

CENTRAL ADMINISTRATIVE TRIBUNAL
Circuit Bench, Lucknow
Opp. Residency, Gandhi Bhawan, Lucknow

INDEX SHEET

CAUSE TITLE 192/88 of 1988 (L)

NAME OF THE PARTIES _____

Sri B.S. Chopra Applicant

Versus

Union of India, RespondentPart A, ~~Part B~~

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50 (L)

R/C
05/01/2012

R/g
Sgt)

(W/2011/10/10)
10.6.71

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Payment of
Back wages

Registration No.

192 of 1988 (L)

APPLICANT (s)

B. S. Chopra

RESPONDENT(s)

U. O. G. & another (N. Rly)

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 ?

yes.

yes

yes

only two sets.

yes

-

-

4. Has the document of authorisation/Vakalat-nama been filed ?

yes

5. Is the application accompanied by B. D. /Postal-Order for Rs. 50/-

yes P.O. no. DD 066021
5 dt. 24.10.88

6. Has the certified copy/copies of the order (s) against which the application is made been filed ?

yes

7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?

yes

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

yes by the Advocate.

Particulars to be ExaminedEndorsement as to result of Examination

- (c) Are the documents referred to in (a) above neatly typed in double space? *yes*
8. Has the index of documents been filed and paging done properly? *yes*
9. Have the chronological details of representation made and the outcome of such representations been indicated in the application? *yes*
10. Is the matter raised in the application pending before any Court of law or any other Bench of Tribunal? *No.*
11. Are the application/duplicate copy/spare copies signed? *yes*
12. Are extra copies of the application with Annexures filed? *No.*
- (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? *No.*
14. Are the given addresses, the registered addresses? *yes*
15. Do the names of the parties stated in the copies tally with those indicated in the application? *yes*
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? *yes*
- (a) Concise? *yes*
- (b) Under distinct heads? *yes*
- (c) Numbered consecutively? *yes*
- (d) Typed in double space on one side of the paper? *yes*
18. Have the particulars for interim order prayed for indicated with reasons? *No.*

19. Whether all the remedies have been exhausted. *yes*

If approved, be listed before the court on 27. X. 88

Dehar
D.R. (J)

26/4/88

DSSDhar
26/4/88
S.O. (J)

82/1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW.

O.A./I.A. No. 192 1988(L)

B. S. Chandra

Applicant(s)

Versus

U.O & A.Os.

Respondent(s)

Sr.No.	Date	Orders
	27-X-88	Hon. D.S. Misra - A.M. Hon. G.S. Sharma, J.M. Admit. Issue notices. One month for C.A. & two weeks for R.A. List this case for final hearing 19.12.88. sd/- sd/- J.M. A.M. <i>frish</i>
	8-11-88	<u>O.R.</u> Notices issued to the respondents No. 1 & 2 through Regd. Post. fixing 19.12.88 for hearing. <i>frish</i> <i>8/11/88</i>
		<u>O.R.</u> No C.A. & R.A. filed.
	19/12/88	No sitting. Adjourned to 27-1-89 for hearing.
	27-1-89	No sitting. Adjourned to <i>h.</i> for hearing. <i>19/12</i> <i>8-2-89.</i> <i>ARM</i> <i>27/1</i>

K.K. Pandey

- Dec 30/1988

with
a
notice
to
date
by
C.C.

h.
14/12
Power filed
on behalf of
O.P. *h.*

GA 192/88(L)

28/3.

OK

(P2/Y)

No reply filed so far by the
learned counsel for the rebels.
As directed by the Hon'ble court
order dt. 9.3.89.

Submitted for hearing.

28/3/89

OK

Ans
28/3/89

Neither reply nor rejoinder filed
so far. Due to wrong posting in the register
the case could not be listed before
Hon'ble court, because of rush of work and the
same is regretted.

Submitted for further orders before
Hon'ble court on 29.3.89

28/3/89

24/3

O.A. No. 192/88

Hon'ble Mr. D.S. Mishra, A.M.
Hon'ble Mr. D.K. Agarwal, J.M.

29/3/89 Shri N.P. Shukla, learned counsel for the applicant is present and requests for some time to be given to file rejoinder to the counter reply filed by the respondents. On going through the record, we find that the counter reply has not been filed so far. Sri Anil Srivastava learned counsel for the respondents has requested for adjournment of the case. The case is adjourned to 26-4-1989. In the meantime the respondents are directed to file their counter reply within 3 days in office and the applicant may file his rejoinder within two weeks.

(sns)

J.M.

A.M.

OR
Time granted for filing counter in the office has expired, but no counter has so far been filed by the counsel for respondents. Submitted for order.

26.4.89. Hon. D.S. Mishra, A.M.
Hon. D.K. Agarwal, J.M.

28/4

Sri. A. Srivastava for the respondents requests one day time to file reply. He may do so by tomorrow (27.4.89).

did it for further order on 27.4.89.

J.M.

A.M.

Don

Serial
number
of
order
and date

Brief Order, Mentioning Reference
if necessary

How complied
with and
date of
compliance

2/11/89

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

No division bench is sitting.

List this case on ⁴⁻¹²⁻⁸⁹~~23-1-90~~ for hearing.

J.M.

(sns)

Hon Justice K. Nath, V.C.

Hon Mr. K.J. Ramani, A.M.

On the request of the applicant
the case is adjourned to 10.1.90

A.M.

J.M.

10/1/90

No Sitting Adj to 2.3.90

10/1/90

6.3.90

No Sitting of Division Bench Court
adjourn to 4.4.90

J.M.

6/4/90

Hon. Justice K. Nath, V.C.
Hon. K.J. Rama, A.M.

Argument heard. judgement
reserved.

A.M.

V.C.

Sd.

~~Ref No (U)~~ (2/5)
CM 10/90 (U)
OA 192/88 (U)

16/8/92 Hon Mr. P. Srinivasan, A.M.
Hon Mr. J. P. Sharma, J.M.

Pl
Type of
Judgment

~~the respondents~~ ~~of~~ ~~the~~ ~~petition~~. In this petition, the petitioners
complaints that the respondents in OA No 192/88
have willfully disobeyed the judgement of
this Tribunal dated 2/5/90 disposing of
the said OA by not implementing it
within ^{the} time limit prescribed therein.
But the applicant ^{has} further prayed that
the officials named in the petition
~~shall~~ be punished for contempt of this
Tribunal. We have in a separate order
of ~~disposal~~ ^{today} disposing of M.P. No 474/90 (U)
filed by the respondents in OA No 192/88 (U)
allowed the said respondents one month
time to implement the aforesaid judgement
of this Tribunal. Shri A. Srivastava submits
that ⁱⁿ ~~the~~ view of this, the officials named
in the petition may not be proceeded against,
~~the~~ in contempt. ~~proceeds~~.

Shri Shukla, on the other hand submits
that this petition may be kept pending
till the expiry of the time granted ~~to~~ by us

P.T.O

O.A. No. 192 of 88 (L)
M.P. No. 474 of 1990 (L)

12/6

16.8.1990.

Hon'ble Mr. P. Srinivasan, A.M.
Hon'ble Mr. J.P. Sharma, J.M.

The respondent in O.A. No. 192 of 1988 (L) want extension of time by two months to implement the judgement of this Tribunal dated 2.5.1990. disposing the said O.A.

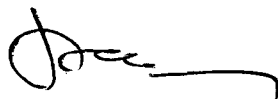
Shri Anil Srivastava, for the original respondents submits that his clients intend to file S.L.P.. before the Supreme Court against the judgment of this Tribunal.


He also submits that various Authorities have to examine the matter, before back wages can be paid and that is taking time. He, therefore, prays, that extension by two months may be granted. Shri L.P. Shukla opposes the prayer of Shri Srivastava.

We are not impressed by the arguments advanced on behalf of the original respondents for seeking time to implement the judgement.

Merely because the respondents propose to move the Supreme Court, they are not automatically entitled to delay implementation of the judgement. In the judgment itself three months time was allowed to complete all formalities and that should take care of various approvals required in the Railways. However considering that this is the first extension being sought we direct the respondents to implement the judgment dated 2.5.1990. within one month from today, unless they are ^{able} to get ^a stay order from the Supreme Court in the meanwhile.

No further, extension of time will be granted M.P. No. 474 of 1990. (L), stands *disposed of accordingly*


J.M.


A.M.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

C.B. at Lucknow

O.A.NO. 192 1988(L)
T.A.NO.

DATE OF DECISION _____

B. S. Chohan & others PETITIONER

Sh. L. P. Shukla Advocate for the
Petitioner(s)

VERSUS

C.O. 1. & another RESPONDENT

Sh. Anil Srivastava Advocate for the
Respondent(s)

CORAM :

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

The Hon'ble Mr. K. J. Raman, A.M.

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

Dineph/

WIC 20

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD
C.B. at Lucknow

O.A.NO. 192 1988(2)
T.A.NO.

DATE OF DECISION _____

B. S. Chopra & others PETITIONER

Sh. L. P. Shukla Advocate for the
Petitioner(s)

VERSUS

U.O. 1. & another RESPONDENT

Sh. Anil Srivastava Advocate for the
Respondent(s)

4

CORAM :

The Hon'ble Mr. Justice K. Nalk, v.c.

The Hon'ble Mr. K. J. Raman, A-M.

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

Dinesh/

one 80

(A3/1)

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.
CIRCUIT BENCH AT LUCKNOW.

Registration (O.A.) No. 192 of 1988 (L)

B.S. Chopra & others	Applicants.
Versus		
Union of India & another	Respondents.

Hon'ble Justice K. Nath, V.C.
Hon'ble K.J. Raman, A.M.

(Delivered by Hon. K.J. Raman, A.M.)

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985 by four applicants, who are all employees of the Northern Railway, Lucknow, against the (1) Union of India through the General Manager, Northern Railway, New Delhi and (2) Deputy Chief Electrical Engineer (W), Northern Railway, Lucknow. The sole grievance of the four applicants is that by the impugned order dated 6.11.1987, respondent no.2 has denied them arrears of pay and allowance for the period from the date of termination of services of the four applicants to the date of their reinstatement.

2. The factual background of this case may be brief stated. The four applicants had filed separate Suits (Registration (T.A.) Nos. 218/86, 219/86, 221/86 and 604/86) in 1979 in the Civil Court, Lucknow, challenging the order of their termination from service dated 27.4.1976 passed by respondent no.2, on the ground of non-compliance of Section 25-F of the Industrial Disputes Act, 1947 amongst other things. By a common judgment dated 23.9.1981 the above suits were decreed and the termination orders were quashed. Respondents no.1 and 2 filed Civil Appeals against the above decision. These four appeals came to this Tribunal on transfer under the provisions of Section 29 of the Administrative Tribunals Act, 1985.

1972

A-3
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-: 2 :-

All the four appeals were dismissed by a common judgment dated 5.1.1987 of this Tribunal. The operative portion, at the end of the judgment, is as follows :-

"In view of the above discussions, we dismiss all the four appeals and the orders dated 27.4.1976 passed by the appellant no.2 terminating the services of the plaintiff-respondents are hereby quashed being in contravention of law and the plaintiffs shall be deemed to have been reinstated on their respective posts with all consequential benefits available to them under the rules. The parties are directed to bear their own costs of these appeals."

A copy of the judgment in question is at Annexure 'A-1' to the application. The main ground for rejection has been stated in the judgment as follows :-

".....We accordingly hold that the termination of the services of the plaintiffs amounted to retrenchment and as they were not paid any compensation under Section 25-F of the Act while terminating their services, the orders of termination of the plaintiffs passed by the appellants are, thus, illegal and void and cannot operate in law. The declaration granted by the Trial Court to the respondents in these cases have, therefore, to be upheld though on different grounds."

3. The applicants were accordingly reinstated. Thereafter, the following order dated 6.11.1987, which is the impugned order, was passed by respondent no.2 :

"Northern Railway

No.E/DSC/CC/AMV

6-11-87

The SS/76/AMV

The SS/W/AMV.

Sub: Court Case.

In ref. to the judgment in the Court Cases Nos. 213/86 connected with 219/86(T), 221/86(T) and 304/86(T) of S/Shi BS Chopra, Ishrat Ali, S.Mukerjee and S.A.Malki. The Dy.CEE(W)/dico has passed the following orders :

They may be informed accordingly:

1987

-: 3 :-

- (a) The period of absence to be counted towards service.
- (b) Seniority to be continued accordingly counting the total service.
- (c) Pay fixation to be done according to their service and seniority.
- (d) No arrears is payable on this account.

Sd. xx xx"

4. In the order, referred to above, the impugned portion is clause (d) which states that "no arrear is payable on this account". In other words, the back wages were denied to the applicants.

5. The four applicants filed a Contempt Petition in this Tribunal (No.14 of 1988) under Section 17 of the Administrative Tribunals Act, 1985. By an order dated 6.10.1988 the contempt proceedings were dropped. While so doing, however, the Tribunal observed as follows :

"13. On the foregoing discussions we hold these proceedings are liable to be dropped. But, in doing so, we must necessarily reserve liberty to the petitioners to challenge the order dated 6.11.1987, to the extent they are aggrieved, in a fresh proceeding under Section 19 of the Act. On this view of the matter, we decline to further examine the legality, validity, aptness or correctness of the order. But, we make it clear that whatever we have said in this order cannot be relied on by the respondents for justifying the order in the fresh proceedings under the Act."

6. It is in pursuance of the above order that the four applicants have filed the present application challenging the impugned order dated 6.11.1987, referred to above, insofar as payment of back wages is concerned.

7. According to the applicants, in terms of Rule 2044 of the Indian Railway Establishment Code (IREC), Volume II, and various instructions issued from time to time by the Railway Board, the applicants are entitled to full back wages right from the date of their removal from service till the date of reinstatement. In this connection they have relied on the decision of the Hon'ble Supreme

199.

Court of India in Mohan Lal v. Management of M/s. Bharat Electronics Limited (1981 (3) SCC 225) and L. Robert D'Souza v. Executive Engineer, Southern Railway & another (1982 SCC (L&S) 124).

8. In the reply filed on behalf of the respondents it is contended that Rule 2044 of the IREC does not apply to the instant case and so also the Supreme Court cases, referred to by the applicants. It is averred that the applicants "as per rules" are not at all entitled to back wages, as alleged; but no rules are cited.

9. In the rejoinder affidavit filed on behalf of the applicants, reliance is placed on Rule 1345 of the IREC, Vol.II (6th Edition 1987) which is corresponding to old Rule 2044-B, read with printed Sl.no. 5642. In para 10 of the rejoinder affidavit it is stated as follows :-

"It is further submitted that the applicants had already brought to the notice of the respondents that they except applicant no.3 had not secured any employment during any period between termination and reinstatement. The applicant no.3 had secured employment under the respondents and had earned less wages than what he is entitled on reinstatement. A true photostat copy of Rule 1345 of the Indian Railway Establishment Code Vol.II along with a true photostat copy of Printed Serial No.5642 is being filed herewith as ANNEXURE No. A-4 to this rejoinder."

10. The case was heard when Sri L.P. Shukla, learned counsel for the applicants, and Sri Anil Srivastava, learned counsel for the respondents, advanced their arguments. After the hearing, the learned counsel for the respondents also submitted a brief written argument dated 5.4.1990.

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-: 5 :-

11. According to the respondents, the applicants are not entitled for back wages since they were only casual labourers and were engaged only as casual labourers. There is a vague reference ^{been} to rules in the reply of the respondents; but no rules have/specified.

12. The learned counsel for the respondents has cited the decisions of this Tribunal in Vidya Singh v. Union of India & others (1990 (12) ATC 18) and V. Sainudheen v. Senior Divisional Engineer and others (1989 (11) ATC 740), justifying the non-payment of back wages to the applicants. In Vidya Singh v. Union of India & others it is no-doubt true that the back wages were not given. But there is no reference at all to the provisions of Section 25-F of the Industrial Disputes Act, 1947. In V. Sainudheen v. Senior Divisional Engineer & others there is a reference to violation of the provisions of Section 25-F, as alleged by the applicants, but the application was allowed on other grounds and, again, there is no discussion regarding the violation of the provisions of Section 25-F of the I.D. Act, 1947. With respect, these two decisions can hardly be considered as authorities for ^{denying} ~~allowing~~ back wages to casual labourers on the ground of their being as such, when the issue of violation of Section 25-F of the I.D. Act, 1947 is raised by the applicants in the context of the Hon'ble Supreme Court's decisions. The learned counsel for the respondents further advanced, what seems to be an off-the-cuff ^{vere} contention that the applicants/offered alternate employment which, except applicant no.3 (Sri Ishrat Ali), all the other applicants refused. The learned counsel cited para 3 of the appellate order dated 5.1.1987 of this Tribunal, as the basis for the above contention. The learned counsel further stated that as per provisions of Section 25-E(i) of the I.D. Act, 1947, the applicants were not even entitled for any compensation and, therefore, there was no question of any back wages to any of the applicants. In para 3 of the appellate order, referred to above, it is stated that after the order of termination

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-: 6 :-

dated 27.4.1976 was issued, the Assistant Personnel Officer offered a post of Khalasi in the grade of Rs.196-232 to the plaintiff and the plaintiff had given his consent. It is stated further in the above para, that the Assistant Personnel Officer, however, vide his order dated 20.4.1977, i.e. long after the termination, offered to engage the plaintiff as a temporary substitute and it was this offer which was declined by the plaintiff, as it was different from the offer to which consent was given. Section 25-E states that no compensation shall be paid to a workman, who has been laid off if he refuses to accept any alternative employment, etc. It is well settled that alternate employment envisaged in this section must be an equivalent employment and not just any kind of employment. Further the so-called offer was obviously made by the respondents long after termination and long after the occasion for the payment of compensation arose and which they failed to pay at the proper time. Moreover, such a plea obviously was not taken before this Tribunal in the appeal proceedings, when it would have been most relevant, if it was valid. The learned counsel for the respondents, in fact, had no right to take such pleas in a casual manner during the final hearing. Even otherwise, the above plea of the learned counsel for the respondents is obviously misconceived and has ~~been~~^{to be} totally rejected.

13. The learned counsel for the applicants relied on Rule 1345 of the IREC (Annexure '4' to the rejoinder affidavit). It is seen, however, that this provision relates to cases of suspension. In the Government of India orders under the above rule, however, there are ^a number of orders of which Order No.(4) relates regulation of pay on reinstatement on grounds of equity or ^{court} ~~justice~~ judgment etc. The learned counsel for the applicants relied on para 1(2) of the above order, which state that payment of full pay and allowances for the intervening period is permissible in cases of reinstatement on the ground of dismissal/removal/discharge or termination being held by a court of law or by an appellate/reviewing authority to

1002

43/1

-: 7 :-

have been made without following the procedure required under Article 311 of the Constitution. The learned counsel for the respondents contended that the present case does not fall within the above description of the ~~above~~ category of cases covered by the above order. While, strictly speaking, this may be so, we notice the following proviso occurring in the above order :-

"provided that the amount to be paid will be determined subject to the directions, if any, in the decree of the court regarding arrears of salary."

It is thus very clear that ultimately the court's orders have to be carried out whatever may be the executive instructions and orders in this respect.

14. It is very well established by a series of decisions of the Hon'ble Supreme Court that non-observance of the conditions precedent contained in Section 25-F of the I.D. Act, 1947, renders the order of termination/retranchment ab initio void and such termination orders are obviously non est. The cases cited by the applicants and referred to above, particularly L. Robert D'Souza v. The Executive Engineer, Southern Railway and another (AIR 1982 SC 854) is clear authority for payment of back wages in cases like the applicants. In fact in para 27 of this judgment of the Hon'ble Supreme Court it is clearly stated that the termination of service of the appellant was illegal and invalid and the appellant continues to be in service and he would be entitled to full back wages and costs quantified at Rs.2,000/-. In this connection we may also refer to a decision of a Full Bench of this Tribunal at Allahabad in S.K. Sisodia v. Union of India & others (1980 (1) SLJ 449). That was also a case of termination of service of an employee of the Northern Railway. The following extracts may be cited here :-

"Admittedly the requirements of Section 25-F of the Industrial Disputes Act have not been complied with in terminating the services of the petitioner. In fact, the respondents do not claim to have complied

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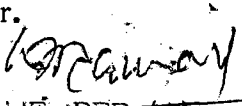
with that Act. The termination order is, therefore, invalid in law and non est. It is as if there was no valid termination at all. He would be deemed to continue in service as if his services were never terminated."

and further -

"34. The order of termination is quashed on the ground that it does not conform to the provisions of Section 25-F of the Industrial Disputes Act. The petitioner is, therefore, entitled to be reinstated in service with all consequential benefits including arrears of pay and allowances. If, however, the petitioner was appointed to any other post in the Railway, he shall be entitled only to the difference in the emoluments."

15. The operative portion of the appellate order dated 5.1.87 also states that the plaintiffs shall be deemed to have been reinstated on their respective posts with all consequential benefits, thus making it clear that the plaintiffs (the present applicants) were entitled to back wages as if they had never been discharged from service.

16. In the result the application succeeds and is allowed. The impugned order dated 6.11.1987 is hereby quashed. The respondents are hereby directed to pay full back wages to applicants no. 1, 2 and 4 for the period from the date of termination of their services to the date of their reinstatement. In the case of applicant no.3, he shall be paid by the respondents full back wages for the period from the date of termination of his service to the date of his reappointment on a lower post, and he shall be paid the difference in emoluments between the two posts during the period he was working on the said lower post. These payments shall be made within three months from the date of receipt of a copy of this order. The respondents shall pay cost of Rs.200/- to each of the applicants within one month from the date of receipt of a copy of this order.


MEMBER (A).


VICE-CHAIRMAN.

Dated: May 9, 1990.

PG.

(824/2)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,
CIRCUIT BENCH , LUCKNOW.

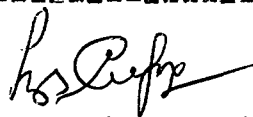
B.S. Chopra & others ... Applicants.

Versus

Union of India & another ... Respondents:

I N D E X.

S.No.	Particulars.	Page no.
1.	Application	1 to 11
2.	<u>ANNEXURE NO. A-1.</u> Photo stat copy of Judgment dated 5.1.1987 passed by this Hon'ble Tribunal in Registration T.A. No. 218 of 1986 (Union of India & another V B.S. Chopra) and other connected cases.	12 to 24
3.	<u>ANNEXURE NO. A-2.</u> Photo stat copy of order dated 6.11.87 bearing no. E/BSC/CC/AMV passed by the respondent no.2.	25
4.	<u>ANNEXURE NO. A-3.</u> Photo stat copy of judgment dated 6.10.88 passed by this Hon'ble Tribunal in Contempt Petition No. 14 of 1988 (B.S. Chopra & Ors. V Sri A.C. Sharma & another.	26 to 33
5.	Vakalatnama	34


Signature of the applicant.

2-4
1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,
CIRCUIT BENCH, LUCKNOW.

54 192/2001

B.S. Chopra & others ... Applicants.

Versus

Union of India & another ... Respondents.

FORM-I
(See rule 4)

APPLICATION UNDER SECTION 19 of THE
Central Administrative Tribunals Act, 1985.

FOR USE IN TRIBUNAL'S OFFICE:

Date of filing -----

or

Date of receipt -----
by post.

Registration No. -----

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,
CIRCUIT BENCH, LUCKNOW.

O.A. NO. 192 of 1988. (4)

Filed on 26.X.88

List on 27.X.88

DR(J)

B.S. Chopra & others ... Applicants.

Versus

Union of India & another ... Respondents.

APPLICATION UNDER SECTION 19 OF THE
ADMINISTRATIVE TRIBUNALS ACT, 1985.

DETAILS OF APPLICATION:

1. PARTICULARS OF THE APPLICANTS:

- (i). Name of applicants :) 1. B.S. Chopra,
son of Late Hans Raj -
Chopra, Wireman gr.II.
- (ii). Name of father :) 2. S. Mukerjee,
son of Late Sushil -
Mukerjee, Electroplator
Wireman gr.III.
- (iii). Designation and :) 3. Ishrat Ali,
office address in :) son of Sri Shaukat Ali,
which employed. :) Bench Fitter gr. II,
4. H.A. Maliki,
son of Late T.A. Khan
Maliki, Electroplator
gr. II.
- All working under the
Deputy Chief Electrical
Engineer (W), Northern
Railway, Charbagh,
LUCKNOW.
- (iv). Office address : c/o Deputy Chief -
Electrical Engineer(W),
Northern Railway,
Charbagh, Lucknow.

(2)

(v). Address for service of : House No. 10-C,
all notices. Singarnagar,
P.O. Singarnagar,
LUCKNOW.

2. PARTICULARS OF RESPONDENTS:

- | | | | |
|--------|--|---|--|
| (i). | Name/or designation :
of respondents. | } | 1. Union of India
through the General -
Manager, Northern -
Railway, Baroda House,
<u>NEW DELHI.</u> |
| (ii). | Office address of res-
pondents. | | |
| (iii). | Address for service of
all notices. | } | 2. The Deputy Chief -
Electrical Engineer(W),
Northern Railway,
Charbagh, <u>LUCKNOW.</u> |

3. PARTICULARS OF ORDER AGAINST
WHICH APPLICATION IS MADE.

Order No. E/BSC/CC/AMV dated 6.11.87
passed by the respondent no. 2 in so
far as it relates to item (d) denying
the arrears of pay for the intervening
period.

SUBJECT IN BRIEF:

For payment of arrears of pay (back wages)
for the intervening period that is from the
date of removal from service till the date
of reinstatement and further payment of
difference of pay as per judgment dated

h. A. Gupta

(3)

dated 5.1.1987 of this Hon'ble Tribunal
and rules.

4. JURISDICTION OF THE TRIBUNAL.

Applicants declare that the subject matter
against which they want redressal is within
the jurisdiction of this Hon'ble Tribunal.

5. LIMITATION.

Applicants further declare that the appli-
cation is within the limitation prescribed
in Section 21 of the Administrative Tribunals
Act, 1985.

6. FACTS OF THE CASE:

(i). That in the year 1979, the applicants
had seperately filed Suits no. 191 of 1979, 192 of
1979, 193 of 1979 and 194 of 1979 in the Civil Court,
Lucknow challenging the orders of their termination
from service dated 27.4.1976 passed by the respondent
no. 2 in contrvention of law, rules and non-compliance
of Section 25 (F) of the Industrial Dispute Act, 1947.

(ii). That by a common judgment dated 23.9.81,
passed by the Learned Ist. Additional Munsif, Lucknow,
the afore-mentioned suits were decreed and the orders

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of applicants' termination from service were quashed.

(iii). That aggrieved by the aforesaid judgment and decree, the respondent, no. 1/² filed four Civil Appeals (R.C.A. Nos. 18 of 1982, 20 of 1982, 15 of 1982 and 19 of 1982) in the Court of District Judge, Lucknow.

(iv). That on the Constitution of the Central Administrative Tribunals, the aforesaid four appeals, in terms of provisions contained under section 29 of the Administrative Tribunals Act, 1985, were transferred to this Hon'ble Tribunal for decision.

(v). That by a common judgment dated 5.1.1987, a Division Bench of this Hon'ble Tribunal consisting of Hon'ble Mr. D.S. Misra, A.M., and Hon'ble Mr. G.S. Sharma, J.M. dismissed all the four appeals filed by the respondent, no. 1/². The orders of the Hon'ble Tribunal are reproduced below :-

" In view of the above discussions, we dismiss all the four appeals and the orders dated 27.4.1976 passed by the appellant no. 2 terminating the services of the plaintiff-respondents are hereby quashed being in contravention of law and the plaintiffs shall be deemed to have been reinstated on their respective posts with all consequential benefits available to them under the rules. The parties are directed

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to bear their own costs of these appeals. ")

Annexure A-21

A true photo stat copy of judgment dated 5.1.1987 of this Hon'ble Tribunal is being filed herewith as Annexure No. A-1 to this application.

(vi). That while dismissing the appeals of the respondents and up-holding the judgment and decree of the Trial Court, the Hon'ble Tribunal , at page 13 of their judgment dated 5.1.1987 (Annex-ure no. A-1), further observed as under :-

" We accordingly hold that the termination of the services of the plaintiffs amounted to retrenchment and as they were not paid any compensation under Section 25-F of the Act while terminating their services, the orders of termination of the plaintiffs ^{passed by the appellant} are, thus, illegal and void and cannot operate in law. The declaration granted by the Trial Court to the respondents in these cases have, therefore, to be upheld though on different grounds. ")

(vii). That by an order No. 38 dated 2.6.1987 passed by the respondent no.2, the applicants were reinstated w.e.f. 28.4.1976 and thereafter by a subsequent order bearing No. E/BSC/CC/AMV dated 6.11.1987 passed by the respondent no. 2, the applicants were informed that :-

(a) their period of absence had been counted towards service;

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- ✓ (b). their seniority is to be considered accordingly counting the total service;
- ✓ (c). their pay fixation is to be done counting their service and seniority;
- ✗ (d). no arrear is payable on this account.

Annexure A-2.

A true photo stat copy of order dated 6.11.1987 is being filed herewith as ANNEXURE NO. A-2 to this application.

(viii). That since in the opinion of the applicants, the order of the respondent no. 2 denying the back wages and ^{his} many other acts were contemptuous to this Hon'ble Tribunal's Orders and judgment dated 5.1.1987 (Annexure no. A-1), a Contempt Petition (No. 14 of 1988) was filed under section 17 of the Administrative Tribunals Act, 1985 against the respondent no. 2 and another before this Hon'ble Tribunal.

(ix). That on 6.10.1988, a Division Bench of this Hon'ble Tribunal, by their judgment and orders, dropped the contempt proceedings with the following observations and directions as contained in para 13 of the judgment :-

" 13. On the foregoing discussions we hold these proceedings are liable to be dropped. But, in doing so, we must necessarily reserve liberty to the

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→ petitioners to challenge the order dated 6.11.1987, to the extent they are aggrieved, in a fresh proceeding under Section 19 of the Act. On this view of the matter, we decline to further examine the legality, validity, aptness or correctness of the order. But, we make it clear that whatever we have said in this order cannot be relied on by the respondents for justifying the order in the fresh proceedings under the Act. "

Annexure A-3.

A true photo stat copy of judgment dated 6.10.1988 is being filed herewith as ANNEXURE NO. A-3 to this application.

(x). That in pursuance of the aforesaid orders (Annexure no. A-3), this application is being filed under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 6.11.1987 (Annexure no. A-2) in so far as it relates to item (d) denying the payment of back wages of the applicants.

→ (xi). That in terms of Rule 2044 of the Indian Railway Establishment Code Vol. II and various instructions, time to time, issued by the Railway Board, are entitled the applicants to full back wages right from the date of their removal from service till the date of reinstatements and the respondents are bound to make such payment.

→ (xii). That the applicants are entitled to full back wages even as per law laid down by Hon'ble Supreme Court of India in Mohan Lal Versus Management of M/S - Bharat Electronics Limited (1981) 3 SCC 225 and L. -

Robert-DB

Robert D'Souza Versus Executive Engineer, Southern Railway and another (1982 SCC (L&S) 124) as their termination orders were passed in non-compliance of Section 25-F of the Industrial Dispute Act, 1947.

(xiii). That the order dated 6.11.1987 (Annexure No. A-2) denying the back wages of the applicants is wholly illegal, arbitrary and against rules and instructions issued by the Railway Board through various circulars.

(xiv). That the respondents have neither mentioned any rule nor the law in their order dated 6.11.1987 (Annexure no. A-2) in support of their denial in making the payment of applicants' back wages, hence the order is further illegal, arbitrary and against the judgment and orders of this Hon'ble Tribunal (Annexure no. A-1).

7. RELIEF SOUGHT:

In view of the facts mentioned in para 6 above, the applicant, prays for the following reliefs :-

- (a). That this Hon'ble Tribunal be pleased to quash order No. E/BSC/CC/AMV dated 6.11.1987 in so far as it relates to non payment of applicants' back wages (item (d) of Annexure A-2) directing

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the respondents to make the payment within a reasonable time so specified by this Hon'ble Tribunal.

- (b). Cost of the application may also kindly be awarded to the applicants in the circumstances of the case.

G R O U N D S:

- (i). That the order dated 6.11.1987 denying the back wages of the applicant, is wholly illegal and arbitrary.
- (ii). That the order dated 6.11.1987 denying the back wages of the applicant, is also against the departmental rules having the statutory force and further against the law laid down by the Hon'ble Supreme Court of India.
- (iii). That orders of applicants' termination from service having been passed in non-compliance of the provisions contained under Section 25-F of the Industrial Dispute Act, 1947, the applicants are entitled to reinstatement with full back wages.

8. INTERIM ORDER, IF PRAYED:

In the facts and circumstances of the case, no interim order is prayed for.

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9. DETAILS OF THE REMEDY EXHAUSTED:

The applicants declare that they have availed of all remedies available to them under the relevant service rules.

10. MATTER NOT PENDING IN ANY OTHER COURT etc.

The applicants further declare that the matter regarding which the application has been made is not pending before any other authority, court or bench of the Tribunal.

11. PARTICULARS OF THE POSTAL ORDER IN RESPECT OF THE APPLICATION FEE.

1. No. of Indian Postal Order. DD 066021
5
2. Name of issuing Post Office. AMINABAD P.O.
3. Date of issue of Postal Order. 24-10-88
4. Post office at which payable. _____

12. DETAILS OF INDEX:

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

13. LIST OF ENCLOSURES:

- (1). Photo stat copy of judgment dated 5.1.87,



passed by this Hon'ble Tribunal in
Registration T.A. No. 218 of 1986

(Union of India and another V B.S. -
Chopra) and other connected cases.

- (2). Photo stat copy of Order dated 6.11.87
bearing No. E/BSC/CC/AMV passed by the
respondent no. 2.
- (3). Photo stat copy of judgment dated 6.10.88
passed by this Hon'ble Tribunal in Com-
tempt petition No. 14 of 1988 (B.S. Chopra
and others V Sri A.C. Sharma & another).

VERIFICATION:

I, B.S. Chopra, aged about 45 years,
son of Late Hans Raj Chopra, resident
of 10-C, Singarnagar, Lucknow, do hereby
verify that the contents of para 1 to 13
of this application are true to my know-
ledge and belief and that I have not sup-
pressed any material fact.

I have^{also} been authorised by other applicants
to sign and verify this application on
their behalf.



Place: Lucknow.
Dated: -10-1988.

Signature of the Applicant.

To,

The Registrar,
Central Administrative Tribunal,
Circuit Bench, Lucknow.

Central Administrative Tribunal, Allahabad.
Registration T.A.No. 604 of 1986 (C.A.No. 19 of 1982)

Union of India and another Appellants.

Vs.

S.A. Maliki Respondent

CONNECTED WITH

(1) Registration T.A.No. 221 of 1986 (C.A.No. 15 of 1982)

Union of India and another..... Appellants

Vs.

Ishrat Ali Respondent

(2) Registration T.A.No. 218 of 1986 (C.A.No. 18 of 1982)

Union of India and another Appellants.

Vs.

B.S. Chopra Respondent

(3) Registration T.A.No. 219 of 1986 (C.A.No. 20 of 1982)

Union of India and another.... Appellants

Vs.

S. Mukherjee Respondent.

Hon. D.S. Misra, AM
Hon. G.S. Sharma, JM

(By Hon'ble G.S. Sharma, JM)

For order, see our order of date passed in
the connected registration T.A.No. 218 of 1986 (C.A.
No. 18 of 1982).

5/1/87
Member (A)

5/1/87
Member (J)

Dated 5.1.1987
kkb

Cor. by: 6/1/87

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D. S. DUBEY
7/1/87
SECTION OFFICER
Central Administrative Tribunal
Allahabad.

Signature

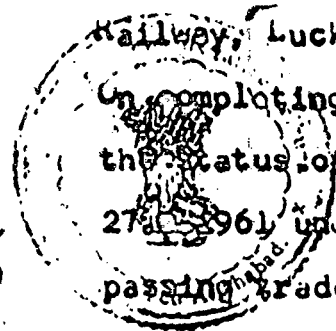
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L. P. SHUKLA
Advocate

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Lucknow decreeing all the four original suits no.191 1979, 192 of 1979, 193 of 1979 and 194 of 1979 filed by the 4 respondents separately against the appellants for declaration that the orders dated 27.4.1976 terminating their services are illegal and void and they continued to be the permanent railway employees of the administration with costs, have been received under Section 29 of the Administrative Tribunals Act XIII of 1985 from the Court of VII Additional District Judge, Lucknow and are being disposed of by this single order.

2. The leading suit no.191 of 1979 was filed by the plaintiff- respondent S.A. Maliki against the appellants for a declaration that the order dated 27.4.1976 passed by the defendant-appellant no.2 terminating his services w.e.f. 28.4.1976 is illegal, void, ultra-vires and without jurisdiction and the plaintiff continues to be a permanent railway servant from the date he completed 3 years continuous service with the allegations that he was appointed as casual labour on 27.11.1960 by the then Workshop Electrical Engineer, Northern Railway, Lucknow now designated as Deputy Chief Electrical Engineer (W), Northern Railway, Lucknow - appellant no.2(in all the appeals). On completing 6 months continuous service, he acquired the status of a temporary railway servant w.e.f. 27.11.1961 under the departmental rules and after passing trade test, he was appointed to officiate




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A. P. SHUKLA
Advocate

as Electroplater in the grade of Rs.260-400 and he continued to officiate on this post till his termination from the afternoon of 28.4.1976. It is further alleged that the plaintiff passed the screening test in 1967 and he was placed at sl.no. 53 in the panel. The post of Electroplater is a skilled post in the railway workshop and by Circular order dated 21.11.1963, the Railway Board had provided to treat the workshop staff as confirmed for all purposes on completion of 3 years continuous service in the workshop and the plaintiff thus became a holder of a permanent post in the railway administration after putting in 3 years service by virtue of the said circular. The railway administration was treating the plaintiff as such and he was availing all the benefits and privileges such as annual increments, leave, medical facilities, railway passes, rewards, loans, advances, P.F. subscriptions, house rent etc. and his basic pay at the time of termination of service was Rs.358/- per month. In spite of these facts, the railway administration decided to hold the screening of the casual labour Khalasis on 22.5.1972 and the name of the plaintiff was also included in such list. Challenging this order of the railway administration, the plaintiff along with certain other persons filed Civil Misc.

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 L. P. SHUKLA
 Advocate

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Writ Petition No. 977 of 1972 in the Lucknow Bench of the High Court, Allahabad which was dismissed as pre-mature. On 10.11.1972, the predecessor-in interest of the appellant no.2 again issued a fresh list of casual labours, who had completed 180 days for screening and the name of the plaintiff was again included in the said list. A representation against the same was made by the plaintiff and other similarly situated persons to the General Manager. During the pendency of the said representation, the predecessor of the appellant no.2 again issued letter dated 23.12.1972 circulating a list of persons for screening. Plaintiff's name was also mentioned in the said list. The plaintiff and other persons, therefore, filed another Civil Misc. Writ Petition No. 1670 of 1972 in the Lucknow Bench of the High Court, Allahabad. The said writ petition was also dismissed on 1.3.1974 with the observation that no occasion had arisen for quashing the order contained in letter dated 23.12.1972. In the special appeal no. 26 of 1974 before the Lucknow Bench of the High Court, Allahabad filed against the said order, the Division Bench was pleased to take a view that the writ petition no.1670 of 1972 was not maintainable in view of the earlier order made by the High Court in writ petition no. 977 of 1972 and there was no change in the circumstances of the case.

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L. P. SHUKLA
Advocate

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3. The defendant-appellant no.2 thereafter vide his order dated 27.4.1976 terminated the services of the plaintiff under rule 149 of the Railway Establishment Code, Vol. I (hereinafter referred to as Code) treating him as casual labour. That order was also challenged by the plaintiff and some other persons by filing civil misc. writ petition no. 1138 of 1976 in the Lucknow Bench of the High Court, Allahabad but on the advice of some other persons, the said writ petition was withdrawn unconditionally by the petitioner and it was dismissed as not pressed. Thereafter, Assistant Personnel Officer (A), Lucknow offered a post of Khelasi in the grade of Rs. 196-252 to the plaintiff on the usual conditions under the service rules and without prejudice to his rights, the plaintiff had given his consent to accept the said appointment. The Asstt. Personnel Officer (A), however, vide his order dated 20.4.1977 offered to engage the plaintiff as temporary substitute Khelasi for a period of 3 years which was declined by the plaintiff as it was against the offer for which he had given his consent. The Assistant Personnel Officer (A), therefore, vide his order dated 10/21.6.1978 deleted the name of the plaintiff from the panel of the screened list.

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Advocate

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4. The termination of his services has been challenged by the plaintiff on the grounds that the railway administration has not complied with the provisions of rule 149 of the Code and Sections 23-F and 23-J of the Industrial Disputes Act (hereinafter referred to as the Act) and the plaintiff, who was permanent employee of the railway administration, was wrongly removed from service treating him as a casual electroplater without affording him an opportunity of hearing, which is in contravention of the provisions of the Constitution of India and after giving notice under section 80 Code of Civil Procedure, he accordingly filed the suit.

5. Suit no.192 of 1979 was filed by B.S.Chopra with the allegations that he was appointed as casual labour on 13.11.1963. The plaintiff-respondent Ishret Ali in suit no. 193 of 1979 has alleged that he was appointed as casual labour on 2.1.1956 and in his suit no.194 of 1979, the plaintiff S.Mukherjee has alleged his appointment as casual labour in 1967.

The reliefs claimed by the other plaintiffs in their respective suits and the other allegations made in the respective plaints are the same with ^{as referred} reference to the case of S.A.Maliki and they need not be repeated here.

6. All the suits aforementioned were contested on behalf of the defendants-appellants and admitting the initial appointments of the plaintiffs as casual

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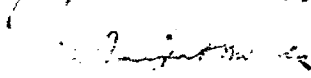
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L. D. SHUKLA
Advocate

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labourers, it was pleaded by them that all along, the plaintiffs had been working as casual labourers against the workcharged post sanctioned from time to time and the rules for regular, temporary or permanent appointments in railway service are not applicable to them. In terms of Railway Board's letter dated 22.8.1962, the services of casual labourers could be regularised against the permanent posts only after selection through regular Selection Board and as such, the plaintiffs were called for screening. The termination of the services of the plaintiffs was made as there was no prospect of ~~the~~ further extension of the workcharged posts against which the plaintiffs were working. The confirmation is subject to holding a regular post which the plaintiffs never held and the plaintiffs, therefore, cannot be deemed to have been confirmed in the service. One months pay in lieu of notice was paid to all the plaintiffs under ~~rule~~ ^{rule} 149 of the Code and the contention of the plaintiffs to the contrary is not correct. It was not possible to offer regular appointment to the plaintiffs and the plaintiffs themselves had refused the offer made to them as Khalasi. The orders of termination passed in these cases were passed according to law and the contentions of the plaintiffs to the contrary are not correct.


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 Advocate

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7. The trial Court framed 6 issues in each of these cases and it was held that the plaintiffs had acquired the status of temporary employees after serving as casual labourers for 6 months and they shall be deemed to have been confirmed in service on the completion of their 3 years service. The termination orders were not found to be void on account of non-compliance of ^{Rule} ~~para~~ 149 of the Code but the termination of their services without issuing a show cause notice was held to be unconstitutional. With these findings, all the 4 suits were decreed with costs, as mentioned above. The original judgment of the trial Court is in the record of suit no. 191 of 1979.

8. Aggrieved by the findings recorded against them, the defendant-appellants preferred these appeals and it has been contended on their behalf that the findings given by the trial Court treating the respondents as temporary or permanent employees of the railway administration are based on the wrong interpretation of the circular orders of the Railway Board and in fact, the plaintiffs were merely casual labourers Khalaseos and their services were rightly terminated after giving them one month's pay in lieu of notice. The appeals have been contested on behalf of the plaintiff-respondents and they supported the findings of the trial Court.

9. We have considered the respective contentions of the parties made before us and have also perused the record in the light of their submissions. It has not been disputed in these cases that all the plaintiffs

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L. P. SHUKLA
Advocate

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were initially appointed as casual labourers. According to the appellants, they continued to be casual labourers till their services were terminated while according to the respondents they acquired the status of temporary railway employees on the completion of 6 months continuous service and became permanent on the completion of 3 years service. The learned ^{Railway Board} ~~Magistrate~~ ^{Nos. 220-E/4} has placed his reliance on 2 circular orders ~~dated~~ ^{dated} 190-(111)(e)(iv) dated 29/31.3.1960 and E-5/KCI/4/3-PT I dated 21.11.1953. The copy of circular order dated 21.11.1953 has been made available to us and paragraph 2 of the same ~~has~~ ^{provides} that the workshop staff should be treated as confirmed for all purposes in completion of 3 years service in a workshop whether they are working against permanent or temporary posts ~~but~~ ^{and} this benefit of confirmation will be in the initial grade of recruitment. The pith and substance of this circular order is that those temporary skilled, semi-skilled and other staff working in the railway workshop should be treated to be confirmed on the completion of 3 years continuous service. It nowhere provides that this benefit is extended even to the casual labourers. The words 'confirmation will be in the initial grade of recruitment' amply make it clear that for taking benefit of this circular, an employee should be ~~regularly~~ ^{regularly} recruited as a temporary employee. A casual labour does not hold any lien on a temporary or permanent post and as such, he is not entitled to get the benefit of

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Advocate

this circular after the completion of 3 years service as casual labourers. The other circular dated 29/31.3.60 has not been produced before us but we had the occasion to go through it in connection with some other case earlier and are of the view that the completion of 6 months continuous service as casual labour merely grants a status of a temporary employee to the casual labour but does not change the character of his employment.

Despite his attaining the status of a temporary employee he does not become the temporary employee for ^{en-4} enjoying the statutory benefits available to a temporary employee. On acquiring the status of temporary employee, he simply becomes entitled to certain facilities and benefits such as annual increments, leave, medical facilities, railway passes, rewards, loans, advances, P.F. subscriptions, house rent etc. The definition of casual labour is given under rule 2501 of the Indian Railway Establishment Manual also leads to the same conclusion. In our opinion, the findings of the learned Munsif treating the plaintiffs as temporary or permanent employees of the railway administration are not in accordance with the law and cannot be upheld.

10. Now the next question arising for determination in these appeals is whether the services of the plaintiff-respondents, who are shown to be continuously

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Advocate

working for several years as casual labourers were rightly terminated by the appellants under the law. The respondents have alleged that the appellants have committed breach of ^{rule} ~~para~~ 149 of the Code and Sections 25-F and 25-G of the Act. It appears from the record that the plaintiff-respondents were given a months' pay in lieu of notice under ^{rule} ~~para~~ 149 of the Code and the termination of their services thus cannot be contrary to ^{rule} ~~para~~ 149 of the Code. Undisputedly, no retrenchment compensation had been paid to the respondents as provided by Section 25-F of the Act.

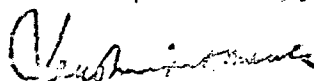
11. The exact details of the services rendered by the respondents as casual labourers have not been made available to us but it appears from the pleadings of the parties that before the termination of their services in 1976, the plaintiff-respondents were working as casual labourers for the last several years and as such, they had completed the minimum continuous service of 1 year as provided by Section 25-B of the Act for claiming benefit under the said Act. Section 25-F of the Act lays down that no workman employed in any industry, who has been in continuous service for not less than 1 year,

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 L. P. SHUKLA
 Advocate

shall be retrenched by the employer until the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to 15 days' average pay for every completed year of continuous service or any part thereof in excess of six months. There is no allegation from the side of the appellants that such compensation was paid in these cases to the plaintiffs. In para 29 of their plaints, the plaintiffs clearly claimed the benefit under sections 25-F and 25-J of the Act. In their written statements, the appellants did not make any mention of these sections and in reply to para 29, it was simply stated that the notice for termination of services of the plaintiffs under para 149 of the Code is legal. Hence, the question of violation of rules, as claimed by the plaintiffs, does not arise. From this evasive reply, we are inclined to infer that no retrenchment compensation was paid by the appellants to the respondents and under the law, the respondents are entitled to the benefit of Section 25-F of the Act. In Robert P'Souza Vs. Executive Engineer, Southern Railway (1982 S.C.C.-124) it was held by the Hon'ble Supreme Court that the expression 'termination of service for any reason whatsoever' in the definition of the

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Advocate

expression 'retrenchment' in Section 2(oo) of the I.O. Act covers every kind of termination of service except those not expressly included in Section 25-F or not expressly provided for by other provisions of the Act. It is not the case of the appellants that the case of the respondents falls in any exception and their termination of services cannot be termed as retrenchment in these cases. We accordingly hold that the termination of the services of the plaintiffs amounted to retrenchment and as they were not paid any compensation under section 25-F of the Act while terminating their services, the orders of termination of the plaintiffs passed by the appellants are, thus, illegal and void and cannot operate in law. The declarations granted by the ~~trial~~ Court to the respondents in these cases have, therefore, to be upheld though on different grounds.

12. In view of the above discussions, we dismiss all the four appeals and the orders dated 27.4.1976 passed by the appellant no.2 terminating the services of the plaintiff-respondents are hereby quashed being in contravention of law and the plaintiffs shall be deemed to have been reinstated on their respective posts with all consequential benefits available to them under the rules. The parties are directed to bear their own costs of these appeals.

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D. S. Dubey
7/1/87
(D. S. DUBEY)
SECTION OFFICER
Central Administrative Tribunal
Allahabad.

S. I.
5.1.1987
Member (A)
Dated 5.1.1987
kkb
Con. by *4/4/87*
5/1/87

S. I.
5.1.1987
Member (J)

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L. P. Shukla
L. P. SHUKLA
Advocate

उत्तर रेलवे
NORTHERN RAILWAY

म. ए. १००० फी. १००० मी. १०००

म. ए. १००० फी. १०००

म. ए. १००० फी. १०००

Subj: Court Case.

- In ref. to the judgment in the Court cases No. 218/86, 221/86 & 204/86 (1) of Sd/- B.S. Chopra, District Ali, S. Mukherjee & H.M. Malik. to by C.E. (a) also has passed the following orders:
- They may be informed accordingly.
- The period of absence to be counted towards service.
 - Seniority to be counted accordingly counting the total service.
 - Pay fixation to be done counting the service & seniority.
 - No arrears is payable on this account.

L. P. Singh

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L. P. Singh

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH AT LUCKNOW.

Dated the 6th day of October, 1988.

Present

THE HON'BLE MR. JUSTICE K.S. PUTTASWAMY .. VICE CHAIRMAN
THE HON'BLE MR. AJAY JOHRI .. MEMBER(A)

CONTEMPT PETITION NO.14 OF 1988

in

REGISTRATION 218 of 1986 (T)

B.S. Chopra & Ors ..

Petitioners

-vs.-

Union of India & Ors. ..

Respondents.

This petition coming on for hearing this day,
Hon'ble Vice Chairman, made the following:

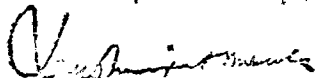
ORDER

In this petition made under Sec.17 of the
Administrative Tribunals Act, 1985 (Act) and the
Contempt of Courts Act, 1971 (C.C. Act), the peti-
tioners have moved this Tribunal to punish the respon-
dents for non-implementation of an order made in
their favour on 5-1-1987 by a Division Bench of this
Tribunal consisting of Hon'ble Shri D.S. Misra (AM) and
Hon'ble Shri G.S. Sharma (JM), in Registration T.A. Nos.
218, 219, 221 and 604 of 1986.

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L. P. SHUKLA
Advocate

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2. Shriyuths: B.S.Chopra, S.Mukherjee, Ishrat Ali and S.A.Maliki, the petitioners before us, were working as Casual Skilled Workmen in the Northern Railway (NR). On 27-4-1976, the Railway Administration terminated their services, the validity of which was challenged by them in Original Suits Nos.191, 192, 193 and 194 of 1979 in the Court of the Munsiff, Lucknow, who on 23-9-1981 decreed them. Against the said judgments and the decrees of the learned Munsiff, the Railway Administration filed appeals before the VII Additional District Judge, Lucknow, which were pending as on 1-11-1985. On the constitution of this Tribunal, those appeals were transferred to this Tribunal and they were registered as Registration T.A.Nos.218, 219, 221 and 604 of 1986. On an examination of the contentions urged in the cases, a Division Bench of this Tribunal consisting of Hon'ble Shri D.S.Misra (AM) and Hon'ble Shri G.S. Sharma (JM), on 5-1-1987 disagreeing with the learned Munsiff on some of the findings recorded by him, however, upheld the decrees made by him and issued certain directions, as set out in the operative portion of its order and the same which is material, reads thus:

"In view of the above discussions, we dismiss all the four appeals and the orders dated 27-4-1976 passed by the appellant No.2 terminating the services of the plaintiff-respondents are hereby quashed being in contravention

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L. P. SHUKLA

Advocate

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of law and the plaintiffs shall be deemed to have been reinstated on their respective posts with all consequential benefits available to them under the rules. The parties are directed to bear their own costs of these appeals."

The petitioners complain that the respondents have not faithfully complied with this order that has become final in letter and spirit, and if anything they have wilfully disobeyed the same and therefore we must first ensure its compliance and then punish them under the C.C.Act.

3. In their reply, the respondents have asserted that they had faithfully complied with the orders made by the Tribunal in favour of the petitioners and have therefore urged for dropping these proceedings against them.

4. Shri L.P.Shukla, learned Advocate, has appeared for the petitioners. Shri A.K.Gaur, learned Advocate, has appeared for the respondents. We have heard them at length yesterday and to-day and perused all the original records.

5. Shri Shukla contends that one of the principal directions issued by this Tribunal on payment of arrears of salaries of the petitioners from the date of their termination to the date of their reinstatement to service had not been faithfully complied with by the respondents and had been wilfully disobeyed by them by making an arbitrary, unintelligible and a non-speaking

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L. P. SHUKLA
Advocate

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order on that aspect. In support of his contention, Shri Shukla strongly relies on the rulings of the Supreme Court in MOHANLAL v. MANAGEMENT OF M/s BHARATH ELECTRONICS LTD. [(1981)3 SCC 225] and L.ROBERT D'SOUZA -vs.- EXECUTIVE ENGINEER, SOUTHERN RAILWAY & ANR. [(1982 SCC (L & S) 124,].

6. Shri Gaur refuting the contention of Shri Shukla, contends that the order made by the Railway Administration denying arrears of salary, even assuming that it was perverse and illegal, had not been made in wilful disobedience of the order made by this Tribunal and these proceedings are therefore liable to be dropped. In support of his contention, Shri Gaur strongly relies on a Division Bench ruling of the Allahabad High Court in BALDEO SINGH v. CHABI SHYAM (1988 U.P. Local Bodies and Educational Cases, 411).

7. We have earlier reproduced the operative portion of the order of this Tribunal.

8. In compliance with the order of this Tribunal, the Railway Administration, on 2-6-1987 had made an order in favour of the petitioners (Annexure A2), which reads thus:

"Office of the Dy.C.E.E.(W), Northern Railway
Charbagh, Lucknow.


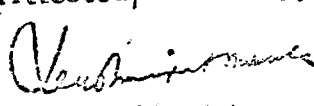
Office Order No.38 dated; 2-6-1987

Following orders are issued to be given immediate effect:

The termination orders issued by Dy.CEE(W)/
CB/Lucknow dated 27-4-1976 effective from
28.4.1976 are hereby quashed and the services

of

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L. P. SHUKLA
Advocate

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of the following Casual Skilled Artisans are reinstated on their respective posts with all consequential benefits available to them under the rules. They are accordingly reinstated with effect from 28.4.76 on their respective posts, pay and place etc.

Sl. No.	Name	Ex. T No.	Designation.	Place of postings.
1.	Sri B.S.Chopra	213/J.	C.L.Wireman(skill- led).	SS/Wiring/AMV.
2.	" S.Mukerjee	222/J	-do-	-do-
3.	" H.A.Malki	137/J	C.L.Elec- troplater (skilled)	SS/TL/Alambagh.
4.	" Ishrat Ali	269/J	C.L.B/Fitter(skilled)	-do-

NOTE: Item No.1&2 are provisionally adjusted by temporarily downgrading 2 posts of H.S. Gr.I Wireman to Skilled grade.

Item Nos.3 & 4 are provisionally adjusted against the existing vacancies under SS/TL/Alambagh respectively.

Authority:- Judgment dated 5-1-87 of Central Administrative Tribunal, Additional Bench, Allahabad and the legal opinion obtained from DRM(Litigation Cell)/Lucknow on Case No.K/BSC/CC/AMV dated 25-5-1987.

Sd. xx xx
Dy.Chief Electrical Engineer(W)
Northern Railway, Charbagh,
Lucknow."

On the terms of this order, the petitioners have been reinstated to service to the posts they held before their termination.

9. We have carefully examined the findings of this Tribunal and this order. We are of the view that this order faithfully complies with the direction of this Tribunal for reinstatement.

10. On

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L. P. SHUKLA
Advocate

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10. On reinstating the petitioners, the Railway Administration examined the outstanding parts of the order of this Tribunal and made an order on 6-11-1987 (Annexure-A5) which reads thus:

"Northern Railway

No.E/DSC/CC/AMV

6-11-87

The SS/76/AMV

The SS/W/AMV.

Sub; Court Case.

In ref. to the judgment in the Court Cases Nos.218/86 connected with 219/86(T), 221/86(T) and 604/86(T) of S/Shn BS Chopra, Ishrat Ali, S.Mukerjee and S.A.Malki. The Dy.CEE(W)/dico has passed the following orders:

They may be informed accordingly:

- (a) The period of absence to be counted towards service.
- (b) Seniority to be continued accordingly counting the total service.
- (c) Pay fixation to be done according to their service and seniority.
- (d) No arrears is payable on this account.

Sd. xx xx "

In sub-para (a) to (c) of this order, the competent officer had directed his subordinates to extend the benefits due to the petitioners on their seniority and pay fixation with which they have complied. On this, it follows that the directions of this Tribunal on fixation of pay and seniority of the petitioners

stands

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L. P. SHUKLA
Advocate

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stands complied or will be complied as assured by the respondents in their reply. With this, we now pass on to examine on what has been stated or directed in sub-para (d) of the order dated 6-11-1987 on which the controversy has centered before us.

11. In deciding the limited question whether the order of this Tribunal had been faithfully complied with or not and whether there was wilful disobedience or not, this Tribunal cannot and does not sit in judgment on the legality, aptness or correctness of the orders in compliance of the order of this Tribunal. We must not also lose sight of the fact that we are dealing with ^{Civil} ~~Court~~ Contempt under the C.C. Act. Bearing these and all other principles, we are of the view that the last part of the order made by the Railway Administration cannot be characterised as made in wilful disobedience of the order of this Tribunal or had wilfully defeated the same as urged by Shri Shukla.

12. In Mohanlal's and Robert D'Souza's cases, the Supreme Court was not dealing with a case arising under the C.C. Act, but was dealing with retrenchments of Industrial workers governed by the Industrial Disputes Act, 1947, and the effect of annulling retrenchments by Courts. But, that is not the position in the present case. Hence, the ratio in these cases does not bear on the point.

13. On

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L. P. SHUKLA
Advocate

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13. On the foregoing discussion, we hold these proceedings are liable to be dropped. But, in doing so, we ^{must} ~~may~~ necessarily reserve liberty to the petitioners to challenge the order dated 6-11-1987, to the extent they are aggrieved, in a fresh proceeding under Section 19 of the Act. On this view of the matter, we decline to further examine the legality, validity, aptness or correctness of the order. But, we make it clear that whatever we have said in this order cannot be relied on by the respondents for justifying the order in the fresh proceedings under the Act.

14. On the foregoing discussion, we hold that these Contempt of Court Proceedings are liable to be dropped. We, therefore, drop these Contempt of Courts Proceedings. But, in the circumstances of the case, we direct the parties to bear their own costs.

sd/-
(AJAY JOHRI)
MEMBER(A).

sd/-
(K.S. PUTTASWAMY)
VICE CHAIRMAN. 6/10/88

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10/10/88

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[Signature]
A. P. SHUKLA
Advocate

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In the Central Administrative Tribunal
व अवालत श्रीमान Allahabad Circuit Bench Lucknow महोदय

[वादी] अपीलान्त

प्रतिवादी [रेस्पान्डेन्ट] श्री का वकालतनामा

C.A. No.

4/1988



वादी (अपीलान्त)

B. S. Chopra & others

Union of India & others

प्रतिवादी (रेस्पान्डेन्ट)

मुकदमा नं०

सन्

पेशी की ता०

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ऊपर लिखे मुकदमा में अपनी ओर से श्री

L. P. Shukla, Advocate

C-700 Mahanagar Lucknow

वकील

महोदय

एडवोकेट

नाम पदावत
मुकदमा नं० नाम
फरीकत

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ कि इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जबाबदेही व प्रश्नोत्तर करें या कोई कागज़ दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा उठावें या कोई रुपया जमा करें या हमारी या विपक्षी (फरीकासनी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद लेवें या पंच नियुक्त करें-वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूँगा अगर मुकदमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह पञ्जालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे।

Amalika Sarkar-Mishra
H. S. Rastogi

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
SITTING AT LUCKNOW

REGISTRATION NO. 192 of 1988(L)

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B.S. CHOPRA

..... Applicant

Versus

Union of India & Others.

..... Respondent.

C O U N T E R - R E P L Y

I, *A. J. Chawale*

working as

WEE/C/CP/KW Northern Railway, Lucknow do hereby

solemnly affirm and state as under:-

1- That the abovenamed official is fully conversant with the facts of the case and has read the application and understood its contents and has been authorised by the respondents to file this Counter Reply.

2- That the contents of paras 1 to 5 of the application do not call for reply.

3- That the contents of para 6 sub-para (i) to (v) of the application are admitted so far it is a matter of record but rest of the contents are denied.

4- That in respect of sub-para (vi) of the application the contents so far it is a matter of record is admitted, but however, it may be stated here that the applicant has quoted only a paragraph of the judgement while the judgement should be read as a whole and then its meaning should be inferred

*21 Affirmative by
Ch. J. L. P. Singh
28/3/89*

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5- That the contents of sub-para (vii) of the application are admitted.

6- That the contents of sub-para(viii) of the application so far it is a matter of record is admitted but rest of the contents are denied. The said Contempt Application filed by the applicant under section 17 of the Administrative Tribunal Act 1985 were finally dropped.

7- That the contents of reply to sub-para (ix) of the application so far it is a matter of record is admitted but rest of the contents are denied. It is further clarified here that in the para under reply only a paragraph has been quoted while the judgement should be read as a whole and then its meaning may be inferred.

8- That the contents of sub-para (x) of the application do not call for reply.

9- That the contents of sub-para (xi) of the application is denied as irrelevant. The said Rule 2044 of the Indian Railway Establishment Code Volume-II does not apply in the instant case.

10- That the contents of sub-para (xii) of the application is categorically denied. The citations quoted in the para under reply are not applicable in the instant case.

11- That the contents of sub-para (xiii) of the application is categorically and vehemently denied. The applicants as per rules are not at all entitled for back wages as alleged. The proforma fixation as per rules have already been given

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to the applicants.

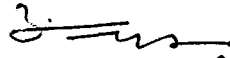
12- That the contents of ^{sub-}para (xiv) of the application is denied as irrelevant.

13- That in reply to para 7 of the application it is stated that the applicants are not entitled to claim any relief as stated and the grounds mentioned therein are not maintainable having no force of law.

14- That the contents of para 8 to 13 of the application do not call for reply.

LUCKNOW:

DATED: 25-3-89
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SIGNATURE 25/3/89

V E R I F I C A T I O N

I, the above named official do hereby verify that the contents of para 1 of this Counter Reply is true to my personal knowledge and those of paras 2 to 14 are believed by me to be true on the basis of official records and legal advice.

LUCKNOW:

DATED: 25-3-89
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SIGNATURE 25/3/89

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

SITTING AT LUCKNOW

REGISTRATION NO. (O.A.) 192 of 1988(L)

B.S. CHOPRA & Others.

.....Applicant

Versus

Union of India & Others.

.....Respondent.

Judgement Reserved on 4.4.90

WRITTEN ARGUMENTS

That after conclusion of the arguments on behalf of the applicant and part arguments on behalf of the answering respondents, this Hon'ble Tribunal directed the counsel for the respondents to file written arguments which are as follows:-

1. As per this Hon'ble Tribunal's judgement dated 5.01.1987 (para 9), the applicant's were only casual labourers and in compliance of the Hon'ble Tribunal's aforesaid judgement the applicants were again engaged (reinstated) as casual labourers.
2. As per division bench (consisting of Hon'ble Vice Chairman and An Administrative Member) Judgement dated July 10, 1989, Vidya Singh

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Place on this
record as per Hon'ble
Court's order on 4/4/90
Rao
5/4/90
P.S. to Hon'ble

Amal Kishore

Vs. U.O.I. & others reported in (1990) 12

Administrative Tribunal Cases 18, the casual labour-
ers were not allowed back (arrears of) wages
taking into account the fact that the applicant
had not worked during the period, and having regard
to the nature of the engagement only in the capacity
of casual labour, though the Hon'ble Tribunal must
be aware of the case of Robert D'Souza Vs. Executive
Engineer reported in 1982 SCC-124.

3. Similarly in another reported division bench judge-
ment dated June 7, 1989; V. Sainudheen Vs. Senior
Divisional Engineer & others reported in (1989)
11 Administrative Tribunals Cases 740, the Hon'ble
Tribunal ~~xxxxx~~ held that casual labourers will not
be entitled to any arrears of ^{pay} ~~app~~ and allowances,
(para 5, last few lines of the judgement) This case
is quite similar to the case of the applicants.

4. As per para 3 of the judgement dated 5.01.1987 of
this Hon'ble Tribunal, the applicants were offered
alternative employment which except the applicant
No. 3 namely Israt Ali, all the other applicants

Shri Sivadas



refused hence as per provision of section 25 E(i)

of the Industrial Disputes Act, 1947, the applicants

were not even entitled for any compensation and

therefore there is no question of any back wages

to any of the applicants.

LUCKNOW.

Dated 5.4.90

(ANIL SRIVASTAVA)
ADVOCATE

Counsel for Respondents.

In the Central Administrative Tribunal, Allahabad,
Sitting at Lucknow.

O.A. No. 192 of 1988 (L)

B.S. Chopra & others ... Applicants.

Versus

Union of India & others ... Respondents.

I N D E X.

S.No.	Particulars.	Page No.
1.	Rejoinder ...	1 to 6
2.	<u>Annexure No. A-4.</u> ...	7 to 13
	Photo stat copy of rule 1345 of Indian Railway Establishment Code Vol. II (Sixth Edition- 1987) and photo stat copy of Printed Serial No. 5642.	

B.S. Chopra
Signature of the Applicant.

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A-9
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,
SITTING AT LUCKNOW.

Registration No. 192 of 1988(L).

B.S. Chopra & others ... Applicants.

Versus

Union of India & others ... Respondents.

REJOINDER TO THE COUNTER REPLY
FILED ON BEHALF OF THE RESPONDENTS.

I, B.S. Chopra, aged about 45 years, son of
Late Hans Raj Chopra, resident of 10-C, Singar-
nagar, Lucknow, do hereby solemnly affirm and
state as under :-

1. That the above-named is the applicant
No. 1 in the case and as such is fully conversant
with the facts of the case. He has read the counter
reply and understood its contents and has been
authorised by other applicants to file this rejoinder:-

2. That the contents of para 1 of the
counter reply call for no remarks.

3. That the contents of para 2 of the
counter reply call for no remarks.

...2.

4. That the contents of para 3 of the counter reply call for no remarks.

5. That the contents of para 4 of the counter reply call for no remarks. The judgment dated 5.1.1987 of this Hon'ble Tribunal is already on record as Annexure No. A-1 to the application.

6. That the contents of para 5 of the counter reply call for no reply.

7. That the contents of para 6 of the counter reply call for no remarks.

8. That the contents of para 7 of the counter reply ^{call for no remarks} The judgment dated 6.10.1988 of this Hon'ble Tribunal is Annexure No. A-3 to the application.

9. That the contents of para 8 of the ~~application~~ counter reply do not call for any reply.

10. That the contents of para 9 of the counter reply are denied and the averments made in para 6(xi) of the application are reiterated. It is clarified that the applicants, even in terms of Rule 1345 of the Indian Railway Establishment Code Vol. II (Sixth Edition-1987) which is corresponding to old Rule 2044-B of the Indian Railway

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Establishment Code Vol. II (1973 Edition) read with Printed Serial No. 5642, are entitled for full pay and allowances for the intervening period that is from the date of termination of their services till the date of reinstatement. It is further clarified that law of limitation for payment of arrears is not applicable in the case of the applicants as they are governed by the Payment of Wages Act, 1936. It is further submitted that the applicants had already brought to the notice of the respondents that they except applicant no. 3 had not secured any employment during any period between termination and reinstatement. The applicant No. 3 had secured employment under the respondents and had earned less wages than what he is entitled on reinstatement. A true photo stat copy of Rule 1345 of the Indian Railway Establishment Code Vol. II alongwith a true photo stat copy of Printed Serial No. 5642 is being filed herewith as ANNEXURE No. A-4 to this rejoinder.

Annexure A-4.

11. That the contents of para 10 of the counter reply are vehemently denied and the averments made in para 6(xii) of the application are reiterated. The citations quoted in the said para of the application are fully applicable in the instant case of the applicants.

12. That the contents of para 11 of the counter reply are absolutely wrong, hence they are vehemently denied and the averments made in para

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6 (xiii) of the application are reiterated. The respondents are required to a strict proof of the allegations made in the para under reply.

It is clarified that since the applicants have been reinstated on their respective posts with all consequential benefits available to them under the rules by this Hon'ble Tribunal vide Judgment and Orders dated 5.1.87 (Annexure No. A-1 to the application), the question of non-payment of their back wages ^{are to be} does not arise specially when they ~~have/have~~ given benefits of continuous service, seniority and fixation of pay as evident from the orders of the respondent no. 2 contained in Annexure No. A-2 to the application. In terms of the judgment and orders of this Hon'ble Tribunal, the respondents are bound to pay back wages of the applicants as per rules.

13. That the contents of para 12 of the counter reply are denied and the averments made in para 6(xiv) of the application are reiterated.

14. That the contents of para 13 of the counter reply are wrong, hence denied and the averments made in para 7 of the application are reiterated. The applicants are entitled to the relief claimed on the facts and grounds mentioned in the application.

Prof

15. That the contents of para 14 of the counter reply do not call for any remarks.

16. That it is relevant to mention here that the respondents, while answering para 14 of the Contempt Petition (Contempt case No. 14 of 1988), submitted in para 13 of the their written statement that the applicants are not entitled for their back wages on the principle of ' No work no pay'. The said paras of the contempt petition and written statement are reproduced below :-

Para 14 of Contempt petition.

"14. That on 6.11.1987, the opposite party no.1 issued a letter dated 6.11.1987 by means of which it was finally declared by him that no arrear of pay in respect of the applicants' back wages would be paid to them, which ought to have been paid as per rules and as per judgment and orders of this Hon'ble Tribunal."

Para 13 of the written statement.

" 13. That the contents of paragraph no. 14 of the petition as stated are not admitted and are denied. It may be stated here that the applicants have misconstrued and misinterpreted the letter dated 6.11.1987 issued by the opposite party no.1 in as much as that since the petitioners have not at all been worked they are no entitled for any arrears of pay on the principle of ' No work no pay'. Although if

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the Hon'ble Tribunal comes to the conclusion that they should be given salary for the periods in which they did not worked at all, the opposite parties shall abide by the order and directions in that respect."

17. That the above principle 'No work no pay' is not applicable in the instant case and the applicants are entitled for payment of their back wages in terms of judgment and orders dated 5.1.87 of this Hon'ble Tribunal, rules and principles laid down by the Hon'ble Supreme Court of India as their services were terminated in non-compliance of section 25 -F of the Industrial Dispute Act, 1947.

Lucknow:
Dated -5-1989.

L.P. Shukla
Applicant.
through Sri L.P. Shukla,
Advocate.

Verification:

I, B.S. Chopra, applicant No.1, do hereby verify that the contents of paragraphs 1 to 17 of this rejoinder are true to my knowledge and belief and that I have not suppressed any material fact. I have also been authorised by other applicants to sign and verify this rejoinder on their behalf.

Lucknow:
Dated -5-1989.

B.S. Chopra
Applicant No.1.

1344 (F.R. 54 A).—(1) Where the dismissal, removal or compulsory retirement of a railway servant is set aside by a Court of law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.

(2) (i) Where the dismissal, removal or compulsory retirement of a railway servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule (7) of Rule 1343 (FR 54), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the railway servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

Provided that any payment under this sub-rule to a railway servant (other than a railway servant who is governed by the provisions of Payment of Wages Act -1936) shall be restricted to a period of 3 years immediately preceding the date on which the judgment of the court was passed, or the date of retirement on superannuation of such railway servant as the case may be.

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the court shall be regularised in accordance with the provisions contained in sub-rule (5) of Rule 1343.

(3) If the dismissal, removal or compulsory retirement of a railway servant is set aside by court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding, such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsory retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a railway servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere nothing shall be paid to the Government servant.

✓ **1345.** (1) When a railway servant who has been suspended is reinstated (or would have been so reinstated but for his retirement (including premature retirement) while under suspension,) the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the railway servant for the period of suspension ending with reinstatement or [the date of his retirement (including premature retirement).] as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

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(2) Notwithstanding anything contained in Rule 1343 where a railway servant under suspension dies before the disciplinary or the court proceedings instituted against him are **concluded, the period between** the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that **period to which he** would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the railway servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the railway servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the railway servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3), the railway servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the railway servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or the court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the railway servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an **order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.**

(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the railway servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

NOTE.—The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of—

- (a) extraordinary leave in excess of three months in the case of temporary railway servant; and
- (b) leave of any kind in excess of five years in the case of permanent or quasi-permanent railway servant.

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(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 1342.

Government of India's Orders

(1) **F.R. 54 absolute.**—A Government servant was dismissed from service on the 8th March, 1927, and, on appeal, was reinstated with effect from the 27th October, 1927. The appellate authority declared, under F.R. 54, that the period of unemployment between the dates of dismissal and reinstatement should be treated as spent on duty and allowed to count for leave and increments. As there was no post against which the lien of the Government servant could be shown for the period of dismissal, the question arose whether in the absence of lie on a permanent post the period of unemployment could count for leave or increments. It was decided that F.R. 54 is absolute and unconditional and that it could not be absolute if the condition of "lien" had first to be satisfied.

(G.I., F.D. No. F/28-R.I/28, dated the 5th April, 1928.)

(2) **When suspension regularised as leave consequential recovery inescapable.**—A question having arisen whether in cases where the period of suspension is ordered to be treated as one spent on leave and when on conversion it is found that the greater part of the period is to be treated as extraordinary leave for which no leave salary is admissible, the recovery of the subsistence allowance already paid would be in order. The moment the period of suspension is converted into leave it has the effect of vacating the order of suspension and it will be deemed not to have been passed at all. Therefore, if it is found that the total amount of subsistence and compensatory allowances that an officer received during the period of suspension exceeds the amount of leave salary and allowances, the excess will have to be refunded and there is no escape from this conclusion.

(G.I., M.F., U.O., No. 3409-E.IV/53, dated the 25th April, 1953, U.O. No. 320-E. IV/54 dated the 22nd February, 1954 to the Communications Division and M.F., (C's) U.O. No. 1681-C. II/54 dated the 2nd March, 1954.)

(3) **Treatment of period of absence and payment thereof.**—The Government of India have conveyed the following clarifications in regard to certain points which have been raised in connection with the application of F.R. 54, 54-A and 54-B.

(1) The decision of the competent authority under F.R. 54, 54-A and 54-B is in respect of two separate and independent matters, viz., (a) pay and allowances for the period of absence, and (b) whether or not the period of absence should be treated as duty. It is not necessary that the decision on (a) above should depend upon the decision on (b) above. The competent authority has the discretion to pay the proportionate pay and allowances and treat the period as duty for any specified purpose(s) or only to pay the proportionate pay and allowances. It has no discretion to pay full pay and allowances when the period is treated as "non-duty". If no order is passed directing that the period of absence be treated as duty for any specified purpose (the period of absence should be treated as 'non-duty'. In such event, the past service (i.e.) service rendered before dismissal, removal, compulsory retirement or suspension will not be forfeited.

For Signature

- (2) As Fundamental Rule 54 is absolute the law of limitation need not be invoked at the time of paying the arrears of pay and allowances for the period from the date of dismissal/removal/compulsory retirement/suspension to the date of reinstatement in respect of all cases where the pay and allowances are regulated on reinstatement in accordance with the provisions contained in F.R. 54, F.R. 54-A and F.R. 54-B with the exception of those covered under sub-rule (4) of F.R. 54 and sub-rule (2) (i) of F.R. 54-A.

(G.I., M.F., O.M. No. 15(14)E.IV (59), dated the 25th May, 1962 and the 9th August, 1962 read with provisions of F.R. 54, 54-A and 54-B.)

(4) Regulation of pay on reinstatement on grounds of equity or court judgment, etc.—1. The following questions in connection with the reinstatement of dismissed/removed/discharged Government servants or the Government servants whose service had been terminated, came up for consideration:

- (1) Whether before the Government of India decide to reinstate an individual on grounds of equity, concurrence of the Ministry of Finance should be obtained for payment of pay and allowances for the intervening period; or whether the administrative authorities, could themselves, after following the prescribed procedure, e.g., consultation with the Union Public Service Commission etc., reinstate the person and sanction payment of pay and allowances under F.R. 54.

- ✓ (2) Whether in cases of reinstatement on the ground of dismissal/removal/discharge from or termination of service being held by a court of law or by an appellate/reviewing authority to have been made without following the procedure required under Article 311 of the Constitution, payment of full pay and allowances for the intervening period is automatic and compulsory.

2. As regards question (1) above, it has been decided that the concurrence of the Ministry of Finance will not be necessary for reinstating a Government servant if the authority which reinstates the Government servant is competent to appoint him. The question as to what pay and allowances should be allowed for the intervening period and whether or not the period should be treated as duty, will be dealt with under F.R. 54.

3. Regarding question (2) stated in para 1 above, it has been decided that F.R. 54 is inapplicable in cases where dismissal/removal/discharge from or termination of service is held by a court or law or by an appellate/reviewing authority to have been without following the procedure required under Article 311 of the Constitution. In such cases—

- (i) if it is decided to hold a further inquiry and thus deem the Government servant to have been placed under suspension from the date of dismissal/removal/discharge/termination under Rule 12 (3) or 12 (4) of Central Civil Services (Classification, Control and Appeal) Rules, 1957 or a corresponding rule, the Government servant will be paid the subsistence allowance from the date he is deemed to have been placed under suspension;

- ✓ (ii) if the Government servant is not "deemed" to have been under suspension as envisaged under (i) above, the payment of full pay and allowances for the intervening period and treatment of that period as duty for all purposes will be automatic and compulsory, provided that—

- (a) the arrears should be paid subject to law of limitation;

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- (b) Where the reinstated Government servant has secured employment during any period between the dismissal/removal/discharge/termination and reinstatement, the pay and allowances admissible to him after reinstatement for the intervening period shall be reduced by the emoluments earned by him during such employment if such pay and allowances exceed such emoluments. If the pay and allowances admissible to him are equal to or less than the emoluments earned by him nothing shall be paid to him: provided that the amount to be paid under (i) and (ii) above will be determined subject to the directions, if any, in the decree of the court regarding arrears of salary.

4. As the termination of service of a Government servant without following the procedure laid down in the Central Civil Services (Classification, Control and Appeal) Rules, the Central Civil Services (Temporary Service) Rules, the C.S.R. or the terms of his appointment, etc., results in the payment of arrears by way of pay and allowances, the need for meticulously observing the "proper procedure" in such cases is once again impressed on all concerned.

5. In all cases where the circumstances leading to a Government servant's reinstatement reveal that the authority which terminated his services, either wilfully, did not observe, or through gross negligence failed to observe the "proper procedure" as explained above, before terminating his service, proceedings should be instituted against such authority under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, and the question of recovering from such authority the whole or part of the pecuniary loss arising from the reinstatement of the Government servant should be considered.

(G.I., M.H.A., O.M. No. F. 2/9/59-Ests. (A) dated the 27th May, 1961 and the 30th May, 1962.)

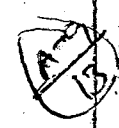
(5) Suspension treated as "dies-non" not reckoned as service:—It has been decided in consultation with the Comptroller and Auditor-General that the period of suspension of a Government servant, which is treated as dies-non, should not be reckoned as 'service' for the purpose of any of these rules.

(G.I., M.F., Endorsement No. F. 7(41)-Est. IV/53 dated the 18th July, 1953 and U.O.No. 1824/E.IV/54 dated the 23rd February, 1954 to the A.G., P & T.)

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ORDER

ANNEXURE NO.....

In exercise of the powers conferred by Rule 3 of the All India Services (Dearness Allowance) Rules, 1972, the Central Government hereby directs that every member of an All India Service shall draw Dearness Allowance at the following rates with effect from 1-4-72 :—

<u>Pay per month</u>	<u>Rates of Dearness Allowance</u>
Rs. 400 and above but below Rs. 450/-	Rs. 160/-
Rs. 450 and above but up to Rs. 499/-	Rs. 164/-
Above Rs. 499 but below Rs. 543/-	Amount by which pay falls short of Rs. 663/-
Above Rs. 543 but up to Rs. 999/-	Rs. 120/-
Rs. 1000 and above up to Rs. 2,250/-	Rs. 100% (subject to marginal adjustment to Rs. 1,119/- for pay up to Rs. 1,018/-).

This issue with the concurrence of the Ministry of Finance.

Serial No. 5641.—Circular No. 831-E/63/2-IX (Eiv), dated 10-5-1972.

Sub.—Selection for the post of Junior Hindi Translator grade Rs. 130-300 (AS).

Consequent on the issue of this office letter No. 831-E/63/2-IX(E.IV), dated 29-9-70 (S.No. 5112) a question has been raised whether the post of Junior Hindi Translator grade Rs. 130-300 (AS) is to be treated as general selection post and the procedure for holding selection for the aforesaid post is to be followed as outlined in Railway Board's letter No. E(NG) 168 PM1/1, dated 26-8-68 circulated vide this office letter of even number, dated 3-6-70 (S. No. 5018). It is clarified that the post of Junior Hindi Translator grade Rs. 130-300 (AS) will continue to be a general selection post. However only Ministerial staff of all departments would be eligible for consideration for this post. (This disposes of DPO/BKN's Confidential D.O. letter No. E-81/Genl, dated 4-4-72).

✓ Serial No. 5642.—Circular No. 52E/O 25 (E.D&A), dated 5-5-1972.

Sub.—Admissibility of pay and allowances to Railway servants on reinstatement as a result of decree etc.—Application of Law of Limitation in cases of Government employees governed by Payment of Wages Act.

A copy of Railway Board's letter No. E(D&A) 71RG6-8, dated 30-3-72, forwarded for information and guidance.

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It has been, now, decided that Proviso (a) below para 3 (ii) of Board's letter, dated 22-9-61 as amended vide their letter No. E(D&A) 63RG6/36, dated 11-10-63 will not apply in the case of Railway employees who are covered by the Payment of Wages Act 1936.

Railway Board's letters referred to in para 2 above were circulated under this office endorsements of even number, dated 30-11-61/6-12-61 and 22-11-63 (P Branch S.I. No. 2307).

Copy of Railway Board's letter No (ED&A)71RG6-8, dated 30-3-72.

Sub.—As above

Attention is invited to Proviso (a) below para 3 (ii) of Board's letter No. E(D&A) 56RG6-12, dated 22-9-61 as amended vide their letter No. E(D&A) 63RG6-36, dated 11-10-1963 on the above subject, in terms of which in cases of reinstatement on the ground of dismissal/removal/discharge from or termination of service being held by a Court of Law or by an appellate/reviewing authority, to have been made without following the procedure required under Article 311 of the Constitution, the payment of full pay and allowances for the intervening period between the dates of dismissal/removal etc. and reinstatement in service, is subject to the Law of Limitation i.e. for a period of three years immediately preceding the date of the Judgement of the Court of Law etc.

2. Doubts have been raised whether in view of the provisions of the Payment of Wages Act, 1936, it would be in order to restrict the payment of arrears of pay and allowances in terms of the Law of Limitation in the case of such Railway employees as are covered by the Payment of Wages Act, 1936. The matter has been considered and it has been decided that Proviso (a) below para 3 (ii) of Board's letter dated 22-9-1961 referred to above will not apply in such cases.

Serial No. 5643.—Circular No. 549-E/34-IV(Eiv), dated 8-5-72.

Sub.—Rent free quarters or House Rent Allowance in lieu thereof to non-gazetted staff of ex. Bikaner-Jodhpur State Railway.

A copy of Railway Board's letter No. E(G)71 RNI-13, dated 30-3-72 is forwarded for information and guidance. The Board's letter dated 3-3-65 referred to therein was circulated under this office letter of even number, dated 3-4-65 (S. No. 2937).

Copy of Railway Board's letter No. EG71 RNI-13, dated 30-3-72.

Sub.—As above

Reference Board's letter No. E(X)11-62RNI-3 Pt., dated the 3rd March, 1965.

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