned Senior Standing Counsel appearing for the Railway Administration which were heard one after the other. Since in all the above mentioned three cases, common questions of fact and law involved, it is directed that this common judgment will govern all the three cases mentioned above.

5. The admitted facts are as follows :

- 1) The Disciplinary proceeding was initiated against all the three petitioners and many other railway employees for having unauthorisedly absented themselves from duty;
- 2) The petitioners along with many others who had ~~been~~ absented themselves unauthorisedly from duty were punished which had resulted from a disciplinary enquiry initiated against these petitioners and others.

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3) The petitioners and those others who had been similarly circumstanced had moved the Hon'ble Calcutta High Court to quash the order of punishment and in the cases of all the petitioners including the three petitioners, now before us, had been directed to file an appeal before their departmental authorities and that the appellate authority sustained the order of conviction and the quantum of penalty.

4) All the three present petitioners along with those others who had been similarly circumstanced had filed separate applications before this Bench to quash the order of punishment imposed on them, and the Bench, while disposing of the applications of all the petitioners ~~except his petition~~ quashed the order of punishment ~~without~~ an observation that their period of remaining out of service should be treated as "dies non", whereas a Bench constituted by different Members, while disposing of the original applications filed by the present petitioners viz., M/s.B.J.Henry, P.Adinarayan and T.Panda (petitioners in OA No.58,60 and 62/89) had held that the period in question in respect of these three petitioners should be treated as dies non, and therefore, the above mentioned amount is sought to be realised from the present petitioners in these three applications.

6. It was submitted by Mr.Deepak Mishra, learned counsel for the petitioners that all the three petitioners have since retired on superannuation and since all these three petitioners have been similarly circumstanced like their colleagues, who have been exonerated from the charges and are not required to pay back a single copper out of the money drawn by them in pursuant to the directions of the Calcutta High Court, the present petitioners should not be saddled with this heavy financial burden which would not only be discriminatory between these petitioners and those others similarly circumstanced, but this order of the administrative authority for realising the said amount

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would be a hard punishment over these three petitioners, especially, keeping in view that they have all retired on superannuation and would sustain their livelihood on the paltry amount of pension which they would draw. Hence it was further submitted by Mr. Mishra that the impugned order containing realisation of the above mentioned amount from each of these petitioners should be quashed, at least from the point of view of principles of natural and to be substantial justice meant out to the present petitioners should be kept in par with those others similarly circumstanced in regard to their punishment resulting from the disciplinary enquiry. On the other hand it was submitted by Mr. B. Pal, learned Sr. Standing Counsel that the administrative authority had no option in the matter but to carryout the directions of this Bench holding that the period in question in respect of the present petitioners should be treated as "dies non" and since the days or months for which they have drawn their emoluments are held to be non-existent in the cases of these three petitioners, they are, therefore, not entitled to any emoluments and it was further submitted by Mr. Pal that this Bench is not sitting as an appellate authority over the Bench which disposed of the above mentioned original applications preferred by these three petitioners, and therefore, this Bench is bound by the directions given by the previous Bench while disposing of the said original applications, and therefore, it was finally contended by Mr. Pal that the impugned order is legal, justified



and hence those impugned orders should not be quashed - rather they should be sustained.

7. We have given our anxious consideration to the arguments advanced at the Bar. At paragraph 3 of the counter, the opposite parties have quoted the order passed by the Calcutta High Court which runs thus :

"....There will be an interim order to the effect that the petitioner is restrained from going to railway office including the union office. The respondents are restrained from giving any further effect to the impugned order which is Annexure-A to the writ petition. The petitioner is further restrained from joining his duties or going to his place of work till the disposal of the rule. The petitioner will be entitled to get such equivalent to his pay and other benefits in the meantime".

From the above quoted order passed by the High Court of Calcutta it is patently clear that learned Judge was conscious that the petitioners are being paid some money without rendering any service. Therefore intention of the learned judge was not to grant any pay for particular days or months but if was by way of compensatory allowance equivalent to their pay for sustenance of livelihood. Therefore, in our considered view it could be very well said that the petitioners have not been given any pay for the days of their absence from duty, but it is by way of compensation to sustain their livelihood.

8. Another striking feature which cannot go un-noticed in all the three cases is that this order of the High Court of Calcutta was not brought to the notice of the Bench which disposed of the original applications of these petitioners holding that the period in question should be treated as dies non. Had this order of Calcutta

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High Court been brought to the notice of the Bench by either parties, we very much believe to ourselves that the Bench might have taken a different view, especially considering that employees similarly circumstanced have not been made to face such harsh punishment. As has been rightly contended by Mr.B.Pal that this Bench cannot sit over the judgment of a Bench which had disposed of above mentioned original applications, similarly the Bench while disposing of original applications of the present petitioners cannot and could not have the powers to sit over the order/judgment passed by the Calcutta High Court. Therefore, contradictory orders cannot remain on the field passed by two different benches viz. Calcutta High Court and Cuttack Bench of C.A.T. in respect of a matter, particularly as to how the period in question has to be treated. Therefore, keeping in view the above mentioned facts, viz., these three petitioners being discriminated with other employees of the railway administration, who had been similarly circumstanced and keeping in view the fact that all these three petitioners have retired on superannuation and would completely depend upon the paltry amount of pension that has to be given to them by the Government, and that the interim order passed by the Calcutta High Court amounts to payment of certain money by way of compensation, we do hereby quash the order passed by the competent authority ordering realisation of Rs.33,183.98 from Shri B.J.Henry, petitioner, in  
 O.A. No.333/94, Rs.62,111.30 from Shri P.Adinarayan,



petitioner in OA 334/92 and Rs.62,193.18 from Shri T.Panda, petitioner in OA 336/92 and I hold that the petitioners are not liable to pay back anything to the Railway Administration. Thus all the applications stand allowed leaving the parties to bear their own costs.

*.....* 24.6.94  
VICE-CHAIRMAN



Central Administrative Tribunal  
Cuttack Bench Cuttack  
dated the 24.6.1994/B.K. Sahoo