

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH LUCKNOW

## INDEX SHEET

CAUSE TITLE CM. Review 200 OF 1990 (W)O.A. - 58 of 89 W

Name of the parties

N. K. Srivastava

Applicant.

Versus.

N. O. J.

Respondents.

## Part A.B.C.

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Checked

23/6/2011

Certified that no further action is required to taken and  
that the case is fit for assignment to the record room. (D)

P.T.O. 8

Rg  
02/10/2011

27/12/11

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
		<p>A.C. Review No. 210/2015 has been filed in C.M. 50/10/15 on 30.10.15</p> <p>The case bearing No. 210/2015 was decided for the Bench of Hon'ble Mr. Justice K. J. Somani on date 23.10.15</p> <p>The author of the judgment is Hon'ble Mr. Justice K. J. Somani</p> <p>Submitted for order.</p> <p>Yes for the order on 30.10.15</p> <p>Applicant is satisfied with the order.</p> <p>S.P.O.</p>

Received copy of judgment  
on 17.10.15  
17.10.15

Dinesh

Received copy of judgment

on 16/10/15 K.K. Parth Chatterjee

Dist. Comm. Adm.

(A2)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
Lucknow Circuit Bench.  
Review Application No.200 of 1990 (L)

In  
Registration O.A. No.58 of 1989 (L)

Nand Kishore Srivastava ..... Applicant

Versus

Union of India & Others ..... Respondents

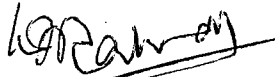
Hon.Mr.Justice K.Nath, V.C.

Hon.Mr. K.J. Raman, Member(A)

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

This is : application for review of our judgement dated 2.3.90 in Original Application described above whereby the said Original Application for quashing the suspension order dated 24.1.89 was dismissed.

2. We have carefully gone through the review application alongwith the judgement under review and we do not find any error apparent on the face of the record or any sufficient cause for making a review of the decision. The main ground concerns the competence of the authority which passed the suspension order. That question has been duly considered in the judgement. The Review Application is dismissed.

  
Member (A)

  
Vice Chairman

Dated the 25<sup>th</sup> Sept., 1990.

RKM

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

Review Application No. 20 of 1990. (1)

Nand Kishore Srivastava ..... Applicant.

In re:

Registration O.A. No. 58 of 1989.

Nand Kishore Srivastava, aged about  
57 years son of late Sri Lalji Srivastava,  
Senior ~~Cashier~~ <sup>Clerk</sup> Northern Railway, Charbagh  
Lucknow under Senior Divisional Accounts  
Officer, Lucknow.

..... Applicant.

Versus

1. Union of India through the General Manager,  
Northern Railway, Baroda House, New Delhi.
2. Senior Divisional Accounts Officer, Northern  
Railway, Lucknow.
3. Asstt. Chief Cashier Northern Railway, Lucknow.
4. Sri Khubi Ram, aged about 53 years, son of Sri  
Bhushan Lal, at ~~xx~~ present working as Asstt.  
Chief Cashier, Northern Railway, Lucknow.

..... Opp. Parties.

Filed today  
20/5/90

N.K. Srivastava

Pre

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Application under Rule 17 of the Central  
Administrative Tribunal (Procedure) Rules, 1987  
for review of the judgement/order dated 2-3-1990  
passed in Registration O.A. No. 58 of 1989 (L)  
Nand Kishore Srivastava vs. Union of India and  
others ~~passed~~ by the Bench of the Hon'ble Tribunal  
comprising of Hon'ble Justice Kamleshwar Nath  
Vice Chairman and Hon'ble K.J. Raman, Member(A).

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The applicant most respectfully begs to submit  
as under :

1. That the aforesaid Registration O.A. No. 58  
of 1989(L) was heard and decided vide judgement  
dated 2-3-1990 passed by the Hon'ble Justice Kamleshwar  
Nath (Vice Chairman) and Hon'ble K.J. Raman, Member(A).  
Some of the material facts were left out from being  
considered by the Hon'ble Bench. Hence this Review  
Application is being filed by the applicant for  
reconsidering the aforesaid judgement dated 2-3-1990.  
The following material facts have been left out  
to be ~~x~~ considered while deciding the aforesaid  
case which have bearing on substantial justice to  
the applicant:

A-1. That the fact mentioned in para 2 of the judgement  
dated 2-3-1990 passed by the Hon'ble Bench  
comprising of Justice Kamleshwar Nath, Vice Chairman  
and Hon'ble K.J. Raman, Member(A), hereinafter

NK. Srivastava

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called 'the judgement', that "The applicant, Nand Kishore Srivastava was originally a Senior Cashier in the office of the Senior Divisional Accounts Officer, Northern Railway, Lucknow, but shortly after detection of some acts of misconduct which were subject-matter of the charge sheet dated 10-1-1986, Annexure-A2, he was posted as clerk in the Provident Fund Arrear Cell in the same office" are not based on the material facts on record. In fact, in the year 1984, the applicant was posted and working as Senior Cashier in the office of the Assistant Chief Cashier, Northern Railway, Charbagh Lucknow. The office of the Senior Divisional Accounts Officer, Northern Railway, is entirely a different establishment, dealong with the accounts only, whereas the cash and pay department exclusive deals with the cash and disbursement of cash having their different Heads of Department. Thus the Chief Cashier and Pay Master is Head of Department of Cash and Pay Department while the Deputy Chief Accounts Officer and Financial Adviser and Chief Accounts Officer, Northern Railway Baroda House, Delhi, are Head of the Accounts Department. In the year 1984, at the time of commission of the offence u/s 409 I.P.C. vide Crime No. 89/84, Police Station G.R.P. Faizabad, the applicant was posted as Senior Cashier in Asstt. Chief Cashier's office, Charbagh, Lucknow and for that offence the applicant was suspended vide suspension order dated 19-4-1984 passed by the Opposite Party No. 3/4 (Annexure No. R-1) attached to short counter reply filed on behalf of Opposite Party No. 3/4 in respect

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criminal offence which was under investigation/enquiry/trial. Subsequently the applicant's suspension was revoked vide letter No. CP/NKS/Acc/84 dated 16-1-1986 issued by the Senior Divisional Accounts Officer, Lucknow (Annexure- 4 to the claim petition).

A-2 After revocation of the suspension order, the applicant was reinstated and his cadre was changed ~~and~~ by way of punishment and he was posted as Clerk in the office of the Senior Divisional Accounts Officer, Northern Rly, Hazratganj, Lucknow on 20-1-1986 vide Annexure A-5 of the claim petition. Subsequently after a lapse of about 3 years, the applicant was again suspended vide order dated 24-1-1989 (Annexure A-7 to the claim petition) issued by the Asstt. Chief Cashier, Northern Railway, Lucknow (Opp. Party No. 3/4), on the charges in respect of criminal offence which was under investigation/enquiry/trial, on which the applicant was earlier suspended on 19-4-1984 (Annexure A-2 to the short counter reply) and the charge sheet of criminal misappropriation was withdrawn. The charges, on which the applicant was earlier suspended and were withdrawn were as follows in the charge sheet dated 18-11-1984 served on the applicant :

(1) Charge sheet dated 18-11-1984 (Annexure A-1 to the claim petition).

- 1) He misappropriated government money to the tune of Rs. 1,28,336.05 during the month of April, 1984 as detected on checking of his account and cash.

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2) He gave a false complaint and misleading statement to the Asstt. Chief Cashier, Northern Rly, Lucknow on 17-4-1984 alleging therein that one bundle of Rs. 100/- G.C. Notes containing Rs. 1,00,000/- was left by him with A.D.C. while taking cash of 'C' Tour from him on 16-4-1984.

3) He mis-appropriated a sum of Rs. 990/- by taking credit of the undermentioned bills as fully paid in his cash for the month of March, 1984 while transferring the cash of the said bills to Shri Udai Bhan Singh, Senior Cashier. The total amount of the said bills comes to Rs. 45,430.09 whereas the amount paid by him to Shri Udai Bhan Singh for the said bills is Rs. 44,440.09.

i) Pay sheet pages of RPF Coy.No. 36 of JNU, SHG & ZFD for the total sum of .....Rs. 33,907.49 for the month of March, 1984 bearing PMT No.2007 dt. 14-3-84.

ii) PMR No. 274 of 13.3.84 for .....Rs. 11,552.60  
Total ..... Rs. 45,430.09

It is submitted that the aforesaid charge sheet of criminal misappropriation was withdrawn and a fresh charge sheet of carelessness, negligence and mishandling of the Govt. cash was issued by the Senior Divl. Accounts Officer, N.Rly. on 10-1-86 (Annexure A-2 to the claim petition). The following charge sheet was issued by the department:-

(2) Charge sheet dated 10-1-1986 (Annexure A-2 to the Claim Petition)

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1. Carelessness and negligence in keeping and handling of cash has caused the Rly. Admn. a cash loss of Rs. 1,28,336.05.



2. He failed to intimate about his whereabouts from 20-4-84 to 19-5-85 to evade interrogation in C/W shortage of Rs. 1,28,336.05 in his cash box, found on 17-4-1984.
3. He gave a false complaint and misleading statement to the Asstt. Chief Cashier, Northern Rly. Lucknow on 17-4-85 alleging therein that one bundle of Rs. 100/- G.C. Notes containing Rs. 100,000/- was left by him with A.D.C. while taking cash of 'C' tour from him on 16-4-1984.
4. He misappropriated a sum of Rs. 990/- by taking credit of the undernoted bills as fully paid in his cash for the month of March 1984 while transforming the cash of the said bills to Shri Udai Bhan Singh, Sr. Cashier. The total amount of the said bills comes to Rs. 45,430.09 whereas the amount paid by him to Sri Udai Bhan Singh for the said bills is Rs. 44,440.09 :

(i) Pay sheet pages of RPF Coy. no. 36 of JNU, SHG & ZFD for the total sum of Rs.....Rs.	33,907.49
(ii) PMR No. 274 of 13.3.84 for ...Rs.	11,552.60
Total Rs.	<u>45,430.09</u>

It is submitted that the earlier charge sheet dated 18-11-1984 was issued on the basis of the F.I.R. of crime no. 89/84 P.S. G.R.P. Faizabad dated 18-4-84 which was subsequently withdrawn after acceptance of the final report by the Chief Judicial Magistrate, Faizabad, as is evident from Annexure A-3.

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That the fresh charge sheet of carelessness and negligence was issued by the Senior Divl. Accounts

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Officer for departmental enquiry on 10-1-86. After about 3 years, the applicant was again suspended in respect of the criminal offence which was under investigation/enquiry/trial vide Annexure A-7 to the petition, not on the basis of the departmental charge sheet dated 10-1-1986. The impugned suspension order (Annexure A-7) is wholly arbitrary and against the law since for the criminal offence, the applicant was already suspended on 19-4-1984 and which was subsequently withdrawn and again the applicant is being suspended on the basis of the same charges by the same authority, i.e. Opposite Party No. 3/4. Therefore, the impugned suspension order is arbitrary, illegal and liable to be set aside.

A-3 That the applicant was earlier suspended on the basis of criminal charges in respect of criminal offence which was under investigation/enquiry/trial and after its revocation, the applicant was again suspended on the basis of the same charges by the same authority, i.e. Opp. Party No. 3/4. Under law, any employee could not be suspended twice on the basis of the same charges and the Administrative Authorities have no right to review their own order. But in the present case, the petitioner was suspended vide order dated 19-4-1984 in respect of a criminal offence which was under investigation/enquiry/trial by the Opp. Party No. 3/4 and after revocation the applicant was again suspended by

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the same authority, i.e. Opp. Party No. 3/4 on the same charges by reviewing his/her own order which is illegal, arbitrary and against the norms of administrative jurisprudence.

B-1 That in para 3 of the judgement it has been incorrectly mentioned that the enquiry under the charge sheet (Annexure A-2) was still pending. In fact the charge sheet (Annexure A-2) of the claim petition, dated 10-1-1986, is not pending since the Deputy Chief Accounts Officer has already accorded sanction of prosecution of the applicant for misappropriation of the amount of Rs. 1,28,336.05 vide order dated 28-3-1984 (Para 7.20 of the claim petition) for the offences u/s 409 I.P.C. and section 5(2) read with 5(1)(c) of the Prevention of Corruption Act. After according sanction of prosecution, no question of carelessness, negligence on the part of the applicant arises, meaning thereby that the charge sheet dated 10-1-1986 is void and has no bearing with the ~~xxx~~ impugned suspension order of the applicant.

C- That the fact mentioned in para 4 of the judgement that the charge sheet has been issued by the Asstt. Chief Cashier is incorrect and beyond the pleadings of the parties. In fact, both the charge-sheets (Annexure A-1 and A-2) had been issued by the Senior Divisional Accounts Officer, Northern Railway

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Hazratganj, Lucknow, and no charge sheet was issued by the Asstt. Chief Cashier.

D- That in para 6 of the judgement it has wrongly been mentioned that "the Asstt. Chief Cashier was an officer next below the Senior Divisional Accounts Officer." In fact the next below officers to the Senior Divisional Accounts Officer are as below :-

- (i) The Divisional Accounts Officer, N.Rly, Lucknow.
- (ii) Asstt. Divisional Accounts Officer, N.Rly, Lucknow.
- (iii) Senior Accounts Officer, Northern Railway, Lucknow.
- (iv) Section Officer, Accounts Deptt., N. Rly., Lucknow.

Whereas the Asstt. Chief Cashier is a Supervisor in grade 'B' of Cash and Pay Department, having no independent charge and is working under the <sup>Chief</sup> Cashier New Delhi (Para 1 of reply dated 17-4-1984 of the Applicant to the Supplementary Application filed by Opposite Party No. 3/4).

E - That the finding recorded in para 7 of the judgement "even though the language of the suspension order could be read to imply the passing of the suspension order by the Assistant Chief Cashier, in substance it constitutes a mere communication of an order of suspension issued with the prior approval of the competent authority" is not based on the facts on record of the case. In fact, the rule 5(1) of Railway Servants (Discipline & Appeal) Rules, 1968

Mr. Srinivasan

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(quoted in para 7.23 of the claim petition) does not provide any provision for approval of the competent authority to whom the power to suspend the employee has been delegated. In absence of any provision for approval, the alleged approval accorded by the Senior Divisional Accounts Officer, is arbitrary and without jurisdiction. The approval is always given by the officer senior to the competent authority. Had the Senior Divisional Accounts Officer been competent to pass the suspension order of the applicant, then there was no question for according any approval by the Senior Divl. Accounts Officer under whom the applicant was working at the time of suspension. In fact, the suspension order was passed by the Asstt. Chief Cashier himself (oopsite party no. 3/4) in the garb of alleged approval by mentioning wrong endorsement in the order itself dated nil, "approval of Sr. D.A.O., Lucknow at page 1 of file no. CP/NSK/88". There was no necessity for getting approval by the Senior Divisional Accounts Officer. Had the Senior Divisional Accounts Officer intended to pass the impugned suspension order of the applicant then she would have directly passed the suspension order by applying her mind on the material on record as the applicant was working directly under her in her own office. Therefore, the suspension of the petitioner is wholly arbitrary and without jurisdiction and also is a colourable exercise of power prohibited under law.

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/..... page 11.

F - That the facts mentioned in the judgement that "The new factor consists of a criminal investigation into the alleged act of misappropriation of railway money and misuse of the powers by the applicant in a corrupt manner punishable under the ~~penal~~ penal law as also under the Prevention of Corruption Act. The institution of a criminal case in the competent Court on these charges on the basis of a criminal offence chargesheet dated 27-10-1988 is certainly a new feature g vis-a-vis the original charge sheet Annexure A-2 dated 10.1.1986 for disciplinary proceedings on account of carelessness, negligence and misappropriation of a specified amount.", is incorrect and beyond the facts on record. In fact, on 18-4-1984 on a complaint lodged by the Opposite Party No. 3/4, a criminal case was instituted against the applicant vide Crime No. 89/84, G.R.P. Faizabad, u/s 409 I.P.C. and for that reason the applicant was suspended vide order dated 19-4-1984 and subsequently the charge sheet was withdrawn on 10-1-1986 and the applicant was reinstated and was posted in P.F. Arrear Cell of Accounts Department instead of Cash and Pay Department. Subsequently, after about 3 years, the applicant was again suspended in respect of criminal offence which was under investigation/enquiry/trial. In fact no criminal investigation was pending against the applicant. Only the civil charges were levied against the applicant vide charge sheet dated 10-1-1986. The contents of the charge sheet clearly show that the charges are of a Civil nature and do not constitute any criminal

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offence. The charge sheet dated 27-10-1988 alleged to have been pending in the competent court of law, is incorrect and the competent court of law for investigating the charges, alleged to have been committed at Faizabad, is ~~the~~ only the Court of Chief Judicial Magistrate and not any other court. In the present case neither any criminal case has been instituted in the court of Chief Judicial Magistrate, Faizabad nor the same has been transferred from the Court of Chief Judicial Magistrate to any other court. Therefore, the impugned suspension of the applicant only on the basis of criminal charges, as evident from the impugned order itself, is arbitrary, misleading and beyond the facts on record. No criminal case against the applicant was pending with respect to the charges mentioned in Annexure A-2. Therefore, the suspension of the applicant on the basis of criminal charges, as mentioned in the impugned order, is false and fabricated.

It is submitted that the facts mentioned in para 8 of the judgement that the institution of a criminal case in the competent court on charges on the basis of a criminal offence, charge sheet dated 27-10-1988 is certainly a new factor vis-a-vis the original charge sheet, Annexure- 2 dated 10-1-86 for disciplinary proceedings on account of carelessness, negligence and misappropriation of a specific amount, is incorrect since Annexure A-2, the charge sheet dated 10-1-1986, does not constitute any misappropriation since the prosecution has been

NK. Srivastava

accorded for misappropriation of an amount of Rs. 1,28,336.05 vice crime no. 89/84, Police Station G.R.P., Faizabad. In that case, after investigation, the competent Court of law, Chief Judicial Magistrate, Faizabad, has already accepted the final report as is evident by Annexure A-3 which contains intimation letter of Spudt of Police, C.B.I., Lucknow, vide letter No. 348/3/22/84/GWB/Lucknow dated 30.1.1986 sent to Commandant, R.P.F., Northern Rly, Lucknow. The allegation of misappropriation of amount of a sum of Rs. 990/- by the applicant in March 1984 is absolutely false. It is evidently clear from the Cash Book maintained by the applicant that this amount has already been mentioned in the Assets and Liabilities of the Cash Book. (Proof of the said alleged amount mentioned in the cash book will be supplied by the applicant at the time of arguments before this Hon'ble Tribunal.) This amount of Rs. 990/- has been falsely mentioned in the charge sheet (Annexure A-2) only to implicate the applicant in the case of misappropriation of money when the opposite parties failed to prove the charge of misappropriation of the amount of Rs. 1,28,336.05. There is no truth in the allegation that the applicant has misappropriated only Rs. 990/- in the month of March 1984. This can be established by the following facts :

- (1) It is clearly indicated in the cash book prepared by the applicant and in the final checking conducted by 3 gazetted officers and one non-gazetted

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officers in the month of January 1984, <sup>2 APRIL 84</sup> and no misappropriation was found against the applicant.

(2) In the month of April 1984, after final checking, the F.I.R. was lodged and there was no mention in the F.I.R. about the allegation of misappropriation of Rs. 990/-.

(3) Rule 1309(I) of Manual of Cash and Pay Office, Pay Branch, Part II, clearly indicates that the checking is done monthwise and in the month of March 1984 there was no allegation of misappropriation against the applicant. Therefore this figure of Rs. 990/- is hypothetical, imaginary and misleading.

G - The finding recorded in para 8 of the judgement "we are of opinion that the new development of institution of a criminal case was certainly an 'exceptional circumstance' which could justify the Assistant Chief Cashier to place the applicant under suspension during the pendency of the criminal case" is erroneous and beyond the facts on record of the case. In fact there was no exceptional circumstance as provided under rule 5(1) of the Railway Servants (Discipline and Appeal) Rules, 1958 since there was no criminal case instituted against the applicant with regard to the charges mentioned in the charge sheet (Annexure A-2 dated 10-1-1986) for which the applicant has been suspended by mentioning in the suspension order that the applicant has been suspended in respect of the criminal case which was registered vide Crime No. 89

Mr. Srivastava

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of 1984 against the applicant has already been finalised and the final report has already been accepted by the Chief Judicial Magistrate, Faizabad, as is evident from Annexure No. A-3. Therefore, after a lapse of 6 years, the suspension of the applicant on the basis of the charges mentioned in Annexure A-2 does not create any exceptional circumstance for suspending the applicant specially when the applicant was posted in the Accounts Office attached to the Divisional Railway Manager, having no dealing with the cash. Thus the Opposite Parties No. 3/4 has passed the impugned suspension order in the garb of criminal offence which was under investigation/enquiry/trial.

It is submitted that the theory of approval accorded by the Senior Divisional Accounts Officer is baseless since there is no provision under the Railway Servants (Discipline and Appeal) Rules, for according any approval by the competent authority to pass the suspension order. Had the competent authority been of the opinion that the applicant should have been placed under suspension, then he should have passed the suspension order herself. But in the present case the suspension order was passed by the Opposite Party No. 3/4 in the garb of approval of Senior Divisional Accounts Officer, in a most arbitrary manner.

H - That the counter affidavit sworn by Sri Khubi Ram Opposite Party No. 3/4, filed on behalf of Opposite Parties no. 1 and 2, could not be considered in the

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present case since no authority letter for filing the counter affidavit on behalf of the Opp. Parties no. 1 and 2, was produced before the Tribunal in spite of clear objection of the applicant in para 2 of the Rejoinder Affidavit dated 6-2-1990.

It is submitted that Sri Khubi Ram, Opposite Party No. 4, holding the post as Opposite Party No. 3, is himself involved in the criminal case and in the enquiry he was found to have been remiss and negligent in the discharge of his official duty, as has already been stated in para 7.14 of the claim petition, but this Hon'ble Tribunal while deciding the aforesaid Registration O.A. No. 58 of 1989, has not considered the fact. It is relevant to mention here that the opposite parties have stated in their counter affidavit that the approval for suspending the applicant was alleged to have been given by the Opposite Party No. 2, then it is the sole duty of the Opposite Party No. 2 to file her own counter affidavit before this Hon'ble Tribunal.

2. That in view of the aforesaid facts and circumstances mentioned in paras 1-A to 1-H it is expedient in the interest of substantial justice to the applicant that this Hon'ble Tribunal may graciously be pleased to review the judgement dated 2-3-1989 passed in Registration O.A.No. 58 of 1989(L)

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by the Division Bench of Hon'ble Justice Kamleshwar Nath, Vice Chairman, and Hon'ble K.J. Raman, Member(A), otherwise the applicant will suffer x irreparable loss.

P r a y e r

WHEREFORE, it is most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to review the judgement dated 2-3-1989 passed in the Registration O.A. No. 58 of 1989(L) by the Division Bench of Hon'ble Justice Kamleshwar Nath, Vice Chairman and Hon'ble K.J. Raman, Member (A), otherwise the applicant will suffer irreparable loss.

Dated Lucknow:  
March 30, 1990.

N.K. Srivastava

Applicant.

Chk. Sr.  
D.A. off. 22  
N.R. 1/2/90

Verification

I, the applicant above named, do verify that the contents of paras 1 (including sub-paras A to H) and para 2 of this review application are true to my personal knowledge, and that I have not suppressed any material fact.

Dated Lucknow:  
March 30, 1990.

N.K. Srivastava

Applicant.

G.L.L. Varma  
Advocate,  
Counsel for the Applicant. Adli

Honble Central Administration  
बअदालत श्रीमान ~~International Arbitration~~ महोदय  
Circuit Bench Lucknow

वादी (मुद्दै) मुद्दै (मुद्दालेह) Registration वकालतनामा  
8-11-1990 5/8/90

Nand Kishore Srivastava Apples  
Union of India & Ors  
बनाम प्रतिवादी (रिस्पान्डेंट)

नं० मुद्दमा सन पेशी की ता० १९ ई०  
ऊपर लिखे मुकद्दमा में अपनी ओर से श्री G. S. L. Varma

M. P. Singh Advocate वकील महोदय  
497/5 Babangana Lko एडवोकेट

को अपना वकील नियुक्त करके (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर करें या अन्य कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा या इकबाल दावा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तस्दीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी या विपक्ष (फरीकसानी) का दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करें वकील महोदय द्वारा की गई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी। मैं यह भी स्वीकार करता हूं कि मैं हर पेशी स्वयं या किसी अपने पैरोकार को भेजता रहूंगा। अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर न होगी। इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर M. S. Srivastava

साक्षी (गवाह) साक्षी (गवाह)

दिनांक 28th March 1990 महीना सन् १९ ई०

(A21)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
LUCKNOW CIRCUIT BENCH

Registration O.A. No. 58 of 1989 (L)

Nand Kishore Srivastava .... Applicant

Versus

Union of India & Others ..... Opposite Parties

Hon. Justice Kamleshwar Nath, V.C.

Hon. K.J. Raman, Member (A)

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

This application under Section 19 of the Administrative Tribunals Act XIII of 1985 is for quashing an order dated 24.1.89, Annexure-A7 whereby the applicant was placed under suspension.

2. The applicant, Nand Kishore Srivastava was originally a Senior Cashier in the office of the Senior Divisional Accounts Officer, Northern Railway Lucknow but shortly after detection of some acts of misconduct which were subject matter of a chargesheet dated 10.1.86, Annexure-A2, he was posted as Clerk in the Provident Fund Arrears Cell in the same office.

The chargesheet, Annexure-A2 dated 10.1.86 was for alleged carelessness and negligence in keeping <sup>and</sup> handling cash, causing cash loss of Rs.1,28,336-05 to the Railways and misappropriation of Rs.990/-. The applicant was already under suspension since 19.4.84 in connection with an earlier chargesheet which was withdrawn on 10.1.86, followed by the issue of chargesheet, Annexure-A2; the suspension was withdrawn on 16.1.86 by the Senior

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Divisional Accounts Officer.

3. While the enquiry under the chargesheet, Annexure-A2 was still pending, the impugned suspension order dated 24.1.88, Annexure-A7 was issued under the signatures of the Assistant Chief Cashier stating inter alia that since the case against the applicant in respect of criminal offence was under investigation/enquiry/trial hence he (the authority competent to place the railway servant under suspension/ an authority mentioned in the proviso to Rule 5(1) of Railway Servants (Discipline & Appeal) Rules, 1968) in exercise of powers under Rule 4/Proviso to Rule 5(1) placed the applicant under suspension with immediate effect.

A remark is further recorded that the suspension order had the approval of the Senior Divisional Accounts Officer recorded at page 1 of File No.CP/MSK/88.

4. Bereft of various insubstantial points raised in the case by the applicant, the principal contentions are that the chargesheet had been issued by the Assistant Chief Cashier who was not competent to suspend as he was not the Appointing Authority or the authority empowered to make suspension and that there were no "exceptional circumstances" within the meaning of proviso to Rule 5(1) of D.A.R. enabling him to pass the suspension order pending subsequent approval of Senior Divisional Accounts Officer.

5. The reply of the opposite parties is that the approval of the Senior Divisional Accounts Officer had already been given before the issue of the impugned



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suspension order which though signed by the Assistant Chief Cashier is in substance in the nature of a mere communication of suspension done by the Senior Divisional Accounts Officer.<sup>o</sup> The alternative contention is that there did exist 'exceptional circumstances' inasmuch as the applicant had been subjected to a criminal offence chargesheet dated 27.10.88 in a Criminal Court and a Criminal Case under Section 409, Indian Penal Code read with Section 5(2) and other provisions of the Prevention of Corruption Act was pending in the Court of the Special Judge (Central) Anti Corruption, Lucknow.

6. We have heard Shri B.C. Saxena for the applicant and Shri Anil Srivastava at considerable length and have gone through the record. It is not disputed that in terms of the Schedule of Disciplinary Powers and powers of suspension of different grades of Railway Officers/ Senior Supervisors appended to Railway Servants (Discipline and Appeal) Rules, 1968, the Senior Divisional Accounts Officer was competent to place the applicant under suspension and the Assistant Chief Cashier was an officer next below to the Senior Divisional Accounts Officer.

7. It is clearly mentioned in para 25 of the Counter Affidavit that prior approval of Senior Divisional Accounts Officer, Opposite Party No.2 had been taken on 24.1.89. The allegation of the applicant that the approval was accorded on 27.1.89 was specifically denied. The learned counsel for the applicant produced before us another photo copy of the impugned suspension order, Annexure-A7 in which there is some illegible initial below





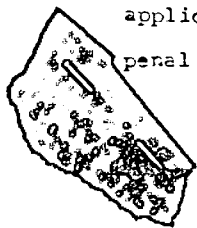
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and across the remark of approval of the Senior Divisional Accounts Officer, bearing the date of 27.1.89.

It may be mentioned that Annexure-A7 filed originally with the petitioner does not contain the initial or date below the initial. Prime facie the initial does not seem to concern any responsible officer and therefore we have no reason to doubt the clear statement contained in para 25 that the Senior Divisional Accounts Officer, opposite party No.2 had recorded the prior approval of the suspension on 24.1.89, which approval was clearly endorsed on the impugned suspension order, Annexure-A7. In this state of affairs, even though the language of the suspension order could be read to imply the passing of the suspension order by the Assistant Chief Cashier, in substance it constitutes a mere communication of an order of suspension issued with prior approval of the competent authority.



2. Even otherwise, we think that the mere fact of the lapse of time between 10.1.86 when the chargesheet Annexure-A2 was issued and the date of the impugned suspension order (24.1.89) would not justify a conclusion that there were no 'exceptional circumstances' within the meaning of the proviso to Rule 5(1) which could enable the Assistant Chief Cashier to order it suspension. The new factor consists of a criminal investigation into the alleged act of misappropriation of railway money and misuse of the powers by the applicant in a corrupt manner punishable under the penal law as also under the Prevention of Corruption Act, 1947.

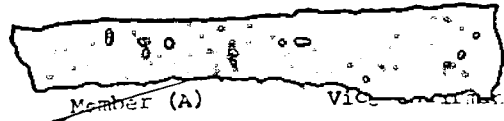


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Act. The institution of a criminal case in the competent Court on those charges on the basis of a criminal offence chargesheet dated 27.10.88 is certainly a new feature vis-a-vis the original chargesheet Appendix-A2 dated 10.1.88 for disciplinary proceedings on account of carelessness, negligence and misappropriation of a specified amount. We are of the opinion, that the new development of institution of a criminal case was certainly an 'exceptional circumstances' which could justify the Assistant Chief Cashier to place the applicant under suspension during the pendency of the criminal case.



9. In view of the above, we find no force in this application which therefore is dismissed. Parties shall bear their costs.



Dated the 2<sup>nd</sup> March, 1990.

RCM

*Attested*

*CTC*

*R. S. Mishra*

*2/3/90*

Deputy Registrar  
Central Administrative Tribunal  
Lucknow Bench,  
Lucknow