

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE T.A. 925 OF 87

NAME OF THE PARTIES Anand Moh. Sen Applicant

Versus

Union of India Respondent

Part A.

Sl.No.	Description of documents	Page
1 A	Index	1
2 A	check list	2 = 3
3 A	order sheet	4 = 6
4 A	Judgment 24-10-89	7 = 10
5 A	Relition along with Annexure	11 = 33
6 A	Vakalat nama	1 = 34
7 A	C.A.	35 to 37
8 A	R.A	38 to 53
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		

CERTIFICATE

Certified that no further action is required totaken and that the case is fit for consignment to the recoord room (decided)

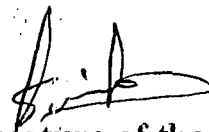
Dated 07-06-11

Check on 10/12/12

Counter Signed.....



Section Officer in charge



Signature of the
Dealing Assistant

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH, LUCKNOW

* INDEX - SHEET

CAUSE TITLE I.A. 925/87 OF 198Name of the Parties A.M. Sin

Versus

U.O.T.Part A, B and C

Sl.No.	DESCRIPTION OF DOCUMENTS	PAGE
1.	Index A ₁	1
2.	check list (A ₂ -A ₄)	2
3.	ordersheet (A ₃ -A ₅)	4
4.	Judgement (A ₄ -A ₁₀)	7
5.	Petition (A ₁₀ -A ₁₁)	9
6.	Annexure (A ₂₀ -A ₃₃)	14
7.	vahalatnamas	1
8.	counter A ₃₅ -A ₃₇	3
9.	Rejoinder A ₃₈ -A ₄₁	6
10.	Annexure A ₄₄ -A ₅₃	10
11.	B. file	10
12.	C. file A ₅₄ -A ₇₇	13 24

om B

17/11/91

(A)

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL ADDL
BENCH?ALLAHABAD.

CASE NO. 925 1987.

ANAND MOY SEN, APPLICANT,
VERSUS
Dy. Controller Of Stores
& Others. Respondents.

I N D E X.

Sl.No.	DESCRIPTIN of documents	pages	
		from	To.
1.	Original Bank draft NO PW1885200 Branch Serial No 21/87, Dated: 3-10-1987 amount Rs. 50.00 (Fifty onle in f/o Registrar, C.A.T. ALLD		Loose.
2.	Claim Application of A.M. Sen,	1	9
3.	List of Document with application	10	-
4.	Dy, C.O.S AlamBagh letter NO E1S/391Dt. 12-12-84	11	-
5.	Do.... ..Do... ..Do.... 4-7-85	12	-
6.	Do.... ..Do... ..Do.... 30-10-1985	13	-
7.	Do... ..Do... ..Do.... 2-1-1986.	14	-
8.	Do .. ..Do... ..Do.... 19-2-1986.	15	-
9.	A.L.C./KANPUR Order Dated 22-10-1986	16	19.
10.	Regional Labour Commissioner (Central) Judgement Dated 29-7-1987	20	23.
11.	Original cover under which the Impugned order Dt. 29-7-87 Recieved.	-	24.

LUCKNOW: DATED:

(A.M. SEN.)
APPLICANT.

Stopage of D.C.R.G etc.

A2-1

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Registration No. 925 of 1987

APPLICANT (s) Annand Moy Sen

RESPONDENT(s) Dy. Controller of Stores, Northern Zone Indian

Railways Lucknow & another

Particulars to be examined

Endorsement as to result of Examination

1. Is the appeal competent ?
2. (a) Is the application in the prescribed form ?
(b) Is the application in paper book form ?
(c) Have six complete sets of the application been filed ?
3. (a) Is the appeal in time ?
(b) If not, by how many days it is beyond time ?
(c) Has sufficient case for not making the application in time, been filed ?
4. Has the document of authorisation, Vakalat-nama been filed ?
5. Is the application accompanied by B. D. /Postal-Order for Rs. 50/-
6. Has the certified copy/copies of the order (s) against which the application is made been filed ?
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?

(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?

Yes

Yes

Yes

Yes. 6 sets filed.

Yes

-

-

No

Yes

Yes

Yes

Yes

Particulars to be ExaminedEndorsement as to result of Examination

- (c) Are the documents referred to in (a) above neatly typed in double space ?
8. Has the index of documents been filed and paging done properly ?
9. Have the chronological details of representation made and the outcome of such representations been indicated in the application ?
10. Is the matter raised in the application pending before any Court of law or any other Bench of Tribunal ?
11. Are the application/duplicate copy/spare copies signed ?
12. Are extra copies of the application with Annexures filed ?
- (a) Identical with the original ?
- (b) Defective ?
- (c) Wanting in Annexures
- Nos...../Pages Nos..... ?
13. Have file size envelopes bearing full addresses, of the respondents been filed ?
14. Are the given addresses, the registered addresses ?
15. Do the names of the parties stated in the copies tally with those indicated in the application ?
16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ?
17. Are the facts of the case mentioned in item No. 6 of the application ?
- (a) Concise ?
- (b) Under distinct heads ?
- (c) Numbered consecutively ?
- (d) Typed in double space on one side of the paper ?
18. Have the particulars for interim order prayed for indicated with reasons ?

Photo Copies filed

Yes

Yes

No

No

Yes

No

Yes

All the Annexures from Page/11 to P/24
wanting in 3 Copies.

Yes, 2 envelopes with

Stamp for B 6-40

Yes

Yes

N/A

Yes

Yes

Yes

Yes

Yes

19. Whether all the remedies have been exhausted.

Yes

If approved the case may be listed
on 9.11.87

12/11/87

Submitted to
Chairman
8.10.87

आदेश पत्रक
ORDER SHEET

A3

अपील
निर्देश आवेदन रजिस्टर में सं०

925/87

No. in Reference Application Register
Appeal

अपील अनिकरण
Appellate Tribunal

अपीलार्थी
आवेदक

Appellant
Applicant

अपीलार्थी
आवेदक द्वारा

बनाम

प्रत्यर्थी

Appellant
Applicant

Vs.

Respondent

प्रत्यर्थी द्वारा
Respondent

आदेश की क्रम संख्या
और तारीख
Serial number of
order and date

संक्षिप्त आदेश, निर्देश देते हुए, यदि आवश्यक हो
Brief order, mentioning reference, if necessary

पालन कैसे हुआ और पालन
करने की तारीख
How complied with and
date of compliance

9-11-87

Hon. K.S. Puttaswamy, V.C.
Hon. Ajay Jolmi, Jm.

Shri R.S. Saxena counsel for applicant prays for permission to delete respondent No. 2 who is neither a necessary nor a proper party to the proceedings. Permission sought for is granted. With the permission so granted Shri R.S. Saxena has deleted respondent No. 2.

The applicant's counsel makes an application under Section 21 of the Act for condonation of delay in filing the application. Issue notice to the respondent on the application for condonation of delay and also on the main petition. Call on 21-12-87.

9/11/87
V.C.

9/11/87
Jm.

11/11/87

आदेश की क्रम संख्या
और तारीख
Serial Number of
order and date

संक्षिप्त आदेश, निर्देश देते हुए, यदि आवश्यक हो
Brief order, mentioning reference, if necessary

पालन कैसे हुआ
करने की तारीख
How complied with and
date of compliance

21-12-87

Hon. S. Zohar Hasan, V.C.

Shri R.S. Saxena for applicant

The petitioner is allowed
to sign the ~~complaint~~ main
petition. Notices were issued
to the respondents. Issue notice
again. Put up on 21-1-88.

M
V.C.

Issued
21/12/87

Recd

21-1-88.

Hon. S. Zohar Hasan, V.C.

Hon. A. J. J. J. J.

On the request of petitioner
for the petition the case is adjourned
to 14-3-88. The defects have
been removed.

2

Am

M

V.C.

OK

Submitted for
admission before court

21/3/88

14/3/88

Hon. D.S. Puri - Am.

Hon. G.S. Sharma - Jm

On the request of applicant
the case is adjourned to 25/4/88
for admission

Am

Ay

ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

.....No. 925/87.....of 198 .

.....Vs.....

Sl.No. of order	Date of order	ORDERS WITH SIGNATURE	Office Notes as to action (if any) taken on order.
	25/4/88	<p>OK</p> <p>As the case file was mingled with other files the case could not be sent to list. Submitted for admission as Unlisted</p> <p><i>[Signature]</i> 25/4</p>	
	25/4/88	<p>Hon. D. S. MISHRA - AM. Hon. G. S. Sharma - JM</p> <p>Being post-heard case put up this case before Bench No-1 on 5/5/88. for admission</p> <p><i>[Signature]</i> AM <i>[Signature]</i> JM</p>	
	16-8-88	<p>OK</p> <p>An application has been received by the office of D.R.O. moved by the Petitioner for transfer of this case to the Lucknow Circuit Bench. Submitted for order.</p>	

925/87

Sl.No.of order	Date of order	ORDER WITH SIGNATURE	Office notes as to action (if any) taken on order
268.80		DR Counsel for applicant is present Case is adjourned to 22.9.88 for reply.	
229.00		DR Counsel for applicant is present Case is adjourned to 25.11.00 for reply.	
25.11.88		DR at counsel for applicant in person counsel for applicant present. CA Not-tiled 5 day. let the same be tiled by 24-1-89.	
24.1.89		OR Reply tiled today R.A. can be tiled by 29.3.89.	
29.3.89		DR on behalf of respondent no one is present in the case is adjourned to 10/4/89 before. The applicant tiled R.A. today. may be listed before court on 10-4-89 for hearing.	

ORDER SHEET

(AS)

OFFICE REPORT

An application has been filed in this Tribunal for transferring the case No...3.25... of ..87.... to the Circuit Bench, Lucknow.

If approved, ..25. August 1988 may kindly be fixed for hearing at Circuit Bench Lucknow. In this regard the notices may be sent to the parties counsel.

18/8/88

D-R(S)

Shri Kumar
16-8-88

List this case before Circuit Bench
Lko on 26-8-88 for filing Reply and R.A
if any before Registrar/ D-R(S).

Shri Kumar

6/4

OK

D-R(S)

Original order dt. 26.8.88,
22.9.88, 28.11.88, 24.1.89
& 29.3.89 are on the previous page.

6/4

Hon' Mr. Ajay Johri, A.M.

Hon' Mr. D.K. Agrawal, J.M.

10/4/89

Shri R.S. Saxena, learned counsel for the applicant is present. He is requesting for adjournment of the case.

Shri G.P. Agrawal, learned counsel for the respondents is not present today. The case is adjourned to 26-4-89 for hearing.

D
J.M.

(sns)

3
A.M.

BR

Case was adjourned for hearing on 26.4.89.

Case is submitted for hearing.

26.4.84.

Hon. D.S. Misra, A.M.

Hon. D.K. Agrawal, J.M.Qua
25/4

The applicant in person request for an adjournment, adjourned to 24th July, 84 for hearing.

De

J.M.

A.M.

Bom

No Setting Adj. to 28.9.87

W
24/7

OR
Case is submitted for hearing.

27/8

28/9/87 A.M. Sen

Hon. Justice K. Nath, J.C.
Hon. Mr. K. Obayye, A.M.

Arguments heard.
Judgment reserved.

A.M.

V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

O.A.NO. 925 1987
T.A.NO.

DATE OF DECISION _____

Anand Moy Sen PETITIONER
R. S. Saxena Advocate for the
Petitioner(s)

VERSUS

Union of India & others RESPONDENT
S. P. Agarwal Advocate for the
Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Natu, V.C.

The Hon'ble Mr. K. Obayya, Jm.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to other Benches ?

Dinesh/

Am'

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Circuit Bench at Lucknow.

Registration O.A. No.925 of 1987

Anand Moy Sen Applicant

Versus

Deputy Controller of Stores,
Northern Railway, Alambagh,
Lucknow Opposite Party No. 1.

Hon. Justice K. Nath, V.C.

Hon. Mr. K. Obayya, A.M.

(By Hon. Justice K. Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act XIII of 1985 seeks to quash an order dated 12.12.84 by which the applicant's gratuity amount of Rs.13411-20 has been confiscated and order dated 30.10.85 by which the applicant has been called upon to make a further deposit of Rs.324-54. There is a prayer for a direction to the opposite parties to pay the applicant's amount of gratuity and to quash the order dated 29.7.87 of the Regional Labour Commissioner (C) and Appellate Authority under Payment of Gratuity Act, 1972.

2. The applicant was working as a Deputy Store Kepeer in the Deputy Controller of Stores, Northern Railway, Alambagh, Lucknow, Opposite Party No.1 when he retired on 1.1.81. The applicant's grievance is that without instituting any departmental enquiry or issuing a chargesheet or conviction or finding of a guilt of misconduct, the opposite party No.1 adjusted the sum of Rs.13411-20 by impugned order dated 12.12.84 against the applicant's gratuity amount for alleged loss to the Railway Stores which were in the charge of the applicant

they^{is} further demand, under the second impugned order dated 30.10.85, of Rs.324-54 also on that basis.

3. It appears that the applicant had laid a claim for payment of gratuity before the Assistant Labour Commissioner(C) and Controlling Authority under the Payment of Gratuity Act, 1972 Kanpur, who adjudged a sum of Rs.17646-75 as payable to the applicant on account of gratuity; but that order was set aside by the Appellate Order dated 29.7.87 of the Regional Labour Commissioner (C) and Appellate Authority under Payment of Gratuity Act, 1972 which held that the provisions of the Payment of Gratuity Act, 1972 did not apply to a railway employee.

4. In reply to the applicant's case before this Tribunal, the case of the opposite parties is that a departmental enquiry was initiated in respect of theft of Railway Stores worth Rs.13,735-74 in the charge of the applicant, but the applicant retired on 31.1.81 hence no punishment could be awarded by the disciplinary authority, which was still pending due to^a criminal case and industrial case. It was urged that the present application is barred by resjudicata due to the earlier proceedings before the Assistant Labour Commissioner and the Regional Labour Commissioner referred to above.

5. The applicant stated in his rejoinder that no disciplinary proceedings were taken or initiated during the period of the applicant's service,^{and} that no notice had ever been served upon him for any disciplinary proceedings which are not capable of being taken in view of Rule 2308 of the Railway Establishment Code Volume II

- 3 -

It was next said that criminal case No.5/77 was not processed by the police and was finally consigned to the records under Challan No.298 dated 7.4.81 viz. final report in respect of which the applicant filed a certified copy of the order passed by the Chief Judicial Magistrate, Kangra At Dharamshala (Himachal Pradesh).

6. We have heard the learned counsel for both the parties and we find that there is no force in the plea of res judicata. The decision dated 29.7.87 of the Regional Labour Commissioner (C) and Appellate Authority under the Payment of Gratuity Act, 1972 is that the provisions of Payment of Gratuity Act, 1972 did not apply to a railway employee as defined in Section 2(e) of that Act because such employees are persons who held posts under the Central Government. He also mentioned that there is a gratuity scheme framed by the railways for the benefit of the railway employees. It is on this basis that the order of the Assistant Labour Commissioner (C) and Controlling Authority under the Payment of Gratuity Act, 1972 was set aside. It will be seen that the merits of the applicant's right to receive gratuity has not been decided at all by the Regional Labour Commissioner. At the same time, it is noticeable that the applicant's right to receive gratuity is admitted by the opposite parties themselves, otherwise there was no question of recovery of Rs.13411-20 from the applicant's gratuity amount on account of alleged loss of Railway Stores in the applicant's charge.

Q

- 4 -

7. Further the matter of payment of the applicant's gratuity is the matter which relates to the conditions of service and is certainly open to be examined by this Tribunal under Section 19 of the Administrative Tribunals Act. The Tribunal has adequate power to disagree with the views of the Regional Labour Commissioner and take its own decision in the matter. The defence plea of res judicata, therefore, has no substance.

8. It may be mentioned that the provisions for payment of gratuity are to be found not only in the Payment of Gratuity Act, 1972 but also in the various decisions of the Railway Administration contained in the Railway Establishment Manual and in the Railway Establishment Code Volume II. Assuming that the provisions of the Payment of Gratuity Act, 1972 may not be made use of by employees of railways in view of their holding civil posts ^{under} the Central Government, nevertheless, the provisions applicable exclusively to the railway employees as set out in the Railway Establishment Manual and Railway Establishment Code have to be applied and the proper amount of gratuity payable has to be determined. The authorities under the Payment of Gratuity Act have to act within the four corners of that Act and therefore are not in a position to exercise jurisdiction in respect of special provisions applicable to the railway employees. Even so, the Tribunal is competent to hold that the railway employees are entitled to the gratuity under the laws specifically applicable to them. That is what must be done in the present case.

Q

- 5 -

9. On merits, the applicant has a clear case. It is the definite statement of the applicant that no disciplinary proceeding was taken or initiated against him during his period of service. Although the statement in the Counter Affidavit is that an enquiry was initiated which is still pending during which the applicant retired, the opposite parties have not produced any documents whatsoever in support of that case. Further it is admitted in the Counter Affidavit that no punishment order was ever passed in the alleged departmental enquiry. If that be so, there could be no basis whatsoever for making any recoveries from him or forfeiting the applicant's gratuity amount in deposit~~ing~~ with the railways.

10. The applicant has also correctly relied upon Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968 which required an opportunity to show cause before even an order of minor penalty in form of recovery^{of} loss could be passed. It is not shown that any such opportunity was given to the applicant. Similarly, there is worth in the applicant's contention that after the retirement of the applicant, a departmental proceeding could be instituted only after fulfilling the conditions set out in Rule 2308 of the Railway Establishment Code Volume II while none of those conditions is indicated to have been satisfied.

11. The applicant has also filed certified copy of an order dated 7.4.81 of the Court of Chief Judicial Magistrate, Kangra At Dharamshala (Himachal Pradesh) in Criminal Case No. 175-II/79 instituted on 7.7.79 against the applicant under Section 409/182 of the Indian Penal Code. The learned Magistrate observed that

- 6 -

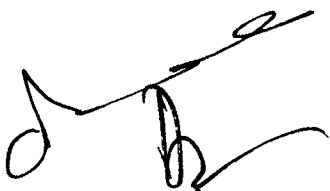
the police had not taken pains to follow the accused applicant for service of non-bailable warrants ~~of~~ arrests and thus was not serious in effecting service and prosecuting the case and therefore he thought it proper not to proceed with the case further. The learned Chief Judicial Magistrate ordered the case to be consigned to the record room. The learned counsel for the opposite parties argued that the contents of the order do not connect it with the matter of loss of railway stores ~~with~~ which the case of gratuity is concerned. The contention is unacceptable because the particulars are clearly the same as are set out in para 4 of the counter.


12. On a consideration of all the matters, we find no justification for the opposite parties' impugned orders dated 12.12.84 and 30.10.85. The applicant has claimed interest. On the material which has been placed before us, there is absolutely no doubt that the payment of gratuity has been unconscionably delayed and that the opposite parties went to the extent of raising frivolous pleas to challenge the applicant's right to get gratuity before the Regional Labour Commissioner even though they had themselves accepted the applicant's claim for gratuity by making recoveries of Rs.13411-20 therefrom. Fairness demands that the applicant should get interest @ 12% since after six months ~~after~~ the date of his retirement. The applicant should also get cost of this proceeding which we assess at Rs.500/-.


13. The impugned orders dated 12.12.84 and 30.10.1985 forfeiting the sum of Rs.13411-20 of the applicant's

gr

gratuity amount and demanding a further payment of Rs.324-54 respectively are quashed. The opposite party is directed to calculate the gratuity amount payable to the applicant within a period of two months from the date of receipt of the copy of this order and shall also pay interest on that amount @ 12% per annum simple with effect from 1.8.1981 till the date of payment. The opposite party shall also pay Rs.500/- as cost to the applicant.


24/10/89


Member (A)


Vice Chairman

Dated the 24 October, 1989.

RKM

A11

Reg. No 925 of 1987
Central Administrative Tribunal

ALLAHABAD

Date of Filing ...

Date of Receipt by Post 7/10/87

DATE OF RECEIPT BY POST :	<i>[Signature]</i> Deputy Registrar
REGISTRATION NUMBER :	

A.M. Sen aged 65 yrs

Retired Depot Store Keeper,

N.Rly, Dy Controller of Stores,

N.Rly, Alam Bagh, LUCKNOW-226005 Applicant.

VERSUS

1. The Dy. Controller Of Stores,
Northern Railway Zone, Indian Railways,
Alam Bagh, Lucknow-226005.

2. The Regional ^{Labour} Commissioner (Central),
Appellate Authority, Under Gratuity Act. 39,
of 1972, 7/201 Swarup Nagar Kanpur-208002.)

*Deleted with
permission of
the LD Govt
9/11/87*

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, Addl BENCH
23 .A. Thorn Hill Road ALLAHABAD. (U.P.)

Application u/s. 19 of C.A.T. Act. 1985 of Sri. A.M. Sen.

1. PARTICULARS OF THE 1. ANNAND MOY SEN.

CLAIMANT (APPLICANT). ii) s/o Late Sri. S.K. Sen.

iii) Retired Depot Store Keeper,
Controller of Stores .N.Rly,
Alam Bagh, LUCKNOW-226005

ADDRESS. OFFICIAL iv). as above Against Serial No (111)

ADDRESS FOR SERVICES v.). Sri. A.M. Sen,

OF ALL NOTICES. 565/141, Puran Nagar, Alam Bagh,
LUCKNOW-226005.

[Signature]

5.5.1988/

Hon.S.Zaheer Hasan-VC

Hon.Ajay Johri -AM

This is an application for condonation of delay. The applicant has claimed gratuity under the Gratuity Act in the Labour Court and his claim was allowed. The opposite party went in appeal and the Appellate Court held that the petitioner was a Railway employee and the provisions of the Gratuity Act will not apply in his case. So, the Labour Court has no jurisdiction in that matter. This order was passed on 29.7.87. On 2.10.87, this application under section 19 of the Administrative Tribunals Act, 1985 was received by post. The applicant was litigating the matter in a bonafide manner in a wrong court. So, the delay is condoned.

Heard.

Admit. Issue notice to the respondents to file counter within a month and rejoinder may thereafter be filed within two weeks before the Circuit Bench at Lucknow as prayed by the learned counsel for the applicant fixing 6.7.1988 for hearing.

A.M.

V.C.

2. PARTICULARS OF RESPONDENTS:-

& ADDRESS.

(i). Dy. Controller Of Stores,
Northern Zone, Indian Railways,
Alam Bagh, Lucknow-226005.

(ii) The Regional Labour Commissioner
(Central), Appellate Authority,
Under Gratuity Act 39 of 1972.
7/201 Swarup Nagar, KANPUR-208002.

iii) Address for service
of notices.

Same as above mentioned.

3. PARTICULARS OF ORDERS
AGAINST WHICH THE
APPLICATION IS MADE

i) E/S/391 Dt. 12-12-1984

ii) ..DO-- Dt. 30-10-85.

iii) passed by The Dy. Controller of
Stores, N.Rly Alam Bagh Lucknow

Subject in Brief

iv) Adjustment of gratuity against
alleged loss to Railway illegally
v) Further demand of cash Rs. 588.80p
and stopage of issue of Complimen-
tary passes to the applicant.

vi) Respondent No 2 order NO 36/2/87-
29.7.87 rec
E-1. Dt. 17-8-87, Revieled on 22/X/
1987, seting aside A.L.C. order
No 48/4-2/86 - E.2, 20.10.86+
Dated 22-10-1986 to pay to the
applicant Gratuity. Rs. 17,646.85p.

4. JURISDICTION OF
C.A. Tribunal

The applicant declares that the
subject matter in the IMPUGNED -
ORDERS against which the applicant
wants redressal is within the
Jurisdiction of the Tribunal.

- 3 -

5. LIMITATION:-

The applicant further declares that the application is within the limitation prescribed under sec. 21 of the Central Administrative Tribunal Act. 13 of 1985.

6. FACTS OF THE CASE.

Facts of the case are given below:-

- 6.1. The applicant has retired as Depot Store Keeper under the Dy. Controller of Stores N.Rly. Alam Bagh Lucknow on 31-1-1981.
- 6.2. The last employer Respondent(1) did not pay the prescribed Death cum Retirement Gratuity to the applicant.
- 6.3. The respondent No.1. on 12-12-1984 finally adjusted the gratuity Rs. 13411.20 against alleged loss to the Railway illegally and also demanded Rs. 588.80 in cash. This was, however, reduced to Rs. 324.54, on 30-10-1985, on representation.
- 6.4. on 30-10-1985, the respondent(1) further stopped issue of Complimentary passed unless the amount Rs. 323.54 was deposited by the applicant with the Station Supdt. N.R. Lucknow.
- 6.5. No departmental Enquiry against the applicant under Disciplinary & appeal Rules 1968 had then been contemplated or pending at the time of the applicants' retirement.
- 6.6. No charge Sheet for recovery of alleged loss, acts of omission, commissions, neglect or misconduct was issued during the service tenure or there after.

A14

- 6.7. The applicant had never been convicted of serious crime or ever held guilty of grave misconduct.
- 6.8. The respondent NO.1, in absence of any offence, crime, grave misconduct or guilt is not competent to withhold pension or death Cum-Retirement Gratuity, on authority of Rule. 2307(C.S.R. 351) of Indian Railways Establishment Code Volume II.
- 6.9. The Rule 2308 (C.S.R. 351-A) further restrains the Respondent .1 to enforce adjustment of Death Cum-Retirement Gratuity of after retirement of an employee as in the instant case.
- 6.10. The applicant served a notice u/s 80. C.P.C. 1908, on the respondent No 1 on 19-12-1985, challenging action ~~xxx~~ in terms of Respdtt. 1. letter No. E/S/391 Dt. 12-12-1984.
- 6.11. The Applicant relying on the judgements of Hon'ble High Courts Calcutta, Kerala & in Hon'ble Supreme Court Delhi/following reported cases preferred claim under Sec. 4 Act 39 of 1972 before the Id. Asstt. Labour Commissioner (Central) Cum Controlling Authority under the said act ^{Kanpur} after departmental remedies were exhausted. The case was contested by the Respdtt. No 1. ^{who} ~~and~~ lost on ^{it} 22-10-1986 in favour of the Applicant by the Respondent.

- (1). 1980. L. I. C. N.O.C. 96 (Cal).
- (2). 1981. L. I. C. N.O.C. 143 (KER) (D.B.)
- (3). A.I.R. 1979. S.C. 1981.

5 -
[Signature]

6.12. The respondent No.1. being aggrieved on the Judgement dt. 22-10-1986, of the A.L.C.-Cum-C.A. went in appeal against the orders before the Id. Regional Labour Commissioner(Central) Cum- Appellate Appellate Authority, Respondent NO.(2).

6.13. The Respondent No.2. in his order Dt. July 29 th, 1987 admitted the appeal and set aside the A.L.C. Cum-C.A. Order Dt. 22-12-1986 on grounds of Jurisdiction and technical grounds that the Act.39 does not apply to the Railway Employees governed by Central Government u/s.2(e) of the Act. The appeal was not decided on its merits.

6.14. The applicant feels aggrieved at the orders Dt. 29-7-1987, still relying on the reported cases cited in the preceeding para No 6.11., all being subsequent to the reported case. 1979.L.I.C. 1073(MAS) in which the Hon8ble H.C.Madras held the act does not apply to the Railway administration its employees, governed by the central Government.

HENCE THE APPLICATION against the illegal adjustment of D.C.R. Gratuity and further demand of Rs. 323.54. under under Rule 2307(351.C.S.R.) of the Indian Railways Establishment Code Vil. II and the orders of the R.L.C. -cum- Appellate Authority /under Act 39, 1985. for further clarification and to declare the judgement of the Respdtt. No 2 as Void. allowing payment of the Gratuity with upto date Interest at the Current market rates till actual payment and the cost.

7. RELIEF SOUGHT.

In view of the facts mentioned in para 6 above

Dr. K - 6 -

- 6 -

the applicant respectfully prays for the following Relief.

- R E L I E F. -

1. The Hon'ble Bench be pleased to declare the impugned orders Dt. 12-12-1984 & 30-10-1985 No. E/S/391 as void.

7.2. The Hon'ble Bench further be pleased to order payment of the Gratuity as be due and payable with upto date Interest at the current market Rates for the delayed payment till actual payment is made.

7.3. The Hon'ble Bench be further pleased to declare that the Gratuity Act.39 of 1972 is applicable to the Railway, Railway Administration and Railway Employees of the Central Government as well as the Railway Company.

7.4. The payment of the Gratuity Rs. 17,646.85 on the resultant interpretation of the application of the Act 39. 1972. as ordered in the A.L.C.-Cum-C.A. Kanpur order Dated 20/22-10-1986.

7.5. The Hon'ble Bench be further pleased to set aside the Respondtt .No 2 order Dated 29-7-87 ~~XXXXXXXXXXXX~~ (Impugned order No 3 .)

3. INTERIM ORDER.

8.1 The Hon'ble Bench be pleased to direct the Respondent NO 1 to release the issue of the Complimentary Passes till the finalisation of the case on its merits. Reference to Impugned order. No. E/S/391 Dt. 30-10-85.

7 -
[Signature]

8.2. REASONS FOR INTERIM ORDERS:

The Impugned order Dt. 30-10-1985 is illegal, melafide, arbitrary. void and against the principles of Natural Justice.

8.3. The punishment or haressment during the pendency of the suit, litigation or even Appeal is not justified in the eyes of Law and Justice.

9. Details of Remedies Exhausted:-

9.1. The applicant declares that he has availed of all the remedies available to him under the relevent SERVICE RULES.

CHRONOLOGICAL DETAILS AS BELOW.

9.2. On 27-12-1984, the applicant submitted representation against Impugned order Dt. 12-12-1984.

9.3. On 19-12-1985 the applicant served notice against Impugned Order Dated. 30-10-1985.

9.3. On ~~MS~~ 8-1-1986, the applicant again submitted ed notice against Respondent Letter . Dt. 2-1-86

9.4. on 19-2-1986, the respdtt. 1. again replied to approach the Dy.Ch. Engineer (Construction) Jumu Tavai for no claim certificate.

9.5. on 3-5-1986 the applicant ~~REXED~~ submitted application ~~EX~~ before the A.L.C. -cum-C.A. Kanpur u/s. Sub Rule(1) Rule 10 of the Act 39.1972.

9.6. On 2-7-1986 the applicant submitted an application before The A.L.C. -C.A. Kanpur for condolation of delay. The same was admitted considered and the delay condoned by the AL.C-C.A. Kanpur.

9.7. On 20/22-10-1986. the A.L.C.-Cum- C.A. Kanpur order-ed the Respondent No 1 to pay Rs. 17,646..75.

9.8. on 20-10-1986 the applicant served a notice on the Respdtt.NO 1 to execute the orders Dt. 20/22-10-1986 of the A.L.C. Kanpur.

9.9. On 11-12-1986 the respondent NO.1 presented an appeal U/s. 7 (vii) of the Act.39.,1972 before the R.L.C.-Appellete Authority Kanpur against A.L.C. Orders Dt. 20/22-10-1986.

9.10. On 29-7-1987 the respondent No 2. admitted appeal ,set aside the orders of the A.L.C.-Cum-C.A Kanpur Dt. 20/22-1986 on technical grounds and not on merits.(Jurisdiction). Reference IMPUGNED ORDER NO. 36/2/87-E.1 Dt. 29-7-1987 recieved on 17-8-1987.

10. MATTER NOT PENDING WITH ANY OTHER COURT.

The applicant further declares that the matter regarding which the application ~~has~~ has been made is not pending before any court of law or any other Authority or any other Bench of Tribunals.

11. PARTICULARS OF BANK DRAFT & FEE.

- (i) Name of the Bank on which drawn.
- (ii) Demand Draft NO.

12. Detail of INDEX.

An INDEX in duplicate containing details of the documents to be relied upon is enclosed.



414

- 9 -

LIST OF ENCLOSURES.

The LIST OF ENCLOSURES in duplicate is
annexed to the application.

IN VERIFICATION

I Anand Moy Sen the applicant S/O. Late Sri S.K. Sen
aged about 65 yrs working as Depot Store Keeper, Northern Zone of
the Indian Railways, under the Dy. Controller Of Stores, Northern
Railway Zone, of Indian Railways, Resident of 565/141, Pura Nagar,
Alambagh, Lucknow-226005, do here by verify that the contents
from paras No 1 to 13 are true to my personal knowledge and
belief and that I have not suppressed any material facts.

Place: LUCKNOW.

Date: 28-9-1987.


(A.M. Sen.)

Applicant.

To,

The Registrar,
Central Administrative Tribunal,
Additional Bench, 23 A Thorn Hill Road
ALLAHABAD. U. P.

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL ADDL. BENCH,
ALLAHABAD.

CASE NO. 1987.

A.M. Sen, applicant.

Versus

Dy, Controller of Stores
& others. Respondents.

LIST OF DOCUMENTS.

The applicant above named do here with
submits the photostat copies of the documents relied upon,
on which the applicant seeks claim, duly verified by and
attested by the presenting officer sri. M.S. Kudesia Prishashan
Adhikaran-1, U.P. Lucknow, along with the application.

S.L.	Document Relied upon No.	Date	page
1	2	3	4
1.	The Photostat copy of the Dy, C.O.S Alam Bagh, LKO (Respodtt. (1) letter. NO. E/S/391	12-12-1984	11.
2.	....Do.....	4-7-85	12.
3.	....Do.....	30-10-85.	13.
4.	....Do.....	2-1-86.	14.
5.	....Do.....	19-2-1986.	15.
6.	A.L.C. Cum C.A. KANPUR K. 48/4-2/86-E.2.	22-10-1986.	16 to 19
7.	R.L.C. Cum R.A.A. Do. 36/2/87-E.1	29-7-87	20 to 23
8.	Original cover bearing		

N.D. Endorsement of Postal Authority
& Postal stamps embossed on 30-7-87 Recieved on 17-8-1987.

Lucknow: Dated:


Applicant.

S.N. - 301/82 - 2,00,000 Pds.

जे. एम. 19-8/G.L. 19-A
मदरस 99 छोटा Gtr. 99 Small

उत्तर रेलवे NORTHERN RAILWAY

No E/S/391

Dated 12/12-84

Shri Arande Moy Sen

S65/141 Purnan Nagar

Alamhaph Lucknow

Sch: - Payment of
Settlement dues
of Shri Arande

By Chief Engineer / Civil / Jammu
Terror has submitted to recover
Rs 14000/- from your Settlement dues
The amount of DC RG Rs 13411.20 is
being adjusted against the above
recovery. The balance amount
of Rs 588.00 ^{you showed} ~~may be~~ deposited in
Cash with S.S./RA/Lucknow and
submit the receipt of the same to
this office for further action.

for ~~Signature~~
LECKNOW.

Attested {

Signature 5/10/84

(Signature)

प्रशासक, उत्तर रेलवे, लखनऊ

Am H

A23 (13)

Northern Railway

Office of the Dy. Controller of Stores,
N.Rly., Alambagh, Lucknow.

No. E/S/391

Dated: 30-10-1985

Shri Ananda Moy Sen,
565/141 Purnanagar,
Alambagh,
Lucknow.

Sub:- Case FIR No. 5 dated 25.1.77 under Section No. 457/380,
470/182 Police Station Shahpur District Kangra H.P.
theft of Tyres and Tubes.

...

You were asked to deposit Rs. 329.54 in Cash with Station
Supdt/N.Rly, Lucknow vide this office letter of even no. dated
4.7.85 but you have not deposited the same so far inspite
of several reminders. You will not be issued complementary
passes till the above amount is deposited with SS/NR/Lucknow.

Shan
30/10/85
Dy. Controller of Stores,
N.Rly., Alambagh, Lucknow.

Amr
30/10/85
(एम० एस० कुरसिया)

प्रस्तुत कर्ता अतिथी
प्रशासनाविकरण - 1, उ० प्र०
लखनऊ

Shan

प्रशासनात् - ३० प्र०
लेखक

A25 (15)

NORTHWESTERN RAILWAY:

Recd AD

No.B/S/391

Dated: 19-2-1986

Shri A.A. Sen Retired ASK,
C/O. Shri R.S. Saxena, Advocate,
Sarla Mandir,
Geeta Palli, Alambagh,
Lucknow.

Sub : Notice U/S.80 G.P.C. & Sec. 34 Specific Relief Act.
47 of 1963.

Ref : Your Notice Dated; 8.1.1986.

In this connection you have already been intimated vide this office letter of even number Dated: 2/1/86 that case regarding recovery of loss for material costing Rs.13735.74 has been initiated by Dy.Chief Engineer (Const), N.R./Jammu Tawi and as such you are required to contact above officer to clear your position. The payment of your D.C.R.G. and other dues are with held on the instructions received from Dy.Chief Engineer (Const)/Jammu Tawi for the recovery of above amount.

You are, therefore again advised to contact Dy.Chief Engineer (Const)/Jammu Tawi in connection with recovery of the loss of material.

25/2/86 19/2/86

Dy. Controller of Stores,
N.R./Alambagh/Lucknow.

Copy for information to :-

1. Dy.Chief Engineer (Const)/Jammu Tawi.
2. C.O.S./Paroda House, New Delhi in reference to his letter No.92-S/1/CC/AN/300 Dtd. 30-1-1986.

SL

Dy. Controller of Stores,
N.R./Alambagh/Lucknow.

RM.18/2

Attested
19/2/86

प्रशासक, उत्तर प्रदेश
लखनऊ

Am

A26

(16)



रजिस्टर्ड ए.डो.

सहायक प्रमाणिक केन्द्रिय, कानपुर
7/201, कानपुर, तेलुगु-308002.

संख्या के. 48/4-2/86-ई.2

दिनांक

फार्म ४आर४

४नियम 17 देजों ४

उपदान भुगतान करने का नोटिस

उप भंडार नियन्त्रक,

उत्तर रेलवे, बालमबाग,

लखनऊ

जैसा कि आनन्द मोय सेन सेवा निवृत्तर भूत पूर्व थियोट स्टोर कोपर उप भान्डार नियन्त्रक ४डिप्टी कन्ट्रोलर आफ स्टीर्स४ आलमबाग लखनऊ एक आपके अधीनस्त कर्मचारो ने उपदान ददाति अधिनियम 1972 को धारा 7 के अन्तर्गत मेरे समक्ष अपना आवेदन पत्र प्रस्तुत किया था ।

और जैसा कि आवेदक को सुना गया और सुवाई के पश्चात में इस निष्कर्ष पर पहुँचा कि श्री आनन्द मोय सेन 17646.75 रुपये ४सत्त्राह हजार ७: सौ थियालिस रुपये और पचहत्तर पैसे मात्र४ उपदान ददाति अधिनियम 1972 के अन्तर्गत उपदान पाने के हकदार है ।

अब इसलिए मैं आपको उक्त राशि 17646.75 ४सत्त्राह हजार ७: सौ थियालिस रुपये और पचहत्तर पैसे मात्र४ श्री आनन्द मोय सेन को इस नोटिस की प्राप्ति के तीस दिनों के अन्दर मुझे सूचित करते हुए भुगतान करने का निर्देश देता हूँ ।

यह निर्देश मेरे द्वारा 20 अक्टूबर 1986 को सील लगाकर दिया गया ।

निर्णय को एक प्रति संलग्न है ।

४ डा आर.एस. तिवारो ४

सहायक प्रमाणिक ४केन्द्रिय४, कानपुर ।

एवं

उपदान ददाति अधिनियम 1982 के

अन्तर्गत नियन्त्रक प्राधिकारो ।

प्रतिलिपि श्री आनन्द मोय सेन आत्मज स्वर्गीय श्री एल.के.सेन,

मकान नं. 565/141, पुरन नगर, आलमबाग लखनऊ को । उन्हें यह परामर्श दिया जाता है कि वे भुगतान प्राप्त करने के लिए नियोजक से सम्पर्क करें ।

निर्णय को एक प्रति संलग्न है ।

सहायक प्रमाणिक ४केन्द्रिय४, कानपुर ।

एस.यू.छान 20.10.86

Attested
30/10/86
(एम० एस० कुंजसिया)
प्रमाणिक अधिकारी
प्रशासनाधिकरण - 1, उ० प्र०
लखनऊ

A 27

(17)

उपदान ददाति अधिनियम 1972 एवं उसके अन्तर्गत नियमों के अन्तर्गत नियन्त्रक प्राधिकारी सहायक प्रमाण्युक्त केन्द्रोय का. मुर. झा आर. एस. तिवारी के समक्ष उपदान ददाति अधिनियम 1972 के अन्तर्गत श्री आनन्द मोय सेन सेवा निवृत्ति भूत पूर्व ऑफोट स्टोर कीपर उप भण्डार नियन्त्रक डिप्टी कन्ट्रोलर आफ स्टोर्स आलमबाग लखनऊ द्वारा प्रस्तुत आवेदन ।

1- श्री आनन्द मोय सेन,
वन्द स्वीय श्री एस.के.सेन,
565/141, पुरन नगर, आलमबाग,
लखनऊ ।

..... आवेदक

2- उप भण्डार नियन्त्रक,
उत्तर रेलवे,
आलमबाग, लखनऊ

..... प्रत्यर्था

आवेदक श्री आनन्द मोय सेन भूत पूर्व ऑफोट स्टोर कीपर, उप भण्डार नियन्त्रक डिप्टी कन्ट्रोलर आफ स्टोर्स आलमबाग लखनऊ के कर्बिारो ने मेरे समक्ष उपदान ददाति अधिनियम 1972 को धारा 7 के अन्तर्गत अपना आवेदन दिनांक 3 मई 1986 को प्रस्तुत किया । आवेदक ने क्लिम्ब से आवेदन प्रस्तुत करने के लिए क्लिम्ब को उपमर्णित करने के लिए दिनांक 2.7.1986 को एक आवेदन प्रस्तुत किया । आवेदक को सुने और उनको परिस्थितियों को परीक्षा करने के उपरान्त क्लिम्ब के उपमर्णित कर दिया गया ।

आवेदक का प्रकरण इस प्रकार है ।

आवेदक दिनांक 31.1.1981 को 34 वर्गों की निरन्तर सेवा के परचात सेवा निवृत्त किया गया था । उनका अन्तिम वेतन 640 रुपये बेसिक और कुल उपलब्ध 1026.20 रुपये थी । आवेदक ने कुल उपदान 13818 रुपये का दावा किया है । उन्हें उपदान की राशि का भुगतान नहीं किया गया है, इसलिए उन्होंने उपदान ददाति अधिनियम की धारा 7 के अन्तर्गत 13818 रुपये के लिए निर्देश देने का अनुरोध किया है ।

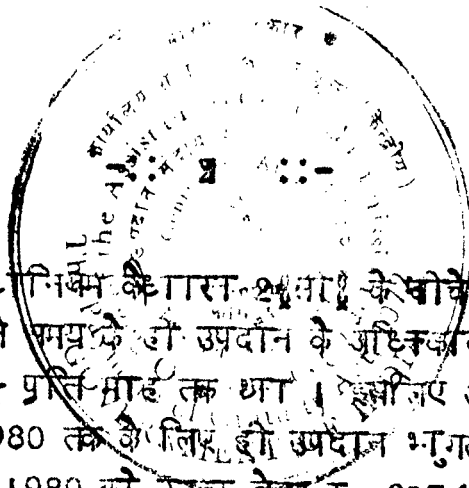
प्रत्यर्था पक्ष ने इस सम्बन्ध में लिखित विरोधा पत्र दिनांक 9.6.1986 को प्रस्तुत किया है । प्रत्यर्था उप भण्डार नियन्त्रक उत्तर रेलवे ने आवेदक को टायरों और ट्यूब्स की वीरो के सम्बन्ध में दाखिलत पूर्ण माना है । वीफ इन्जोनियर कन्स्ट्रक्शन उत्तर रेलवे दिल्ली के पी.के. दिनांक 1.6.1984 के पत्र निर्देश के अनुसार श्री आनन्द मोय सेन से 13735 रुपये 74 पैसे वसूली करना थी । तदनुसार 13411 रुपये 20 पैसे उपदान राशि के रोक लिए गये और बचाया 324 रुपये 54 पैसे उन्हें जमा करो का आदेश दिया गया । और इसलिए आवेदक को असाक्षात्कारों के कारण, हुई क्षति को पूर्ति आवश्यक थी । इन कारणों ने उन्हें कोई उपदान का भुगतान नहीं किया गया । प्रकरण को परीक्षा के समय प्रत्यर्था के प्रतिनिधि ने बताया कि इस आरोप के सम्बन्ध में कोई वार्शोट नियोजक को ओर से आवेदक को नहीं दी गई ।

प्रशासनिक रूप - 1, उ० प्र०

लखनऊ

इस सम्बन्ध में आवेदक ने कहा है कि जावान आल शहर जिला आगड़ा में वे जनवरी 1977 में वर्कशाप इन्चार्ज थे । दिनांक 24.1.1977

ने 3.....



उपदान ददाति अधिनियम के धारा 24(1) के नीचे दिये गये सष्टोकरण के अनुसार केवल उन्ही समूह के ही उपदान के अधिकारी है जब तक उनका वेतन सभ्या 1000/- प्रति माह तक था। इसलिए आवेदक 20.2.1947 के दिनांक से 30.6.1980 तक के लिए ही उपदान भुगतान के अधिकारी है। क्योंकि 30.6.1980 को उनका वेतन रु. 927/- था। इसलिए वे 33 वर्गों को ही अर्हता सेवा के पश्चात् 495 दिनों का वेतन उपदान के रूप में पाने के अधिकारी थे। इस प्रकार वे कुल रु. 17646.75 पाने के अधिकारी थे। मैं अपना निर्णय देता हूँ कि श्री आनन्द मोय से निम्नानुसार उपदान भुगतान के अधिकारी है।

- | | |
|---------------------------------------|------------------|
| 1- अन्तिम वेतन भुगतान किया गया वेतन | 927/- रु. |
| 2- कुल अर्हता सेवा | 33 वर्ग |
| 3- कुल देय उपदान | 927 x 15 x 33 |
| | 26 |
| | = 17646.75 रुपये |
| 4- कुल भुगतान को गई उपदान राशि | शून्य |
| 5- अधिशेष जिसका भुगतान किया जाना है - | 17646.75 रुपये |

उपरोक्त निर्णय आज उन्नीस तौ अष्टादश छियासो वर्ग के अक्टूबर माह की बीसवी तिथि को मेरे द्वारा दिया गया।

Am. Prasad

सहायक आयुक्त (केन्द्रीय) कानपुर
एवं

उपदान ददाति अधिनियम 1972 के
अन्तर्गत नियन्त्रक प्राधिकारी।

एस.यू.छान

20.10.1986

Attested

ms. K. S. M.

5.10.87

(सहायक आयुक्त)

कानपुर

प्रशासनाधिकरण - 1, उ. प्र. 0

लखनऊ

Am. Prasad



A29

19

उपदान ददाति अधिनियम के तहत 20 मा. के बोवो दिये गये सञ्चोकरण के अनुसार केवल उतने समूह के ही उपदान के अधिकारी है जब तक उनका वेतन समया 1000/- प्रति माह तक था । इसलिए आवेदक 20.2.1947 के दिनांक से 30.6.1980 तक के लिए ही उपदान भुगतान के अधिकारी है । क्योंकि 30.6.1980 को उनका वेतन रु. 927/- था । इसलिए वे 33 वर्गों को ही अर्हता सेवा के परभाव 495 दिनों का वेतन उपदान के सम में पाने के अधिकारी थे । इस प्रकार वे कुल रु. 17646.75 पाने के अधिकारी थे । मैं अपना निर्णय देता हूँ कि श्री आनन्द मोय सेन निम्नावुद्धार उपदान भुगतान के अधिकारी है ।

- 1- अन्तिम वेतन भुगतान किया गया वेतन 927/- रु.
- 2- कुल अर्हता सेवा 33 वर्ग
- 3- कुल देय उपदान $927 \times 15 \times 33 = 17646.75$ रुपये
- 4- कुल भुगतान को गई उपदान राशि शून्य
- 5- अधिकारोण जिक्र भुगतान किया जाना है - 17646.75 रुपये

उपरोक्त निर्णय आज उन्नीस तौ अक्टूबर दिनांक 1986 के अक्टूबर माह की बीसवी तिथि को मेरे द्वारा दिया गया ।

Om Prakash

सहायक आयुक्त (केन्द्रीय) कानपुर एवं

उपदान ददाति अधिनियम 1972 के अन्तर्गत नियन्त्रक प्राधिकारी ।

एस.यु. छान

20.10.1986

Attest

Om Prakash

(एस.यु. छान 20.10.1986)

प्र. 10.10.1986

प्रशिक्षण अधिकारी - 1, उ. प्र.

लखनऊ

Om Prakash

Received on 17/8/87

A 30

20

BEFORE SRI V. SUNDARASEAN, REGIONAL LABOUR COMMISSIONER (C),
KANPUR AND APPELLATE AUTHORITY UNDER PAYMENT OF GRATUITY ACT

BETWEEN

IN THE MATTER OF THREE APPEALS UNDER PAYMENT OF GRATUITY
ACT, 1972 BETWEEN DIVISIONAL RAILWAY MANAGER, NORTHERN
RAILWAY LUCKNOW AND S/Sri RAMESHWAR PRASAD SHARMA,
KALICHARAN SHARMA AND UP BHANDAR NIYANTRAK, NORTHERN
RAILWAY, LUCKNOW AND SRI ANAND MOY SEN IN REGARD TO
PAYMENT OF GRATUITY TO THEM.

APPEARANCES:

- | | | |
|---------------------------------|-------|--|
| 1. Sri B.P.S. Chauhan, Advocate | ..... | On behalf of the Appellant. |
| 2. Sri R.S. Sharma | ..... | Respondent |
| 3. Sri Kali Charan Sharma | ..... | Respondent |
| 4. Sri R.S. Saxena | ..... | On behalf of Respondent Sri Anand Moy Sen. |

No. 36/2/87-E.1

Dated the 29th July, 1987.

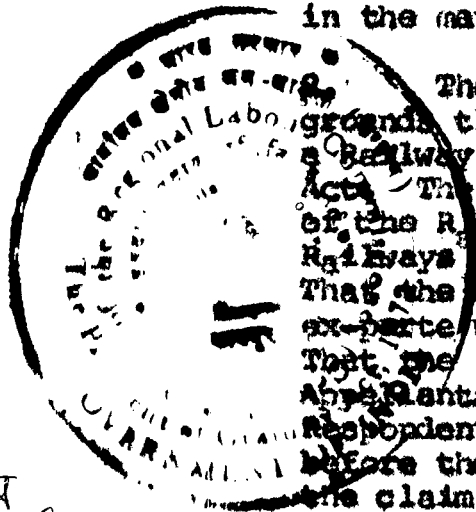
D E C I S I O N

These are ^{three} ~~four~~ appeals filed by the Appellants, Divl. Railway Manager, Northern Railway, Lucknow and Up Bhandar Niyantarak, Northern Railway, Lucknow ~~against the~~ under Sub-Section 7 of Section 7 of Payment of Gratuity Act, 1972, against the orders No. K.48/4-5/86-E.2 dated 1.12.1986, K.48/4-2/86-E.2 dated 22.10.1986 and K.48/4-6/86-E.2 dated 1.12.1986 of the ~~Asstt.~~ Labour Commissioner (C), Kanpur and Controlling Authority under the Payment of Gratuity Act, 1972 in regard to payment of gratuity to S/Sri R.S. Sharma, Anand Moy Sen and Kali Charan Sharma, respectively. As the points agitated in all these three appeals are the same and the Advocate for the Appellants is the same, hearing in the above three appeals was held jointly on 10.6.1987 in the office of the ~~Asstt. Labour Commissioner~~ Regional Labour Commissioner (C), Kanpur after issuing due notices to the concerned parties and a combined decision is given in the matter.

The Appellants have preferred the appeals on the grounds that the Railway administered by Government is not a Railway Company for the purpose of Payment of Gratuity Act. The definition of Railway Co. according to Sec. 3(3) of the Railway Act cannot be construed as including of Railways either owned or administered by the Central Govt. That the learned Controlling Authority has decided the cases ex-parte without giving any opportunity to the Appellants. That the learned authority has erred in holding that the Appellants have deducted the amount from the wages of the Respondents. But in fact no document or any evidence was before the Authority on which he considered this point. That the claim of the petitioners was perfectly barred by time but the Authority did not consider at all this point. Therefore, the Appellants prayed to set aside the orders of the Controlling Authority under Payment of Gratuity Act.

3. On the other hand the Respondents have contested the arguments of the Appellants for the following reasons:

The Indian Railway including the Northern Zone falls within the scope of Section 1(3) (a) and not 1(3) (b) of the Act. The Indian Railway administered by the Central Govt. regularly carries on the work of construction, development and maintenance of Buildings and bridges etc. and as such it is covered by the Section 2(ii) (9-9g) of the Payment of



Attended

10.8.87

प्रशासनिक विभाग - 1, उ. प्र.

लखनऊ

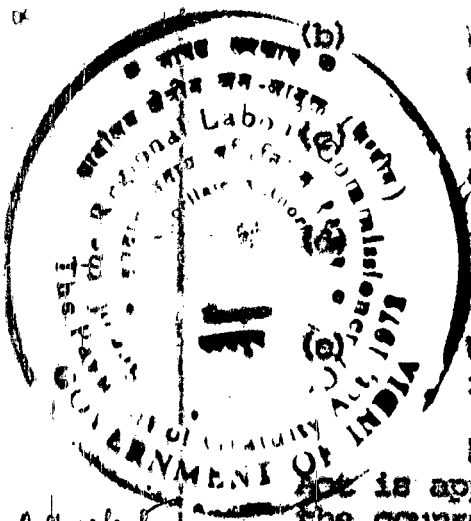
लखनऊ

Nages Act and as such the Indian Railway governed by the Central Govt. will also fall under the scope of Section 1(3) (b) of the Payment of Gratuity Act. The Hon'ble High Courts Calcutta and Kerala (1980-L.I.C. N.O.C. 96(Cal) and 1981 L.I.C. N.O.C. 143(KER) (D.B) have held that the Payment of Gratuity Act is applicable to Railway employees. The Hon'ble Supreme Court in a reported case A.¹.R. 1979 S.C. 1981 in civil appeal No.8 of 1977 decided on 16.10.1979 (After the cited L.I.C. case 1979 page 1073 decided in August 1979) against opinion of Hon'ble Punjab & Haryana in Civil Writ No.1366 of 1975 has laid down that the Parliament intended that the proceedings for payment of gratuity that be due must be taken under that act and no other. The Id. Solicitor General of India has admitted the Law as laid down by the Hon'ble Supreme Court and as such the appellant citation 1979.L.I.C. page 1073 has no legal force at the stage as detailed above. The Controlling Authority has given sufficient opportunities to the Appellants to argue their case before him but they did not avail of the same. The Controlling Authority has considered the application for condonation of delay and condoned the same as pointed out in the award order. The delay once condoned by the Competent Authority under Sec.7(5) and Rule 5(4) of the Rules to the Act 39 of 1972 cannot be challenged at the appeal stage. The gratuity under the Supreme Court law as laid down in the reported case A.¹.R. 1985 S.C. 355 - State V/s State of Kerala & others is no longer any bounty to be distributed by the government to its employees. It is a valuable right and property in the hands of the Government and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rates till actual payment the liability commences at the expiry of two months from the date of retirement. For the reasons circumstances as detailed here the appeal is not maintainable and liable to be dismissed with cost, special damages and prescribed rate of interest at the current market rate.

4. I have carefully considered the arguments put forth by the learned counsel of the Appellants and the Respondents. The following points are to be decided in these appeals.

- (a) Whether Payment of Gratuity Act is applicable to the establishment of Ruz Appellant Railways?
- (b) Whether the Railway servants in these appeals are employees as defined under Section 2(e) of the Act?
- (c) Whether the ex-parte proceedings of the Controlling authority is valid in law?
- (d) Whether the Controlling Authority has condoned the delay according to law?
- (e) Whether the deductions made by the Appellant Railways from the gratuity amount of Respondents are legal?

Regarding point (a) Whether Payment of Gratuity Act is applicable to the establishment of Appellant Railways? the counsel for the Appellants argued that the Payment of Gratuity Act, 1972 is applicable only to Railway Company under Section 1(3) (a) and not to Railway Administration. Further, the employees of the Railways are holding civil posts under the Central Government and as such does not come under the purview of definition of 'employee' under the Act. No doubt the Railway Administration does not come under the purview of Section 1(3) (a) as the word 'Railway Administration' is not mentioned there as held by the Hon'ble Madras High Court in the case of Executive Engineer(C) V/s K.V.Varghese (1979-Lab. I.C. page 1023).



Accepted

5.10.82

एम० एस० कुर्सेसिया
प्रमुख कर्ता अधिकारी
प्रशासनाधिकरण - 1, उ० प्र
सूचना

11 3 11

However, Hon'ble Kerala High Court has held in case of Executive Engineer(C) Southern Railway, Quilon V/s M.P. Shankarapillai (1981-Lab.I.C (NOC) 143 (KER)) that the 'establishment' as defined under the definition of 'establishment' as defined under Section 1(3) (b). The learned counsel for the Appellants Railways have not contested this point. I, therefore, hold that the Appellant establishments of the Railway Administration are establishments as defined under Section 1(3) (b) and the Payment of Gratuity Act applies to said establishments of the Railway Administration.

5. The next point (b) whether the Railway servants in these appeals are employees as defined under Section 2(e) of the Act is to be decided. Prior to the amendment the employee as defined under Section 2(e) of the Act does not include a person who holds a civil post under the Central Government or State Government..... and w.e.f. 1.7.1984 an employee does not include a person who holds a post under the Central Government or State Government and is governed by any other act or rules providing for payment of gratuity. It is the contention of the Appellants Railways that the Railway servants are holding posts under the Central Government whereas the Respondents contended that they are not holding post under the Central Government.

6. I have carefully gone through the arguments of the learned counsel for the Appellants and Respondents. It has been held by various courts that a Railway servant is holding a post under the Central Government and enjoys the protection under Article 311 of the Constitution of India. Further, the Railway Establishments Code and other service rules including Death-cum-Retirement Gratuity are framed under the powers vested under Article 309 of the Constitution. Further more, the Railway servants are being paid from the Consolidated Fund of India. Therefore, for all purposes they are holding the post under the Central Government and also as per Amendment Act w.e.f. 1.7.1984 there is also a gratuity scheme framed by the Railways for the benefit of Railway servants. I, therefore, decide that the Railway servants are not coming within the purview of definition of 'employee' as defined under Section 2(e) of the Payment of Gratuity Act. The Kerala High Court citation refers to payment of gratuity to casual employees who do not hold civil posts.

700

7. In the result the orders of the Asstt. Labour Commissioner(C), Kanpur and Controlling authority under the Payment of Gratuity Act, 1972 are set aside and appeals are allowed.

Given under my hand and seal this the 29th day of May, 1987.

(V. Sunkaresan)

Regional Labour Commissioner (Central)
Kanpur
and
Appellate Authority.

Copy forwarded for information and necessary

Action to:-

1. Dy. Controller of Stores, Northern Railway, Alambagh, Lucknow.
2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Sri Kalicharan Sharma, S/o Sri Har Charan Lal Sharma, R/o 16, Newaiya, Ganeshganj, Lucknow. 226001.
4. Sri Ramashwar Prasad Sharma, S/o Sri Mahadhar Sharma



As the employees involved in these appeals are not coming within the purview of the Act, other points are not discussed.

A 33

23

11 4 11

R/o 567/127, Anandnagar, Jail Road, Lucknow

RECD. A.D. 5. Sri Anand Moy Sen S/o Sri S.K. Sen, R/o 565/141, Purnanagar, Alambagh, Lucknow.

6. The Controlling Authority and Asstt. Labour Commissioner (C), Kanpur. His office file Nos. K.48/4-2/86-E.2, K.48/4-5/86-E.2 and K.48/4-6/86-E.2 are also returned herewith.

7. The CJC (C), New Delhi

8. File Nos. K.36/1/87-E.1
K.36/15/86-E.1



Attested

msd (ms)
5.10.87

एम० एम० कुंजरेलिया,

प्रधान कार्य अधिकारी

प्रशासनिक विभाग - 1, उ० प्र०

लखनऊ

Central Administrative Tribunal Addl Bench

ब अदालत भीमान्

[नावी] अपीलान्त

प्रतिवादी [रिपण्डेण्ड]

Petitioner A.M. Sen

वकालतनामा



A.M. Sen.

नावी (अपीलान्त)

बनाम

नं० मुकदमा 925 सन् 1987

पेशी की ता० 9.11.

प्रतिवादी (रिपण्डेण्ड)
Dy. Controller of Stores
Lucknow

ऊपर लिखे मुकदमा में अपनी ओर से श्री

Ram Swarup Saxena Advocate

C-135 Gesta Patti, Alambagh
Lucknow - 226005

वकील
महोदय
एडवोकेट

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पंरवी व जबाब देही व प्रश्नोंत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया वसूल करें या सुलहनामा व इकवाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करें मुकदमा उठावें या कोई रुपया जमा करें या हमारी बिपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (हस्तखती) रसीद से लेवे या पंच नियुक्त करें—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पंरोकार को भेजता रहूंगा अगर मुकदमा अदम पंरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

9.11.87

November

महीना

सन् 1987 ई०

स्वीकृत

R. Saxena

Adv. 11/11/87

and he has invoked the jurisdiction of the Industrial Court upto the highest hierarchy wherein he has not been awarded the said sum so the reliefs sought to set aside the decision of the R.L.C. as these are not appellate or Super appellate authority as per provisions of Articles 226 and 227 of Constitution of India , so the petition be rejected.

7- That on account of pending cases criminal as well as Industrial Court the Departmental proceedings could not be finalised. It may be on the principles of pendency of cases.

8- That the contents of paras 1 to 4 of the petition needs no comment.

9- That the contents of para 5 of the petition are denied.

10- That the contents of paras 6.1 to 6.14 of the petition needs no reply as they relate to the decision of A.L.C. and R.L.C. and their legality on the subject. Since it is not a Court of Second Appeal , so they cannot be further adjudicated.

11- That the contents of paras 7.1 to 7.5 of the petition are denied as the petitioner is not entitled to the reliefs claimed. The petitioner is not at all entitled to the interest.

सहायक मंडारि प्रमुख
उत्तराखण्ड आलमवाय
लखनऊ

CA

A37

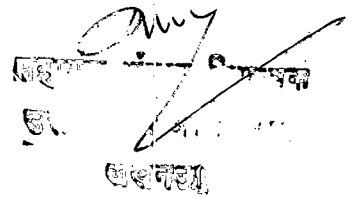
- 3 -

12- That the contents of paras 8 to 12 of the petition needs no comment.

13- That the petition is liable to be rejected.

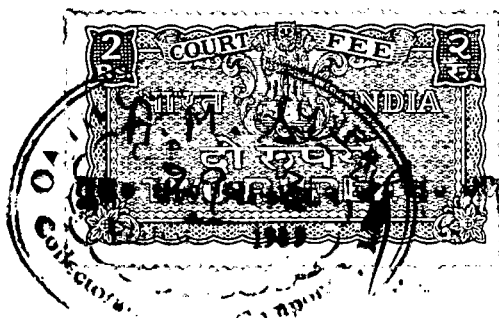
OR
I, N. D. Bhaskar, Asst. Controller of Stores, Northern Railway, Lucknow do hereby verify that the contents of paras 1 to 13 of the Counter are true to my personal knowledge derived from official records and also based on legal advice received from our Counsel which I believe to be true. Signed and verified on this day of 1989 at Lucknow.

CL


N. D. Bhaskar
Asst. Controller of Stores
Northern Railway, Lucknow

A38

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT COURT, LUCKNOW.



Case NO. 925 of 1987.

Fixed fee 29-3-1989.

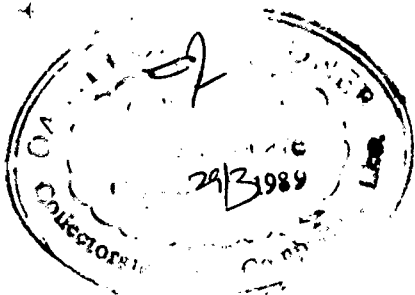
Anand May Sen Aged about 65 yrs,
S/O. Late Sri. S.K. Sen,
R/O. 565/141 Puran Nagar,
Lucknow-226005. Petitioner/Deponent.

Pl. put up with
file before court
on next date -
mahangam
29/3/89

Versus

Dy. Controller of Stores,
Northern Railway, Alam Bagh,
Lucknow. Respondent.

Affidavit Of A.M. Sen, the petitioner above
named against reply of the respondent,
received on 24-1-1989.



The petitioner above named herein after the de
Deponent swears and deposes on oath as under:-

1. That the deponent is the petitioner in the case and well conversant with the facts of the case.
2. That the deponent does not admit the para 1 of his counter reply to the petition and the same is denied.

a) The petition is maintainable under sec. 19(a)
Act. 13 1985.

Presented by Advocate

A. S. Saxena

on 29. 3. 89

Heery

29/3
Adv

Copy served on Respondent
by Registered Post on 29/3/89

AM SEN

Petitioner

A39

-2-

- b). The Railway is not the constituent part of Union Of India .
- c). The Railway is administered by the Railway Board under the Central Government. It falls under the central administrative Tribunal pervue. (Ref. Rlys Act IX 1890 Sec. 3(6), and Section 3(7) and governed by its Rules framed u/s. 47 of the act.
- d). The Central tribunal is not guided by the Civil Procedure Code 1908 but by the Principles of 'Natural Justice and the provisions of the Central Administrative Tribunal Act, and Rules (Ref. Sec. 33.).
- e). The impugned order (ES/391 dt. 4.9.85) falls within the jurisdiction of the Central Administrative Tribunal for its adjudication U/S. 19(1)(a) & (b) of the act and not C.P.C.
- f). The maintainability of the application has since been considered at the ^{preliminary} ~~preliminary~~ stage at the time of its admission after hearing both the parties. It cannot be challenged at the stage.

That para 2 not admitted and is denied:-

- a). The principle of resjudicata does not apply.
- b). The A. L. C. Kanpur order Dt. 20-10-1986 was an Ex. Parte order.
- c). The R. L. C. Kanpur has set aside the A. L. C. Order on appeal by the respondent, on question of Jurisdiction of the Labour Courts without any adjudication on the dispute Viz. Payment /non payment of the Gratuity payable to the petitioner, on retirement.
- d). The R. L. C. has not decided the dispute in issue.

PM^c

4. That para 3 not admitted and ^{is} denied.

The petition has been admitted after condonation of delay caused due to institution of the case in wrong jurisdiction of the Labour Courts. The delay once condoned cannot be challenged subsequently.

5. That the para 4 not admitted and is denied,
The averment in petition paras 6.5 to 6.9 are reiterated.

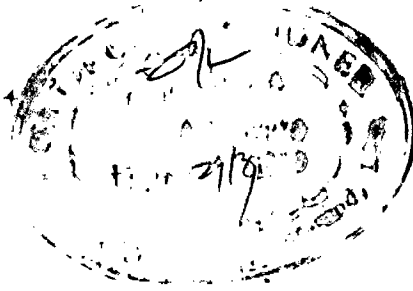
(a). The criminal case No 5/77 was maliciously registered. It was not processed by the Police. It was finally consigned to records under challan No 293 of 7-4-1981 with final Report, "Police is not interested in the case."

(b). The deponent was not prosecuted and punished in the alleged criminal case and its proceedings. The onus to prove the same does not lie on the petitioner. It has not been proved by any ~~documentary~~ ^{documentary} evidence and the respondent has not filed any document in support of the defence pleading in the point in issue.

(c). No disciplinary proceedings under the provisions of Disciplinary and appeal rules 1968 were taken or even contemplated during service tenure till retirement on 31-1-1981.

(d). No departmental proceedings can be taken at the stage under Rule NO 2308 (CSR 351.A) Establishment code Vol. XX II.

(e). No notice was ever served on the petitioner by the respondent to conduct Disciplinary ~~Proceedings~~ Proceedings, during period of petitioner's Service. The same is barred under limitation as provided in the above mentioned Rule 2308 (C.S.R. 351-A).



[Handwritten signature]
29/3/89

241

-4-

f). No charge sheet was served by the respondent on the petitioner since 1977 to 1981 when the petitioner retired on attaining the age of superannuation on 31-1-1981.

g). In absence of issue of the charge sheet under Rule 11. D. & A. Rules 1968, no order imposing on a Railway Servant any of the penalties specified in the Rule 11. Clauses (1) to (IV) of sub rule (1) and (II) of sub Rule (2) of rule 6 shall be made, after informing the Rly servant in writing of the proposal to take action against him and of the imputations of misconduct or mis-behaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal.

h). The petitioner has not been convicted of serious crime or held guilty of grave mis-conduct.

i). The Rule NO 2307 Est. Code Vol. II (C. S. R. 351 is not applicable in the case of the petitioner

j). The respondent has no authority to withhold or set aside the gratuity of the petitioner against the alleged loss to the Rly Administration under rule 2307. The Rule 2308 Est. Code Vol. II and Rule .11- D. & A. Rules 1968 override provisions under Rule 2307 Est. Code Vol. II.

6. 2
is denied.

The petitioner does not admit para 5. The same

a). No departmental enquiry was contemplated, conducted or held.

b). In absence of a charge sheet and Departmental

Inquiry does not authorise the employer, ~~XXXXXXXXXX~~ the respondent and the disciplinary authority to impose any punishment or withhold the Gratuity of the petitioner.

C. The respondent in violation of Rule 9. cannot take any action in setting aside or withholding the ~~XXXXXXXXXX~~ Gratuity.

7. (1) The deponent does not admit para 6. The same is denied. The petition Dated 9-11-1987 U/S. 21 was admitted after condoning the delay on account of filing ~~XXXXXXXXXX~~ the petition in a wrong Jurisdiction (Labour Court).

(2) The C.A.T. Act. 1985 vests jurisdiction in the Hon'ble Tribunal U/S. 14 and divest the remedy under Art. 226 227 of the Constitution of India of the Hon'ble High Court or any other courts, from the appointed day (27-2-1985.).

8. (1). That the deponent does not admit the para 7. The same is denied.

(2). The deponent was not convicted in the alleged criminal case. The final report was given on the case, The same was consigned to records.

(3). The defence pleadings in para 7 are malicious. There is or was no bar to conduct the departmental proceedings when the criminal trial or any other suit or a case is subjudice in any other court.

9. That the para No. 8 needs no comments. It merely admits pleadings paras 1 to 4 of the petition.

10. That the deponent does not admit para 9 of the reply. The same is denied. Para 5 of the petition is reiterated due to condonation of the delay by the Hon'ble Tribunal as already deposed in para 2 of the affidavit.

11. That the defence para No 10 needs no comment, except

A43

-6-

on point of legality of the Labour court Decisions. The Hon'ble Tribunal has considered the legality at the time of admission when the Labour court was deleted as other party on the request of the Petitioner in the court itself. The Labour court decisions are not relevant to ~~KHKA~~ petition specially on the point and objections of the A/R.L.C. Kanpur para 7 of the orders Dated : 29-7-1987.

12. That the deponent does not admit para 11. The same is denied. The petitioner is entitled to the relief prayed for.

13. (1). That the deponent does not admit the para 12. The same is denied. The respondent has not offered any remarks against pleadings paras 8 to 12.

(2) The petitioner in para 8.1 to 8.3 has prayed for interim orders to order issue of complementary passes as due to the deponent till final disposal of the petition. The deponent is entitled for the interim orders on the point of issue of the complimentary passes. The same are liable to be issued after the interim orders of the Hon'ble Bench.

14. That the para 13 not admitted. The same is denied. The payment of Gratuity with interest, cost and issue of complimentary passes are liable to be ordered by the Hon'ble Bench.

Lucknow: Dated:

Verification.

Deponent.

29/3/89

I the deponent above named do hereby verify that the contents of paras No. 1, 4, 5, 6, 7, 8, 9, and 13 are true to my own knowledge and those of paras NO 2 to 3, 10 to 12 and 14 are believed by the deponent on basis of documents and legal advice. Nothing material has been concealed. No part of it is false. So help me God. Signed this 29 th day of March 1989 Within civil court compound Lucknow.

Lucknow : Dated :

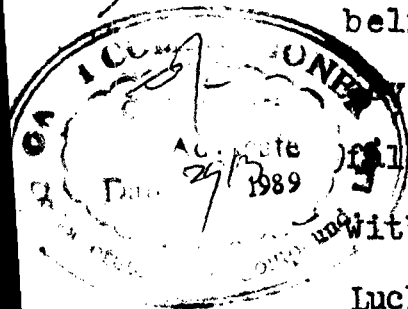
Deponent

29/3/89

I identify the deponent who has signed this day before me. He is personally known to me.

R.S. Saksena
Advocate

29/3/89



11.40 PM
I have examined the contents of the
deponent's statement and find it to be
true and correct.

[Signature]
C. M. S. R. A.
Advocate
Date... 29/8/88... Oath Commissioner
Collectorate Court, Lucknow.

वादी प्रतिवादी द्वारा पेश किये गये दस्तावेजों की सूची

आदेश १२, नियम ६

न्यायालय Central Administrative Tribunal जिला L.K.
बाद संख्या ५२५ सन् १९८७ ई०

--- A.M. Sen --- वादी

--- Dy Controller of Stores R.K. Lio --- प्रतिवादी
Petitioner --- वादी/प्रतिवादी की ओर से बाद-पत्र के साथ पेश किये गये दस्तावेजों की सूची

प्रथम सुनवाई के समय

इस सूची को Petitioner से आज सन् १९८७ March -- के २५th दिवस को पेश किया।

१	२	३	४
कागज क्या हुआ			
दस्तावेज का अभिवर्णन और उसकी तारीख यदि कोई हो	यदि अभिलेख में सम्मिलित किया गया तो प्रदर्शन चिन्ह जो उस पर डाला गया	यदि नामजद हुआ तो पक्षकार को लौटाये जाने की तारीख और पक्षकार या उसके अधिवक्ता के हस्ताक्षर जिसको कागज लौटाया गया	यदि वाद के निश्चय के पश्चात कागज अधिनियम में रह जाय और अध्याय ३ नियम २४ के अधीन लिफाफा में बन्द किया गया तो लिफाफा में बन्द करने की तारीख
टिप्पणी			
१. Photostat copy of Est Code Vol II Rule 2306 to 2308			
२. Extracts N.R. Extraordinary Gazette Oct 5. 1968			

नाम अधिवक्ता
मुख्य वं.
नाम फीकेन
नाम

[सूची को पेश करने वाले पक्षकार या अधिवक्ता के हस्ताक्षर]

against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the railway servant shall be deemed to have been placed under suspension by the competent authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5) (a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a railway servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the railway servant shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

PART III.—PENALTIES AND DISCIPLINARY AUTHORITIES.

6. Penalties.—(1) The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a railway servant, namely:—

Minor Penalties :

- (i) Censure :
- (ii) withholding of his promotion for a specified period ;
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders;
- (iv) withholding of increments of pay for a specified period with further directions as to whether on the expiry of such period this will or will not have the effect of postponing the future increments of his pay;

Major Penalties :

- (v) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;
- (vi) reduction to a lower time-scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or Service from which the railway servant was reduced and his seniority and pay on such restoration to that grade, post or Service;

PART IV—PROCEDURE FOR IMPOSING PENALTIES.

9. **Procedure for imposing major penalties.**—(1) No order imposing any of the penalties specified in clauses (a) to (c) of sub-rule (1) of rule 6 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 10, or in the manner provided by the Public Servants (Inquiries Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a railway servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Explanation.—Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (9) and in sub-rule (11) to sub-rule (19) to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a railway servant under this rule and rule 10, the disciplinary authority shall draw or cause to be drawn up :—

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain :—

(a) a statement of all relevant facts including any admission or confession made by the railway servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained

(4) The disciplinary authority shall deliver or cause to be delivered to the railway servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the railway servant to submit a written statement of his defence within ten days, if he does not require to inspect any documents for the preparation of his defence, and if he requires to inspect any documents, within ten days after completion of the inspection of documents and to state whether he desires to be heard in person.

(5) The railway servant may, for the purpose of preparing his defence :—

(i) inspect and take extracts from the documents specified in the list referred to in sub-rule (3) within 5 days of the receipt thereof or within such further time not exceeding 5 days as the disciplinary authority may allow;

(ii) submit a list of witnesses to be examined on his behalf;

NOTE.—If the Railway Servant applies, in writing, for the supply of copies of the statements of witnesses mentioned in the list referred to in Sub-rule (3), the disciplinary authority shall furnish him with a copy each of such statements as early as possible and in any case not later than 3 days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

- (iii) give a notice within ten days of the receipt of the list of documents referred to in sub-rule (3) or within such further time not exceeding ten days as the disciplinary authority may allow for inspection of any other documents which are in the possession of railway administration but not mentioned in the list referred to in sub-rule (3).

NOTE.—The railway servant shall indicate the relevance of the documents required by him for inspection.

- (6) The disciplinary authority shall, on receipt of the notice for inspection of documents, permit the railway servant to do so.

Provided that the disciplinary authority may, for reasons to be recorded by it in writing, refuse permission to inspect all or any such documents as are in its opinion not relevant to the case or it would be against the public interest or security of the State to allow him access thereto.

- (7) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary to do so, appoint, under sub-rule (2) inquiring authority for the purpose, and where all the articles of charge have been admitted by the railway servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such further evidence as it may think fit and shall act in the manner laid down in rule 10

- (b) If no written statement is submitted by the railway servant, the disciplinary authority may itself inquire into the articles of charge or may, if it considers it necessary to do so, appoint, under sub-rule (2) an inquiring authority for the purpose.

- (c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order in writing, appoint a railway or any other Government servant to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

- (8) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority:—

- (i) a copy of the articles of charge and the statement of the imputations of mis conduct or misbehaviour;
- (ii) a copy of the written statement of defence, if any, submitted by the railway servant;
- (iii) a copy of the statements of witnesses, if any, referred to in sub-rule (3);
- (iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the railway servant; and
- (v) a copy of the order appointing the "Presenting Officer".

(9) The railway servant may present his case with the assistance of any other railway servant (including a railway servant on leave preparatory to retirement) employed on the same railway administration on which he is working. If the railway servant is employed in the office of the Railway Board, its attached office or subordinate office, he may present his case with the assistance of any other railway servant (including a railway servant on leave preparatory to retirement) employed in the office of the Railway Board, attached office or subordinate office, as the case may be, in which he is working.

Note.—1. In the case of a non-gazetted railway servant, he may have the assistance of an official of a Railway Trade Union recognised by the railway administration under which the railway servant is employed, but shall not engage a legal practitioner. A Trade Union official shall not be allowed to appear in a disciplinary case before an inquiring authority unless he has worked as such in recognised Railway Trade Union for a period of at least one year continuously before he appears and subject to the condition that he takes no fees.

Note.—2. Nomination of an assisting railway servant or a Railway Trade Union official shall not be accepted if at the time of nomination the assisting railway servant or the Railway Trade Union official has more than two pending disciplinary cases in which he has to assist.

(10) After the nomination of the assisting railway servant or a Railway Trade Union official, and the inspection of documents and other necessary steps preliminary to the inquiry are completed, a date ordinarily not exceeding one month shall be fixed for the inquiry and the railway servant informed accordingly.

(11) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer, if any, and may be cross-examined by or on behalf of the railway servant. The Presenting Officer, if any, shall be entitled to re-examine the witnesses on any points on which they have been cross examined, but not on any new matter without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(12) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer, if any, to produce evidence not included in the list given to the railway servant or may itself call for new evidence or recall and re-examine any witness and in such case the railway servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the railway servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the railway servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice.

*Note.—*New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence shall be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(13) When the case for the disciplinary authority is closed, the railway servant shall be required to state his defence orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the railway servant shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

A49

(14) The evidence on behalf of the railway servant shall then be produced. The railway servant may examine himself in his own behalf if he so prefers. The witnesses produced by the railway servant shall then be examined and shall be liable to cross-examination and re-examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(15) The inquiring authority may, after the railway servant closes his case, and shall, if the railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the railway servant to explain any circumstances appearing in the evidence against him.

(16) The inquiring authority may after the completion of the production of evidence, hear the Presenting Officer, if any, appointed and the railway servant, or permit them to file written briefs of their respective cases, if they so desire.

(17) If the railway servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex-parte.

(18) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself :

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross-examine and re-examine any such witnesses as herein before provided.

(19) (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain.—

- (a) the articles of charge and the statement of the imputations of misconduct or misbehaviour ;
- (b) the defence of the railway servant in respect of each article of charge ;
- (c) an assessment of the evidence in respect of each article of charge ;
- (d) the findings on each article of charge and the reasons therefor.

Explanation.—If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of charge, it may record its findings on such article of charge :

Provided that the findings on such article of charge shall not be recorded unless the railway servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry, which shall include.—

- (a) The report prepared by it under clause (i) ;

- (b) the written statement of defence, if any, submitted by the railway servant ;
- (c) the oral and documentary evidence produced in the course of the inquiry ;
- (d) written briefs, if any, filed by the Presenting Officer, if any, or the railway servant or both during the course of the inquiry ; and
- (e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

10. **Action on the inquiry report.**— (1) If the disciplinary authority, having regard to its own findings where it is itself the inquiring authority, or having regard to its decision on all or any of the findings of the inquiring authority, is of the opinion that the penalty warranted is such as is within its competence, that authority may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witness and examine, cross examine and re-examine the witness and may impose on the railway servant such penalty as is within its competence in accordance with these rules. Where such disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, that authority shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as hereinafter provided.

(2) The disciplinary authority, if it is not itself the inquiring authority, may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of rule 9 as far as may be.

(3) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of sub-rule (1), and clauses (i) and (ii) of sub-rule (2), of rule 6 should be imposed on the railway servant, it shall, notwithstanding anything contained in rule 11, make an order imposing such penalty :

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the railway servant.

(5) (i) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (v) to (ix) of sub-rule (1) of rule 6 should be imposed on the railway servant, it shall :—

- (a) furnish to the railway servant a copy of the report of the inquiry held by it and its findings on each article of charge, or, where the inquiry has been held by an inquiring authority appointed by it, a copy of the report of such authority and a statement of its findings on each article of charge together with brief reasons for its disagreement, if any, with the findings of the inquiring authority ;

(b) give the railway servant a notice stating the penalty proposed to be imposed on him and calling upon him to submit within a specified time, ordinarily not exceeding fifteen days from the date of the receipt of the notice subject to a minimum of seven days, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under rule 8.

(ii) (a) In every case in which it is necessary to consult the Commission, the record of the inquiry together with a copy of the notice given under clause (i) and the representation made in pursuance of such notice, if any, shall be forwarded by the disciplinary authority to the Commission for its advice.

(b) The disciplinary authority shall, after considering the representation, if any, made by the railway servant, and the advice given by the Commission, determine what penalty, if any, should be imposed on the railway servant and make such order as it may deem fit.

(iii) here it is not necessary to consult the Commission, the disciplinary authority shall consider the representation, if any, made by the railway servant in pursuance of the notice given to him under clause (i) and determine what penalty, if any, should be imposed on him and make such order as it may deem fit.

11. Procedure for imposing minor penalties.—(1) Subject to the provisions of sub-rule (4) of rule 10, no order imposing on a railway servant any of the penalties specified in clauses (i) to (iv) of sub-rule (1) and clauses (i) and (ii) of sub-rule (2) of rule 6 shall be made except after,—

(a) informing the railway servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal ;

(b) holding an inquiry in the manner laid down in sub-rule (3) to (19) of rule 9, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary ;

(c) taking the representation, if any, submitted by the railway servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration ;

(d) recording a finding on each imputation of misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

(2) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed, after considering the representation, if any, made by the railway servant under clause (a) of that sub-rule to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the railway servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rule (3) to (19) of rule 9, before making any order imposing on the railway servant any such penalty.

AS2

(3) Notwithstanding anything contained in sub-rule (1), in the matter of imposition of the penalty of fine, it shall be open to the disciplinary authority to obtain the explanation of the railway servant concerned on the spot and reduce the charge and his defence to writing immediately and inform the railway servant concerned of the imposition of the fine.

(4) The record of the proceedings in cases specified in sub-rules (1) and (2) shall include :—

- (i) a copy of the intimation to the railway servant of the proposal to take action against him ;
- (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him ;
- (iii) his representation, if any ;
- (iv) the evidence produced during the inquiry, if any ;
- (v) the advice of the Commission, if any ;
- (vi) the findings on each imputation of misconduct or misbehaviour; and
- (vii) the orders on the case together with the reasons therefor.

12. **Communication of orders.**—Orders made by the disciplinary authority shall be communicated to the railway servant who shall also be supplied with a copy of the report of the inquiry, if any, held by the disciplinary authority and a copy of its findings on each article of charge, or, where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority and a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the findings of the inquiring authority (unless they have already been supplied to him) and also a copy of the advice, if any, given by the Commission and, where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance.

13. **Common Proceedings.**—(1) Where two or more railway servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such railway servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

Note.—If the authorities competent to impose the penalty of dismissal on such railway servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others.

(2) Any such order shall specify :—

- (i) the authority which may function as the disciplinary authority for the purpose of such common proceeding ;
- (ii) the penalties specified in rule 6 which such disciplinary authority shall be competent to impose ; provided that such authority shall not impose the penalties specified in clauses (vii) to (ix) of that rule if that authority is subordinate to the Appointing Authority ;
- (iii) whether the procedure laid down in rule 9 and rule 10 or rule 11 shall be followed in the proceeding.

AS3

01

R. P.-51. (a)

Stamps affixed except in case of uninsu- Rs. R
red letters of not more than the initial *Date-Stamp*
weight prescribed in the Post and Telegraph
Guide on which no acknowledgment is due.

Received a V. R. registered*
addressed to.....

By Control of Store
M. R. Alaukt

.....* Write here 'letter', 'parcel' or 'railway'
Sig. of Receiving Officer with the word 'insured' before it when



To be filled in only when the article is to be insured; other
to be crossed out by means of two diagonal lines

Insured for Rs. (in figures).....(in words).....

weight | rates