

RESERVED

**Central Administrative Tribunal Lucknow Bench
Lucknow**

**Original Application Nos. 382/2009
, 461/2009, 462/2009, 463/2009, 464/2009**

This, the ----- of February, 2013

HON'BLE SRI SUDHIR KUMAR, MEMBER (A)

O.A. No. 382/2009

Rajesh Kumar, aged about 35 years, son of Sri Janki Prasad, Resident of Village- Bainama Ka Purwa, Rauza Gaon, District- Faizabad.

Applicant

By Advocate Sri R. L. Mishra.

Versus

1. Union of India through the Secretary, Ministry of Railway, Railway Board, Rail Bhawan, New Delhi.
2. the General Manager, Northern Railway, Baroda House, New Delhi.
3. The Senior Mechanical Engineer, Northern Railway, DRM's Office Hazratganj, Lucknow.
4. The Assistant divisional Mechanical Engineer (D) Northern Railway, DRM's Office-Hazratganj, Lucknow.

Respondents

By Advocate Sri S. Verma.

O.A. No. 461/2009

Shashi Kant Dwivedi, Son of Sri Keshav Prasad Dwivedi, Resident of Village-Bardi Khalilabad, Post- Utratiya, district-Lucknow.

Applicant.

By Advocate Sri R. L. Mishra.

Versus

1. Union of India through its General Manager N. R. Baroda, House New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Assistant Signal and Tele Communication Engineer Northern Railway, Lucknow.
4. Senior Section Engineer/Tele Communication Engineer, Pratapgarh.

Respondents

By Advocate Sri S. Verma.

O.A. No. 462/2009

Ram Chandra Yadav, aged about 45 years, son of Sri Heera Lal Yadav, resident of Villae-Madad Ali Ka Purwa, jPost Office Rauza Gaon, District -Faizabad, Ex-Helper Khalasi, Class-I IV, Employee, ticket No. 75-H, in the office of O/ODY, CME, C&W, C&W workshop, Alambagh, Lucknow.

Applicant

By Advocate Sri R. L. Mishra.

Versus

1. Union of India through Secretary to Government Railway Department (N.R.) Central Secretariat, New Delhi.
2. Senior General Manager (N.E.), Baroda House, New Delhi.
3. Chief Mechanical Engineer (W), Northern Railway, Carriage and Wagon Workshop, Alambagh, Lucknow.
4. Assistant Workshop Manager, Northern Railways, Carriage and Wagon Workshop, Alambagh, Lucknow.

Respondents.

By Advocate Sri S. Verma.

O.A. No. 463/2009

Ram Bachan, aged about 35 years, son of Sri Sant Ram Yadav, Resident of Village-Barai Kala, Post-Siwan, District-Faizabad, worked as Helper Khalasi (Cass-IV) t. No. 723, Office of Dy. CNE/W Carriage and Diesel Shed, Alambagh, Lucknow.

Applicant

By Advocate Sri R. L. Mishra.

Versus

1. Union of India through Secretary to Govt. Railway Department (N.R.) Central Secretariat, New Delhi.
2. Senior General Manager (N.R.) Baroda House, New Delhi.
3. the Divisional Mechanical Engineer (DSL) Diesel Shed, Alambagh, Lucknow.
4. The Assistant Mechanical Engineer, Diesel Shed, Alambagh, Lucknow.

Respondents

By Advocate Sri S. Verma.

O.A. No. 464/2009

Ramayan Prasad Gupta, aged about 34 years, son of Late Sohan Lal gupta, resident Village Baroti Khallilabad, Post- Utratiya, District-Lucknow.

Applicant.

By Advocate Sri R. L. Mishra.

Versus

1. Union of India through its General Manager, N. R. Baroda, House New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Assistant Signal and Tele Communication Engineer, Northern Railway, Lucknow.
4. Assistant Personal Officer, Northern Railway, Lucknow.

Respondents

By Advocate Sri S. Verma.

(Reserved on 7.2.2013)

ORDER

By Hon'ble Sri Sudhir Kumar, Member (A)

These 5 cases clubbed together, relating to the same point in law, were heard and reserved for orders together, and are being disposed off through a common order.

2. The clubbing of O.A. No. 461 of 2009 with O.A. No. 462/2009 had actually been ordered earlier itself on 4.12.2009.
3. The applicants of these 5 O.A.s have come before this Tribunal in the third round of litigation on the original side. They had first come before this Tribunal in the years 1999- 2000, when a batch of 126 petitions were disposed off together by a Division Bench, through a common order in O.A. No. 124/2000 & 125 others dated 14.10.2003, in "**Sher Singh etc.etc. vs Union of India and Others**". The applicant of the O.A. 382/2009 was the applicant of the O.A. 372/2001, at serial No. 8 in that batch of 126 petitions disposed off together, with the other four being O.A. Nos. 579/99 and 226/2000, which were covered in the same common orders, and O.A. No. 112/2004 decided on 23.3.2004, and O.A. No. 117/2004, decided on 25.03.2004.
4. For the sake of brevity, and in order to avoid repetition, it may be appropriate for us to borrow the facts of the case as prescribed in the opening paragraphs of the Hon'ble M(A)'s portion of the Tribunal's order dated 14.10.2003 (Supra), as reproduced below:-

"3. The facts of the cases in all the applications are almost the same except the date of order of respondent authorities, by which the services of the applicants were terminated, the date of joining at Lucknow and the Station from where they came on transfer e.g. Karnal, Ludhiyana, Jodhpur, Varanasi, Firozpur, Faizabad, Sialadan, Ambala, Sultanpur etc. are different in each case. In large number

of cases they were shown as first joined at BSL/Shed/MGH/Lucknow/ and then transferred to Carriage and Wagon Shop Alambagh Lucknow. Their date of joining and date of alleged appointment is also different in each case. On a scrutiny of the O.As it has been seen that 110 applicants served the railways between 3 to 5 years and their break up is as follows:

1995-2000 26
1996-2000 35
1997-2000 4
1995-1999 8
1996-1999 20
1997-1999 11
1994-1999 1
1996-2001 2
1998-2001 3

The remaining applicants had worked for a period less than 3 years except the applicants in two cases wherein it has been found that in O.A. No. 30/2000 (Shitab Rai who came on transfer from Lucknow to Diesel Shed Alambagh Lucknow) has worked for 8 years from 10.10.91 to 30.11.99 and the other case of O.A. No. 188/2001 (Satendra Kumar who came from Ambala to Lucknow Diesel shed, Alambagh Lucknow) worked for only three months between 12.6.99 to 16.6.99. Counsel for both the sides therefore, suggested that for the sake of convenience we may take up the case of Sher Singh (O.A. No. 124/2000) as a sample case which is represented by Dr. Ashok Nigam from applicants side and Sri A. K.Chaturvedi from the respondents side and deal with the same, since except the date of joining, date of termination and the place from where they came on transfer, other facts are similar in all the cases. The other counsel on both sides stated that their arguments may also be taken as put forth by the above counsel.

4. The above O.As are being preferred against the order dated 31.12.99 by which the services of the applicant (in O.A. 124/2000) had been terminated without affording any opportunity to the applicants. The O.As have been filed against the impugned order passed by the Assistant Works Manager, Northern Railway, Alambagh Lucknow who is the respondent No. 4 (in O.A. 124/2000).

5. The facts of the case, in brief are the applicants being unemployed persons were informed by their acquaintees in the office of opposite party No. 3 that some vacancies of Khalasis are existing in the Railway office and that they may apply for the same. Accordingly, the applicants submitted their applications for appointment in the Railway office. The applicants thereupon kept on visiting the office and enquiring about the result of their applications. In the first week of January 1996, the applicants were informed that they can join duties w.e.f. 9th January, 1996 which is the date in the case of Sher Singh (O.A. No. 124/2000). Accordingly, the applicants reported for duty immediately in the office of opposite party No. 3 and were given duty in the SRM Section which is meant for fresh recruits and for their training. It was however, stated by the applicant's counsel that the applicants were not given any written appointment letters.

When the applicants requested for the same, they were informed that the same will be given to them after their confirmation.

6. It has been further stated in the O.A.s that after joining in the SRM section, the applicants were sent for 45 days through training in the workshop vide order dasted 29.6.96 to varishth Adhikshak Basic training School Alambagh Lucknow. After successfully completing the applicants were sent back to SRM section for further posting. Thereafter from SRM Section, the applicants were transferred and posted under shop Superintendent Carriage and Wagon shop vide order dated 25.12.96. It is further submitted by the applicants that due to their hard work they were promoted from the post of Khalasi Helper w.e.f. October, 1996 and they joined as Khalasi Helper in the Alambagh Workshop Northern Railway in the year 1996. From November, 1996, the applicants were being issued regular computerized pay slips giving their designation as Khalasi Helper, copies of which have been filed by the applicants with their O.As. It is further submitted by the applicants that they had been paid their salary regularly through computerized pay slips which were being issued to them till the year 1999 when their services were suddenly terminated. The applicants have further submitted that all of a sudden, vide impugned order dated 31st December, 1999, in the case of Sher Singh (O.A. No. 124/2000) passed by Assistant works Manager/NC Carriage and Wagon Shop, Alambagh Lucknow and that the authorities, taking cognizance of the said letter gave consent to the applicants to join their duties at Lucknow.

7. It has further been alleged that another fake letter dated 26th December 95 purported to be from DRM Northern Railway, Firozpur and the second letter dated 8.1.96 from Ludhiana was also given to the office of respondent No. 3 and because of these letters the applicants were allowed to join duties at Lucknow. The applicants have further stated in the O.As that on verification from DRM Firozpur, he has informed that he had never issued any such transfer order or Memo. The impugned order further says that thus all the above letters are fake and fabricated and consequent upon the same, letters mentioned in the impugned order dated 12.12.95, 10.12.96 and 31.12.96 are cancelled and the services of the applicants ;are terminated with immediate effect as they are not railway employees and joined the railways on fraudulent way.

.....Para 8 to 21 not reproduced.....

22.In the present case however, we find that the respondent authorities hardly took any time to initiate disciplinary proceedings and to conclude their action by passing order of dismissal from service against the applicants. Moreover, the applicants were not supplied the charge sheet and they were not given opportunity to file their explanation. No enquiry in our knowledge or notice, was held at all by the enquiry officer, no show cause notice was admittedly issued or served upon the applicant against the proposed punishment and their services were terminated wholly arbitrarily and illegally. The disciplinary proceedings rushed through in

violation of principles of natural justice and the provisions of service rules and in contravention of relevant provisions of service rules and in contravention of relevant provisions of constitution of India and in utter lurch of principles of natural justice as well as in violation of decision of the apex court and as such the impugned orders are liable to be held illegal and no nest in the eyes of law. Besides, at the cost of repetition, **it may be stated that rule 55 and 55 A of the CCA rules provided procedure for taking disciplinary action against the delinquent railway servants. The said rules are fully applicable in the present case. We have therefore, no hesitation in holding that the respondents have completely failed to avail the constitutional and statutory provisions, rules and regulations and have arbitrarily passed the impugned orders against the applicants which are non est and unenforceable in law and are liable to be quashed.**

23. In our view, the fact cannot be denied that the action taken by the respondents would cast stigma on the applicants for their future recruitment as they had secured employment on fictitious grounds and therefore, principles of natural justice require that they should be given reasonable opportunity of being heard and then only proper action with reasons in support thereof need be taken. The impugned orders terminating the services of all the applicants in all O.As are liable to be set aside and the same are quashed.

24. It would, therefore, be open to the respondents to issue notice to all the applicants within a period of six weeks from the date of receipt of this judgment and consider the cases of the applicants and then pass appropriate orders with reasons in support thereof. The said notices shall be given to all the applicants stating grounds on which they seek to dismiss them and the applicants are directed to submit their side and objections with material in support thereof within one month thereof. After receipt of replies from the applicants, the respondent authorities are directed to consider their objections carefully and pass appropriate orders within six weeks thereafter and communicate the same to all the applicants under registered post acknowledgement due. The order, as aforesaid should contain concise reasons in support of the conclusions arrived at by respondents. **As regards the past wages of such applicants, the same cannot be given to them on the well settled principle of 'No work no pay' as per decisions of the Hon. Apex court in the cases of R. Rajendra Singh vs. Depot Manager , A.P. SRTC (2000 SCC L&S) 101 and in the case of Bank of India Vs. Ts. S. Kelawala (1990) 4 SCC 744, and Rajasthan State Road Transpt Corp Vs. Bhagomal 1994 SCC (L&S) 648.**

25. Accordingly, we hold that **it will be open for the contesting respondents to pass orders as aforesaid after following the procedure prescribed under law and in the light of the observations given above.**

(emphasis supplied).

5. Hon'ble Judicial Member, though she agreed with the conclusion arrived at by the Hon'ble Administrative Member in his portion of the order, gave her own different reasons thereafter, by passing a separate order, in which she noted her reasoning as follows:-

“8. It is relevant to mention here that **as per applicant's own averments, none of the applicants have got any appointment letter which itself shows that applicants appointment cannot be said to be an appointment as per law** as neither they have show any advertisement showing vacancies and calling applications nor have they undergone any selection processor they have any appointment letter so definitely their appointments is not as per the accepted mode in accordance with rules in any case.

9. **In these circumstances, the question that arises for consideration is whether applicants can claim the protection or procedure enumerated in Railway Servants (Disc. And Appeal) Rules to be followed before terminating their services. In my considered view since applicants have not been able to show that they were appointed in Railways in accordance with rules, they cannot claim protection under Raiwlay Servants (Disc. and Appeal) Rules because that would amount to giving premium to those, who have gained entry in Railways by an unknown method, not permitted by rules. If it is encouraged it would amount to recognizing those who have gained back door entry. Therefore, this contention of the applicant's counsel is rejected.**

10.After all from the facts, it is clear that there is a big racket giving rise to these kind of appointments and the least that was expected from G.M. was to expose such racket so that it does not reoccur. Simply terminating such persons is not the solution. Solution lies in busting such racket otherwise after terminating these persons, the same process would be started all over again so it is important that the G.M. sets his own house also right, therefore, I expect that respondent No. 1 would at least now try to find out who are the officers involved in this racket and take appropriate action against them. This action would, however, be independent of these cases.

11. Coming back to the point whether in these circumstances any show cause notice is required to be given or not. I feel since, applicants had already worked for 4 to 5 years with the respondents and had been given further promotion also, the least that was required of respondents was to give show cause notice to the applicants so that they could at least give their version/defence to explain as to how they

were appointed. In the instant case, no show cause notice was given to the applicants before terminating their services. Moreover, the tenor of termination order is such, which casts total blame on applicants for having joined Railways fraudulently. The termination order therefore, gets vitiated as it is violative of principles of natural justice. **Hon'ble Supreme Court has repeatedly held that any order which has civil consequences cannot be passed without giving show cause notice to the person concerned. I, therefore, quash the termination order. However, since termination orders are quashed due to an irregularity for not having issued show cause notice, applicant would not be entitled to back wages. The respondents would be at liberty to give show cause notice to the applicants within 6 weeks from the date of receipt of a copy of this order** calling upon them to explain within one month as to how they were appointed, who asked them to join and who is their acquaintance as stated in the O.As. **After, they give reply to the show cause notice within the stipulated period, it would be open to the respondents to pass appropriate speaking orders in accordance with law within 6 weeks thereafter** under intimation to the applicants. **Till such time this exercise is completed, applicants shall be kept under suspension.**

12. In view of the above discussion, the OAs are allowed with no order as to costs.

Member (J)
Lucknow: Dated:
HLS/-

Member (A)

In the result, all the 126 O.As are allowed, with no order as to costs. Copy to be placed in each O.A.
(Meera Chhibber) S. K. Agarwal
Member (J) Member (A)

Dated: Hyderabad the 13th October, 2003."
(emphasis supplied)

6. Thereafter, bowing before the directions of this Tribunal, show cause notice dated 29.4.2004 was issued to the applicant of O.A. No. 382/2009, and similar show cause notices were issued to others. The applicants replied to the show cause notices, and further, since the replies of the applicants were not found complete, orders of termination of the applicants were issued once again, through orders similar to Annexure A-5 dated 27.7.2004 in the first O.A. The applicant of the first O.A. had in the

meanwhile filed a Contempt Petition No. 28/2004, since, according to him, this Tribunal had through its order dated 17.10.2003 converted the termination order into an order of suspension, and stating that suspension allowance ought to have been paid, which had not been paid by the respondents. That Contempt Petition No. 28/2004 came to be disposed of through orders dated 4.10.2004, directing the respondents to dispose of the representation of the applicant regarding subsistence allowance within three months.

7. Against the second order of termination passed by the respondents on 27.7.2004, Annexure A-5, the applicant of the first O.A. had approached this Tribunal once again in the second round of litigation on original side, by filing of O.A. 468/05, which was disposed of by this Tribunal on 30.1.2006, with directions to the respondents to dispose of the representation of the applicant within two months.

8. The applicant again approached the office of DRM on 24.2.2006 praying that the order of termination which was converted into order of suspension entitles him to subsistence allowance, which should be paid to him. Through his representation dated 12.4.2006, he had again reiterated his prayer for the subsistence allowance to be paid. The ground of the applicant is that even though he has been paid subsistence allowance, for the period 29.4.2004 onwards, but he was rather entitled to be paid subsistence allowance for the period from 14.5.2001, the date of his first order of termination. He has submitted that in identical cases several other original applications were filed by similarly placed persons before this Tribunal, and through order dated 11.1.2008 disposing off the O.A.

21/2008, S. K. Sharma Vs. Union of India & others , O.A. No. 22/2008, Anoop Kumar Srivastava Vs. Union of India & Others, and O.A. No. 23/2008 Vinay Kumar Vs. Union of India & Others, stating that since the applicants have submitted for foregoing all other claims at present, except disposal of their representation for grant of subsistence allowance, the O.As concerned stand disposed off, with a direction to the respondents to consider the claim of the applicants, and dispose off the same within a period of 2 months from the date of receipt of a copy of that order, in accordance with law. A 4th O.A. 130/2009 Sri Virendra Kumar Vs. Union of India was also decided on 7.8.2009, and in that case also, the applicant had given up all other claims, except disposal of his representation for grant of subsistence allowance, and the O.A. was disposed of with the direction to the respondents to consider the claim of the applicant and dispose of the representation within a period of three months from the date of receipt of the copy of that order.

9. In the present case before us, the Respondents, Union of India and others, filed M.A.No. 240/10 on 17.2.2010 in the O.A. which was an application praying for condonation of delay in filing of the O.A. to be dismissed. Apart from this, they had filed a detailed CA with MA 241/10 against affidavit filed in support of application for condonation of delay in filing O.A. 382/2009. In addition to this , respondents filed a detailed counter reply also to the main O.A 382/2009. A similar cycle of events and proceedings had taken place in the other four applicants'

cases also, which is not being described in detail here for the sake of brevity.

10. Heard. All of these five OAs have made a similar prayer for grant of subsistence allowances, based upon the concluding sentence of para-11 of the concurring but different judgment delivered by the then Hon'ble Member (J) Smt. Meera Chhibber directing that till such time the respondents give a show cause notice to the applicants calling upon them to explain within one month as to how they were appointed, who asked them to join, and who is their acquaintance as stated in the OAs, and after they give reply to the show cause notice, the respondents could pass speaking orders in accordance with law within six weeks thereafter, under intimation to the applicants, and that till such time this exercise is completed, applicants shall be kept under suspension. The plea of all these five applicants is that this direction entitles them to the grant of subsistence allowance from the respective dates of their first termination orders. But it is seen that as held by the Hon'ble M(J) herself, in para 9 of the order, as already reproduced and highlighted above, it was determined by her that since the applicants had not been able to show that they were ever appointed in the Railways in accordance with rules, they cannot claim protection under Railway Servants' (Disc. and Appeal) Rules, 1968, because that would amount to giving premium to those, who had gained entry into Railways by an unknown method, not permitted by rules, and if it is encouraged, it would amount to recognizing those who had gained back door entry. Therefore, the contention of the applicant's counsel in this regard was rejected. In her order in Para 10 onwards, the

Hon'ble Member (J) had further reiterated that the applicants were not entitled to protection under the Railway Servants (Dis. & Appeal) Rules, 1968.

11. The entitlement of a Railway Servant for subsistence allowance flows only from the provisions of Railway Servants' (Discipline & Appeal) Rules, 1968. Therefore, once the Bench had, through the words of Hon'ble Member (J), agreed to and signed by the then Member (A) also at the end, held that the Railway Servants' (Discipline & Appeal) Rules, 1968, were not applicable to the applicants of 126 OAs before that Bench, there is no question of payment of any subsistence allowance whatsoever to any of those applicants in respect of any period whatsoever, as well as for the period as claimed for by them. It was pointed out during the arguments on the present five cases that this judgment dated 13.10.2003 has remained unchallenged by either sides, and has become final. If that is so, the finding of the Bench that the Railway Servants' (Discipline and Appeal) Rules, 1968, were not applicable to the 126 applicants before it, had become final on 13.10.2003.

12. The next question is as to whether the last sentence of the paragraph 11 of the order dated 13.10.2003 as dictated by the then Hon'ble Member (J) regarding the applicants therein being kept under suspension would have prospective application, or retrospective application. The law regarding prospective and retrospective application of judgments of Courts and Tribunals has been very lucidly explained in the Hon'ble Apex Court's Constitution Bench judgment in **Managing Director, E.C. I.L., Hyderabad Vs.**

B. Karunakar (1993) 4 SCC 727: AIR 1994 SC 1074 JT

1993 (6) SC 1: 1994 (1) LLJ 162” particularly, in paragraph 67 and 73 of that judgment in which it has been laid down that:

“67.when judicial discretion has been exercised to establish a new norm, the question emerges whether it would be applied retrospectively to the past transactions, or prospectively to the transactions in future only. It was observed by the Hon’ble Supreme Court that prospective overruling limits the application of the principle to only the future situations, and excludes the application of the principle to situations which have arisen before the decision was evolved. It was mentioned by the Apex Court that the Supreme Court of the United State of America has consistently held that the American Constitution neither prohibits nor required retrospective effect, and, therefore, it is for the Court to decide, on a balance of all relevant considerations, whether a decision overruling a previous principle should be applied retrospectively or not. It was further observed by the Hon’ble Supreme Court that the benefit of the decision must be given to the party before the Court, though applied otherwise to future cases from that date prospectively, and its benefits may not be extended to the parties whose adjudication had either become final or matters are pending trial or in appeal.

Para 68,69, 70, 71,72 not produced.

73.This Court would adopt retroactive or non-retroactive effect of a decision not as a matter of constitutional compulsion but a matter of judicial policy determined in each case after evaluating the merits and demerits of the particular case by looking to the prior history of the rule in question, its purpose and effect and whether retroactive operation will accelerate or retard its operation. The reliance on the old rule and the cost of the burden of the administration are equally germane and be taken into account in deciding to give effect to prospective or retrospective operation.”

13. But the doctrine of prospective application of the law as laid down has been held by the Apex Court to be applicable and available only to the judgments of the Hon’ble Apex Court. In fact, in a particular case, while deciding the Civil Appeal No. 8568 of 2002” **Union of India & Anr. Vs. I.P. Awasthi and ors.**” in its judgment dated 16.2.2006, the Hon’ble Apex court had clarified that the doctrine of prospective overruling pertains only to the Supreme Court itself, and that this Tribunal does not have


power to determine and hold that its judgment will only have prospective application, and not a retrospective application, as no such doctrine is available to this Tribunal for the exercise of its powers. Therefore, the judgments of this Tribunal laying down or determining a ratio are applicable from the date the cause of action arose, in respect of which the ratio has been determined.

14. Therefore, once the Bench of this Tribunal had on 13.10.2003 held that the protection of Railway Servants' (Dis.& Appeal) Rules, 1968, was not available to all the applicants of the 126 OAs decided by a common order that day, the only meaning of that order can be that the protection of and benefit of any portion of the Railway Servants' (Dis. & Appeal) Rules, 1968 was not available to any of the applicants from the date of the original cause of action itself, i.e. from the dates of their initial fraudulent entry into the Railway Service, as held to be proved by the Bench.

15. Therefore, when, by the order of this Tribunal, the 126 applicants, including three of the 5 applicants before us in the 5 O.As before us today, and the two others who were equated with those 126 later, through separate orders of this Tribunal, were denied the protection of Railway Servants' (Dis. & Appeal) Rules, 1968, from the initial date of their fraudulent entry into Railways from 1994 etc. onwards itself, they cannot lay a claim to be covered by the Railway Servants' (Dis. & Appeal) Rules, 1968, from the date of the first order of the termination of their services, as passed in their cases, as they have all been held to be outside the protection of the Railway Servants' (Discipline & Appeal) Rules, 1968, from the very date of their initial

fraudulent appointment. Therefore, any observations of the Bench in its order (para 11) that the applicants would be under suspension can only be termed to be in the nature of obiter dicta, and not a ratio decidendi, giving rise to any rights in favour of any of the 126 applicants before it, on the basis of which they could have claimed any monetary benefits from the respondents in the name of a subsistence allowance. 16. And, when the Railway Servants' (Discipline & Appeal) Rules, 1968, themselves were not applicable to the 126 applicants, and two others later, whose cases were decided by this Tribunal, and they were out side the pale and purview of the applicability of the Railway Servants' (Discipline & Appeal) Rules, 1968, ab-initio, from the date of their initial fraudulent appointments, they certainly cannot claim the benefit of any subsistence allowance whatsoever, from any date, and in particular from the dates of their initial termination orders, as has been claimed by them in the present 5 OAs, since subsistence allowance could have become payable to them only if they were held to be covered by the Railway Servants' (Discipline and Appeal) Rules, 1968.

17. Therefore, all the 5 O.As are rejected. But, there shall be no order as to costs.


(Sudhir Kumar)
Member (A)

Vidya