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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH,
CUTTACK

ORIGINAL APPLICATION NO. 903 OF 2005
(Decided on 8th June 2007)

Shri L.P.Rao Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes.*
2. Whether it be sent to the Principal Bench or not? *Yes.*

prf
(B.B.MISHRA)
ADMINISTRATIVEMEMBER

ldr
(N.D.RAGHAVAN)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH,
CUTTACK

ORIGINAL APPLICATION NO. 903 OF 2005

(Decided on 8th June, 2007)

CORAM:

HONOURABLE SHRI N.D.RAGHAVAN, VICE-CHAIRMAN
AND
HONOURABLE SHRI B.B.MISHRA, ADMINISTRATIVE MEMBER

Sri L.P.Rao,
Aged about 63 years,
s/o late Satyanarayan Rao,
previously working as Loco Inspector (Retd.),
Mechanical, Waltair Division,
Visakhapatnam,
Presently residing at Qtr.No.1/1,
Field Hostel No.1,
At/PO-Talcher, Dist.Angul

.....

Applicant

Advocates for the applicant - M/s A.Kanungo, S.K.Kar & C.Nayak

Vrs.

1. Union of India, represented through General Manager, East Coast Railway, Chandrasekharpur, At/PO-Bhubaneswar, Dist.Khurda.
2. Chief Personnel Officer, East Coast Railway, Chandrasekharpur, At/PO-Bhubaneswar, Dist. Khurda.
3. Divisional Personnel Officer, Waltair Division, Waltair, East Coast Railway, Visakhapatnam

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Respondents

Advocate for Respondents - Mr.T.Rath, Panel Counsel(Railways)

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O R D E R

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

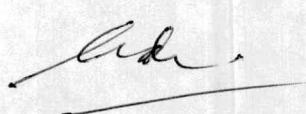
1. This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri L.P.Rao, who retired from Railway service as Loco



Inspector in South Eastern Railway (presently East Coast Railway), Waltair Division, Waltair.

2. Brief facts of the case are these: The applicant was appointed on 14.4.1964 as temporary Shed Khalasi. Subsequently he officiated in the post of Second Fireman with effect from 15.4.1964, First Fireman w.e.f. 14.10.1979, Diesel Assistant w.e.f. 21.11.1983, Loco Shunter w.e.f. 3.6.1988, Goods Driver w.e.f. 16.9.1989, and Senior Goods Driver w.e.f. 13.11.1996. Thereafter he was promoted as Loco Inspector w.e.f 16.9.1999. While working as Loco Inspector, the applicant retired from service on attaining the age of superannuation w.e.f 31.7.2003 when he was in receipt of basic pay of Rs.9,900/-, D.A. of Rs.5, 445/- at 55% of his basic pay, and running allowance of Rs.2,970/- at the rate of 30% of basic pay, apart from other allowances.

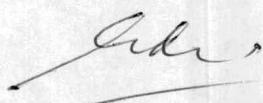
3. Upon his superannuation, the retirement dues of the applicant were calculated and determined by the Respondent-Railways, vide calculation sheet and memo of settlement (Annexure 1), which, inter alia, show that his pension, DCRG and family pension have been determined after taking into account an additional amount equal to 30% of his basic pay as 'average mileage'; whereas, the encashment of his leave salary for 10 months has been determined without adding the said 30% average mileage. For the sake of clarity, it is noted here that the applicant's total average emoluments have been arrived at Rs.12,844/- for determining his pension at Rs.6422/-, DCRG at Rs.3,02,198/-, and family pension at Rs.3861/-; whereas, his entitlement to get encashment of 10 months' leave salary has been determined at Rs.1,53,450/- by taking



into account his basic pay of Rs.9,900/- and D.A of Rs.5,445/- at 55% of his basic pay, the total of which comes to Rs.15,345/-.

4. The applicant felt aggrieved by the non-addition of 30% average mileage to his monthly emolument for encashment of leave salary and made a representation on 5.8.2003 (Annexure 2) to Respondent No.3, i.e., Senior Divisional Personnel Officer, East Coast Railway, Waltair Division, claiming the said benefit. By (Annexure 3) the memo dated 4.9.2003, the said authority rejected the claim of the applicant to get 30% average mileage on the grounds that at the time of absorption in the stationary post of Loco Inspector the applicant had been extended the benefit of 30% mileage for fixation of pay in the said post and as such he was not entitled to the same for the second time.

5. It is stated by the applicant that the Senior Divisional Personnel Officer, South Eastern Railway, Bilaspur Division, by his letter dated 25.7.1993 (Annexure 4) had moved the Chief Personnel Officer (Ruling), S.E.Railway, Garden Reach, Calcutta, to examine as to whether 30% of basic pay drawn in the revised scale of pay would also be reckoned as emoluments for the purpose of encashment of leave salary to Loco Inspector as it also falls under the purview of retirement benefits. The office of Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta, issued a letter dated 27.12.2003 (Annexure 5) to the Senior Divisional Personnel Officer, South Eastern Railway, Bilaspur, clarifying that encashment of leave might also come within the purview of Estt. Srl.No.209/92, the applicability of which would be as per Notes 1 and 2 of Rule 2544 RII (Fifth Reprint) ACS No.412 RII circulated under Estt.Srl.No.209/92. Relying on this letter (Annexure 5) as well as the Estt.



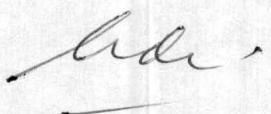
Srl.No.209/92, the applicant by his representation dated 9.6.2004 (Annexure 6) once again requested Respondent No.3 to consider his case and grant him the said benefit.

6. The applicant having failed to get his grievance redressed by the Respondent-authorities in the matter, has filed the present O.A. on 21.11.2005 for the following relief:

- “A) Declare the refusal of 30% additional amount on leave salary under Annexure-3 is illegal, arbitrary and contrary to law.
- B) Direction and/or directions be issued to pay the additional amount of 30% against the leave salary of Rs.1,53,450/- in consonance with the rules. (Estt. Srl.No. 209 of 1992 i.e. encashment of leave also comes within the purview).
- C) Any other direction and/or directions appropriate under the circumstances be issued as this Hon’ble Court deem fit and proper.”

7. The Respondents have filed counter refuting the claim of the applicant. Along with the counter, they have filed Annexure R/1, the South Eastern Railway, Garden Reach, Estt.Srl.No.209/92 publishing the Railway Board Establishment Srl.No.197/92 which contains the amendment to the Indian Railway Establishment Code Volume II (Fifth Reprint) for incorporating sub-rules g(iii) and g(iv) and Note 1 and 2 below sub-rule g(iv) below Note under Rule 2544 g(ii), in Chapter XXV, Section 11 of the said Code, with effect from 1.1.1993.

8. It has been stated by the Respondents that on his promotion to the post of Loco Inspector with effect from 16.9.1999 in the pay scale of Rs.6500-10,500/-, his pay was fixed at Rs.9300/- by adding 30% of basic pay as running element. Under the Estt.Srl.No.209/92, 30% additional amount equal to basic pay is taken into account for calculation of average emoluments for the purpose of gratuity and death-cum-



retirement gratuity only and not for encashment of leave salary. The claim of the applicant being not admissible under the rules, his representation has been rightly rejected. As regards the letter dated 25.7.1993 of the Senior Divisional Personnel Officer, Bilaspur and the letter dated 27.12.1993 issued by the Assistant Personnel Officer (Rule), office of the Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta, the Respondents have stated that in view of the non-admissibility of 30% additional amount on leave salary in terms of Estt.Srl.No. 209/92, the letter dated 27.12.1993 was not circulated to all the Divisions of the South Eastern Railway.

9. It has also been stated by the Respondents that the applicant was working and had retired from service at Visakhaatnam and therefore, the cause of action having arisen at Visakhapatnam, the Cuttack Bench of the Tribunal does not have jurisdiction to entertain and adjudicate upon the matter. They have further stated that the applicant's representation dated 5.8.2003 (Annexure 2) having been rejected by letter dated 4.9.2003 (Annexure 3) issued by the Respondents, the Original Application filed on 21.11.2005 is barred by limitation.

10. Upon perusal of the pleadings and hearing Shri Agasti Kanungo, the learned counsel appearing for the applicant as well as Shri T.Rath, learned Panel Counsel appearing for the Respondents, we find that the following points arise for our determination:

- (1) Whether the Cuttack Bench has jurisdiction to entertain the Original Application?
- (2) Whether the applicant is entitled to reckon an additional amount equal to 30% of basic pay for the purpose of encashment of leave



salary in terms of Estt.Srl.No. 209/92, issued by the S.E.Railway, Garden Reach, Calcutta, publishing the Railway Board's letter No. E(P&A)II/83/RS-10(III) dated 25.11.92 (RBE No.197/92) and the amendment to Rule 2544 of Indian Railway Establishment Code, Vol.II (Fifth Reprint)?

(3) Whether the letter dated 27.12.1993 (Annexure 5) issued by the Assistant Personnel Officer (R), office of the Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta, has extended the benefit of reckoning an additional amount equal to 30% of basic pay for the purpose of encashment of leave salary of Loco Inspector working in the Bilaspur Division of South Eastern Railway and if so, whether non-extension of the said benefit by rejection of the applicant's claim is discriminatory?

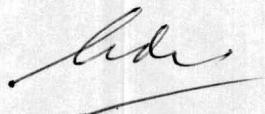
(4) Whether the O.A. is barred by limitation?

(5) Whether the applicant is entitled to any relief? *and ~~the~~*.

11. The applicant in the cause title of the Original Application and the verifications attached to the O.A. and the Rejoinder, has stated that he is residing at Qrs. No. 1/1, Field Hostel No.1, At/PO-Talcher, Dist. Angul, which is in the State of Orissa. The Respondents' plea is that as the applicant was working at Visakhapatnam and retired from service at Visakhapatnam, the cause of action, if any, has arisen at Visakhapatnam and therefore, this Bench has no jurisdiction to entertain the O.A. In this connection, we would refer to the provisions contained in Section 18 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act') and Rule 6 of



the Central Administrative Tribunal (Procedure) Rules, 1987 (hereinafter referred as 'the Procedure Rules'). In exercise of the powers conferred under Section 18, the Central Government issued GSR No. 631(E) dated 15.10.1991 and under Sl.No.8, the territorial jurisdiction of Cuttack Bench has been confined to the territorial limits of the State of Orissa. Rule 6 of the Procedure Rules deals with the place of filing of application and while sub-rule (1) thereof provides that an application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction (i) the applicant is posted for the time being, or (ii) the cause of action, wholly or in part has arisen, it has been provided under sub-rule (2) that notwithstanding anything contained in sub-rule (1) persons who have ceased to be in service by reason of retirement, dismissal or termination from service may, at his option, file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application. As noted earlier, the applicant has stated in his O.A. as well as the Rejoinder that he is residing at Qrs. No. 1/1, Field Hostel No.1, At/PO-Talcher, Dist. Angul, which is in the State of Orissa. Except stating that the applicant was working and retired from service at Visakahapatnam, the Respondents have not disputed that the applicant is residing at the place indicated by him, i.e., in the State of Orissa. We are, therefore, of the view that as the applicant, after his retirement from service at Visakhapatnam, is residing in the State of Orissa, he has the option to file an application before this Bench of the Tribunal in terms of sub-rule (2) of the Procedure Rules. The contention of the Respondents that this Bench of the Tribunal has no jurisdiction to adjudicate upon the matter is, therefore, rejected.



12. The applicant's claim to get additional amount equal to 30% of basic pay to be reckoned as emoluments for the purpose of encashment of leave salary and the Respondent's defence in support of their decision rejecting the applicant's claim being based on the Estt.Srl.No. 209/92, we would like to quote the said Estt.Srl. in verbatim:

'Estt.Srl.No. 209/92.

No.P/R/4/4\31-RII/Pt.III

Dated: 23.12.92.

A copy of Railway Board's letter No.E(P&A)II/83/RS-10(III) dated 25.11.92 (**RBE No.197/92**) with a copy of its enclosure Advance Correction Slip No. 412-RII (Fifth Reprint) is published for information, guidance and necessary action.

President is pleased to direct that subrule g(iii) and g(iv) and Note 1 and 2 below subrule g(iv) be incorporated below Note under Rule 2544 g(ii), in chapter XXV, Section-II of Indian Railway Establishment Code Volume – II (Fifth Reprint).

The amendment will be effective from 1.1.1993.

Copy of the Rly. Board's letter No. E(P&A)II/83/RS-10(iii) dated 25.11.92 addressed to the General Managers, All Indian Railways & others.

**Amendment to Indian Railway Establishment Code
Volume II (Fifth Reprint)**

In exercise of the powers conferred by proviso to Article 309 of the Constitution of India, the President is pleased to direct that Sub Rule g(ii) and g(iv) and Note 1 and 2 below sub-rule g(iv) be incorporated below Note under Rule 2544 g(ii), in Chapter XXV, Section II of Indian Railway Establishment Code Volume II (Fifth Reprint), as amended in the Advance Correction Slip No. 412 enclosed herewith.

2. The amendment will be effective from 1.1.1993.

ADVANCE CORRECTION SLIP NO. 412-R.II (FIFTH REPRINT)

Rule 2544

"g(iii)

For the purpose of calculation of average emoluments in case of Loco Inspectors:- An additional amount equal to 30% of basic pay drawn in the revised scales of pay will be reckoned as emoluments for periods for which a person works as Loco Inspector during the relevant period after 1.1.1993. (This will take effect from 1.1.1993).

g(iv)

For the purpose of Gratuity and/or Death-cum-Retirement Gratuity in case of Loco Inspectors:- An additional amount equal to 30% of basic pay, in the revised scales of pay, drawn during the relevant period

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after 1.1.1993, will be reckoned as emoluments. (This will take effect from 1.1.1993).

Note 1: The provisions contained in Rule 2544 (g)(i) and g(ii) are applicable to the Running Staff only.

Note 2: The provisions contained in Rule 2544 g(iii) and g(iv) are applicable to Loco Inspectors drawn from Loco Running Staff only and will not be applicable to any other category of Staff. These provisions are applicable to Loco Inspectors who are entitled for Running Allowance in lieu of TA/DA in terms of Board's letter No.E(P&A)II/83/RS-10(iv) dated 25.11.92.

(AUTHORITY: Ministry of Railways' letter No. E(P&A)II/83/RS-10(iii) dated 25.11.92)"

13. It is also relevant here to quote Rule 2544 of Indian Railway Establishment Code Volume II (Fifth Reprint) as it stood before incorporation of sub-rule g(iii) and g(iv) as well as Notes 1 and 2:

"Allowances reckoned for Pension

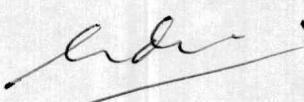
2544. (C.S.R. 486)-Emoluments and Average Emoluments.- The term "Emoluments", used in these Rules, means the emoluments which the officer was receiving immediately before his retirement and includes –

- (a) pay other than that drawn in tenure post;
- (b) personal allowance, which is granted (i) in lieu of loss of substantive pay in respect of a permanent post other than a tenure post, or (ii) with the specific sanction of the Government of India, for any other personal considerations.

Note.- Personal pay granted in lieu of loss of substantive pay in respect of a permanent post other than a tenure post shall be treated as personal allowance for the purpose of this article. Personal pay granted on any other personal considerations shall not be treated as personal allowance unless otherwise directed by the President.

© fees or commission if they are the authorized emoluments of an appointment, and are in addition to pay. In this case "Emoluments" means the average earnings for the last six months of service;

(d) acting allowance of an officer without a substantive appointment if the acting service counts under Rule 2409 (C.S.R. 371), and allowances drawn by an officer appointed provisionally substantively or appointed substantively pro tempore or in an officiating capacity to an office which is substantively vacant and on which no officer has a lien or to an office temporarily vacant in



consequence of the absence of the permanent incumbent on leave without allowance or on transfer to foreign service;

- (e) deputation (duty) allowance;
- (f) duty allowance (special pay); and

(g)(i) **For the purpose of calculation of average emoluments.**- Actual amount of running allowances drawn by the railway servant during the month limited to a maximum of 75% of the other emoluments reckoned in terms of (a) to (f) above,.

(ii) **For the purpose of gratuity and/or death-cum-retirement gratuity.**-The monthly average of running allowances drawn during the three hundred and sixty-five days of running duty immediately preceding the date of quitting service limited 75% of the monthly average of the other emoluments reckoned in terms of items (a) to (f) above drawn during the same period.

Note.-In the case of an Officer with a substantive appointment who officiates in another appointment or holds a temporary appointment, "Emoluments" means.-

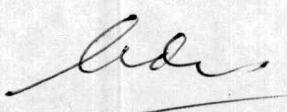
- (a) the emoluments which would be taken into account under this Rule in respect of the appointment in which he officiates or of the temporary appointment, as the case may be, or
- (b) the emoluments which would have been taken into account under the Rule had he remained in his substantive appointment, whichever are more favourable to him."

14. From the above it is clear that under sub-rule g(iii) a Loco Inspector is entitled to reckon an additional amount equal to 30% of basic pay drawn in the revised scales of pay towards his 'average emoluments' for the purpose of pension. Sub rule g(iv) clearly provides that an additional amount equal to 30% of basic pay in the revised scales of pay drawn during the relevant period will be reckoned as 'emoluments' for the purpose of Gratuity and/or Death-cum-Retirement Gratuity in case of Loco Inspectors, which eventuality takes place after an incumbent Loco Inspector dies or retires from service. The benefits granted under sub-rules g(iii) and g(iv) are granted to Loco Inspectors drawn from Loco Running Staff only who are entitled to Running Allowance in lieu of TA/DA and will not be applicable to any

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other category of Staff [vide Note 2 below sub-rule g(iv)]. The entire provisions of Rule 2544 of the Indian Railway Establishment Code Volume II (Fifth Reprint), as it stood prior to and after amendment, nowhere specifically provide that such additional amount equal to 30% of basic pay will be reckoned as emoluments for the purpose of encashment of leave salary by a Loco Inspector. When certain financial benefit has not been clearly provided in the rule in force, no Court or Tribunal can import such provision into the rule. Rule 2544 of the Indian Railway Establishment Code Vol.II (Fifth Reprint), quoted above, being silent on the aspect of additional amount equal to 30% of basic pay to be reckoned as emoluments for the purpose of encashment of leave salary by a Loco Inspector, to which category the applicant belongs, we hold that the applicant is not entitled to get the same and his claim has been rightly rejected by the Respondents. Therefore, the letter dated 4.9.2003 (Annexure 3) issued by the Respondents is held to be unassailable.

15. Relying on the letter dated 27.12.1993 (Annexure 5) issued by the Assistant Personnel Officer (R), office of the Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta, to the Senior Divisional Personnel Officer, South Eastern Railway, Bilaspur, in response to the latter's letter dated 25.7.1993, the applicant has claimed in the O.A, and it has been submitted by Shri Kanungo, learned counsel appearing for the applicant, that the benefit of reckoning an additional amount equal to 30% of basic pay as 'emoluments' for the purpose of encashment of leave salary has been extended to the persons, who were placed similarly like the applicant, in the Bilaspur Division of South Eastern Railway and, therefore, denial of the said benefit to the applicant is discriminatory as the Indian Railway is one



organization and both the Bilaspur Division and Waltair Division were under the South Eastern Railway. For appreciating the contention of the applicant, it is necessary to quote the entire letter dated 27.12.1993 (Annexure 5):

“SOUTH EASTERN RAILWAY

CPO’S Office/GRC

No. P/A/4/31-RII/Pt.III

Dated 27.12.03.

To

The Sr.Divl.Personnel Officer,
South Eastern Railway,
Bilaspur

Reg: Amendment to R-II(1987 Edition)

Ref: Your No. E/GE/E-Corr/RII/2 dated 23.7.93.

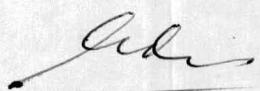
In regard to encashment of leave salary as desired to know vide your letter under reference it is informed that encashment of leave may also come within the purview of Estt.Sr.No.209/92, Applicability of which will be as per note – 1 & 2 of Rule 2544 RII (fifth reprint) ACS No. 412 RII circulated under Estt. Srl.No.209/92.

This has been settled by FA&CAO/GRC/8164

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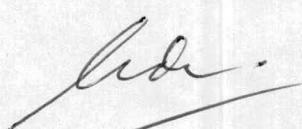
ASSTT. PERSONNEL OFFICER ®
For CHIEFL PERSONNEL OFFICER”

16. It is pertinent to mention here that Estt.Srl.No. 209/92 has been issued by the South Eastern Railway, Garden Reach, Calcutta, i.e., the Zonal Headquarters, publishing the Railway Board’s letter No. E(P&A)II/83/RS-10(iii) dated 25.11.92 (RBE No.197/92) with a copy of its enclosure Advance Correction Slip No. 412-RII (Fifth Reprint) for information, guidance and necessary action, which has notified the amendment to Indian Railway Establishment Code, Volume II (Fifth Reprint). By way of this amendment, sub-rule g(iii) and g(iv) and Notes 1 and 2 below sub-rule g(iv) have been incorporated below Note under Rule 2544 g(ii), in Chapter XXV, Section II of Indian Railway Establishment Code Volume II (Fifth Reprint) with effect from 1.1.1993. R.B.E. 197/92 issued by the Railway Board and Estt. Srl. No. 209/92



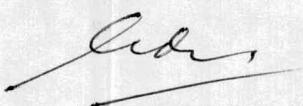
issued by the South Eastern Railway, Garden Reach, Calcutta (Zonal Headquarters) only notify the amendment to Rule 2544 of Indian Railway Establishment Code, Volume II (Fifth Reprint), i.e., incorporation of sub-rules g(iii) and g(iv) and the Notes below sub-rule g(iv) below Rule 2544(g)(ii) with the approval of the President of India in exercise of the powers conferred on him by the proviso to Article 309 of the Constitution of India. If at all any doubt arose as to the interpretation of the provisions of sub-rules g(iii) and g(iv), it was the President of India who has got the power, authority and jurisdiction to issue clarification and/or the Railway Board should have issued appropriate clarification after getting approval from the President of India. No other authority or functionary than the President of India has been vested with the power under the Indian Railway Establishment Code framed under Article 309 of the Constitution of India to issue clarification without approval of the President of India and in the process, to import a provision into the rules thereby overriding and/or supplanting the said statutory provisions. Therefore, the applicant's claim that under Estt.Srl.No.209/92 and RBE 197/92 he is entitled to reckon an additional amount equal to 30% of basic pay as emoluments for the purpose of encashment of leave salary, is untenable.

17. The learned counsel for the applicant submitted that the benefit in question has been made applicable to persons, similarly placed like the applicant, in Bilaspur Division, by virtue of the clarificatory letter (Annexure 5) which has been issued in concurrence with the Financial Advisor and Chief Accounts Officer, S.E.Railway, Garden Reach, Calcutta, and further that there could not and should not be any discrimination amongst the employees working in



different Divisions of a particular Railway or any Zonal Railway. The applicant has not stated either in the O.A. or Rejoinder that on the basis of the letter at Annexure 5 the Respondent-authorities have granted the benefit to the persons, similarly placed like the applicant, in Bilaspur Division. He has also not filed a single scrap of paper showing that such benefit has been granted to any person in Bilaspur Division.

18. In support of his contention, the learned counsel for the applicant, has relied on the decision of the Hon'ble Supreme Court in the case of Executive Engineer, Electricity Distribution Division, U.P.State Electricity Board, Bareilly v. Hydro Electric Employees Union and others, 1999 LAB.I.C.599. The facts of the case before the Hon'ble Supreme Court were that the six workmen (who were Respondents in the Civil Appeal) had raised an industrial dispute to the effect that they were entitled to be regularized in the services of the U.P.State Electricity Board in accordance with its order No. 683 dated 13.11.1987 as they were senior-most workmen. Their contention was that though they were working and had completed 240 days of work in a given year they were not regularized as per the said order. The industrial dispute was referred to the Labour Court for adjudication. The stand taken by the U.P.State Electricity Board (appellant in the Civil Appeal) before the Labour Court was that the said office order dated 13.11.1987 did not apply to Bareilly Region where the respondent-workmen were said to have worked in the past. The Labour Court repelled the said contention and passed the order and the award was drawn accordingly. The writ petition filed against the order and the award of the Labour Court by the U.P.State Electricity Board was also dismissed. The Civil Appeal was filed by U.P.State Electricity Board before the Hon'ble Supreme Court challenging the



judgment of the High Court dismissing the writ petition and confirming the order of the Labour Court in favour of the workmen-respondents. The contention of the appellant before the Hon'ble Supreme Court that in fact there was no office order dated 13.11.1987. The Hon'ble Supreme Court held that such a contention of the appellant raised for the first time in the Civil Appeal was unsustainable. While deciding the correctness of the judgment of the High Court and the order of the Labour Court, the Hon'ble Supreme Court held as follows;

“.....The only contention canvassed before Labour Court was that the aforesaid office order did not apply to Bareilly Region. It is difficult to appreciate as to how the said office order giving benefit of regularization to those workmen who had completed service of 240 days in a year could be made available to workmen working in other Division and could not be made available only to workmen working in Bareilly region. That would be clearly discriminatory act on the part of the Board which is a State within the meaning of Article 12 of the Constitution. Consequently, it must be held that the aforesaid defence put forward by the appellant was wholly misconceived and rightly rejected by the Labour Court and the High Court....”

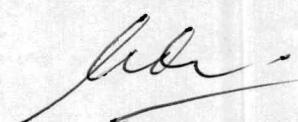
19. It is not the case of the applicant that the Respondent-Railways have granted the benefit of additional amount equal to 30% of basic pay to be reckoned as emoluments for the purpose of encashment of leave salary to the incumbents in Bilaspur Division on the basis of Rule 2544(g)(iii) and (iv), vide RBE 197/92 issued by the Railway Board and Estt.Srl.No. 209/92 issued by the South Eastern Railway, Garden Reach, Calcutta and have denied the same saying that the same did not apply to applicant and other similarly placed persons in Waltair Division and other Divisions. The Respondents' stand is that under the said statutory rules the benefit in question is not admissible to any person like the applicant. As held in the preceding paragraph that Annexure 5, the letter dated 27.12.1993 issued by the Assistant



Personnel Officer, office of Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta, cannot override and supplant the statutory provisions of Rule 2544 (g)(iii) and (g)(iv) of the Indian Railway Establishment Code, Volume II (Fifth Reprint) as published vide RBE 197/92 and Estt. Srl.No. 209/92. The applicant has not stated either in the O.A. or in the Rejoinder and further has not placed before the Tribunal any materials to show that on the basis of Annexure-5 similarly placed individuals in Bilaspur Division of S.E.Railway have been granted such benefit and that he has been denied of the same on the ground that Annexure-5 is not applicable to persons belonging to Waltair Division or other Divisions. Thus the facts of the decision in *U.P. State Electricity Board (supra)* are distinguishable from that of the present O.A. before us and therefore, the ratio decidendi in that decision is not applicable to the present case.

20. In view of our discussions and findings above, we hold that the applicant has not been able to make out a case for the relief prayed for by him in the O.A.

21. Even otherwise, the applicant has no case on the preliminary point of limitation itself. The Respondents have stated that applicant's representation dated 5.8.2003 (Annexure 2) having been rejected by the communication dated 4.9.2003 (Annexure 3), the applicant should have approached the Tribunal within a period of one year from 4.9.2003, as provided under Section 21 of the Act. The applicant has stated that after rejection of his representation, he made another representation on 9.6.2004 wherein he relied on the Estt.Srl.No.209/92 as well as the letter dated 27.12.1993 (Annexure 5) issued from the office of the Chief Personnel Officer,

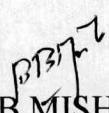


S.E.Railway, Garden Reach, Calcutta, in support of his claim in question and once again requested the Respondents to grant him the benefit of 30% additional amount on the encashment of leave salary. The applicant has also stated that his representation dated 9.6.2004 was still pending with the Respondents when he approached the Tribunal by filing the present O.A. on 21.11.2005. But the Respondents in their counter have stated that the representation of the applicant, dated 9.6.2004, was not received by them. As the applicant has not filed any postal acknowledgement receipt either along with the O.A. or Rejoinder, we find ourselves unable to reject the Respondents' contention. Be that as it may, after rejection of his representation dated 5.8.2003 (Annexure 2) by the Respondent-authorities by order dated 4.9.2003 (Annexure 3) the applicant ought to have approached the Tribunal within the period of limitation, i.e., one year from 4.9.2003. It cannot be ruled out that the applicant has willfully and deliberately made another representation dated 9.6.2004 (Annexure 6) in the same matter and has taken an averment in the O.A. to have made such representation with a view to overcome the rigor of limitation. After a final order has been passed by the authority, further representation in the same matter is not maintainable. Even if any such further representation is made by the aggrieved person, the cause of action for maintaining an Original Application before the Tribunal, in terms of Section 20(2)(a) of the Act, arises on the date the order has been made by the authority rejecting the representation made by such person in connection with the grievance and the period of limitation of one year from the date on which the said order has been made, starts running on and from that date. By no stretch of imagination, it can be held that the cause of action has arisen on the date when the



period of six months from the date the further representation was made expires and the period of limitation starts running from the said date. In the instant case, the applicant made representation dated 5.8.2003 (Anenxure 2) to the Divisional Personnel Officer, East Coast Railway, Waltair, claiming the benefit in question and the said Respondent-authority rejected his representation by order dated 4.9.2003 (Annexure 3). Therefore, the cause of action arose on 4.9.2003 and the applicant should have filed the Original Application within a period of one year from that date (4.9.2003). But he filed the Original Application on 21.11.2005. In view of this, we are of the view that the Original Application is barred by limitation and liable to be rejected.

22. In the result and in any event, the applicant's O.A. is dismissed hereby.
No costs.


(B.B.MISHRA)
ADMINISTRATIVE MEMBER


08/06/07
(N.D.RAGHAVAN)
VICE-CHAIRMAN