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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 511 OF 1996
Cuttack, this the 22nd day of June, 2001

Maheswar Rout ....Applicant

Vrs.

Government of India and others ... 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? No.

22.6.2001

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
22.6.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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ORIGINAL APPLICATION NO. 511 OF 1996
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Maheswar Rout, aged about 58 years, son of Dambarudhar Rout, Village-Mahadiha, P.O-Belpara, District-Dhenkanal, at present Trolley Man, P.W.I, Jharsuguda, District-Jharsuguda

.... Applicant

Advocates for applicant - M/s Satyabadi Das
R.N.Acharya
S.B.Mohanty

Vrs.

1. Government of India, through Secretary, Railway Department, New Delhi.

2. The Senior Divisional Engineer, South Eastern Railway, Chakradharpur, Bihar.

3. The Assistant Engineer, South Eastern Railway, Chainbasa, Singhbhumi, Bihar.

4. The Assistant Engineer, South Eastern Railway, Jharsuguda,Orissa

.... Respondents

Advocates for respondents-M/s R.Sikdar
A.Sikdar
S.Ghosh

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for quashing the proceeding and the chargesheet issued against him in memo dated 13.9.1995 (Annexure-4). The second prayer is for quashing the order of punishment dated 23.2.2000 (Annexure-10) removing him from service with effect from the date of receipt of punishment notice.

SSm.

2.The case of the applicant is that he was initially appointed as Gangman in the Railways on 1.8.1962 and he was

subsequently promoted to the post of Trolley Man and posted at Chainbasa, Bihar, under Assistant Engineer, Chainbasa (respondent no.3). While he was working at Chainbasa, on 24.4.1984 some anti-social elements attacked the Railway employees with deadly weapons and assaulted many of them. Law and order authorities intervened in the matter and investigation was conducted in presence of the applicant who was an eye witness to the occurrence and who subsequently identified the criminals who had attacked the Railway employees. These anti-social elements thereupon tried to terrorise the applicant and his family members with a view to pressurise him not to give evidence before the police authority. The applicant has stated that local Railway authorities advised the applicant to avail leave till return of normalcy and the applicant submitted leave application and left Chainbasa with his family members. Thereafter the applicant requested the Railway authorities to transfer him to any other place for safety of self and his family. Accordingly, he was transferred to Jharsuguda as a Trolley Man in order dated 1.9.1984 enclosed by the respondents at Annexure-R/1. The applicant has stated that he joined at Jharsuguda by complying withthe above order. The applicant thereafter requested the authorities at Chainbasa to send his relieve order. But he was advised by the said authorities that no relieve order is necessary as the transfer order has been made in the interest of Railway staff. The applicant has stated that he submitted his joining report before P.W.I., Jharsuguda (respondent no.4). But because of absence of the relieve order from Chainbasa, he was not allowed to continue at Jharsuguda. The applicant thereasfter continued at Jharsuguda and submitted his leave applications from time to time. But without taking any action on those, in order

dated 1.12.1992 (Annexure-1) departmental proceedings were initiated against him by Assistant Engineer, Chakradharpur for his continued absence from duties from "24.7.74". The applicant has stated that he submitted a representation to supply him certain documents, but those documents were not supplied to him. He submitted an explanation dated 16.3.1993 (Annexure-2) praying that he may be exonerated of the charges. The applicant has stated that the Railway authorities considering the explanation dropped the charges in order dated 9.8.1995 (Annexure-3). Again in the impugned order dated 13.9.1995 (Annexure-4) draft charges were issued against him for his unauthorised absence from 24.8.1984 till date. The applicant submitted a memo dated 26.10.1995 at Annexure-5 praying for dropping of the charges at Annexure-4. It is further stated that once the first chargesheet has been dropped, the second chargesheet on the selfsame ground is not maintainable. it is alsostated that the applicant was directed by respondent no.3 to attend the enquiry on 8.7.1998 at Chainbasa where he was working. The applicant has stated that he has all along submitted to the Railway authorities that it is not possible for him to proceed to Chainbasa because of danger to his life. It is further stated that in the absence of the applicant, the inquiring officer completed the enquiry ex parte and held the applicant guilty. On receiving the said enquiry report he submitted an explanation which was not taken note of and the impugned order of punishment dated 23.2.2000 (Annexure-1) removing him from service from the date of receipt of punishment notice was issued. He has further stated that he retired from service on 1.7.1998 and the punishment order has been issued long after he has retired. On the above grounds he has come up in this petition with the prayers referred to earlier.

3. Respondents have filed counter opposing the prayer of the applicant, and the applicant has filed rejoinder. It is not necessary to record the averments made by the respondents in their counter and the applicant in his rejoinder as these would be referred to while considering the submissions made by the learned counsel of both sides.

4. We have heard Shri S.Das, the learned counsel for the petitioner and Mrs. R.Sikdar, the learned panel counsel (Railway) for the respondents. The learned counsel for the petitioner and the learned panel counsel (Railway) have filed notes of arguments along with memo of citations. These have been perused. We have also gone through the decisions relied upon by the learned counsel for the petitioner and these will be referred to while considering the submissions made by both sides.

5. Before proceeding further it has to be noted that in a disciplinary proceeding the Tribunal does not act as an appellate authority and cannot substitute its finding in place of the finding arrived at by the inquiring officer and the disciplinary authority, by re-evaluating the evidence. The Tribunal can interfere if there has been violation of principles of natural justice and denial of reasonable opportunity or if the findings are based on no evidence or are patently perverse. The submissions made by the learned counsel for the petitioner in support of the prayers made in the O.A. have to be considered in the context of the above well settled position of law.

6. The first point urged by the learned counsel for the petitioner that the Tribunal had granted stay of the disciplinary proceedings. But notwithstanding this the enquiry was conducted and punishment imposed, and therefore the findings of the inquiring officer and the punishment order are prima facie void. On a reference to the record we find that in the O.A. which was subsequently amended by the petitioner, he had prayed for staying

the departmental proceedings initiated on 13.9.1995. In order dated 23.12.1996 the Tribunal noted that the learned counsel for the petitioner prayed that by way of interim relief the departmental proceeding may be stayed till 8.1.1997. Accordingly, the Tribunal in their order dated 23.12.1996 stayed the departmental proceedings till 8.1.1997. On 8.1.1997 the Tribunal directed that the matter should be taken up for hearing on 14.1.1997 and the interim order was continued till 14.1.1997. On 14.1.1997 and thereafter the interim order was not continued and in view of this it cannot be said that there was an order staying the departmental proceedings beyond 14.1.1997. As a matter of fact the departmental proceeding was stayed for the period from 23.12.1996 to 14.1.1997. It cannot, therefore, be said that the enquiry report submitted on 4.8.1998 and the punishment order issued on 23.2.2000 were issued while the interim order of stay was continuing. This contention of the learned counsel for the petitioner is, therefore, held to be without any merit and is rejected.

7. The second contention of the learned counsel for the petitioner is that initially the chargesheet was issued against the applicant for his unauthorised absence from 24.7.1974 till the date of issue of chargesheet on 1.12.1992. This is at Annexure-1. The applicant submitted his explanation dated 16.3.1993 at Annexure-2 mentioning about threat to self and his family members and prayed for dropping the charges. In the order dated 9.8.1995 the charges were dropped. The applicant has stated that since the charges were dropped after considering his explanation, it was not open for the disciplinary authority to issue fresh chargesheet in order dated 13.9.1995 on the same ground of unauthorised absence. In support of his contention the

learned counsel for the petitioner has relied on the decision of the Hon'ble High Court of Madras in the case of A.Palani v. Union of India and others, 1993 Lab.I.C. 2353. In that case the writ petitioner before the Hon'ble High Court was exonerated of the charges in a disciplinary proceeding. The Hon'ble High Court held that subsequent disciplinary proceeding on the same cause of action is not permissible. The respondents have pointed out that the applicant actually remained on unauthorised absence from 24.8.1984. But because of a clerical mistake, P.W.I., Chainbasa, reported the applicant's unauthorised absence from24.7.1974 instead of 24.8.1984. That is why in the chargesheet issued on 1.12.1992 unauthorised absence with effect from24.7.1974 was mentioned by mistake. After the mistake was detected, in letter dated 9.8.1995 k(Annexure-5) it was clearly mentioned that major penalty chargesheet is improper and the case is dropped and a fresh D & A case for major penalty is being processed against the applicant. The applicant was informed of this in letter dated 9.8.1995, enclosed by the applicant himself at Annexure-3. From this it is clear that in the first departmental proceeding there was no enquiry. It is also case of none of the parties that the applicant was on unauthorised absence from 24.7.1974. Because of a clerical error this was mentioned in the original chargesheet. Later in the fresh chargesheet issued on 13.9.1995 the correct date of 24.8.1984 has been mentioned. It cannot therefore be said that the applicant was exonerated of the charges alleged against him in the first chargesheet dated 1.12.1992 and therefore a fresh chargesheet on the same ground could not have been legally issued. The first chargesheet was cancelled because of a clerical and typographical error and the second chargesheet indicating the correct date from which the applicant was allegedly on unauthorised absence was issued on 13.9.1995. In view of this,

the contention of the applicant that the second chargesheet has been issued after the applicant has been exonerated of the same charge in the first chargesheet is held to be without any merit and is rejected.

8. The third ground urged by the learned counsel for the petitioner is that the applicant retired on superannuation on 1.7.1998, but even thereafter the departmental proceedings were continued and ultimately the punishment order issued on 23.2.2000 which is illegal. In support of his contention, the learned counsel for the petitioner has relied on the case of Bhagirathi Jena v.Board of Directors, Orissa State Financial Corporation, AIR 1999 SC 1841. In that case the Hon'ble Supreme Court did not hold that the departmental proceedings cannot be continued after superannuation. The point decided in that decision was the legality of deduction from the provident fund and the Hon'ble Supreme Court held that in the absence of any specific provision in the Regulations, deduction from the provident fund is not permissible. This decision does not in any way support the point made by the applicant. Moreover, the applicant did not actually retire on 1.7.1998. The respondents have pointed out that originally the age of retirement was on attaining 58 years of age and according to this, the applicant was due to retire on 1.7.1998. But before that the age of superannuation was fixed at 60 years and therefore the applicant was due to retire in July 2000. In view of this, the contention of the learned counsel for the petitioner that the punishment order was issued to the applicant after his superannuation is held to be without any merit and is rejected.

9. The fourth point urged by the learned counsel for the petitioner is that even granting for the sake of argument that the applicant was on unauthorised absence from 24.8.1984,

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the proceeding was initiated originally in December 1992, i.e., after a lapse of eight years, and the second chargesheet was issued in September 1995, i.e.,a fter a lapse of 11 years. It is submitted that on the ground of delay in initiation of departmental proceeding the chargesheet and the subsequent action taken thereon should be quashed. In support of his contention, the learned counsel for the petitioner has relied on the decision of the Hon'ble High Court of Orissa in the case of Bhaktaram Purohit v. Chief Engineer,Orissa State Electricity Board, 1996(1) OLR 369, and the decision of the Hon'ble Supreme Court in the case of State of Andhra Pradesh v. N.Radhakrishnan, AIR 1998 SC 1833. In **Bhaktaram Purohit's case (supra)** their Lordships have held that disciplinary proceedings initiated against an employee are to be concluded with reasonable diligence and within a reasonable period of time. If this is not observed, the employer would thereby put the employee in distress for indefinite period. This may amount to mala fide intention and arbitrariness. In the case before their Lordships the disciplinary proceedings were pending for fourteen years and accordingly the same were quashed. In **N.Radhakrishnan's case (supra)** the Hon'ble Supreme Court held in paragraph 19 of the judgment that it is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings whether on that ground disciplinary proceedings are to be terminated. Each case has to be determined on the facts and circumstances of that case. The essence of the matter is that the court has to take into consideration all relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is

abnormal and there is no explanation for the delay. In the instant case, the applicant's grievance is that for his alleged unauthorised absence from August 1984 proceedings were initiated initially only in December 1992 and again after cancellation of the first chargesheet, in September 1995. We find that the charge is that from1984 the applicant has remained on unauthorised absence till the issue of the chargesheet. From this, it is clear that the lapse alleged against the applicant is a continuing one. In other words, when the chargesheet was issued initially in December 1992 and again in September 1995, according to the departmental authorities, the applicant was still on unauthorised absence from August 1984. Therefore, his lapse was continuing, according to the disciplinary authority, till the issue of the two chargesheets. In view of this, it cannot be said that there has been delay in initiation of disciplinary proceedings.Had it been the case that the applicant after remaining on unauthorised absence from August 1984 for some months or years had re-joined the service and thereafter after delay of several years, the disciplinary proceedings were initiated against him, then the stand taken by the applicant would have had some validity. But as the charge is that till the date of issuing of the chargesheet the applicant is allegedly on unauthorised absence from 1984, it cannot be said that even for his unauthorised absence till the date of issue of chargesheet, the respondents are precluded from issuing the chargesheet and the chargesheet is liable to be quashed on the ground of delay. This contention is, therefore, held to be without any merit and is rejected.

10. The next two points urged by the learned counsel for the petitioner are taken up together. It has been urged that the disciplinary authority did not appoint a presenting officer and the inquiring officer looked into record and concluded the

enquiry. It is also stated that the inquiring officer was appointed even before receipt of the explanation of the applicant. As regards the point about absence of apresenting officer, the applicant has relied on the decision of the Hon'ble Supreme Court in the case of Anil Kumar v. Presiding Officer, AIR 1985 SC 1121. In that case the Hon'ble Supreme Court held that the report of the inquiring officer should be a reasoned one. In this decision the question of appointment of presenting officer was not considered. This decision does not therefore support the stand of the applicant. The respondents have pointed out in their note of arguments that appointment of presenting officer is not a mandatory provision. Railway Board's order dated 20.10.1971 lays down that nomination of a presenting officer in disciplinary proceedings is not obligatory but discretionary. In a case where no presenting officer is appointed, the inquiring officer may examine and cross-examine the witnesses to find out the truth in the charges. It is further stated that practice in the Railways is to appoint presenting officer only in case of gazetted officer. In the instant case we find from the enquiry report at Annexure-8 that there was no oral witness. The inquiring officer enquired into the charges with reference to the official documents and therefore, it cannot be said that by not appointing a presenting officer, the applicant has been denied reasonable opportunity. This contention of the learned counsel for the petitioner is accordingly rejected.

11. The next contention of the learned counsel for the petitioner that the inquiring officer was appointed before receipt of the explanation of the applicant is factually not correct because in the instant case the disciplinary authority has himself enquired into the matter. It has been submitted by the learned counsel for the petitioner that the Assistant Engineer, Chainbasa, is not the disciplinary authority. This

aspect would be considered in a later part of this order. But granting for the sake of argument for the present that Assistant Engineer, Chainbasa is the disciplinary authority, he has himself enquired into the charges. The learned counsel for the petitioner has strongly urged that the disciplinary authority cannot himself enquire into the matter and accept his own findings. This contention is without any merit. Railway Servants (Discipline & Appeal) Rules provide that the charfges can be enquired into by the disciplinary authority or he can get it enquired into by appointing any other inquiring officer. In the instant case the disciplinary authority chose to enquire into the charges himself and therefore, the questioining of appointing an inquiring officer before receipt of the explanation of the applicant does not arise. This contention is also held to be without any merit and is rejected.

12. The seventh contention of the learned counsel for the petitioner is that in course of the proceedings he has been denied reasonable opportunity and principles of natural justice have been violated. In support of his contention the leasrned counsel for the petitioner has relied on the following decisions:

(i) Biswambar Patnaik v. Union of India, 72(1991) CLT 795;

(ii) Gangadhar Das v. Sakhigopal Regional Co-operative Marketing Society, 75(1993) CLT 427;

(iii) Ratanlal Sharma v. Managing Committee, Dr.H.R.Higher Secondary School, AIR 1993 SC 2155;

(iv) M/s Meridian Steels v. Commissioner of Commercial Taxes, Orissa, 1997(2) OLR 348; and

(v) Ramesh Chandra Mangolik v. State of U.P., 2000 Lab.IC 3127, decided by Hon'ble High Court of Allahabad.

It is not necessary to go into facts of those cases. It is only necessary to note that application of principles of natural justice in departmental proceedings has been settled by series of decisions of the Hon'ble Supreme Court and Hon'ble High Courts. The gist of it, as has been mentioned by the Hon'ble High Court of Orissa in **Biswambar Patnaik's case(supra)** is that principles of natural justice are not embodied in exact terms anywhere. What particular rule of natural justice should be applied in a particular case depends on facts and circumstances of the case. The courts are to see if the non-observance of these principles in a given case is likely to have resulted in deflecting the course of justice. The principle of natural justice is applied to prevent miscarriage of justice. It has been laid down by the Hon'ble High Court of Orissa in **Gangadhar Das's case (supra)** that the basic principle of natural justice is that no one who is likely to suffer any civil consequences should be denied an opportunity of stating his case fully. The submissions made by the learned counsel for the petitioner that in this case principles of natural justice have been violated and the applicant has been denied reasonable opportunity have to be considered in the context of the above well settled position of law. It has been submitted by the learned counsel for the petitioner that because of threat to his life and lives of his family members, he has come away from Chainbasa, but the enquiry was ordered to be held at Chainbasa and therefore it was not possible for him to attend the enquiry. The respondents in their objection to the amendment petition have mentioned in page 2 that the averment of the applicant that the enquiry was fixed at Chainbasa on 8.7.1998 is incorrect and denied. The enquiry was fixed two times at Chakradharpur, but the applicant, according to the respondents, avoided to attend the enquiry. The exparte

enquiry was conducted at Chainbasa. We also find from Annexure-6 series that in letter dated 25.1.1995 the enquiry was fixed in the office of Assistant Engineer, Jharsuguda and in order dated 17.6.1998 the enquiry was fixed in the chamber of Assistant Engineer, Chakradharpur. From this it cannot be said that the enquiry was fixed always at Chainbasa. Twice the enquiry was fixed elsewhere but the applicant did not attend the enquiry. In view of the above, this contention is held to be without any merit and is rejected. The second submission of the learned counsel for the petitioner is that in letter dated 10.7.1998 it was intimated to the applicant that the enquiry was fixed earlier on 13.7.1998. But on that day the disciplinary authority would not be available and as such the enquiry was fixed on 23.7.1998 at Chainbasa. The applicant has stated that this notice fixing the enquiry on23.7.1998 was received by him only on 23.7.1998 at 2.00 P.M. and it was, therefore, not possible for him to attend the enquiry. He had also written to the disciplinary authority in his letter at Annexure-7 but this was not taken note of. We note from Annexure-7 that this letter is not dated. Moreover, in this letter the applicant has urged that the Tribunal had passed interim order of stay and therefore, it would not be proper to enquire into the matter. He had also taken the stand in this letter that he had retired from service on 1.7.1998 and therefore the enquiry should not be conducted. From this undated letter, which was received by the disciplinary authority on 6.8.1998, as it appears from Annexure-8, it appears that the applicant has not prayed for holding the enquiry on some other day. From the enquiry report enclosed by the applicant at Annexure-8 it is found that the enquiry was ultimately conducted on 14.8.1998. The

learned counsel for the applicant has stated that by not giving him adequate opportunity to be present in the enquiry on 23.7.1998, the applicant has been denied reasonable opportunity. In support of his contention the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of Union of India v. D.S.Karekar, 1998 Lab.I.c.3021. That was a case where chargesheet and the showcause notice were not served on the opposite party before the Hon'ble Supreme Court. In this case the applicant has received the notice fixing the enquiry on 23.7.1998. We are not inclined to accept his contention that the notice has been received on 23.7.1998 because in his letter at Annexure-7 he has not indicated the date on which he has sent this letter. Even though in the letter he has mentioned that he has received the notice on 23.7.1998, i.e., the proposed date of enquiry. He has also not enclosed the postal record showing that the notice was received by him on 23.7.1998. In his undated representation he has also not asked for fixing any other date. He has merely stated that the Triunal has granted stay, a contention which we have already rejected, and has also taken the stand that he has retired in the meantime, another contention which has been rejected by us. In view of this, it is clear that the applicant has deliberately stayed away from the enquiry on this and earlier dates and this contention is, therefore, held to be without any merit and is rejected. It is also to be noted that in the instant case there was no oral witness and the charge was held to be proved by the disciplinary authority on reference to official documents like service-sheet and other records showing that the applicant had been absenting unauthorisedly with effect from 24.8.1984 without any intimation to his immediate superior officer.

13. The eighth contention of the learned counsel for the petitioner is that the applicant was not actually absent from 24.8.1984. He had joined at Jharsuguda after getting the transfer order dated 1.9.1984 at Annexure-R/1 to the counter. We are not prepared to accept this contention because in the O.A. the petitioner has not mentioned as to the date on which he presented himself at Jharsuguda for joining. He has stated that he submitted his joining report before respondent no.4 at Jharsuguda. But he has not mentioned the date on which this joining report was submitted. Moreover, we find from his representation 26.10.1995 at Annexure-5 that in page 3 of his representation he has mentioned that unless he joins in the new station presumably at Jharsuguda it will be unsafe for him to continue at Chainbasa. From this it is clear that his statement in the O.A. that he has joined at Jharsuguda is not correct. In the last sentence of this representation he had also prayed that he should be directed to join at Jharsuguda. So it is clear that the applicant did not join at Jharsuguda.

14. The ninth contention of the learned counsel for the petitioner is that the Assistant Engineer, Chainbasa is not the disciplinary authority and therefore the order of punishment is illegal. In our earlier discussion we have held that the applicant had not joined at Jharsuguda. It is also his case that he was not relieved from Chainbasa and therefore, Assistant Engineer, Chainbasa was the disciplinary authority with regard to his continued absence from duty from2 4.8.1984. This contention of the learned counsel for the petitioner is accordingly rejected.

15. Lastly it has been submitted by the learned counsel for the petitioner that the punishment of removal from service is disproportionate to the lapses committed by the applicant. We are

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not inclined to accept this contention of the learned counsel for the petitioner. The disciplinary authority in his report dated 14.8.1998 at Annexure-8 has held that the applicant has remained away from duty from August 1984. He has thus been away from duty for fourteen years. Considering this, it cannot be said that the punishment imposed is so disproportionate as to shock the judicial conscience.

16. In consideration of the above, we hold that the Original Application is without any merit and the same is rejected but without any order as to costs.

Somnath Som
22.6.2001

(SOMNATH SOM)
VICE-CHAIRMAN

G.NARASIMHAM, MEMBER(JUDICIAL)

17. I agree that this Original Application is without any merit. However, I would like to touch on two points raised by Shri Das, the learned counsel for the applicant in support of his contention that continuation of the proceedings beyond 1.7.1998 was illegal. According to applicant, he having completed 58 years of age his date of retirement on superannuation was 1.7.1998. His first point is that his date of superannuation could not have been extended to 60 years, i.e., till 1.7.2000, without serving any notice of such extension on him and the other point is that basing on superannuation date as 1.7.1998, he had duly submitted pension papers. In other words, his contention was that the superannuation retirement age could not have been extended to 60 years and he is not bound by the same. Shri Das raised these two points several times in course of arguments advanced on three dates. At one stage when I

remarked about the futility of such contention pointing out that retirement age had not been extended to 60 years only in case of his client, but has been raised(not extended) in respect of all the Central Government employees, including the railway employees by the Union Government and/by the Railway Board during May, 1998, Shri Das though reacted sharply, expressed regret thereafter. Since the superannuation retirement age was raised to 60 years in respect of all the employees serving the Union of India and the Railways, the contention of the learned counsel for the applicant that the Department should have intimated the applicant with regard to the extension of his superannuation age to 60 years is without any basis. His other contention that he had submitted pension papers basing on the superannuation date as 1.7.1998 is also without any basis. Though this O.A. was initially filed in July, 1996, the applicant filed application for amendment to the O.A. in August, 2000. His prayer for amendment was allowed, but even in this amended application there has been no specific averment that the applicant had already submitted his pension papers, treating 1.7.1998 as the date of his superannuation retirement. By advancing this point now and then on many occasions in course of hearing, the learned counsel for the applicant created an impression on us that the applicant in fact submitted his pension papers much prior to 1.7.2000, on which date his superannuation retirement was due. On the other hand Mrs.Sikdar, the learned Addl.Standing Counsel for the Railways submitted that she had instructions that the applicant submitted pension papers only after

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1.7.2000 and not prior to that date. Shri Das, in course of his reply to the argument of Mrs.Sikdar could not contradict this submission. Thus, it is a typical instance of an argument raised on a point not specifically pleaded. Even if he had submitted pension papers treating 1.7.1998 as his retirement age, it would not nullify Board's notification dated 14.5.1998 raising the retirement age to 60 years and the applicant is bound by such notification.

18. The O.A. being without any merit is dismissed. No costs.

22.6.01.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

ANPs
B.K.SAHOO//