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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NOS. 42, 628, 651 & 652 OF 1992

Cuttack, this the 24th day of April, 1995

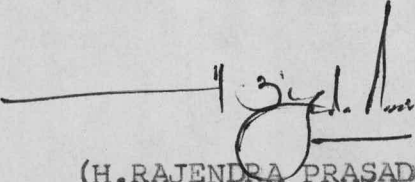
Sri Mahendra Lal Karmakar (In OA 42/92)
Sri N.Redden (In OA 628/92)
Sri P.Yarrayya (In OA 651/92)
Sri A.K.Dutta (In OA 652/92) ... Applicants.

-versus-

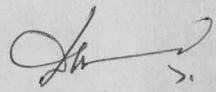
Union of India & others (In all cases)
... Respondents.

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters
or not? *yes.*
- 2) Whether it be circulated to all the Benches
of the Central Administrative Tribunal
or not? *yes*


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

24 APR 95


(D.P. HIREMATH)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NOS.42, 628,651 & 652 OF 1992

Cuttack, this the 24th day of April,1995

In OA 42/92

Sri Mahendra Lal Karmakar,
s/o late Narayan Chandra Karmakar,
working as E.S.M.Grade-I, S.E.Rly.,
At/P.O-Kharsua, Bilaspur Division,
Dist: Raigarh, Madhya Pradesh ... Applicant.

By the Advocate - M/s C.M.K.Murty &
S.Kr.Rath.

-versus-

1. Union of India,
represented through the
General Manager,
South Eastern Railway,
Garden Reach,
Calcutta-43.
2. The Divisional Railway Manager,
South Eastern Railway, Khurda Road,
P.O-Jatni, Dist.Puri.
3. Divisional Railway Manager, S.E.Rly.,
At/P.O: Bilaspur, Dist.Raigarh,
Madhya Pradesh.
4. Divisional Personnel Officer,
S.E.Rly., Khurda Road, Post:Jatni
Dist.Puri. ... Respondents.

By the Advocates - M/s Bijay Pal &
O.N.Ghosh.

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In OA 628/92

Sri N.Redden,
s/o late V.M.Redden,
Bachara Colony, P.O: Jatni, Dist.Puri,
now working as Shedman, S.E.Rly.,
At: Khurda Road, P.O:Jatni, Dist.Puri ... Applicant.

By the Advocates - M/s C.M.K.Murty &
S.Kr.Rath.

-versus-

By the Advocates - M/s B.Pal &
O.N.Ghosh.

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Sri P.Yarrayya, aged 56 years,
s/o late P.Ramanna, C/o.Locoforeman Office,
S.E.Railway,Bilaspur,P.O-Bilaspur,
Dist.Bilaspur,Dist.Bilaspur,M.P. ... Applicant.

By the Advocates - M/s C.M.K.Murty &
S.Kr.Rath.

-versus-

1. Union of India,
represented through
the General Manager,
S.E.Railway, Garden Reach,
Calcutta-43.
2. The Divisional Railway Manager,
S.E.Railway, Khurda Road,
P.O.-Jatni, Dist.Puri.

3. Divisional Railway Manager,
S.E.Railway, At/P.O-Bilaspur,
Dist.Raigarh, M.P.
4. Divisional Personnel Officer,
S.E.Railway, Khurda Road,
P.O.Jatni, Dist.Puri ... Respondents.

By the Advocate - Mr.R.C.Rath

...

In O.A. 652/92

Sri A.K.Dutta,
son of late Kanhai Lal Dutta,
working as Driver(Goods),
Locomandendragarh,
P.O.Manendragurh,
District-Sarguja,
M.P. Applicant

By the Advocates - M/SC.M.K.Murty &
S.Kr.Rath.

-versus-

1. Union of India,
represented through the
General Manager,
South Eastern Railway,
Garden Reach,
Calcutta-43.
2. The Divisional Railway Manager,
South Eastern Railway, Khurda Road,
P.O-Jatni, Dist.Puri.
3. Divisional Railway Manager, S.E.Rly.,
At/P.O-Bilaspur, Dist.Raigarh, M.P.
4. Divisional Personnel Officer,
S.E.Railway, Khurda Road, P.O-Jatni,
Dist.Puri Respondents

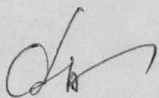
By the Advocate - Mr.Ashok Mohanty.

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O R D E R

D.P.HIREMATH, VICE-CHAIRMAN

In all these cases a common question arises, namely, whether the amount paid by the respondents to the respective applicant in each of the cases as compensatory allowance for the period during which the matters were pending before the Calcutta High Court, i.e. between January 1981 and July 1985, could be recovered by the respondents on the ground that this Tribunal while disposing of the Original Applications of similarly situated applicants before this Tribunal, directed their reinstatement but with a rider that the period of absence between the date of dismissal and the date of reinstatement should be treated as dies non. The facts of the cases are brief and simple. These applicants and a large number of workmen were dismissed from service for having participated in the general railway strike in the year 1981. The Calcutta High Court before which petitions by some of the employees came to be filed in its writ jurisdiction challenging the orders of dismissal, made an interim order that



the petitioners before it would be entitled to get sum equivalent to their pay and other benefits in the meantime. Ultimately a direction was made, while disposing of the petitions, to approach the jurisdictional Tribunal for necessary relief. Accordingly these applicants and others filed Original Applications and in the course of its orders, this Tribunal directed that the applicants be reinstated in service forthwith and the period from the date of termination till the date of reinstatement should be treated as dies non.

2. In pursuance of this order, the amounts paid to these applicants and others were sought to be recovered by the respondents. Some of the workmen approached this Tribunal in O.A.Nos.333,334 and 336 of 1992 (decided on 24.6.1994) challenging the jurisdiction of the respondents to recover the amounts already paid as compensatory allowance. In the course of the order, the learned Vice-Chairman, who disposed of the Applications, referring to the order of the Calcutta High Court as well as the order of this Tribunal treating the period of absence as dies non, reasoned as follows:

"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 it 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."

So saying the Tribunal held that the petitioners are not liable to pay back anything to the Railway Administration and accordingly allowed the applications.

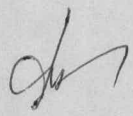
3. The applicants herein are similarly situated and out of the four applicants, two of them have retired and huge amounts ranging upto Rs.56,000/- were sought to be recovered from the applicants.

It may be stated that for a period of four years during the pendency of the writ petitions before the Calcutta High Court payments were made to these applicants for sustenance of their livelihood, as directed by the Calcutta High Court. It is undisputed that this order of the Tribunal rendered on 24.6.1994 has remained unchallenged and has been in force.

The learned counsel for the respondents urged that the order of this Tribunal treating the period

of absence from duty as dies non should be looked into. But it is noteworthy that the Supreme Court, while considering the relief to be given to some other employees before them with regard to the period of absence from duty between the date of dismissal and the date of reinstatement, made the following observations in the case of Union of India & others v. R.Reddappa & another (1993 Vol.III SVLR (L) 67):

"But the rationale behind this decision of the Government is to atone the injustice done to these employees. It has not been found by any tribunal that the orders passed against the respondents was in any manner justified. In other words, the exercise of power was arbitrary. If this be so as is apparent then there can be no justification for denying the benefit to employees. Technical arguments apart once this Court is satisfied that the participants in the strike were unjustly treated the Court is not only competent but has no obligation to act in a manner which may be just and fair. Keeping this in light we issue following directions:


- (i) Employees who were dismissed under Rule 14(2) for having participated in the Loco Staff strike of 1981 shall be restored to their respective post within a period of three months from today.
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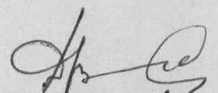
(ii) (a) Since more than three years have elapsed from the date the orders were found to be bad on merits by one of the tribunal it is just and fair to direct the appellant to pay the employees compensation equivalent to three years salary inclusive of dearness allowance calculated on the scale of pay prevalent in the year the judgment was delivered, that is, in 1990.

(b) This benefit shall be available even to those employees who have retired from service. In those cases where the employees are dead the compensation shall be paid to their dependents. The compensation shall be calculated on the scale prevalent three years immediately before the date of retirement or death. "

If this was the view taken by the Supreme Court on the ground that the dismissal of the employees who had approached the Supreme Court was not justified, and they also directed payment of their salary for the period during which they were kept out of work, then we find no justification in the respondents now taking steps to recover the amounts already paid to these applicants in pursuance of the Calcutta High Court's order. We find no grounds to differ ^{from} ~~with~~ the learned Single Judge who disposed of the other applications (O.A.Nos.333, 334 and 336 of 1992) and that again is a precedent for this Tribunal when

these matters came before us for disposal.
Accordingly, allowing these applications, we
direct that the respondents are restrained
from recovering any amount that remains to be
recovered from any of the applicants.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)


(D. P. HIREMATH)
VICE-CHAIRMAN

24 APR 95

A. Nayak, P.S.