

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 579 OF 2005 *December*[Patna, this *Thursday*, the 17th Day of November, 2009].C O R A MHON'BLE MR. JUSTICE ANWAR AHMAD, MEMBER [J]
HON'BLE MR. SUDHIR KUMAR, MEMBER [A]Sidharath Ranjan Bhatt, son of Late Chandrama Maharaj Bhatt, resident of
Chandra Bhavan, Roy Ji Ki Gali, Kamta Singh Lane, East Boring Canal Road,
Patna. APPLICANT.By Advocate :- Shri M.P.Dixit.

Vs.

1. The Union of India through General Manager, E.C.Railway, Hazipur.
2. The Divisional Railway Manager, E.C.Railway, Sonepur
3. The Divisional Railway Manager [Personnel], E.C.Railway, Sonepur.
4. The Divisional Railway Manager [Operating], E.C.Railway, Sonepur.
5. The Divisional Commercial Supdt. now Divisional Commercial Manager, E.C.Railway, Sonepur.
6. The Senior D.F.M., E.C.Railway, Sonepur. RESPONDENTS.
By Advocate :- Shri R.N.Choudhary, ASC.

O R D E R

Justice Anwar Ahmad, Member [J] :- This OA has been filed by Sidharath Ranjan Bhatt seeking the following reliefs :-

“8[i] That your Lordships may graciously be pleased to quash and set aside the order dt. 31.12.2002 Annexure-A/11, together with removal order as contained in Annexure-A/2 and appellate order as contained in Annexure-A/12, in the light of Annexure-A/6 & A/10 based on acquittal dated 11.02.1998.

[ii] That the respondents authorities may be directed to treat the entire period of removal from service to date of normal retirement as on duty for all purposes including salary and its arrears.

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[iii] That the respondents authorities may further be directed to pay the pension, and its arrear from the date of normal retirement to the date of death of his father, i.e., up to 10.11.2000.

[iv] That your Lordships may further be pleased to direct the respondents to pay the DCRG, leave encashment for 180 days, commuted value of pension, GIS, transfer and packing allowances and all other benefits applicable to a retired Government servant.

[v] Respondents may be directed to pay the penal interest at the rate of 25% p.a. on the entire amounts as prayed in para 8[ii], 8[iii] & 8 [iv] from the date of normal retirement upto the date of actual payment.

[vi] That the respondents be directed to grant all consequential benefits including family pension in favour of his unmarried daughter namely, Kumari Indu Ranjan, upto her attaining the age of 25 years or upto the date of her marriage whichever is earlier and pay the interest on arrears.”

2. Learned counsel for the applicant submitted that applicant's father, namely, Chandrama Maharaj Bhatt, removed from the post of Guard, died on 10.11.2000 leaving behind three sons and one unmarried daughter. Applicant is the eldest amongst the sons and the daughter who have authorised him to file the OA. It is stated that the father of the applicant was initially appointed as Guard in the N.E.Railway, Sonpur on 23.04.1953. After serving for more than 23 years he was implicated in a criminal case under Section 3 of R.P. [U.P.] Act along with other persons bearing Sonpur [RPF] Case no. 11976 for the allegation of theft and recovery of railway property. The respondent no.5 without applying his mind issued an order of removal from service on 01.02.1976 dispensing with the departmental inquiry under Rule 14 [II] of Railway Servant [D&A] Rules, 1968, read with proviso [b] to Article

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311 [2] of the Constitution of India. The said order is dated 31.01.1976 [Annexure-A/2]. Against the order of removal he filed a representation dated 11.03.1976 [Annexure-A/3] to the Divisional Railway Manager, N.E.Railway, Sonpur requesting him to supply the relevant documents so as to enable him to file an appeal in the matter. However, no action was taken on his representation including subsequent reminders given by him vide Annexure-A/4 series. Thereafter, his case was taken up by Shri Chandrasekhar, Member of Parliament [Lok Sabha] through letter dated 23.12.1978 [Annexure-A/5]. Vide Annexure-A/6 dated 02.04.1979 the applicant came to know that he was removed from service on account of the criminal case. It is also mentioned in the said letter that till decision in the said case no further action regarding reinstatement of the applicant will be taken up. So he had no option but to wait for the disposal of the criminal case. In the meantime, on account of normal age of retirement he was deemed to be retired from service w.e.f. 30.09.1984 during the period of removal. The pending criminal case was finally disposed of on 11.02.1998 and the applicant was acquitted of the charges by the Judicial Magistrate, Railway, Samastipur. The Magistrate came to the conclusion that the prosecution has failed to bring home the charge against both the accused persons, namely, C.M. Bhatt and Gokulanand and as such, both of them were not found guilty of the charges and consequently they were acquitted. Immediately after his acquittal the applicant sent a representation dated 01.06.1998 to respondent no.2 along with the order of the Magistrate requesting to reinstate him in the service and for extending the necessary benefits to him treating the entire period from the date of removal to

the date of normal retirement as on duty for all purposes including payment of salary, retiral benefits, etc. The said representation dated 01.06.1998 is Annexure-A/7. Thereafter, he received a letter dated 24.08.1998 [Annexure-A/8] from respondent no.3 by which he was asked to send copies of the entire orders including the order of the learned Magistrate for processing the case of the applicant. It is stated that he sent the entire documents to the concerned respondent under his letter dated 22.09.1998 [Annexure-A/9]. It is alleged that inspite thereof he was not given due benefits as admissible under the law even though he has been ~~completely~~ acquitted in the criminal case. Finding no way out he filed OA 152 of 2000 but before decision in the OA he died on 10.11.2000 and thereafter a substitution petition was filed substituting the name of the applicant and his brothers and sister and the same was allowed. The OA was allowed with direction to the respondent no.2, Divisional Railway Manager, N.E.Railway, Samastipur to treat the instant OA as representation of the applicant and pass a speaking order by settling the case of the applicant with reference to the prayer made in accordance with law. On the direction of the Tribunal the respondent – Divisional Railway Manager, E.C.Railway, Sonpur passed the speaking order [Annexure-A/11] dismissing the representation/claim of the applicant on the flimsy grounds that no document has been produced by the applicant to establish his claim of being a railway servant who was removed from the service due to criminal case and even if it is assumed that he was a railway servant, it cannot be ascertained at this stage whether removal was related to criminal case or not. Learned counsel, therefore, submitted that CCPA 87 of 2003 was filed for non-

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compliance of the order of the Tribunal passed in OA but the contempt petition was dismissed with the observation that the applicant is free to take recourse of filing a fresh case. So, the present OA has been filed. He submitted that the applicant has also filed an appeal against the impugned order [Annexure-A/7] and the Appellate Authority without application of mind rejected the appeal with the remarks 'Regret' [Annexure-A/12]. The learned counsel submits that the impugned orders be set-aside and the OA be allowed. In support of his contention he refers to a decision reported in Shashi Kumar Vs. Uttari Haryana Bijli Vitran Nigam [2005 [Vol.I] ATJ 154]. He submitted that in the aforesaid decision their Lordships of Punjab & Haryana High Court has quashed the impugned order of removal from service and held the appellant to be reinstated in service with all consequential benefits.

3. Learned counsel for the respondents, on the other hand, submitted that late C.M.Bhatt at the first time moved the Tribunal in the year 2000 by filing OA 152 of 2000, after lapse of about 23 years. As the claim related to the year 1976 so the case of the applicant was time barred. He submits that on this score alone the OA is fit to be dismissed. The Tribunal in the aforesaid OA 152 of 2000 condoned the delay and hence, the point of limitation cannot be agitated in the present OA. Learned counsel for the respondents further submitted that late C.M.Bhatt happened to be an accused in a criminal case under Section 3 of the RP[U.P.] Act along with others for the allegation of theft and recovery of railway property. So he was removed from service vide Annexure-A/2. So he submitted that the order of removal dated 31.01.1997 became absolute and confirmed as late C.M.Bhatt did not

challenge the order of the appellate court in any appropriate court of law. He, therefore, submitted that there is no merit in the OA and hence, the OA be dismissed.

4. Considered the submissions made by the learned counsel for the respondents and also the written statement filed by them. The point in issue has not been touched. The speaking order [Annexure-A/7] passed on the direction of this Tribunal in OA 152 of 2000 is ridiculous. It is said in the order that no document has been produced by the applicant to establish claim of his being a railway servant removed from service on account of a criminal case. It is stated that even if it is assumed that the applicant was a railway servant it cannot be ascertained at this stage whether removal was related to the criminal case or not. There is a lot of documents in support of appointment of the applicant in the railway, his services rendered therein, the criminal case against him, his removal from service on the ground of an accused in a criminal case and the order of dismissal from service of the applicant and then such an order was passed. The case of the applicant is more or less exparte.

5. The implications of and the consequences of an acquittal in a criminal case came to be discussed by the Hon'ble Supreme Court in the case "Union of India & Ors. Vs. Jaipal Singh" in Civil Appeal No. 8565 of 2003 on 03.11.2003 [All India Services Law Journal III – 2004 [1] page 374]. The sum and substance of the orders of the Hon'ble Supreme Court in that case is that entitlement to back-wages starts from the date of acquittal in the criminal case, on which date the dismissed Government servant becomes entitled to be



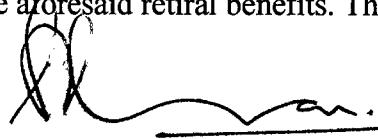
reinstated in service. It was further clarified by the Hon'ble Supreme Court that denial of back wages for the period the Government servant was not in service was correct, as the Government cannot be made liable to pay [the salary and wages] for the period for which they could not avail of the services of such employee. By way of abundant caution, however, the Hon'ble Supreme Court clarified that "except for the purpose of denying the actual payment of back wages, that period also will be counted as period of service, without any break."

6. In this case, however, the applicant has to be deemed to have retired on 30.09.1984, before his date of acquittal on 11.02.1998, when he had attained his normal age of retirement. Therefore, except for the payment of back wages for that period, the applicant would have to be counted as having continued in his service, without any break, upto his normal age of superannuation on 30.09.1984. The respondent Railway Authorities have to deem the applicant to have continued in his service from the date of his dismissal on 01.02.1976 to the normal date of his retirement on 30.09.1984, and, except for salary or back wages for that period, count that period for the grant of all the retirement benefits to the applicant, as if the applicant had continued in his service, without any break, till his normal date of retirement.

7. In the result, this OA is partially allowed and the impugned order dated 31.01.1976 [Annexure-A/2] of removal from service, order dated 16.01.1978 [Annexure-A/12] of the appellate authority dismissing the appeal and the speaking order dated 31.12.2002 [Annexure-A/11] passed on the direction of the Tribunal in OA 152 of 2000 are quashed and set-aside. The

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respondents are directed to treat the entire period from the applicant's date of removal from service on 01.02.1976 to the date of normal retirement on 30.09.1984 as on duty for all purposes, other than the payment of salary and any back wages as arrears. They are directed to accordingly re-compute the pension, and pay the pension and its arrears from the date of normal retirement to the date of death, i.e., upto 10.01.2000. They are directed to compute and pay the retiral benefits such as DCRG, leave encashment, GIS, etc. They are also directed to pay family pension from 11.01.2000 onwards in favour of the unmarried daughter, namely, Kumari Indu Ranjan, as per the rules. They are also directed to pay interest on the prevailing rate on the delayed payment of the aforesaid retiral benefits. There will be no order as to cost.



[Sudhir Kumar]/M[A]



[Anwar Ahmad]/M[J]

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