CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

O.A.No.164/92

Tuesday this the 15 day of February, 2000

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. J.L. NEGI, ADMINISTRATIVE MEMBER

Shyam Narain Jha
aged 58 years son of Shri Mohanand Jha, resident of Village Ojhawan (Barari) PO.Mukhilispur Dist. Lakhimpur Kheri (UP). ... Applicant

(By Advocate Mr. L.P. Shukla)

V.

1. Union of India through the General Manager Northern Eastern Railway, Gorakhpur (UP).

2. Divisional Commercial Suddt. N E.Railway Iaztnagar, Distt. Bareilly (UP).

3. Additional Divisional Railway Manager, N.E.Railay, Izatnagar, Dist. Bareilly. ... Respondents

(By Advocate: None for the respondents)

The application having been heard on 9.2.2000, theTribunal on 15.2.2000 day of February, 2000 delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant Shri S.N.Jha was initially appointed as a Rakshak in the Railway Protection Force (RPF for short) on Northern Railway, Gorakhpur in the year 1965. Due to administrative reasons he was transferred to Commercial cadre of the said Railways in the year 1970 and was designated as Booking Clerk. He was promoted as Sr. Booking Clerk

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and then as Head Booking Clerk in the scale Rs.425-640 (pre-revised). While so he was by order dated 10.7.87 placed under suspension with immediate effect. However, the Senior Commercial Supdt. vide order dated 25.11.87 revoked the suspension and reinstated the applicant. Thereafter he was served with a memorandum of charge dated 27.4.88 issued by the Senior Divisional Commercial Superintendent, Northern Railway, Izatnagar, who is the competent disciplinary authority. The charge was that the applicant being a habitual offender of realising excess money from the passengers on booking of tickets, on 15.6.87 deliberately realised Rs.110/- against the actual fare of Rs.108/- on the sale of two tickets Ex-Puranpur to Siwan from a decoy of the Vigilance team with ulterior motive for his private gain and when detected, he took a plea of returning the same to the decoy purchaser along with the tickets sold to him, which was far from truth. The applicant denied the charge. The Senior Divisional Commercial Supdt. appointed by order dated 8.7.88 one Shri Ram Dass Prasad as enquiry officer. The enquiry officer concluded the enquiry and submitted a report. The second respondent accepting the report imposed on the applicant a penalty of removal from service by order dated 22.2.89 without giving the applicant a copy of the enquiry report and giving an opportunity to make a representation. The appeal filed by the applicant was rejected by the third respondent by order dated 29.6.89 (A.7). The applicant filed O.A.267/89 challenging the orders

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of his removal and the appellate order, which was disposed of by the Tribunal by judgment dated 15.7.91 setting aside the order of the disciplinary authority dated 28.2.89 and of the appellate authority dated 27.6.89 but granted liberty to the respondents to proceed afresh in the matter in accordance with rules and law on the subject from the stage after furnishing a copy of the enquiry report to the applicant and giving him an opportunity to represent and shown cause against it. Purporetedly in pursuance to the judgment of the Tribunal the second respondent issued an order dated 13.8.91 placing the applicant under suspension with effect from 28.2.89 ie., (the date of removal from service by A5 order) The applicant was then given a copy of the enquiry report giving him 15 days time to make his representation, if any. The applicant was not paid any subsistence allowance or arrears of pay and allowance. On receipt of the enquiry report and a notice calling upon him to make his representation the applicant made a representation to the second respondent on 2.9.91 requesting him to disburse to him the arrears of pay and allowance and the subsistence allowance explaining that for want of funds he was really starving and that he would not be in a position to make a proper representation and to participate with the furbher enquiry if the subsistence allowance or arrears of pay is not paid to him and sought 15 days time more to make a representation. He made another representation on 13.9.91 (A.12) to the second respondent again requesting him to disburse to him the subsistence allowance to enable him to effectively participate in the proceedings and to make

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proper representation. He had also stated that the proceedings being held by the second respondent was really incompetent. However, the second respondent thereafter issued an order (A.13) dated 26.9.91 removing the applicant from service. The applicant filed a detailed appeal to the third respondent challenging the competence of the second respondent to impose the penalty explaining how he was denied reasonable opportunity to defend as he could not participate in the further enquiry effectively for want of funds as also how the order was not sustainable. The applicant was by letter dated 17.12.91 received by him on 23.12.91 directed to appear before the third respondent for a personal hearing at Izatnagar on 30.12.91 along with his defence counsel (A.15). As the applicant was not paid his subsistence allowance and/no given free pass for his journey and his defence counsel's journey to Izatnagar, the applicant made a representation on 27.12.91 to respondents 2&3 explaining his inability to be present at the personal hearing fixed on 30.12.91 along with his defence assistant and requesting that the matter may be disposed of in a judicial manner taking into account the contention that the order of removal was passed by an incompetent authority, that the order was passed in gross violation of the principles of natural justice and against the provisions of Art. 14 and 16 of the Constitution. The appeal was dismissed by the third respondent by order dated 8.1.93 (A.17). Aggrieved by this the applicant has filed this application challening the order at A.9 by which he was placed under deemed

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suspension, the order of the disciplinary authority (A-13) and the order of the appellate authority (A.17) and seeking the consequential benefits of arrears of pay and allowance and retiral benefits as the applicant reached the age of superannuation on 31.1.92. The applicant has alleged that he was initially appointed as a Rakshak to the RPF by the Chief Security Officer who is the appointing authority under Section 6 of the RPF Act, that the second respondent who issued the impugned order A.13 imposing on him a penalty of removal from service being an authority lower in rank than the Chief Security Officer, the order was in violation of Article 311(1) of the Constitution, that the competent authority Sr.Divisional Commercial Supdt. having exercised the powers of the disciplinary authority and issued the Memorandum of Charge and appointed the enquiry Officer, second respondent who is a lower authority had without jurisdiction passed the order of removal from service, that the enquiry was not held in conformity with the rules, that as the arrears of pay and allowances and subsistence allowance were not paid to the applicant in spite of repeated requests and as the applicant was virtually made to starve the further enquiry held without paying the subsistence allowance was vitiated and the orders passed thereunder are unsustainable, that there was no evidence at all on the basis of which a reasonable conclusion could be arrived at and that the order of the appellate authority being cryptic and non-speaking is wholly unjustified and unsustainable.

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2. The respondents in their reply statement have sought to justify the impugned orders. The placing of the applicant under deemed suspension, according to the respondents was perfectly in order. It is contended that the enquiry has been held in conformity with the rules, that the second respondent was the competent disciplinary authority as the applicant was appointed only by an Assistant Security Officer and not by the Security Officer and that the order of penalty and the appellate order have been passed in accordance with rules.

3. The applicant in his rejoinder contended that the case of the respondents that the applicant was appointed by the Assistant Security Officer is not correct and that the order CA.I produced by the respondents along with the reply statement does not show that the Assistant Security Officer was the appointing authority of the applicant. The applicant has produced an order dated 5.1.63 by which the Chief Security Officer posted him as Record Lifter in the scale Rs.80-110 by change of cadre as a result of test held on 27.8.62.

4. We have carefully gone through all the materials placed on record and have heard Shri L.P.Shukla, learned counsel appearing for the applicant. As none appeared for the respondents we did not have the benefit of hearing the respondents. However, we have taken into consideration the defence of the respondents contained in the pleadings.

5. Shri L.P.Shukla, learned counsel of the applicant argued that the impugned order A.13 of removal of the applicant from service having been issued by Divisional Commercial Supdt. who is an officer lower in rank than the Chief Security

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Officer of the RPF now redesignated as Chief Security Commissioner, the order is in violation of Article 311(1) of the Constitution and is therefore liable to be set aside on that score itself. Shri Shukla argued that under Section 6 of the RPF Act, the Chief Security Officer being the appointing authority of Rakshak and as the applicant has been appointed by the Chief Security Officer, the contention of the respondents that the second respondent was competent as ~~xxxx~~ the applicant was really appointed by the Assistant Security Officer is untenable. The respondents in support of their contention that the applicant was appointed by the AssistantSecurity Officer have produced an Office Order dated 25.7.55 issued from the Office of the Security Officer, Gorakhpur. This order appears to be an order of posting after the selection and appointment of Sainiks. From this document it is not possible to discern that Assistant Security Officer is the appointing authority of the applicant or that it was he who appointed the applicant. Further at the bottom of this order "FOR SECURITY OFFICER" is typed below the signature and above that "ASSTT." is typed in a difference machine. Further it is seen that the applicant was appointed by a cadre change as Record Lifter by the Chief Security Officer in 1963 (Ann.R1). The contention of the applicant that he was appointed by the Chief Security Officer and therefore, the impugned order Annexure.13 of his removal from service issued by the second respondent who is an officer lower in rank is in violation of Article 311(1) of the Constitution of India is valid.

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5. The another point urged by the learned couhsel of the applicant about the incompetence of the second respondent to exercise the powers of disciplinary authority and to impose on him the penalty of removal from service is that as the Senior Divisional Commercial Superintendent has exercised the power of the disciplinary authority by issuing the Memorandum of Charge and appointing the enquiry officer, the second respondent who is lower in rank and subordinate to the Sr.Divisional Commercial Supdt. has no locus standi or authority to function as disciplinary authority. This case has been put forth by the applicant right from the stage of the enquiry uptothe pleadings in this application. The respondents have not met this point in their reply statement apart from making an evasive answer that the second respondent xxxDivisional Commercial Supdt. was an independent branchofficer and as such he was competent to function as disciplinary authority. However, since the Sr.Divisional Comercial Superintedent has already exercised the jurisdiction as disciplinary authority by issuing the Memorandum of Charge and appointing the Enquiry Officer unless the second respondent was appointed as adhoc disciplinary authority, which is not possible as he is an officer below in rank, the second respondent could not have validly exercised the disciplinary jurisdiction in this case. We are,therefore, of the view that the impugned order of penalty issued by the second respondent is invalid and unsustainable for his incompetence.

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6. Learned counsel of the applicant next argued that the applicant who had put in a service of thirty years was removed from service initially by order (A5) with effect from 28.2.89 was virtually starving for non-receipt of pay and allowances in the absence of any other income when further enquiry was held in August, 1991 and as the repeated requests of the applicant to make available to him the subsistence allowance to enable him to make a proper defence was turned a deaf ear to by the second respondent, further enquiry is vitiated, and therefore the order passed is unsustainable. He further argued that even when the appellate authority directed the applicant and his defence counsel to be present in its office for a personal hearing, though the applicant requested for release of arrears of subsistence allowance so that he could meet his defence counsel, get his advise and appear before the appellate authority to present his case, the request was totally neglected by the second respondent as also the third respondent and therefore, the entire proceedings including the appellate order A.17 is vitiated, ~~argued on learned counsel~~.

7. In Ghyanshyam Das Shrivastava V.State of Madhya Pradesh reported in AIR 1973 SC 1183 a five member Bench of the Hon'ble Supreme Court, when the appellant challenged the order of his dismissal from service on an enquiry which was held exparte as he did not appear before the enquiry officer allegedly for want of funds as he after being placed under suspension in October,1964 was not paid subsistence allowance till 20.3.65,

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reversed the judgment of the Madhya Pradesh High Court which refused to interfere with the order on the ground that the applicant did not complain specifically in the Writ Petition that he did not attend the enquiry as he had not been paid subsistence allowance and had no means to meet his expenses of going to Jagdalpur, that his affidavit did not give particulars of the source of income and estimate of expenses to be incurred by him in the enquiry, that the third class railway fare from Rewa to Jagdalpur is Rs.20/- and that he could have made up this money as he had been drawing a pay of Rs.300/- p.m., and that after his dismissal he was capable of filing the Writ Petition before the High Court. The apex court observed as follows:-

> "5. With respect, we find it difficult to share the view taken by the High Court. Paragraph 5 of the writ petition expressly alleges that on December 5, 1964, the appelant sent a letter to the Enquiry Officer informing him that unless he was paid subsistence allowance he would not be able to face the enquiry proceedings. The letter was filed along with the petition. It is Annexure.H. The letter stated that "Until and unless I am paid subsistence allowance... I categorically refuse to face any proceeding....as I have no capacity to do so because of acutre shortage of funds (emphasis added). This is obviously specific pleading on he point that for non-payment of subsistence allowance he was short of funds and could not attend the enquiry. It is true that his affidavit does not give any particulars about his sources of income and the estimate of expenses to be incurred in the enquiry. But it would prima facie suggest that he had no other source of income except his pay. If he had no other source of income, he could not invent them for the purpose of mentioning them in the affidavit. More significantly the Government affidavit does not allege that he had any other source of income except pay. The fact that he had been drawing a monthly pay of Rs.300/-

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till October, 1964 would not necessarily show that he had sufficient money to enable him to go to Jagdalpur to attend the enquiry in February,1965. He was supended on October, 30, 1964 and thereafter he did not get subsistence allowance until March, 20, 1965. Having regard to the prevailing high prives, it is not possible to draw any adverse inference against him from the mere circumstances that he had been receiving a monthly pay of Rs.300/- till October, 1964. The fact that he filed a writ petition immediately on the passing of the order of dismissal and thereafter came in appeal to this court would not establish that he had enough resources to enable him to attend the enquiry. It seems to us that on the whole the High Court has gone by conjectures and surmises. There is nothing on the record to show that he has any other source of income except pay. As he did notreceive subsistence allowance till March 20,1965 he could not, in our opinion, attend the enquiry. The first payment of subsistence allowance was made to him on March,20, 1965 after a part of the evidence had already been recorded on February 9, 10 and 11, 1965. The enquiry proceedings during those days are vitiated accordingly The report of the Enquiry Officer based on that evidence is infected with the same defect. Accordingly the order of the Gowernment dismissing him from service cannot stand. It was passed in violation of the provisions of Art.311(2) of the Constitution for the appellant did not receive a reasonable opportunity of defending himself in the enquiry proceedings."

8. The legality of denial of subsistence allowance to an employee placed under suspension facing a departmental disciplinary proceedings was considered by the Apex Court in O.P.Gupta V.Union of India reported in (1987) 4 SCC 328. The court made the following observations with regard to subsistence allowance:

"An order of suspension of a government servant

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does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this court in Khem Chand V.Union of India (AIR 1958 SC 300) is that he continues to be a member of the government service but is not permitted to work further during the period of suspension he is paid only some allowance - generally called subsistence allowance - which is normally less than the salary instead of the pay and allowance he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental enquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression subsistence allowance 'subsist' as given in Shorter Oxford English Dictionary Vol.II at P.217) is to remain alive as on food; to continue to exist. Subsistence" means - means of supporting life, especially a minimum livelihood." (Emphasis supplied)

In a more recent case Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and anoher reported in 1999 SCC(L&S) 810 the Hon'ble Supreme Court observed as follows:-

"On joining government service, a peron does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Government. The Government, only because it has the power to appoint does not become the master of the body and soul of the employee. The government by providing job opportunities to its citizens only fulfils its obligations under the constitution, including the Directive Principles ofState Policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his ervice. His association with the Government or any other employer like instrumentalities of the Government or statutory or autonomous corporations etc. is regulated by the terms of contract of service or service rules made by the Central or State Government under the proviso to Article 309 of the Constitution or other statutory rules including certified standing orders. The fundamental rights including the right to life under Art.21 of the Constitution or the basic human rights are not

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surrendered by the employee. The provision for payment of subsistence allowance made in the service rules only ensure non-violation of the right to life of the employee. That was the reason why this Court in State of Maharashtra Vs. Chandrabhan Tale (1983) 3 SCC 387 struck down a service rule which provided for payment of a nominal amount of rupee one as subsistence allowance to an employee placed under suspension. This decision was follows in Fakirbhai Fulabhai Solanki V. Presiding Officer (1986) 3 SCC 131 and it was held in that case that if an employee could not attend the departmental proceedings on account of financial stringencies caused by non-payment of subsistence allowance, and thereby could not undertake a journey away from his home to attend the departmental proceedings, the order of punishment, including the whole proceedings would stand vitiated. For this purpose, reliance was also placed on an earlier decision in Ghanshyam Das Shrivastava Vs. M.P. State (1973) 1 SCC 656."

After a survey of the authorities on the subject the court held that as it was not disputed that subsistence allowance was not paid to the appellant during the pendency of the departmental proceedings, that the court had to take a very strong notice of it and/for that reason the court held that the appellant was punished in total violation of the principles of natural justice. The order was reversed.

9. The facts and circumstances of the instant case is also similar to the casesunder citation. After the applicant was removed from service by order dated 28.2.89 (A.5) the applicant was not paid either pay and allowances or subsistence allowance. Even when theTribunal vide its order in O.A.267/89 set aside the order dated 28.2.89 of the disciplinary authority as also the order dated 27.6.89 of the appellate authority and gave liberty to the respondents to resume the enquiry, the respondents did not reinstate the applicant or pay him backwages or subsistence allowance. When a copy of the enquiry report was given to the applicant calling upon him to make a representation, if any, by the second respondent on 14.8.91 the applicant made a fervent request to the second respondent to disburse to him the arrears of pay

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and allowances of the subsistence allowance explaining that he was suffering from extreme poverty that it was not possible for him without the release of subsistence allowance or pay and allowances to properly defend himself at the further enquiry by making proper represenetation. As there was no response the applicant made another representation to the second respondent informing him that if the arrears of pay and allowances or subsistence allowance is paid he would not be in a position to make any representation regarding the enquiry report and to participate in the further enquiry. A question may be asked why the applicant could not gave his representation about the acceptability of otherwise of the report of the enquiry officer if he could make detailed representations claiming subsistence allowance and arrears of pay and allowances. Making a request for disbursement of arrears of pay and allowances and claiming subsistence allowance is not the same as making a fepresentation relating to enquiry report. For making proper representation to counter the conclusions reached by the enquiry authority, the applicant might have to take the advise of his defence counsel and for that purpose he might have to go to the place where the defence counsel is posted or residing. The applicant, therefore, was right in not making a representation in response to the enquiry report and not participating with the further enquiry. In fact by hot disbursing to the applicant the arrears of subsistence allowance, the applicant has been disabled from making a proper defence in this case. When the appellate

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authority requested the applicant to appear before him along with the defence counsel for personal hearing again the applicant wrote to the second and third respondents requesting that unless the subsistence allowance was made available to him as he was in an accute state of poverty it would not be possible for him to appear before appellate authority to avoil of the opportunity of personal hearing. This also did not make the second respondent as also the appellate authority to open their eyes to reality and to disburse to the applicant his subsistence allowance so that atleast at the appellate stage the applicant could have made a proper defence. Under these circumstances in the light of the principles enunciated by the Hon'ble SupremeCourt in the ruling in Ghyansham Vs. State of M.P. and others and Capt. M.Paul Anthony Vs.Bharat Cold Mines Ltd. and another (Supra) we are of the considered view that the further enquiry held from the stage of supply of enquiry report to the applicant accofding to the liberty given to the respondents by the Tribunal in its order in OA. 267/89 is vitiated for the violation of the principles of natural justice and the proceedings as also the orders passed thereunder are null and void.

10. Learned counsel of the applicant argued that the order issued by the second respondent placing the applicant under deemed suspension with effect from 28.2.89 by order dated 13.9.91 purportedly invoking the powers under proviso to Rule 5(1) of the Railway Servants (D&A) Rules is unsustainable because the applicant was not under suspension before he was removed from service. To buttress this point, the learned counsel referred us to the ruling of the

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Apex Court in Khem Chand Vs. Union of India and others reported in AIR 1963 SC 687 wherein the court observed as follows:-

> "Where a penalty of dismissal, removal or compulsory retirement imposed upon a government servant is set aside by the departmental authority on appeal, it may or may not order further enquiry; just as where a similar penalty is set aside by a decision of a court of law the disciplinary authority may or may not direct a further enquiry. Where the appellate authority after setting aside a penalty of dismissal removal or compulsory retirement makes an order under R.30(2)(ii) remitting the case to the authority which imposed the penalty, for further enquiry, Rule 12(3) will come into operation and so the order of suspension which in almost all cases is likdy to be made where a disciplinary proceeding is contemplated or is pending shall be deemed to have continued in force on and from the date of the original order of dismissaland shall remain in force until futther orders. There is therefore no difference worth the name between the effect of Rule 12(4) on a government servant the penalty of dismissal, removal or compulsory retirement on whom is set aside by a decison of a court of law and a further enquiry is decided upon and the effect of R.12(4) on another government servant a similar penalty on whom is set aside to appeal or on review by the departmental authority and a further enquiry is decided upon. In both cases the government servant will be deemed to be under suspension from the date of original order of dismissal, except that where in a departmental enquiry a government servant was not placed under suspension prior to the date when the penalty was imposed, this result will notfollow as R.12(3) would not then have any operation." (emphasis ours)

The proviso of the CCS (CCA) Rules considered by the Apex Court in that case was almost similar to Sub Rule 1 of Rule 5 of the Railway Servants (Discipline and Appeal) Rules under

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which the second respondent placed the applicant under deemed suspension with effect from 28.2.89. As the applicant was not under suspension when the order of removal from service was issued on 28.2.89 Rule 5(1) of the Railway Servants (Discipline and Appeal) Rules had no application and the order of deemed suspension is unsustainable.

11. Now we will come to the last point whether there was any legal evidence on the basis of which a conclusion could be arrived at that the applicant was guilty of the misconduct. This according to the respondents is a [illegible] case. On a careful scrutiny of the Memorandum of Charge and the Enquiry Report, we find that this is a case where the prey did not fall into the trap, the hunters cornered him and pulled him into the trap. It is interesting to read the article of charge, which reads thus:

> "Sri S.N.Jha, Head Booking Clerk, while on duty in the Booking Office, Piranpur on 15/6/87 from oo hrs to 10.08 hrs shift has committed serious misconduct in as much as that he being a habitual offender of realising excess money from the passengers on booking the tickets, deliberately realised Rs.110/- (One hundred and ten) against the actual fare of Rs.108/- (One hundred and eight) on the sale of two tickets ex Puranpur to Siwan from the decoy with ulterior motive for his private gain and when detected, he took alibi of returning the same to the decoy purchaser along with the tickets sold to him although the fact was far off from the truth."

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In the statement of imputation there is no mention anywhere that the applicant was a habitual offender. The last part of the article of charge that when the misconduct was detected the applicant took alibi of returning the money to the decoy purchaser along with the ticket sold to him is far off from the truth appears to have been included to foreclose the defence of the applicant. There is no allegation in the charge that the applicant had stated to the decoy purchaser that the cost of one ticket is Rs.55/- and therefore that of two tickets would be Rs.110/-. But Shri Gorakh Nath Misra in the enquiry stated that the applicant said that the charge for one ticket is Rs.55/-. This is a matter which was not there either in the Memorandum of Charge or in the statement of imputations. The prosecution witness R.K.Misra had given evidence that along with the ticket the balance of Rs.2/- was put on the counter by the applicant. It is also seen from the discussion and the evidence by the enquiry officer that the balance amount of Rs.2/- alleged to have been taken by the applicant was actually given to Gorakh Nath Misra the decoy by the S.M. as the amount was found on the counter and the Vigilance Inspector S.N.Prasad admonish Gorakh Nath for having received the money. This will clearly show that the Vigilance Inspector wanted to book the applicant even though the balance of Rs.2/- was along with the ticket place by the applicant on the counter. Even though there is a detailed

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discussion of the evidence, a reading of the enquiry report would clearly show that what is discussed would not permit a reasonable person come to the conclusion that the charge has been established. On the basis of this rport the second respondent who we have found has no competence, has issued the impugned order A.13 imposing on the applicant a penalty of removal from service, which is cryptic and non-speaking. A copy of the enquiry officer's report was submitted to the applicant for the purpose of making a representation to the disciplinary authority so that the disciplinary authority would consider his representation also but the disciplinary authority has only stated that on a careful consideration of the enquiry report aforesaid the undersigned agrees with the findings of the Enquiry Officer in so far as it relates to Imputations nos.(i) to (xvi). No consideration of the applicants representation and no reason for conclusion is seen mentioned therein. The applicant had filed very detailed appeal raising several valid legal grounds. The appellate authority's order Annexure.17 is absolutely non-speaking and cryptic and laconic.

12. Going through the materials available in this case we cannot escape from reaching a irresistible conclusion that the applicant at the fag end of his career had been unnecessarily harrassed by the respondents by framing a cooked up charge, not allowing him to make a proper defence by denying him the principles of natural justice and not considering the various representations and appeals made by him. Having served the Railway Administration for as long as a period of 30 years the applicant

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was kept out of service towards the fag end of his service without being paid even the subsistence allowance which is an inhuman act.

13. In the conspectus of facts and circumstances, we set aside the impugned orders A9, A.13 and A.17. As the applicant has reached the age of superannuation on 31.1.92 we direct the respondents to pay to the applicant the entire backwages for the period he was kept out of service deeming that he continued in service and retired on the date of superannuation, determine his pension and retiral dues issuing a proper Pension Payment Order (P.P.O) and to make available to him all his retiral dues like Provident Fund, Gratuity, Leave encashment, arrears of pension etc. All the above directions shall be complied with as expeditiously as possible at any rate not later than a period of three months from the date of receipt of a copy of this order. We also direct the respondents to pay to the applicant a sum of Rs.2000/- (Rupees two thousand) as costs.

Dated the 15th day of February, 2000

J.L. NEGI
ADMINISTRATIVE MEMBER

A.V. HARIDASAN
VICE CHAIRMAN

s.