

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,BENCH

OA/TA/RA/CP/MA/PT 07.17 of 20.90

Babu Ram Vaisya.....Applicant(S)

Versus

U.O.9.....Respondent(S)

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B.C. file weeded and destroy

Certified that the file is complete in all respects.

Signature of S.O.

Deo
11/6/12

Signature of Deal. Hand

16

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Lucknow this the 4th day of April 1996.

O.A. No. 17 of 1990.

HON. MR.JUSTICE B.C. SAKSENA, V.C.

Babu Ram Vaish aged about 69 years, son of late
Shri Lal Nathu Lal, resident of E-I/658, Vinay
Khand-I, Gomti Nagar, Lucknow.

Applicant.

By Advocate Shri A. Moin.

versus

1. Union of India Ministry of Railways, through
General Manager, Northern Railways, Baroda House,
New Delhi.

2. The Divisional Railway Manager, Moradabad.

Respondents.

By Advocate Shri A.K. Chaturvedi.

O R D E R

HON.MR. JUSTICE B.C.SAKSENA, V.C.

Through this O.A. the applicant a retired
employee of the Northern Railway seeks a direction
to be issued to the respondents to pay him full
amount of gratuity with 15% compound interest per
annum from 1.8.79 to the date gratuity is finally
paid.

2. The brief facts are that the applicant after
serving for about 37 years, retired as Station
Master on the 31st of July, 79. All the post
retirement benefits have been paid to him but ~~the~~
gratuity was not paid. The applicant preferred an
application, as per advice tendered to him, under
section 15 of the Payment of Wages Act, 1936 before
the prescribed authority (City Magistrate,
Shahjahanpur). The same was decided by judgment
dated 21.7.89 and the learned Prescribed Authority

B.C.S.

held that the question of gratuity does not fall for decision under section 15 of the Payment of Wages Act. The applicant therefore, has filed this O.A.

3. It has been averred that in paragraph 14 of the written statement filed by the respondents before the prescribed authority, it has been indicated ~~xxxxxxxxxxxxxxxxxxxxxx~~ that Wagon No. No. NR-24490 was fraudulently diverted from Mughalsarai and delivered at Safipur, the station where the applicant was working, on forged railway receipts dated 20.5.77 by the applicant. It was also indicated that three more wagons were also delivered by the forged Railway receipts by the plaintiff, resulting the loss of about 21,400 to the Central Government. It was also disclosed in the said written statement that the payment of gratuity of Rs 13,411.20 has been withheld on the advice of Superintendent of Police, Railways, Lucknow. In the O.A. the applicant, therefore, took the plea that the order for withholding the applicant's gratuity had been passed without holding any enquiry under the Railway Servants (Discipline and Appeal) Rules.

4. The respondents have filed a Counter Affidavit in which they have indicated that the applicant had effected delivery on forged railway receipts which resulted in loss of Central Government to the tune of Rs 21,400. It has been stated that the matter was investigated by the Outstanding Inspector, Moradabad and the applicant was held responsible for delivery of the above wagons on forged railway receipts, therefore, Senior Commercial Officer, Headquarter, Baroda

Bd.

House, New Delhi ordered for the withholding of payment of gratuity of the applicant. It has also been pleaded that the order for withholding of gratuity was passed in the year 1979 and thus this O.A. which was filed in the year 1990 is barred by limitation.

5. The applicant has filed Rejoinder Affidavit reiterating the averments made in the O.A.

6. A supplementary counter affidavit on behalf of the respondents was filed in reply to the rejoinder in which it has been indicated that the actual owners of the wagons have preferred a claim for cost of material and investigation was conducted by the Outstanding Inspector, Moradabad whose report dated 6.11.79 has been filed alongwith the order passed by the competent authority to recover the cost, i.e. Rs21,400 from the settlement dues of the applicant. It has further been pleaded that since the amount of gratuity was less than the amount to be recovered from the applicant the gratuity is not being paid to him. The applicant has filed Supplementary rejoinder.

7. I have heard the learned counsel for the parties. The short question that falls for consideration is whether the investigation or the report made by the Outstanding Inspector could be treated sufficient for ordering withholding of the gratuity. The learned counsel for the applicant cited a few decisions in support of his submission that an order for forfeiture of gratuity can only be passed by the President of India, hence the order passed by the Senior Commercial Officer was incompetent. The decision cited by the learned counsel for the applicant is reported in

1989(11) A.T.C. 675, Bimalendra Banerjee vs. Union of India and others. The learned counsel for the respondents in respect of this ~~xxxxx~~ decision submitted that it would not apply since in the instant case no order for forfeiture of the gratuity has been passed. He, therefore, submitted that the said decision, in so far as it lays down that the President of India alone was competent to order for forfeiture of gratuity is not attracted to the facts of the present case. There is force in the submission made by the learned counsel for the respondents. In the same context other decision cited by the learned counsel for the applicant reported in 1990 (Supplement) S.C.C. 640 F.R. Jesuratnam vs. Union of India and others also would not be applicable. The question, there was whether gratuity can be forfeited. The Hon'ble Supreme Court took the view that gratuity is no longer a bounty but it is a matter of right of the employee and it can therefore, no longer be regarded as a provision in the discretion of the President as provided in the Pension Regulations. Since there is no legal provision empowering the authorities to forfeit the gratuity payable to an employee, the order passed by the Government forfeiting the gratuity payable to the appellant must be held to be bad and must be set aside." The said decision however, goes to show that the gratuity is no longer a bounty and it is a matter of right of employee. Even forfeiture of the same by the President under the provisions in the Pension Regulation was found to be not legal provision empowering the authorities to forfeit the gratuity payable to an employee. Thus, the withholding of gratuity would also be without authority of law.

R.D.

8. The next question that arises ^{is} as to whether the investigation by the outstanding Inspector was sufficient to warrant the order for withholding the gratuity. The learned counsel for the applicant cited a few decisions on this aspect of the matter. They are:

i) Ram Shiromani vs. Union of India and others vs. Union of India reported in (1995) 30 A.T.C. 330.

ii) Barindra Kumar Ghosh vs. Union of India reported in (1991) 5 ATC, 83.

iii) S.S. Poley vs. Union of India and others reported in 1989(11), AT.C. 699.

9. Under the Railway Pension Rules, there is a provision in rule 2308 (CSR 351-A) which reads as under:

"The President further reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding, the pension is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement."

for

In the definition clause in rule 2302(10) (CSR 41) pension has been defined as follows:

"Except when the term "pension" is used in contradistinction to Gratuity, "Pension" includes Gratuity."

Thus, even ~~if~~ under rule 2308 of the Pension Rules withholding of pension would also include gratuity with a view to recover the pecuniary loss caused to the government can only be passed after departmental or judicial proceedings in which pensioner is found guilty of misconduct or negligence during the period of his service. No departmental enquiry as contemplated under rule 9 of the Railway Servants (Discipline and Appeal) Rules has admittedly been held. Therefore, the order passed by the Senior Commercial Officer for withholding of the gratuity is clearly illegal. In the aforesaid two decisions it has been held where no charge sheet has been issued, D.C.R.G./commutation of pension could not be withheld unless a formal charge sheet was issued in a departmental proceedings or filed in a court of criminal trial. In the first case, on intimation of the C.B.I. the order for withholding D.C.R.G. /commutation of pension was passed and it was held that withholding of D.C.R.G./commutation of pension on the basis of said intimation of C.B.I. alone was incompetent.

10. In the second case only fact finding enquiry was held and recovery was ordered. It was held that the recovery was illegal.

11. The learned counsel for the respondents

AB

submitted that since the order for withholding gratuity was passed in the year 1979, and the O.A. was filed in the year 1990, the same is highly belated and barred by limitation. It is very well settled that gratuity is no longer a bounty and the right to pension is/ recurring cause of action. I am therefore, not impressed with the submission.

11. In view of the above, the O.A. succeeds. The order for withholding of gratuity as passed by the Senior Commercial Officer through his letter dated 22.11.79, copy of which has been filed as Annexure -1 to the Counter Affidavit is quashed. The respondents are directed to pay to the applicant the amount of gratuity payable to him with interest at the rate of 12% per annum from the date it became payable till the date it is actually paid. The payment of the gratuity/may be made within three months from the date of communication of this order to the respondents. It is further provided that in the event of failure to comply with the above directions, the respondents would be liable to pay to the applicant amount of gratuity alongwith interest at the rate of 15% per annum from the date it became payable till the date of actual payment. No order as to costs.

B.S. Akbar

~~MEMBER (2)~~ - 81

VICE CHAIRMAN

Lucknow; Dated: 4.4.91

Shakeel/

16-1-80

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Registration No. 17 of 1969 (C)

APPLICANT(S) B. R. Vaish
RESPONDENT(S) U.O.C.

	<u>Particulars to be examined</u>	<u>Endorsement as to result of examination</u>
1.	Is the appeal competent ?	Y
2.	a) Is the application in the prescribed form ?	Y
	b) Is the application in paper book form ?	Y
	c) Have six complete sets of the application been filed ?	Y
3.	a) Is the appeal in time ?	Y
	b) If not, by how many days it is beyond time ?	
	c) Has sufficient cause for not making the application in time, been filed ?	Y
4.	Has the document of authorisation/ Vakalatnama been filed ?	Y
5.	Is the application accompanied by B.O./Postal Order for Rs.50/-	Y
6.	Has the certified copy/copies of the order(s) against which the application is made been filed ?	Y
7.	a) Have the copies of the documents relied upon by the applicant and mentioned in the application, been filed ?	Y
	b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?	Y
	c) Are the documents referred to in (a) above neatly typed in double space ?	Y
8.	Has the index of documents been filed and pagging done properly ?	Y
9.	Have the chronological details of representation made and the outcome of such representation been indicated in the application ?	Y
10.	Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal ?	No

Particulars to be ExaminedEndorsement as to resultExamination

11. Are the application/duplicate copy/spare copies signed ?

12. Are extra copies of the application with Annexures filed ? *Ys*
 a) Identical with the Original ?
 b) Defective ?
 c) Wanting in Annexures
 No. of pages _____ ?

13. Have the file size envelopes bearing full addresses of the respondents been filed ? *No*

14. Are the given address the registered address ? *Ys*

15. Do the names of the parties stated in the copies tally with those mentioned in the application ? *Ys*

16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ? *NA*

17. Are the facts of the case mentioned in item no. 6 of the application ? *Ys*
 a) Concise ?
 b) Under distinct heads ?
 c) Numbered consecutively ?
 d) Typed in double space on one side of the paper ?

18. Have the particulars for interim order prayed for indicated with reasons ? *Ys*

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

dinesh/

6A 17/90 (4)

19.1.90

Hn. J. P. Sharma, J.M

3

The Ad. Counsel Mr. Tewari

wants time to argue a brief
bank of Himalayan. Res.

5/2/90

or C.M.A. No 77/90th filed
by 4c for the applicant
for condonation of delay 2

5.2.90

No sitting. Ady to 21/2/90
4c for the applicant is
present

21.2.90.

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

Sri T.N. Tewari counsel for
the applicant is present
issue notices to the
respondents to show
cause why the application
be not admitted. The reply
if any, may be filed
by 19.3.90. and put up
for orders on the date
fixed.


J. P. Sharma
J.M.

or
notice issued
1/3/90

OR
Notices were
issued on 1.3.90.
No answer
nor any unsworn
rep. ever to be
seen here.

S. P. O.

ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD/C.B. LUCKNOW

O.A.NO. 17/ No. 90 (L) OF 19

BABU RAM VAISH Vs. U.O.I.

Sl.No.	Date	Office Report	Orders
12291		Writting Ady to 13.3.91 CA filed L 4/3/91	<p>27.11.90 Hon'ble Mr. Justice K.Nath, V.C. Hon'ble M.M.Singh, A.M. Respondents Counsel requests and is allowed 4 weeks time to file counter, rejoiner may be filed within 2 weeks thereafter. ADMIT. List before D.R. on 16.1.91 for fixing a date if possible, after completion of record.</p> <p>Sd/ A.M.</p> <p>Sd/ V.C.</p> <p>16.1.91 D.R.</p> <p>Both the parties are absent today. Counter has not been filed by O.P., hence O.P. to file counter by 12/2/91. Case is listed before me on 12/2/91.</p>
		CA filed on 4.3.91 No RA filed L 12/3	<p>13.3.91 D.R.</p> <p>Both the parties are absent today. Counter has been on 4.3.91 by the re- spondents, but rejoinder not been filed till by the applicant.</p>

O.A. 17/90

20.11.91
D.R.

Applicant's side is

present. Applicant
is directed to file Rejoinder
by 10/2/92.

10.2.92

D.R.

Both the parties are
absent. Applicant
did not file Rejoinder
till today. He is ordered
to file it, by 28/4/92.

Behandlung
JAO/IC

28.4.92

D.R.

Applicant is present
in person. He is further
ordered to file Rejoinder
by 29/7/92. O.P. is
absent.

29.7.92

D.R.

Both the parties are present.
Applicant is directed to
file rejoinder by 28.9.92.

OA. No. 17/90

21/4/93

6

Hon. Mr. S.N. Prasad, J.M.

The Case called out again after lunch. Shri Ram Ray learned Counsel for the applicant & Shri A.K. Chaturvedi learned Counsel for the respondents are present. Counsel for the respondents file Supplementary Counter affidavit. Copy where of has been received by the learned Counsel for the applicant. Supplementary Rejoinder affidavit, if any may be filed within 4 days.

list this case on 28/4/93 for hearing and disposal.

of
SCADA
Bhagat
SSB
V.P.D.

date
28.4.93

J.M.

Honble Mr. S.N. Prasad, J.M.

The learned Counsel for the applicant has sought adjournment. List this case for hearing and disposal on 29.4.93.

J.M.

29.4.93 Honble Mr. S.N. Prasad, J.M.

case called out. Non-response on behalf of either of the parties. Set up again after lunch.

J.M.

O.A. 17/90 (C)

29/4/93

7

No sitting of single ^{member} bench after lunch.
Case is adjourned to 11/5/93.

11/4/93
S.P.M.
Delivered Submitter C.P.A.
S.M.A. & R.P.M.

11/5/93

Hon. Mr. S.N. Basad, I.M.

None responds on behalf
of either of the parties.
C.P.A & R.P.M. have been
Exchanged. List this case
on 19/5/93 for hearing
& disposal.

on
C.P.A & S.M.A.
R.P.M.
S.P.M.

I.M.

19/5/93

Hon. Mr. S.N. Basad, I.M.

The case called out.
The counsel for the applicant
has sought adjournment.
List this case on 24/5/93
for final hearing. & dispose

on
C.P.A
S.M.A.
R.P.M.
S.P.M.
a
21/5/93

I.M.

O. A. 17/90

08/10/1993

No sitting of Single Bench
Case is adjourned to 13/10/93.

~~DR~~
~~crossed out~~
DR
~~DR~~

13/10/93

Hon. Mr. Justice R.K. Varma, V.C.

Sris v.s. Tripathi learned
counsel for the petitioner has
sought adjournment. The case
is adjourned.

R.K.V.C.

DR
31.8.94 As per direction of Hon V.C.
list it for hearing on
20.9.94. Motify in the
warning list.

DR

20-9-94

No sitting of D.B.
adj to 20-10-94

DR
BSC

31-1-95.

OA 17/90 9

Hon Mr Justice B.C. SARKAR, J.C.
Hon Mr. V.K. SETH, A.M.

The name of Shw V.S. Tafolla
be shown as learned counsel
for applicant in the cause
Lst. but for hearing on 23.2.95.

V.C. *Book*

V.C.

A.M.

A

23.2.95

Hon. Mr. D.C. Verma, J.M.

or
S.P.A
23/2/95

List this case on 22.3.95.

V
J.M.

22.3.95

HON. MR. V.K. SETH, MEMBER(A)

Advocates abstain from judicial work,
adjourn to 17.4.95

V
MEMBER(A)

Shakeel/

17/4/95

Hon'ble Mr. D.C. Verma, J.M.

Applicant: None.

Respondent: None.

Shri. Ram Raj, learned counsel
for the applicant has sent an appli-
cation for adjournment the same is
allowed.

List on 02/5/95 for hearing.

AR

J.M.

CSA 17180

578155

2

the concerned
person was not
informed if this section
whether he has deposited
seed cost in this
for "cereal".

Hon. Mr. D. C. Verme, Jr.

for applicant: Sh. A. Moh

for respondents: Sh. A. K. Chakravedi

The learned counsel for applicant
seeks & is allowed 2 weeks time
to file Supp. R.A.

21st for orders on 21st etc.

丁
3

21-9-95

~~or
sub RA not filed
after 10/15~~

No sitting of single Bench
adj. to 11/10/ast.

11-10-95

~~the~~
Bee

Hon Mr. V. R. S. Ch. A.M.

For A Moon for applicant.
None for respondent.
In pursuance of the order
of the Board, the ~~case~~^{cost}
has been deposited with
the Registry. The OA is
therefore ~~on the~~ restored.
The applicant be filed
Supplementary reports
Affidavit, copy of which
has been

as per
Gandy No
for
G

O.A. 17/90

11

20.12.95

Hon. Mr. Justice B.C. Saklana, V.C.

Sh. A. Mohd. I.d. counsel for the applicant
and Sh. A.K. Chaturvedi I.d. counsel
for the respondents are present. I.d.
counsel for the applicant seeks
adjournment. List this case on
05.1.96.

B.C.

V.C.

5.1.96

No sitting of S.B.

Adj. to 22.1.96.

N

B.C.

22/1/96

No sitting of S.B. case is
adj. to 24.1.96 for hearing

24/1/96

Hon. Mr. A.C. Verma, J.M.

for applicant: Sh. A. Mohd
Sh. A.C. Chaturvedi has appeared
earlier & informed that he is
busy in Court No. 1 & requested
for adjournment.

List for hearing on 26/1/96.

J.M.

SA 17/80

5/8/85

10

or
the concerned
person has not
improperly filed this section
whether he has deposited
seal cost in this
tribunal.
19/9/85

Hon. Mr. D.C. Verma, J.M.

for applicant: Sh. A. Mohan
for respondents: Sh. A. K. Chaturvedi

The learned counsel for applicant
seals & is allowed 2 weeks time
to file Supp. R.A.

2nd for orders on 21/10/85

J. M.

2

21-9-85

No sitting of Single Bench
adj. to 11/10/85:

or
et
Supp. R.A. not filed
a/c to OA

11-10-85

^{the} B.C.

Hon. Mr. V. R. Sh. A. M.

Sh. A. Mohan for applicant.
None for respondent.
In pursuance of the OA & OA
of the Tribunal, the ~~case~~ ^{cost}
has been deposited with
the Registry. The OA is
therefore ~~set~~ restored.
The applicant has filed
Supplementary respondents
Affidavit, copy of which
has been served on the
respondents' counsel.

As the pleadings are
complete, they will be listed
for hearing on 18-10-85.

AB

14

O.A. 17/90

11

20/12/95

Hon. Mr. Justice B.C. Saketna, V.C.

Sh. A. Mohd. I.d. counsel for the applicant
and Sh. A.K. Chaturvedi I.d. counsel
for the respondents are present. I.d.
counsel for the applicant seeks
adjournment. List this case on
05.1.96.

BOL

V.C.

5/1/96

No sitting of S.B.

Adj. to 22.1.96.

N

B.C.

22/1/96

No sitting of SB. case is
adj. to 24.1.96 for hearing

*S
BOL*

24/1/96

Hon. Mr. A.C. Verma, J.M.
for applicant: Sh. A. Mohd.
Sh. A.K. Chaturvedi has appeared
earlier & informed that he is
busy in Court No. 1 & requested
for adjournment.
List for hearing on 12/2/96

J.M.

CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW.

O.A. No. 17/90

Dt. of decision _____

Babu Ram Vaid Petitioner(s)

Ran A. Maitra Advocate for the
petitioner(s)

VERSUS

Union of India Respondent(s)

Smt A K Chaturvedi Advocate for
respondent(s)

CORAM :-

HON'BLE MR. Justice B.C. Saksena, V.C.

HON'BLE MR. W

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

B.C. Saksena

SIGNATURE

Date 16-1-80.

Date of filing 16-1-80.

In the Hon'ble Central Administrative Tribunal,

Additional Bench Allahabad, (Registration)

Circuit Bench at Lucknow,

C.A. No. 17 of 1990 (L).

B.R. Vaish

Applicant.

Versus

Union of India & another ... Respondents.

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4	Power.	15

Separate

5	Annexure A-1, Copy of notice under Section 80 C.P.C.	1-2
6	Annexure A-2, copy of judgement dated 21-7-1989.	3-6

Filed Today
Served on
19.1.1990
Advocate
16.1.1990

For the use in Tribunal office Applicant

Date of Filing 16/1/90

through

Registration No.

Subhash Singh
(T.M. Tiwari)Signature
for Registrar.Advocate
counsel
for applicant.

B.R. Vaish

In the Hon'ble Central Administrative Tribunal,
Addl. Bench Allahabad,
Circuit Bench at Lucknow.

O.A. No. 17 of 1990 (L)

Central Administrative Tribunal
Court of Inquiry
Date, 16-1-90
Date of hearing, Past.....

Deputy Registrar(J)

Babu Ram Vat, aged about 69 years, son
of late Shri Lala Nathu Lal, resident of
E-I/658, Vinay Khand-I, Gomti Nagar, Lucknow.

....Applicant.

Versus

1. Union of India Ministry of Railways,
through General Manager, Northern Railways,
Bareda House, New Delhi.
2. The Divisional Railways Manager, Moradabad.

....Respondents.

DETAILS OF THE APPLICATION.

1. Particulars of order against which the application is made :-

That the application is made against
the order of Denial of the payment of Gratuity
availed in the Written Statement in a case
pending before the Prescribed Authority under
Payment of Wages Act (Annexure A-3).

B.R. Vaish

2. Jurisdiction of the Tribunal :

That the applicant declares that the subject matter of the order/decision against which he wants redressal is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation :

That the applicant further declares that the application is within the limitation period prescribed in Section 21 of the Central Administrative Tribunal Act, 1985.

4. Facts of the case :

(a) That the applicant had joined Railways services as Assistant Station Master on 16-8-1942 and after serving to his best dedication for about 37 years was retired w.e.f. 31-7-1979 as Station Master from the Railways - Station Saifpur district Umaria.

(b) That before retirement the
B.R. Vaish

applicant had visited the office of respondent no. 2 so as to complete all the required formalities with regards to the completion of the retirement/pension papers. In the said office the dealing concerned demanded certain sum to finalise the papers and release all the dues in time. The applicant did not agree for the said sum and to which the dealing concerned became unhappy and said " SAHAB SAMAJH LO, BAD MAIN LOG PARESHAN HOTE HAIN." However, the applicant did not pay even a single paisa and after filling all the required papers he returned back to Saifpur Station.

(e) That at the time of retirement the applicant was cleared from the concerned office and all the dues including pension and other claims were paid to him but the gratuity was not at all paid while all the papers for required gratuity were got completed by respondent no. 2.

(d) That when the gratuity was not paid for more than 6 months after retirement the respondent no. 2 was contacted by one of the relative of the applicant as the applicant

B R Vaish

due to his serious sickness could not go personally. On personal contact, through relative it was confirmed that the same shall be paid shortly. However, the said gratuity has not been paid as yet.

(e) That the applicant just after retirement fallen seriously sick and as a result of that the matter of gratuity could not be agitated before the Hon'ble Court concerned. However, a notice under Section 30 C.P.C. was sent on 8-3-1984 through Sri S.D. Saxena Advocate which also could not elicit any result from their end. A true copy of notice is annexed herewith as ANNEXURE A-1 to this application.

(f) That being very much disappointed and finding no other way left out, the applicant preferred an application as advised under Section 15 of the Payment of Wages Act, 1936 before the Prescribed Authority (City Magistrate) Shahjahanpur and in the said judgement, which was delivered on 21-7-1989, the Hon'ble Prescribed Authority declined to decide the gratuity issue. A copy of the judgement is annexed herewith as ANNEXURE A-2.

B.R. Vaish

to this application

(g) That it is pertinent to mention here that the applicant was retired in 1979 and despite repeated request on personal contact the gratuity has not been paid to the applicant till date and when he had filed an application u/s 15 of the Payment of Wages Act the respondents had filed their written statement admitting an amount of Rs. 13411.20 p. due on account of gratuity and alleged that the same had been withheld on the advice of the Superintendent of police Railways, Lucknow with regards to wrong delivery of Railways Wagons at Safipur Railway Station on forged Railway Receipts by the plaintiff. A true copy of the said written statement is annexed herewith as ANNEXURE A-3 to this application.

(h) That it is also pertinent to mention here that as alleged offence of the so called wrong delivery of wagons on forged railway receipts was committed on 20-5-1977 and the applicant was retired from services after about 2 years and 2 months but no administrative or disciplinary action was initiated against the applicant and even after

B.R. Verma

retirement till date no proceedings to meet such loss has been initiated by the respondents. This automatically goes to show that the applicant has been arbitrarily and deliberately with malafide intention put to suffer irreparable loss and injury in his old age.

(i) That it will not be out of place to mention here that it is not understood as to why the respondents have kept quite till date for taking any action to meet the loss of Rs. 21,400/- as alleged in the para 10 of the said written statement outstanding against the applicant. This also proves nothing but only to harass the applicant in his old age.

(j) That the respondents have no right to forfeit the gratuity of the applicant without any cogent reason and affording an opportunity to him. The provision to forfeit the gratuity is contemplated in Section 4 (6) (b) of the Payment of Gratuity Act 1972 which reads as follows :

* Any decision to forfeit the gratuity under Section 4 (6) (b) can be taken

B.R. Vaish

only after affording opportunity
to the employee concerned."

Bharat Gold Mines Ltd. Vs. Regional

Labour Commissioner 1987 ILLN 303 Kant (DB).

(k) That from the aforesaid
it can be easily seen that the applicant is
an innocent and has ~~been~~ never delivered such
wagons even then his gratuity has been
with held and lastly forfeited, without
any reasonable ground and without affording
opportunity to him. As such the applicant
is entitled for principle amount plus 15%
per annum compounding interest right from
1-8-1979 to the date of payment.

* Sudhir Chandra Sarkar

vs.

Tata Iron & Steel Co. Ltd.

(1984) 3 SCC 369

1984 SCC (L & S) 540

(1) That the applicant has
already suffered a lot and respondents are
adamant not to pay the gratuity to the
applicant. Under such circumstances, the
interference of this Hon'ble Tribunal is
very much essentially invited.

B.R. Vaish

5. Grounds for relief(s) with legal position.

That the applicant being aggrieved
of the illegal acts of Respondents is seeking
relief(s) amongst other on the following

G R O U N D S

(i) Because the applicant was retired in
1979 and even then his gratuity has been not
released so far though more than 10 years
have passed.

(ii) Because the so called offence was
said to have been committed in 1977 and
the applicant thereafter was in service for
more than 2 years but no action was taken.

(iii) Because no proceedings with regards
to such loss or wrong delivery of wagons
were recorded against the applicant.

(iv) Because the applicant had never
delivered such wagons.

B. R. Vaish

(v) Because in any case the applicant is entitled for his gratuity with 15% per annum compound interest.

(vi) Because no opportunity has been offered to the applicant before forfeiting his gratuity.

(vii) Because the action of the Respondents to forfeit the gratuity is plainly arbitrary, illegal and invites the interference of this Hon'ble Tribunal.

(viii) Because the gratuity can never be forfeited for no fault of the applicant.

(ix) Because the applicant had never been levelled with any such charges.

(x) Because the principles of natural justice have been violated by the respondents.

B.R.Vaish

6. Details of remedies exhausted:

That the applicant by filing the application under Section 15 of the Payment of Wages Act and sending notice under Section 30 of the Code of Civil Procedure, has exhausted all the remedies available to him. There is no other way out left except to approach this Hon'ble Tribunal for proper judicial intervention.

7. Matter not previously filed or pending with any other court.

That the applicant had filed the application under Section 15 of the Payment of Wages Act 1936 but the Prescribed Authority vide judgement dated 21-7-1989 declined to interfere into the matter of gratuity payable to the applicant, hence this application.

8. Relief(s) sought:

In view of the facts mentioned

B.R. Vaish

In para 4 above the applicant prays
for the following relief's :

(a) That the Hon'ble Tribunal
may graciously be pleased to direct
the respondents to pay the full gratuity
to the applicant with 15% per annum
compound interest from 1-8-1979 to the
date the gratuity is finally paid.

(b) Any other relief deemed just
and proper in the circumstances of the
case by the Hon'ble Tribunal may be granted
in favour of the applicant.

(c) Cost of the application may
also be awarded to the applicant as against
the respondents.

8. Interim relief, if any, prayed for :

That pending decision the applicant
prays for the following interim order's

(a) That the respondent no.2 may be
directed to pay at least Rs.10,000/- immediately

B.R.Kaish

for survival of the applicant.

10. N/A.

11. A postal order serial no. B/02-424871 dated 16-1-90 issued from G.O. Wk post office for Rs.50/- as court fee.

12. List of enclosures :

Annexures A-1 to Annexure A-3.

Lucknow, dated:
January 15, 1990

B.R. Vaish
Applicant

Verification

I, Babu Ram aged about 69 years, son of late Shri Lala Nathu Lal, hereby verify that the contents of 1 to 4 and 6 to 12 are true to my personal knowledge and the contents of para 5 are believed to be true on legal advice and that I have not suppressed any material fact.

Lucknow, dated:
January 15, 1990.

B.R. Vaish
Applicant

I declare on Smt. B. Vaish who is personally known to me and has signed before me and delivered her
(Smt. B. Vaish)
(Smt. B. Vaish)

In the Hon'ble Central Administrative Tribunal
Addl Bench, Allahabad
Circuit Bench, Allahabad

O.A No. _____ of 1990 (L) 13

Babu Ram Vaish Applicant
Versus
Union of India & Others Respondents
ANNEXURE- A- 3

IN THE COURT OF SUB DIVISIONAL MAGISTRATE ~~area~~ (City Magistrate)
SHAHJAHAN PUR

No. 11 of 1995.

Baboo Ram Vaish v/s 1. Divisional Personnel Officer,
Northern Railway,
Moradabad.
2. Union of India.

sir,

written statement on behalf of defendants No.1 and
2 is as below-

Para-1. That the contents of Para 1 as stated are not admitted.
Para-2. That the contents of para 2 are admitted.
Para-3. (1 to 10)- That the contents of Para 3(1) to (10) as
stated are not admitted.
Para-4. That the contents of Para 4 are legal.
Para-5(a & (b))- That the contents of Paras 5 (a)& (b) are legal.
The relief claimed is not admitted.

ADDITIONAL PLEASE:

Para-6. That the claim of the applicant is time-barred.
Para-7. That the applicant has wrongly stated that Rs. 1200/-
have been deducted from his wages in connection with
punishment Notice No. 12/226/MK/76 Dt. 21.7.78.
Para-8. That the amount of Rs. 1200/- has been deducted
from his wages in connection with another claim case.
Para-9. That one wagon No. NR-24490 was fraudulently diverted
from Mughal Sarai and delivered at safipur on forged
railway receipt No. 675869 Dt. 20.5.77 by the Plaintiff.
That three more coal wagons were also delivered on
forged railway receipts by the plaintiff. That the
payment of gratuity comes to Rs. 13411.20 paise only
and it has been withheld on the advice of Superintendent
Police, Railway, Lucknow.

21400/-

Para-10. That an amount of L.S. ~~21400/-~~ is outstanding against him in connection with wrong delivery of coal wagons on forged railway receipts.

Para-11. That the cause of action arose to the applicant when he was posted at Safipur Railway Station (District Unnao).

Para-12. That the opposite parties have their offices at Moradabad and Delhi.

Para-13. That no cause of action arose to the applicant and the application needs to be dismissed with costs.

Para-14. That this court has no jurisdiction as the matter relates to Tilloh Sub-division.

Divl. Personnel Officer
N.Rly. Moradabad.

Senior Divl. Commr. Subdt,
~~Controller of Railways~~,
N.Rly. Moradabad
for Union of India.

The contents of the above paras are verified to be true on the basis of information gathered from official records.

Verified at Moradabad on 9/9/1985.

Divl. Personnel Officer,
N.Rly. Moradabad.

Senior Divl. Commr. Subdt,
~~Controller of Railways~~,
N.Rly. Moradabad
for Union of India.

महोदय
In the Harkile C.A.T. वंकालतनामा
वंकालत धीमान C. B. Jucker का [वादी अपीलांट]
प्रतिवादी [रेस्पाइट]

15

Do the Faculty C.A.T

महोदय

C. & B. Leder का देव

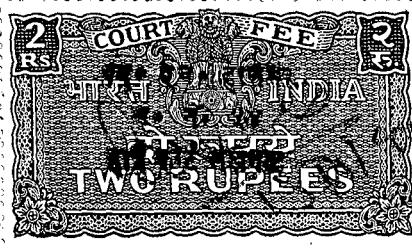
[बादी अपीलान्ट]

1998 2000 2002 2004 2006

प्रतिवादी [रेस्पाडेन्ट]

9 A.M.

- At 1980 ✓ 1



(अपोलान्ट)

Sabu Ram Vaish Somnath
Mrs. I. Dube & Austin प्रतिवादी (रेस्पांडेंट) Peppi
बनाम
नं० मुकद्दमा १६ ई०
पेशी की ता० T.N. Tripathi *Advocate*
ऊपर लिखे मुकद्दमा में अपनी ओर से श्री बकील
महोदय
एडवोकेट
वा० Shri V.S. Tripathi, Advocate

नाम अदालत'.....
मुकदमा न०.....
नाम फरीकेन'.....

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया लासूब करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करे मुकद्दमा उठावे या कोई रुपया जमा करे या हारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करे—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होमा मैं यह भी स्वीकार करता हूं कि हर वेशी पर स्वयं या किसी अपने पैरोकार को मेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह बकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे ।

✓ B.R. Vaish
हस्ताक्षर

साक्षी (गवाह) साक्षी (गवाह)

दिवांक महीना - - + - - सन् १९७०

स्वीकृत

साक्षा (गवाह) सम. १६९५०
सं. १६९५०
सम. १६९५०

Babu Ram Waish Applicant

Union of India & ^{An} Others Respondents

ANNEXURE- A-1

The Union of India,
Through the General Manager,
Northern Railway, Baroda House,
New Delhi.

Div'l Railway Manager H. R. Moradabad.

Subject- Notice u/s 80 CPC in respect of payment of
Rs 1200/- deducted vide Punishment letter
dated 21.7.78 which was later cancelled by
DRM/RB letter No. 13/52/236/MK/76 dated
2.4.80 to Sri B. R. Waish, ~~Retired~~ Retd. Station Master Safipur Distt. Unnao,
Moradabad Division U.P.

Sir,

Under instruction from my client Retd. Station
Master Safipur, the above named, I beg to submit the
unsworned notice u/s 80 CPC on the following grounds:-
1. That my above named client was working as Station
Master Miharpur Katra Distt. Shahjahanpur in the year
1975.

2. That my client was served with charge sheet No.
13/SR/236/MK/76 dated 12.7.76 was received by my client
on 25.3.78. My client requested the administration for
inspection of records mentioned in the charge sheet
which was shown to my client on 17.7.78.

3. That while my client was in the process of seeing
the record he was served with punishment order notice
No. 13/SR/236/MK/76 dated 21.7.78 served on 25.7.78
without awaiting for the reply of charge sheet imposing
recovery of Rs 100/- from the pay of my client.

4. That my client thereafter appealed to Divisional
Railway Manager Northern Railway Moradabad which was
allowed via letter No. 13/SR/236/MK/76 dated 2.4.80.
The said letter u/s 101 cancelled the punishment of
imposition of recovery of Rs 100/- from my client D.M.
was served on my client on 10.8.80 after retirement
of my client from Railway Services.

5. That Rs 1200/- had already been deducted by the
Railway Administration, my client requested the Railway

Administration to refund the said amount of Rs 1200/- but of no avail and hires this notice.

6. That my client has requested for payment of gratuity amounting to Rs 13000/- but the said amount has also not been paid.

7. That the cause of action arose within the jurisdiction of the Civil Court of Shahjahanpur for which illegal punishment was imposed without following the procedure of natural justice and affording reasonable opportunity of defence and this court has jurisdiction to try the suit.

8. That the suit fee is Rs 1600/- plus interest at 18% per annum along with notices charges of Rs 110/- and typing and posting charges of Rs 50/- ^{and} hence the court fee would be paid as and when the suit is filed.

You are therefore, requested to pay Rs 1200/- plus interest at 18% per annum Gratuity amounting to Rs 13000/- ^{within six months} legal notice charges of Rs 110/- and posting and typing expense of Rs 50/- to my client within sixty days from the date of receipt of this notice failing which my client shall be forced to file a suit in the proper court of law and you shall be liable to pay the damages and cost of the suit as well.

(S. D. S. 202) Advocate
For
Rath. Station Master
Safipur Distt. Unnao

2.3.84.

O.A No. _____ of 1990 (L)

Babu Ram Vaish Applicant
Versus
Union of India & ^{AP} Others Respondents
ANNEXURE- A-2

न्यायालय नगर ऐविट्टेट - शालिंदपुर।

विच सं 39/11/105 दाता 15 पेमेंट ग्राफ ब्लॉक स्टॉट

पालुरा ८५४ वनम डी०पीयो० उ०८० मुरादाबाद आदि

CMV/11/105

प्रार्थित

यह कार्यवाली अन्तर्गत धारा 15 पेमेंट ग्राफ ब्लॉक स्टॉट प्राथा० ग्री बालुरा में बैठ रहा नियुक्त स्टेफन-भारटर के प्रार्थित पत्र पर प्रारम्भ हुई। दिल्ली कहा गया कि वे रेलवे बिश्वास से स्टेफन ग्राहर के पद से दिनांक 1-8-79 को रेलवे नियुक्त हुये एवं उनकी तेजाती गोरानपुर बट्टरा में धारा तथा उन्हे आरोपण दिनांक 12-2-76 किया गया। जिसमें बिना उनका स्पष्टानीकरण ग्राप्त किये 200/- ग्राम माह बैतन की कटौती के आदेश हुये एवं प्राथा० द्वारा 1978 से इक बर्फ तक 100/- रु० की भातिल किसी में 1200/- की कटौती की गई। प्राथा० धारा इस कटौती के विचार क्षमत्वादेशके अपील दिल्लीबन्द रेलवे भेजकर मुरादाबाद को की गई। जिसने अपने दिनांक 2-4-80 में कटौती आदेश को निरस्त कर दिया, वे कटौती के धा की वापती उत्ते नहीं की गई। प्राथा० का व्याप है कि उत्तेज्योति का 13411-20 पैसा भी नहीं किया गया। इस प्रकार कुल 14611-20 पैसा तथा 18 ग्रामिशत रालाना ब्लॉक उत्ते दिलाये जाने की प्रार्थना गई। प्राथा० नियुक्त ग्राप्त की पर दिलाती को नियमानुसार भोग्यता नहीं दी गयी। रेलवे की ओर से दिलाती को रेलवे भेजकर मुरादाबाद रेलवे ब्लॉक द्वारा भी दोर० स्ल० ब्र० ब्लॉकेट की धारा में रेलवे का पदा नियुक्त हरने के उपर्याकारपत्र प्रस्तुत किया गया तथा ब्लॉक ब्लॉक दावा प्रस्तुत हुआ। जहा दोवा में रेलवे की ओर से कहा गया कि प्राथा० का धारा काल बाधित है तथा 1200-00 की कटौती किसी अन्य मामले में की गई है तथा प्राथा० धारा कोयले से भारे बेगन फर्मी रेलवे रतीदों द्वारा गलत स्थान पर भोज दी गई जिसके कारण उसकी ग्रेड्यूटी 13411-20 पैसा स्ल० पी० रेलवे की तंत्रज्ञता के आदार पर रोक दी गई। तथा धा भी कहा गया कि प्राथा० के ऊपर उपरोक्त कारण से 21400-00 रु० घोषिया है। प्राथा० ने अपने ब्लॉक ब्लॉक में दिनांक 19-9-85 में रेलवे के उपरोक्त कथान को गलत धारा और कहा कि कहीं रतीदों के बारे में उससे बोहु प्राप्तान नहीं की गई।

धारा चिन्ता

पैर- 2

29

Letters

- 1- Whether the application is time barred?
- 2- Whether recovery of Rs. 120/- has been made in
connection with Notice of 013/SP/23/MS/1789T.21.2.89
Cancelled under Order No. 13) & R/236/MS/176 on in
any other claim case if so its effect?
- 3- Whether the applicant has been served with any
charge sheet about three or more Coal Wagon and
if not its effect?
- 4- Whether payment of the applicant can be withheld
on the called advice of S. H. Kirby and if not its effect?
- 5- Whether the order of cancellation of punishment dated 14/2/89
by the applicant authority was served at Shajapur
and if so its effect.
- 6- Whether the court has jurisdiction to try the suit
- 7- Whether the applicant is entitled to interest @ 12%
per annum
- 8- Whether a lawyer of m/s m/s has been represented in
the case if not its effect.
- 9- To what relief is the applicant entitled?
- 10- Whether the court has jurisdiction to
decide the case.

उत्तर प्रदेश की सांख्य प्रत्युत्ता छठके का पुर्ण अंतर प्रदिवा था। प्राचीरी
की ओर ते येनो रेलवे टर्मिन 12-7-76 प्रत्युत्ता दिया था। जिसी अंतरे विद्वा
अधिकारी वार्षिकी राखे अनु छा उत्तरांत है। इस योग्यता में प्राचीरी पर 3320-ए
की छटीरी 1 लेस्टरी जन्य दाखले थे। अमाये लाने छा अप्पेचा है। जिसी विद्वा में शक्ति
नदा। 11 अप्रैल 1976 ते याने पर उत्तरे प्राचीरी के अपने में छाफी अनुत्तर एवा छठके
प्रथम अन्य येनो 11-7-78 के अनुत्तर डीव्वारा 10 अप्रैल 1978 मुरादाबाद अंतरा
प्राचीरी की अपील ललनीकी दारणो पर अप्पिल बर ली गई। पर उत्तर पर
अमाये नदा अंतरे का छाकेता विरत छठ दिया था। प्राचीरी की ओर से
लाल्य में उत्तरे अप्रा। अप्पे वा व्याप लाया। छठके प्रदिवा ये पुर्वांचितारी
द्वारा इस वार्षिकी को ब्रेक्ट्रीय टिप्पुन्न के लांगति दिया था। परन्तु
माननीय केन्द्रीय प्रशासनीय टिप्पुन्न द्वारा इस निर्दिश के तापा प्राप्ति
वापत बर की दिया गया निराकारण। 1970 डिस्ट्री लेट के अपारी इसी
न्यायालय से दिया गया। देखो की ओर से नीष्ठार तिंह प्रशासन निर्दिश
उत्तरे के अध्यान लाये गये। जिसे अनुत्तर अपी रेलवे विट्टी पर उत्तर प्रांती
— 53 —

को खेल की विलीनती लेने के लिए उसके विषय सिवायीय वार्षिकी के अलगाव से है। इसके प्रतिरिक्षण एक ग्रन्थ भरते हैं जो विविध विषयों की विविध विलीनती के लिए उपयोगी है। इसके अलावा एक ग्रन्थ भरते हैं जो विविध विलीनती के लिए उपयोगी है। इसके अलावा एक ग्रन्थ भरते हैं जो विविध विलीनती के लिए उपयोगी है।

‘‘प्राची’’ की ओर ने यह गदा कि उसे देख दास विद्युती वाली
उत्तर विद्युत विभागीय वार्षिकी विद्युतालय वही देखा कि जैसे ही उन्हें
कहा गया कि प्राची वह दास विद्युतालय के छाता वही विद्युतालय के वार्षिक
उत्तर देख दास रोकी गई ।

प्राद फिल्म दो. १ :-

ଶାନ୍ତି ପିଲ୍ଲ ନମ୍ବର ୫ ପାତ୍ରିତ ୧୦

देखें अ शास्त्र देखें अ दी याएँ ॥ २ ॥ ११ ॥

- 102 -

दादा बादी गद्दरी टांगड़ी लिंगड़ी वारी वारी याता है। बाद उपर्याप्ती बारी लाली है।

ପିଲାପ ମୁଖ୍ୟମନ୍ତ୍ରୀ

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1920-1921. The following is a list of the members of the Board of Education:

54

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIEUNAL ALLAHABAD
ADDITIONAL BENCH AT LUCKNOW.

OBJECTION/REPLY

On behalf of respondents no. 1 & 2

IN

O.A. No. 17 of 1990

Babu Ram Vaishya Applicant

Versus

Union of India & another Respondents.

The objection/reply of the respondents to
the aforesaid application is as under :-

1. That in regard to the allegations made in
paragraph 1 of the application, it is stated that
on investigations having been carried out at Safipur
in connection with the delivery of Wagon No. NR 24490
and 3 more Wagon Nos. NR 26768, WR-38205 and NR-61024,
it was revealed that the applicant had affected the
deliveries on forged railway receipts Nos. C-675869
dated 20.5.1977, RR No.675870, 675871 and 675872, which
resulted in loss to the Central Government to the
tune of Rs.21,400/-. The case had been investigated

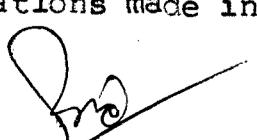
2
filed today
2
GJM
u/3/91

Divisional Personnel Officer
Northern Railway

by O.S.I./M.B. and the applicant was held responsible for allowing the delivery of above Wagons on forged railway receipts. Orders had been passed by the competent authority for recovering the cost of consignment amounting to Rs.21,400/- from the settlement dues of the applicant. This order withholding the payment was passed on 22/23.11.1979 by the Senior Commercial Officer, Headquarters Office, Baroda House, New Delhi. The applicant, who was S.M./Safipur at the relevant time had played the major role in finalisation of the transaction, which resulted in the loss to the Central Government. The applicant had full knowledge of the above Order and allowed the same to become final. The order having been passed in the year 1979, the application under section 19 of the Act is clearly barred by time. It is further stated that Annexure-A-3 referred to in the paragraph under reply does not amount to an order.

2. That in regard to the allegations made in paragraph 3 of the application, it is stated that the application is clearly barred by time. In this connection it is further stated that the order for withholding of the amount in question had been passed on 22/23.11.1979, a true copy of the aforesaid order dated 22/23.11.1979 is being annexed with this reply and is marked as Annexure-1.

3. That in regard to the allegations made in


Divisional Personnel Officer
Northern Railway
Moradabad

paragraph 4(a) of the application, it is stated that the applicant was appointed on 10.8.1942 as Probationary A.S.M. and retired on attaining the age of superannuation on 31.7.1979 (A/N). At that time he was holding the ^{Salipan} post of S.M. (S.F.P.B.). It is further stated that the service records of the applicant shows that his work and conduct had not been up to the mark.

4. That the allegations made in paragraph 4(b) of the application are absolutely incorrect and are emphatically denied. It is further stated that the enquiries into the fraudulent transaction, in which the applicant was involved and was found responsible for affecting deliveries on forged railway receipts, to which a reference has already been made above, were conducted. This enquiry was going on and the applicant retired from service. The enquiry report was submitted on 6.11.1979, whereafter the competent authority ordered for the withholding the dues of the applicant, which were outstanding by that date. This order was passed on 22/23.11.1979. No incident as asserted in the paragraph under reply ever happened.

5. That in regard to the allegations made in paragraphs 4(c)&(d) of the application, it is stated that as has already been indicated above, the enquiry proceedings were going on when the applicant retired from service. The enquiry report was submitted on 6.11.1979 and the orders for withholding the outstanding dues were passed by the competent authority on

22/23.11.1979. It is further stated that the applicant has through out been aware of the enquiry proceedings and the orders passed by the competent authority for withholding his outstanding dues. The amount of outstanding dues was far less than the amount of Rs.21,400/- which was the amount of loss incurred by the Central Government on account of the fraudulent act of the applicant. In the circumstances of the case, the question of payment of the amount of gratuity claimed by the applicant does not arise.

6. That the allegations made in paragraph 4(e) of the application are incorrect and are denied. The applicant knew fully well that in face of the order, to which a reference has been made above, he was not entitled to any amount claimed by him. There is no evidence on the record showing that the applicant had fallen sick. The notice referred to in the paragraph under reply is totally misconceived and baseless.

7. That in regard to the allegations made in paragraph 4(f) of the application, it is stated that the proceedings referred to in the para under reply were totally misconceived and the application filed by the applicant under the Payment of Wages Act was ultimately rejected.

8. That in regard to the allegations made in


Divisional Personnel Officer
Northern Railway
Moradabad

paragraph 4 (g) of the application, it is stated that in the circumstances of the case, the applicant was not entitled to any amount claimed by him. As a matter of fact, the amount of gratuity is far less than the amount, which is outstanding against the applicant inasmuch as in the circumstances of the case the applicant is bound to pay the amount of Rs. 21,400/- towards the recovery of loss, to which a reference has already been made above in the preceding paragraphs of this reply.

9. That in regard to the allegations made in paragraph 4 (h) of the application, it is stated that the illegal delivery on the basis of the forged railway receipts, for which the applicant was responsible, came to the knowledge of the authorities concerned when the complaint about the non receipt of the goods and claim in this regard was received by the authorities and investigations were ordered in that matter, in which the report was submitted on 6.11.1979. As has already been indicated above, the enquiry proceedings were going on when the applicant attained the age of superannuation and was retired on account of the retirement of the petitioner. The payment of the amount in question stands withheld under the order passed by the competent authority. The applicant is not entitled to the payment of the amount of gratuity

as claimed. It is further stated that the applicant had throughout been aware of the enquiry proceedings and the report submitted by O.S.I./M.B. dated 6.11.79 and the order dated 22/23.11.1979 passed by the Senior Commercial Officer. The orders for recovering the amount from the outstanding dues of the applicant had been passed long back as is apparent from the order dated 25th June, 1981, a true copy of which is being annexed with this reply and is marked as Annexure-2. The Order for withholding the payment of the amount in question and its recovery has not been passed arbitrarily as alleged and the action is not at all vitiated on account of any malafidies as alleged.

10. That the allegations made in paragraph 4(i) of the application are absolutely incorrect and are emphatically denied. The order dated 25th June, 1981 itself shows that the amount in question stood adjusted against the recovery of Rs.21,400/-, which was to be recovered from the applicant.

11. That in regard to the allegations made in paragraph 4(j) of the application, it is stated that the applicant was found responsible for the loss caused by him to the Government and the orders for withholding the payment of the amount in question fully was/duly justified. The applicant was made aware of the proceedings initiated against him and he has


Divisional Personnel Officer
Northern Railway
Moradabad

throughout been aware of the orders passed against him, to which a reference has already been made in the preceding paragraphs. It is further stated that in the circumstances of the case the provisions contained in Section 4 of the Payment of Gratuity Act, 1972 are not at all attracted. Moreover in the circumstances of the case, the adjustment of the amount in question against the amount of money, which the applicant is liable to pay to the Government cannot be deemed to be a forfeiture as asserted in the paragraph under reply.

12. That in regard to the allegations made in paragraph 4(k) of the application, it is stated that the applicant is not entitled to the amount in question and in fact a large amount of money is still due against him, which is to be recovered. In these circumstances, the question of payment of any interest as claimed does not arise.

13. That the allegations made in paragraph 4(l) of the application are absolutely incorrect and are emphatically denied. As has already been indicated above in the preceding paragraphs, the applicant is not entitled to the amount in question. No ground at all has been made out for interference by this Hon'ble Tribunal and the application deserves to be dismissed.

14. That in regard to the allegations made in

paragraph 5 of the application, it is stated that none of the ground mentioned in the paragraph under reply are made out and there is no evidence and materials on the record and are not at all justified from the facts and circumstances of the case.

15. That the allegations made in paragraph 6 of the application are incorrect and are denied. The order for withholding of the payment of the amount in question had been passed long back on 22/23.11.1979. The applicant did not avail of the departmental remedy against the order withholding the payment of the amount in question and allowed the said order to become final. The present application is, therefore, not maintainable.

16. That in regard to the allegations made in paragraph 7 of the application, it is stated that the proceedings referred to in the paragraph under reply are totally misconceived and baseless.

17. That in regard to the allegations made in paragraph 8 of the application, it is stated that the applicant is not entitled to any relief claimed.

18. That in regard to the allegations made in paragraph 9 of the application, it is stated that the applicant is not entitled to any interim relief as claimed.

(S)

-9-

I Hulas Singh aged about 31 years,
Son of Shri Yadvu Nandan Singh working as ~~and~~ Personnel Officer
posted at Moradabad do hereby verify
that the contents of paragraph Nos 1 to 18 of this
reply are true to my personal knowledge and based on
perusal of records, which all I believe to be true that
no part of it is false and nothing has been concealed
in it.

Verified at Moradabad on 21-11-90

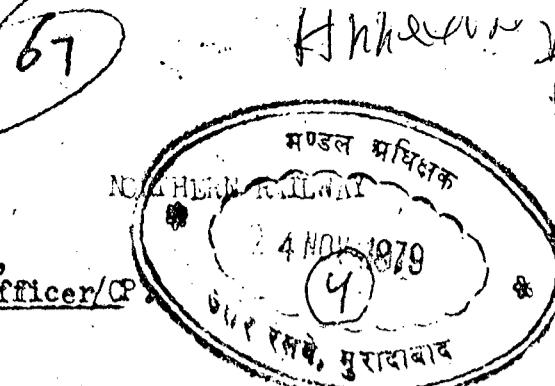
PLACE: Moradabad

~~Signature~~
Divisional Personnel Officer
Northcru Railway
Moradabad

(Signature of the Deponent)

DATE : 21 - 11 - 90

(Signature of Counsel)



R.D. Khanna,
Sr. Control Officer/CP

Headquarters Office,
Baroda House, N. Delhi.

D.O. No. 70-POC-120-79.

Dt. 24/11/79.

My dear Sharma,

Sub:- EX. Andal to Ghaziabad, Inv. 10, ER 429121 dt. 26.4.77,
Rly. Receipt of wagon No. NR 24490 containing coal, claim
for Rs. 5,350/- wagon fraudulently diverted from MGS and
delivered at Safipur on forged ER No. 675869 dt. 20.5.77
issued from Sitarampur(E.Rly.).

Mr. claim

Ref:- Your D.O. letter No. 48-FD-SPP-790 dt. 20.7.79.

Kindly refer to Dy. DCS/ESD's D.O. letter No. 03/2076/7/77
dated 20.6.79 addressed to CSO/N.Rly. copy to you wherein action
under D&A Rules against Sh. B. R. Vaish, SM/Safipur (retired) was required
to be taken.

2. Enquiries made by CSC have revealed that Sh. B. R. Vaish
was responsible for delivery on forged ER. He has observed that even
if Sh. B. R. Vaish has since retired his dues if not paid can be ~~xxx~~
held up.

3. He has further observed that three more wagons No. NR 26768,
NR 36205 and NR 61024 were also found to have been delivered on forged
ERs No. 675870, 675871 & 675872 dt. 20.5.77. These ERs have also
been shown as issued from Sitarampur(E.Rly.).

4. The dues of Sh. B. R. Vaish, if not already paid, be withheld
under advice to this office.

5. Action may also be initiated to get the cases registered
with the local police and copy of the FIR submitted to this office.

Yours sincerely,

(R.D. Khanna) 23/11

Shri S. N. Sharma,
Sr. D. C. S., N. Rly.
MORADABAD.

Copy forwarded to Sh. L. C. Mathur, Dy. DCS/Chittaranjan. He will
please refer to Sr. DCS/MS's D.O. No. 48-FD-SPP-790 dt. 20.7.79 and this office's
letter of even number dated 22/23.8.79 and arrange to send relevant papers
to Sr. DCS/Moradabad to enable him to take action against Sh. B. R. Vaish. Full
report in regard to the three other wagons may also be sent ~~xx~~ to
Sr. DCS/MS as well as this office at the earliest.

Copy to CSO/Baroda House, New Delhi for information.

True copy

ATTESTED

No. 31894
Asstt. Personnel Officer
N. Rly. MORADABAD.

Sikhs
Annexure II

RECORDED MAIL

Annexure III
S3 N62

B.N.Singh
A.C.O./SR

Chief Comml. Supt's Office,
Station Building, Varanasi.

D.O. No. SR/C3/2076/77

Dated 26th June, 1981

My dear Sant,

Reg:- Andal to G45 Inv. 10 No. 429121
dt. 26.4.77, Wagon No. NR 24490 containing
coal, claiming for Rs. 5350/- wagon fraudulent
delivered at SFPR on forged No. 675869
dt. 20.5.77.

Ref:- Your office D.O. No. 45-Fraud/SFPR-790
of 25.2.80.

Since the settlement dues of Retirred SM/SFPR
Shri B.N. Vaish has been with held and under process of recovery
and as such please advise me the particulars of recovery at your
earliest.

An early reply will be much appreciated.

Yours sincerely,

(B.N.Singh)

Shri R.S. Sant,
ACS/DRM Office N.Rly.,
Moradabad.

F.D./

True copy
ATTESTED

No 846
Asstt. Personnel Officer
N.Rly MORAD/BAL

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDL. BENCH ALLAHABAD.

Circuit Bench Lucknow.

C.W. Application No. 77 of 1990 (L)

Babu Ram Vaish. ... Applicant.

In re:

O.A. No. 17 of 1990 (L)

Babu Ram Vaish. ... Applicant.

Versus.

Union of India and others. Respondents.

APPLICATION FOR CONDONATION DELAY.

To,
The Hon'ble The Vice Chairman,
and other Hon'ble Members
of the aforesaid Tribunal.

The applicant named above, most respectfully,
begs to submit as under:-

1. That the applicant was retired from service on 31.7.1979 and after retirement he was not paid his gratuity on the ground of some baseless charges levelled against him.
2. That after retirement the applicant had fallen seriously sick and as a result of that he could not present his matter of gratuity before the concerned authorities.

B. R. Vaish

3. . . That the applicant in his sickness had remained always unconscious to which his family members took as an effect of some evil spirit and because of the same no treatment was given to the applicant upto 31.7.1980 except the 'DUA AND POOJA' etc. On 1.8.1980 when there was no improvement in the condition of the applicant he was taken to a Registered Ayurvedic Practitioner Vaidya who started treatment by which the applicant recovered his condition on 18.3.1985 and thereafter he filed an application as advised before the Prescribed Authority under Section 15 of the Payment of Wages Act ,1936. A true copy of the Medical Certificate for his sickness is annexed herewith as Annexure No.1 to this application.

4. . . That, .the said application under Section 15 of the Payment of Wages Act was finally decided on 21.7.1989 then only the applicant could learnx that he should file an application in the Hon'ble Central Administrative Tribunal and accordingly after the date of order i.e. 21.7.1989 the applicant has filed the original application in the Central Administrative Tribunal on 16.1.1990 i.e. within one year from the date of last order but the Hon'ble Tribunal at the time of admission observed the application to be beyond the time of delay permissible u/s 21 of the Central Administrative Tribunal Act, 1985.

B.R. Vaidya

5. That it is submitted that the delay, if any, was not deliberate but beyond the control of the applicant and as such the same is liable to be condoned.
6. That it is also submitted that if the delay is not condoned and application is not admitted the applicant shall suffer irreparable loss and injury by losing an amount to a tune of Rs.13,411.20.
7. That it is further submitted that the applicant is advised to state that "No claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specific period", under the provisions of Rule 7 (5) of the payment of gratuity (Central) Rules 1972.
8. That in the circumstances aforesaid it is very much expedient in the interest of justice that the delay, if any, is condoned and application is decided on merits.

PRAYER.

It is, therefore, most respectfully prayed that the Hon'ble Tribunal may graciously be pleased

B.R. Vaish

to condoned the delay, if any, in filing the application and the application may graciously be decided on merits, in the interest of justice otherwise the applicant shall suffer irreparable loss and injury.

Lucknow; Dated

February, 5, 1990.

B.R.Vaish
Applicant.

Verification.

I, Babu Ram Vaish, aged about 69 years, son of Late Sri Lala Nathu Lal, hereby verify that the contents para 1 to 5 of this application are true to my personal knowledge and those paras 6 to 8 are true on legal advise which are believe to be true and that I have not suppressed any material fact.

Lucknow, dated
Fe. 5, 1990

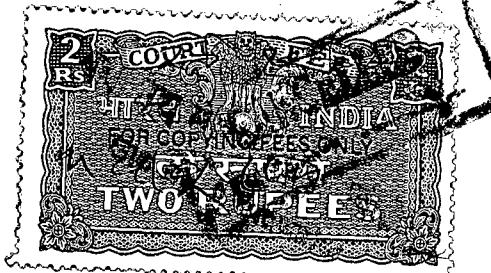
B.R.Vaish
Applicant.

Identified Sri Babu Ram Vaish who is personally known to me and has signed before me.

T.N.Tiwari
(T.N.Tiwari) 5/2/90
Advocate,
Counsel for the Applicant.

B.R.Vaish

ANNEXER. 1



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Case No. 37/11 of 1989

McCall 30/09

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sd/ B.R. Vaish

28 May 20

27/11/1974 15/9/74

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IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD
ADDITIONAL BENCH AT LUCKNOW

C.M. APPLICATION NO. OF 1992

in re:

O.A. No. 17 OF 1990

Babu Ram Vaish

....

Applicant

Versus

Union of India

Ministry of Railways & another

Opp. parties



REJOINDER AFFIDAVIT

1. I, Babu Ram Vaish aged about 71 years son of late Nathu Lal resident of C/O Vijay Kumar, State Bank of India, Shahabad, District Hardoi do hereby solemnly affirm and state on oath as under.

That the deponent is the petitioner in the aforesaid writ petition and is well conversant with the facts of the case.

3. That the contents of para 1 of the objection/reply filed by both the respondents are wrong and have been made for the purposes of the aforesaid case and as such are categorically denied. Answering deponent submits that presuming though not conceding that any inquiry was pending against him, he was not aware of the same nor the respondents at any point of time informed the deponent of the same.

Babu Ram Vaish

....2

The alleged incident/offence as said to have been committed in the year 1977 and the services of the answering deponent came to an end on 31-7-1979.

Though the respondents had enough time to indicate the pending inquiry, if any, against the deponent, yet it was not done. The deponent submits that no inquiry was contemplated when his services came to an end after attaining the age of retirement.

4. That as regards para 2 of the objection under reply, the deponent submits that he was not aware of any such order dated 22/23 Nov 1979 was contained in Annexure 1 of the objections filed by the respondents. In fact such order was never passed as annexed now with the objections under reply. The said document is manufactured one and has been made for the purpose of the case. The said order, if any, was never communicated to the deponent.

In the light of the circumstances, the contents of para 2 vehemently denied. The work and conduct of the deponent was excellent through-out his career of service and no adverse entry was ever communicated to him. No charge-sheet, whatsoever, was served upon the deponent during his tenure of service.

5. That the contents of para 4 are false and denied and the contents of para 4(b) of the writ petition are reiterated to be correct. No inquiry was ever conducted against the petitioner as the deponent was never involved in any fraudulent transaction as alleged.

.....3

Balaji Ramaswami

6. That the contents of para 5 of the objections under reply are wrong and the same are denied. The deponent never indulged in any fraudulent transaction at any point of time. The opposite parties are to prove as to how and under what circumstances, the respondents came to a figure of Rs 21,400.00 (Rupees Twenty one thousand four hundred only). The deponent is entitled for the gratuity with market rate interest.

7. That the contents of para 6 of the objections under reply are denied and that of para 4(e) of the writ petition are reiterated to be correct.

8. That as regards para 7 of the objections under reply, it is submitted that the proceedings under section 15 of Payment of Wages Act was preferred by the deponent before the Presiding Officer, Payment of Wages Act, Shahjahanpur and the same was rejected on the ground that the gratuity does not fall under section 2 of Payment of Wages Act and was, therefore, not maintainable. The Hon'ble Presiding Officer while deciding the application of the deponent under section 15 of the Payment of Wages Act observed that the respondents have failed to make out the case of fraudulent transaction.

9. That the contents of para 8 of the objections under reply are false and the same are categorically denied and the contents that of para 4(g) of the objection are reiterated to be correct.

Babu Ram Vasisht

10. That the contents of para 9 of the objections under reply are false and the same are denied. The deponent is not aware of the Annexure No 2 filed alongwith the objections under reply and the same is, therefore, not in the knowledge of deponent and the contents that of para 4(h) of the petition are reiterated to be correct.

11. That the contents of para 10 of the objections under reply are wrong, concocted and the same are denied, and the contents that of para 4(i) of the writ petition are reiterated to be correct.

12. That as regards the contents of para 11 of the objections failed by the respondents are denied and the contents of para 4(j) of the writ petition are reiterated to be as correct. The deponent most humbly begs to state that the gratuity is treated a retiral benefit on par with pension. Therefore, this Hon'ble court is fully competent to adjudicate upon the matter and order the respondents to realise the gratuity illegally withheld by the respondents.

13. That the contents of para 12 and 13 of the objections under reply are wrong and the contents that of para 4(l) and (k) of the writ petition are reiterated to be as correct.

13. That the contents of para 14 of the objections under reply are wrong and that the grounds of the writ petition are reiterated to be correct. As a matter of fact the respondents have no evidence or the material to show that the deponent was ever involved in any fraudulent transaction as has been alleged.

.....5

Balon Ram Dairh



14. That as regards the contents of para 15 of the objections under reply, it is submitted that when the deponent was not involved in any fraudulent/illegal transaction at any point of time and no show-cause notice was served upon the deponent, no question of seeking any remedy arose. Therefore, the contents of para under reply are wrong and denied.

15. That the contents of para 16 and 17 and 18 of the objection under reply are wrong and the same are denied in to-to. The deponent is entitled for his gratuity alongwith market rate of interest.

16. That once the deponent was illegally served with a notice for recovery of Rs 3,320/- (Rupees Three thousand three hundred twenty only). On preferring an appeal before Divisional Railway Manager, Northern Railway, Moradabad which is being filed as Annexure No. RA-1 to this Rejoinder Affidavit, the deponent was fully exonerated vide order No 13/SR/236/MK/76 dated 24.4.1980 and photo-stat copy of the same is being filed as Annexure No. RA-2.



Lucknow

Balram Vaidya

(Deponent)

Dated : 29 Sep 92

VERIFICATION

I, the above named deponent do hereby verify that the contents of paras 1 to 16 of this rejoinder affidavit are true to my personal knowledge and no part of it is

false and nothing material has been concealed. So help me God.

Balaji Ram Dabhi

Lucknow

Deponent

Dated: 29 Sep 92

I identify the deponent who has signed before me.

Ramkaji
Advocate

Solemnly affirmed before me on 29/9/92
at 10 AM/PM by the
deponent who is identified by

Sri

Ramkaji
Advocate, High Court at Lucknow.

I have satisfied myself by examining the deponent that he understands the contents of this affidavit which have been read out and explained by me to him.

N. D. Arora
N. D. Arora
OATH COMMISSIONER
High Court, Lucknow Bench, Lucknow
No. 30/159
Date. 29/9/92

29/9/92

In the Central Administrative Tribunal At ALLAHABAD
Addl. Bench At LUCKNOW
Babu Ram Vaish O.A. NO. 17 of 1990
vs. ANNEXURE NO 1
U.O. Sandesh.

COPY

From BR Walsh

D.R.M.

SM/ Sajipur

A. Ry

(SFPR)

Moradabad

Respected Sir,

Re: Punishment notice No 13/SR/236/MK/76

D/27/7/78 (Debit of Rs 3320/- Recovery at the rate of
Rs 100/- PM) from Aug 78 to July 79.

In connection with the above I have already submitted
my appeal for the ex-parte action taken against me.
Again I beg to approach your goodself with the following
more facts for your kind consideration.

1. That wagon no 32964 booked ex-Tata Nagar to JUD
containing the plates was despatched at MK Station being
basaxle. This wagon remained standing for about more
than two months for non availability of wagon, secondly
when wagon received for TPT the consignment could not be
transported by manual labour being heavy consign-
ment. The matter was referred to ENL/MB for necessary
action. The control arranged 5 Tons Crane for TPT of
consignment. The crane man showed his inability in
transporting the consignment into a covered wagon as crane
could extract out the consignment of the covered wagon,
but could not place it into covered wagon. This was
again referred to ENL and ENL arrange one KC(open wagon)
for the transportment of the wagon.

The consignment then transported into the wagon and
there was no shortage as consignment transhipped correctly
& then the question of issuing the DD Message does not
arise. As such- the shortage was depicted at destination
station, the shortage is unavoidable being a open wagon
for which I am not responsible as per conference rule.

- 8

: 2 :

Sir, I have acted as per order of E&L/mB and I am not responsible for any shortage of consignment. Consignment was transferred from covered wagon to open wagon.

Since huge amount Rs 3320/- has been debited against me and a recovery of Rs 100/- per month is being made from my salary bill and near about Rs 1000/- has since been recovered so-far. I approach your goodself to kindly review my case on the above facts.

I shall be highly obliged to kindly waive off the above punishment if your honour is not satisfied be kind enough to allow me to hear me in person to explain you the gravity of the case.

Thanking you.

Yours faithfully,

sd/-xxx

B.R. Vaish

SM/SFPR

30/7/79

RECEIVED
GARIB

In the Central Administrative Tribunal At Allahabad
Additional Bench At Lucknow
O.A. NO. 17 of 1990 9

Baba Ram Vaishn Verris U.O.I. Ministry of P.R.
ANNEXURE NO 2 and another

SPECIAL POWER OF ATTORNEY

In the Court of Central Administrative Tribunal
Addl Circuit Bench Lucknow
Regd. No. 17/1990

Plaintiff
Appellant
Petitioner

B. R. Vaishya

Versus

Union of India

Defendant
Respondent
Opposite Party

KNOW all men by these present that I S.N. Pandey, DRM/MB

Northern Railway, Moradabad do hereby appoint and authorise

S/Shri Asit Kumar Chalawani to appear, plead,

and act for me jointly or severally in the above noted case

and to take such steps and proceedings as may be necessary

for the prosecution and defence of the said matter, as the

case may be and for the purpose to make sign, verify and

present all necessary plaint petitions, written statements and

other documents to compromise the suit admit the claims and

to lodge and deposit money in court and to receive payment from

the court of money deposited and to file and withdraw comments

from court and Generally to set in the promises and in all

proceedings arising thereout whether by way of execution appeal

or otherwise or in any manner connected therewith as effectually

to all intents and purposes as I could act if personally present

I hereby agree to notify and confirm whatever shall be lawfully

done by virtue of these presents.

In witness whereof I herein set my hand this

day of 19

S.N. Pandey

Northern Railway

Divt. Rly. Manager

Northern Railway
Moradabad

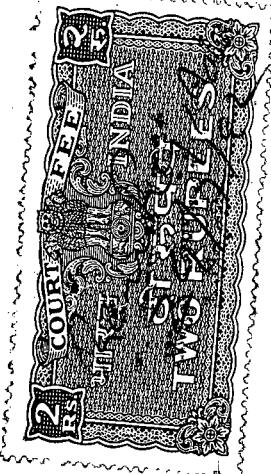
Asit Kumar Chalawani

Central Administrative Tribunal, Lucknow

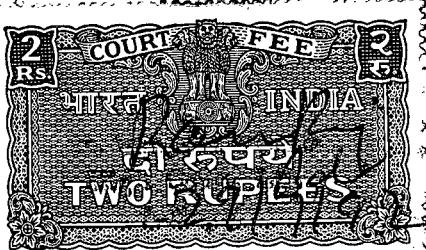
VAKALATNAMA

In the High Court of Judicature at Allahabad

SITTING AT LUCKNOW



Babu Ram Varsh



VERSUS

Crown of India.

OA. No. 77

of 1990

(L)

17/1990 (L)

I/We the undersigned do hereby nominate and appoint Shri RAM RAJ and
Shri VINOD SINGH 1 Moti Mahal Road, opp SBI Hazaribagh
LUCKNOW Advocates, to

be counsel in the above matter, and for me / us and on my / our behalf to appear, plead act and answer
in the above Court or any Appellate Court or any Court to which the business is transferred in the above
matter, and to sign and file petitions, statements, accounts, exhibits, compromises or other documents
whatsoever, in connection with the said matter arising therefrom, and also to apply for and receive
all documents or copies of documents, depositions, etc, etc and to apply for issue of summons and
other writs or subpoena and to apply for and get issued any arrest, attachment or other execution,
warrant or order and to conduct any proceeding that may arise thereout; and to apply for and receive
payment of any or all sums or submit the above matter to arbitration.

Provided, however, that if any part of the Advocates fee remains unpaid before the
first hearing of the case or if any hearing of the case be fixed beyond the limits of the town; then
and in such an event my / our said advocate shall not be bound to appear before the court and if
my / our said advocate doth appear in the said case he shall be entitled to an outstation fee and
other expenses of travelling, lodging, etc. Provided ALSO that if the case be dismissed by default,
or if it be proceeded ex parte, the said advocate (s) shall not be held responsible for the same.
And all whatever my / our said advocate (s) shall lawfully do, I do here by agree to and shall in
future ratify and confirm.

ACCEPTED :

1. Ram Raj Advocate.
2. _____ Advocate.
3. _____ Advocate.

Signature of Client

B. R. Varsh

SPECIAL POWER OF ATTORNEY.

In the Central Administrative Tribunal Circuit Bench Lucknow
Region. O.A. No. 17/1990.

B. R. Vaish

Plaintiff
Appellant
Petitioner

versus
Union of India

Defendant
Respondent
Opposite Party

S.N. Pandey, Div. Ry. Manager

KNOW all men by these presents that I S.N. Pandey, Div. Ry. Manager
Northern Railway, Moradabad do hereby appoint and authorise
S/Shri S.P. Srivastava, advocate to appear, plead,
1/0 7. Hamilton Road, George Town, Allahabad
and act for me jointly or severally in the above noted case
and to take such steps and proceedings as may be necessary
for the prosecution and defence of the said matter, as the
case may be and for the purpose to make sign, verify and
present all necessary plaint petitions, written statements
and other documents to compromise the suit admit the claims
and to lodge and deposit money in court and to receive payment
from the court of money deposited and to file and withdraw
documents from court and Generally to set in the premises and
in all proceedings arising thereout whether by way of execution
appeal or otherwise or in any manner connected therewith
as effectually to all intents and purposes as I could act if
personally present I hereby agree to satisfy and confirm what-
ever shall be lawfully done by virtue of these presents.

In witness whereof I hereinto set my hand this 20-7-90
day of 19.

S.N. Pandey
(S.N. Pandey)

Accepted
(S.P. Srivastava)
(S.P. Srivastava)

Divisional Railway Manager
Northern Railway
Northern Railway

10
BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW.

M.P. No. of 1993

UNION OF INDIA & OTHERS

... APPLICANTS/
RESPONDENTS

In Re:
ORIGINAL APPLICATION No.17 OF 1990

BABU RAM VAISHYA

VERSUS

... APPLICANT

UNION OF INDIA & OTHERS

... RESPONDENTS

APPLICATION FOR TAKING
THE SUPPLEMENTARY COUNTER REPLY
ON RECORD OF THE HON'BLE TRIBUNAL

The Applicant / Respondent most respectfully
beg to submit as under:-

That the some new averments have been made in
the Rejoinder filed on behalf of the Applicant and
as such, it is necessary in the interest of
justice that the Respondent should file a
Supplementary Counter Reply thereto before this
Hon'ble Tribunal.

Therefore, it is most humbly prayed that for
the reason stated above and in the accompanying
Supplementary Counter Reply, this Hon'ble Tribunal
may be graciously pleased to permit the Respondents
to file a Supplementary Counter Reply to the
Rejoinder filed on behalf of the Applicant, and
take the Supplementary Counter Reply on record of
the Hon'ble Tribunal in the interest of justice.

Place : LUCKNOW
Dated : APR 1993

(ASIT KUMAR CHATURVEDI)

Advocate

COUNSEL FOR THE APPLICANTS/RESPONDENTS

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW.

ORIGINAL APPLICATION No. 17 OF 1990

BABU RAM VAISHYA

... APPLICANT

VERSUS

UNION OF INDIA & OTHERS

... RESPONDENTS

SUPPLEMENTARY COUNTER REPLY
ON BEHALF OF THE RESPONDENTS
TO THE REJOINDER AFFIDAVIT OF THE APPLICANT

I, P. S. NERWAL aged about 41 years
(I.R.T.S.)
S/o Sh. R. S. NERWAL R/o L-39(B) Railway
Officers Colony, N.R/Moradabad state as under:-

1. That the Deponent is presently working as Sr.Divl.Comml.Manager, in the Office of the Divisional Railway Manager, Northern Railway, Moradabad Division, Moradabad, the Respondent No. 3, and as such is fully competent to file Supplementary Counter Reply and is conversant with the facts and circumstances of the Case. The Deponent has read and understood the contents of the Rejoinder Affidavit under reply and states hereinafter.

झाल वाणिज्य प्रबन्धक
झाल रेलवे सर्विस
Senior Divl. Commercial Manager
N. R. R. Moradabad

2. That the contents of Paragraphs 1 & 2 of the Rejoinder Affidavit need no comments.

3. That the contents of Paragraph 3 of the Rejoinder Affidavit are denied and the contents of Paragraph 1 of the Counter Reply are reiterated as correct. It is stated that the Applicant delivered four railway wagons on forged receipts to a fictitious firm named as Bharat Trading Corporation without verifying the original labels or seeking permission from the Competent Authority at the Divisional Office, Moradabad. The Competent Authority order to recover the cost, Rs.21,400/= (Rs.5350/= + Rs.16,050/=) from the Settlement dues of the Applicant. The actual owners of the wagon preferred a Claim for the cost of the goods. An inquiry /investigation was conducted by ~~Shri~~ Out Standing Inspector Moradabad and the Report dated 06th November 1979 was submitted. A copy of the Inquiry Report dated 06th November 1979 and the Recovery Orders dated 05th February 1980 and 23rd August 1984 of Rs.21,400/= is being annexed as ANNEXURES Nos. C-1, C-2 & C-3 respectively to this Supplementary Counter Reply.

4. That the contents of Paragraphs 4 & 5 of the Rejoinder Affidavit are denied and the

Shri
महाल नियम प्रबन्धक
क्र. २०, मुरादाबाद
Senior Divl. Commercial Manager
N. H. 24, Moradabad

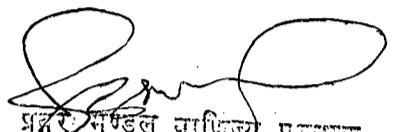
contents of Paragraphs 2, 3 & 4 of the Reply are reiterated as correct. It is stated that the Applicant is responsible for the loss to the Railway Administration to the tune of Rs.21,400/= and as such the recovery of the said amount has to be made from the Applicant.

5. That the contents of Paragraphs 6, 7, 8 & 9 of the Rejoinder Affidavit are denied and the contents of Paragraphs 5, 6, 7 & 8 of the Reply are reiterated as correct. It is stated that the payment of Gratuity of Rs.13,411.20 to the Applicant has not been made as the amount to be recovered from the Applicant was Rs.21,400/=. The Railway Administration has not been able to recover till date, Rs.7,488.80 from the Applicant.
6. That the contents of Paragraphs 10, 11 & 12 of the Rejoinder Affidavit are denied and the contents of Paragraphs 9, 10 & 11 of the Reply are reiterated as correct. The Applicant is not entitled for the payment of Gratuity as the recovery of Rs.21,400/= has to be made from the Applicant.
7. That the contents of Paragraphs 13, 14, 15 & 16 of the Rejoinder Affidavit are denied and the contents of Paragraphs 12, 13, 14, 15, 16, 17 & 18 of the Reply are reiterated as

महाराष्ट्र राज्य व्यवस्था
कानूनी व्यवस्था
Senior Civil Commercial Manager
Mumbai, Maharashtra
Mumbai, Maharashtra

correct. The amount of Rs.3,320/= has no relevancy with this Original Application. The Original Application is devoid of merits and deserves to be dismissed with costs to the Respondents.

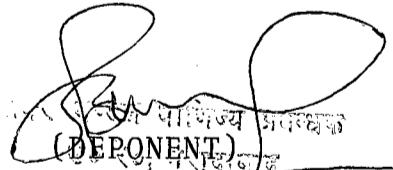
Place : Moradabad
Dated : 20 APR 1993


N. R. V. Moradabadi
(DEPONENT)
Senior Divl. Commercial Manager
N. R. V. Moradabadi

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

I, the Deponent above named, verify that the contents of Paragraphs 1 to 7 above are true and correct to my knowledge derived from information and records. The legal parts of the paras are based on legal advice received which is believed by me to be true and correct.

Verified this, the 25th day of April, 1993
at Moradabad.


N. R. V. Moradabadi
(DEPONENT)
Senior Divl. Commercial Manager
N. R. V. Moradabadi

Confidential

RR/OS/79 of 6-11-79.

Dated: 6/11/79

From: OSI/MB:

To,

The Sr. DCS/Moradabad.

Re:- Andal to Ghaziabad Inv. 36 RR No. 429121
dated 26-4-77 Non-Receipt of wagon No.
NR 24490 coal claim for Rs. 5350/-

Your no. 48-Fd-SFPR-79C

In compliance of orders investigations have been carried out at Safipur in connection with delivery of wagon no. NR 24490 ~~city~~ coal and that the wagon in question was received at SFPR by M490p. of 6-6-77 under Sitarampur ~~entry~~ to SFPR as per wagon register entry. This was placed in position for unloading on 6-6-77 at 18/30 hrs and released on 7-6-77 at 9/-. The wagon No. NR 24490/C was delivered against RR No. C 675869 Inv. ~~one~~ one of 20-5-77 Ex. Sitarampur to Safipur on 9-6-77 and the contents removed on 9-6-77.

The delivery was granted by Shri B. R. Vaish SM/SFPR who was already been retired from service on 31-7-79 to Shri Sheromal who signed in Urdu in the delivery book, wagon transfer register. Address written in the Daily book by SM/SFPR* Makan No. 111/87 Ashok Nagar Kanpur Telephone No. 44676 where as on RR it is also written on the back" Mohalla Galaktarganj Unao and in bracket (Mahesh chandra Sheromal Bauna Mai, Unao) is different in delivery book and RR. The RR on the back bears Makan No. 111/87 Ashok Nagar Kanpur telephone No. 44676 also.

The RR No. C 675869 thoroughly examined and found the distance, Rate and freight shown in RR are totally wrong. The actual distance rate and freight to be as follows:-

Distance Rate

806Km.	52-30 per quintal for class 37-5 vide GT No.35 part. I volume 2 if the changed enforced from 1-9-76.	1223-80
	10% on the freight vide Spl. rate circular No. 1 of 1976	122-30
	78% per tonne class change on the actual weight.	1346-10 18-30 1364-40
		R/o 1365/-

During examination of the RR it is also observed that the RR in question neither stich in any book nor from any book as all the ends at this RR are original. The print of the RR is also different as compared with OPRS at MR,Rosa and Una G/sheds.

During check at SFPR I also found these wagons were received at SFPR and delivery there on RR Nos C 675870, C675871, C675872 of 20-5-77 Ex. Sitarampur to Safipur details are given below:-

1- Wagon no. NR 26768/C Ctg. coal arrived SFPR by M49M. on 19-6-77 at 15/- placed in position at 15/- on 19/6 released at 19/- on 19-6-77 and delivered under invoice no.2 RR C675870 of 20-5-77 by Shri B. R. Vaish SM/SFPR now retired to ~~संपर्क अमित अमित~~ as signed in the delivery book.

2- Wagon No. 38205/C Ctg. coal arrived SFPR by M49M. on 14-6-77 at 15/- placed in position at 15/- on 14-6-77 and released at 19/- on 14-6-77 deld. on 15/6 by Shri B. R. Vaish SM/SFPR(Retired) to Sherowal as signed in Urdu in delv. book and position register. RRG 675871 of 20-5-77 .

3- Wagon no. NR 61024 CRT ctg. coal arrived SFPR by M49M. on 29/6 at 9/- placed on 29/6 at 11/- and released at 15/- on 29-6-77 and delivered under Inv.4 RRG 675872 of 20-5-77 Ex. Sitarampur to Safipur by shri B. R. Vaish SM/SFPR (retired) to shri Daram Das as signed in delivery book.

Thus the RRs no. 675869, 675870, 675871 of 20-5-77 Ex. Sitarampur to SFPR against the contents coal of wagon no. NR 24490/C, NR26768/C, R 38205/C and NR 61024/CRT delivered at SFPR by Shri B. R. Vaish to SFPR(retired) apparently forged. All the RRs(four in number) placed in the file along with the three copies of RRs duly of attested by SM/SFPR for perusal please.

SM/SFPR was ordered to sec. ACS/BB at SPN along with the RRs unloading book, wagon register, wagon transfer register and delivery book in connection with the above four RRs on 18/7/79. The four RRs were examined by him (ACS/BB) and he is also of the opinion that these RRs are forged and ordered to take over from SM/SFPR and rest records in their connection to be kept at station in the custody of SM/SFPR. Therefore the four RRs No. C 675869, C675870, C675871, C675872 of 20-5-77 Ex. Sitarampur to safipur have been taken over from him along with true copies of RRs duly attested. are placed in the file and rest records have been made over the SM/SFPR for safe custody vide memo dated 18-5-79 placed in the file duly acknowledged by SM/SFPR Sh. H.P.Kausar.

ACS/BR ordered to compare these RRs with original RRs at other stations and also to contact DSO/Unnao regarding endorsement on the back of RRs duly signed and stamped by *पंडित बिपाश बनारसी*, 3 अप्रैल

I have checked up and tallied the same and find that the enclosed RRs have been printed in Boldu letters and also the station stamp fixed on RRs does not tally the genuine RRs bear station stamps showing Sitarampur and 23⁴⁰4 Sitarampur Jn. whereas these RRs show 23⁴⁰2 Site- E.Rly.-23⁴⁰2 -rampur.

The distance rate and freight shown in these RRs are quite wrong and incorrect. The actual distance rate are given above the original seal labels of these wagons are not available at SFPR as per memo of SM/SFPR placed in the file.

From the records at SFPR I observed that No coal wagon arrived at SFPR earlier to the e wagons since long. The KPA of these railway receipts is not available, the SM/SFPR took these in debit through RRs. The SM/SFPR might have not verified, and compared the same with the genuine RR as no prior delivery of coal wagons effected at SFPR.

The arrival and delivery particulars of these four RRs are already given above. As per orders of ACS/BR I went to Unnao on 5-11-79 to contact DSO/Unnao. The DSO was out of that date, I met ARO/Unnao, but he did not help me and asked me to DSO on any other date. He confirmed that Shri G. B. Pandey was DSO/Unnao in 1977, but the signatures on these RRs could not be verified by him. After that I went to G/shed Unnao and examined the RRs delivery at Unnao having the signatures and stamps of DSO/OM. Which totally differs the signatures and stamp on these RRs. On enquiry I also observed that there is no firm like "Bharat Trading corporation" being the consignee of these RRs as per RRs does not exist at Safipur.

Thus in my opinion it is clear case of deliveries on forged RRs and fit case to be investigated by police. The four RRs no. 675869, 675870, 675871, 675872 of 20-5-77 Ex. Sitarampur to Safipur on which the four wagons coal delivered, are enclosed herewith four perusal and necessary action please.

Alleged
Term
ASST. COM. MANAGER
N. RLY. MORADABAD
This is also pointed out that Sh. B. R. Vaish SM/SFPR granted deliveries on these forged four RRs, has since been retired. As such this should be kept in view in setting his retirement dues.

The original file no. 48-Fd-SFPR-790 containing 23 (twenty pages including four RRs 675869, 675870, 675871, 675872 of 20-5-77 Ex. Sitarampur to Safipur) pages + 2 pages PP is returned herewith for necessary action please.

125
Single Bench

20

Single Judge

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW.

M. P. No. 17/95 of 1995

inre;

O. A. No. - 17 of 1990.

Place before the
Hon'ble Bench
for orders on 31/7/95.

Dy. Registrar

Place before the
Hon'ble Bench
for orders on 8/8/95

Babu Ram Vaish.

..... Applicant.

Dy. Registrar

Versus;

10/7

Union of India & Others.....

..... Respondents.

APPLICATION FOR RECALL OF ORDER DATED 12.5.1995
PASSED BY HON'BLE MR. JUSTICE D.C. VERMA.

The applicant named above, most respectfully begs to submit as under :-

For the facts and circumstances mentioned in the accompanying affidavit, it is most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to recall the order dated 12.5.1995 by means of which the above noted petition of the applicant has been dismissed for want of non-prosecution and restore the case of its original numbers and may be heard and decided on merit, otherwise applicant shall irreparable loss and injuries.

LUCKNOW:

DATED: 14-7-1995.

18

Ram Raj
(Ram Raj)
Advocate
Counsel for the Applicant.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW.

M. P. No.

of 1995

inre;

O. A. No. 17 of 1990.



Babu Ram Vaish. Applicant.

Versus;

Union of India & Others..... Opp. Parties/
Respondents.

AFFIDAVIT IN SUPPORT OF APPLICATION FOR RECALL
OF THE ORDER DATED 12.5.1995.

I, Babu Ram Vaish, aged about 74 years, Son of Late Sri Lallu Nath Lala Resident of E-1/658, Vinai Khand, Gomtinagar, Lucknow, the deponent, do hereby, solemnly affirm and state on oath as under :-

1. That the deponent is applicant in the above noted original application, as such is well conversant with the facts of the case.
2. That the aforesaid case of the applicant was listed for arguments on May 11, 1995. The said date was declared holiday on the eve of Idul Zuha.
3. That the case of the deponent was listed for next

Babu Ram Vaish

date i.e. on 12.5.1995.

4. That the counsel for the applicant did not attend this Hon'ble Tribunal on 12.5.1995 and therefore, this Hon'ble Tribunal was pleased to dismiss the aforesaid case, as the counsel for the applicant was not present.

5. That the deponent was seriously ill and could not contact his counsel. Only on 7th July, 1995, the deponent contacted his counsel who had sent his clerk to the office of this Hon'ble Tribunal and it was revealed from the office records that the aforesaid original application of the applicant stands dismissed for want of prosecution.

6. That the deponent most humbly begs to state that without any fault of his, the aforesaid case has been dismissed. In case the impugned order of dismissal of the application, dated 12.5.1995 is not recalled, the applicant shall incur irreparable loss and injuries, as he is already 74 years of age and is ailing.

7. That in the view of above mentioned facts and circumstances it would be expedient in the interest of justice that the Hon'ble Tribunal may please to recall the order dated 12.5.1995 passed by Hon'ble Mr. Justice D.C. Verma in the aforesaid original application and

: 3 :

restore the same in its original number and may be heard and decided on merits.

Baba Ram Vansh

LUCKNOW:

DATED: 10/5/1995.

DEPONENT.

VERIFICATION:

I, the deponent named above, do hereby verify that the contents of paras 1 to 7 of this affidavit are true to my own knowledge, those of paras 8 to 12 are true as per information derives from the perusal of records while paras 13 to 16 are based on legal advise. No part of it is false and nothing material has been concealed. So help me God.

Baba Ram Vansh

LUCKNOW:

DATED: 10/5/1995.

DEPONENT.

I, identify the deponent, who has signed before me.

Ram Ray
ADVOCATE.

10/5/1995
MOSHIN ALAM FAHIM
Oath Commissioner
Civil Court Lucknow

82

In the Hon'ble Central Administrative Tribunal
Central Administrative Tribunal, Lucknow, Date of Filing
Lucknow. Date of Receipt by Post

FF-219

M.A. No. 1879 of 1995.

O.A. No. 17 of 1990.

Jf
D. Registrar (1)

Babu Ram VaishApplicant

Versus

Union of India and Others.....Opposite Parties
Union of India

Application for filing and taking on record supple-
men tary rejoinder.

In the above noted case, it is respectfully submitted as under:

That certain new facts have been brought out in the supplementary counter reply filed by the opposite parties and as such, it is necessary in the interest of justice that the applicant should file a supplementary rejoinder reply thereto.

It is therefore most respectfully prayed that for the reason stated above and in the accompanying supplementary rejoinder reply, the Hon'ble Court may be pleased to permit the applicant to file a supplementary rejoinder reply to the supplementary counter filed by the opposite parties and the supplementary Rejoinder reply be taken on record.

A. Mohan Adw.

Dated: 14-9-95

21
at Lucknow.

Counsel for applicant

Central Administrative Tribunal
Lucknow Bench
In the Hon'ble Central Administrative Tribunal
Date of Receipt by Post
Lucknow.

M.A. No. 180 of 1995.

By, Registrar ()

O.A. No. 17 of 1990.

Babu Ram Vaish

Applicant

Versus

Union of India and Others

Opposite Parties

Application for condonation of delay.

In the above noted case, it is respectfully submitted as under:

1) That there has been some delay in filing the supplementary rejoinder reply to the supplementary counter reply of the opposite parties. The delay being unintentional and having been caused for no fault of the applicant, the same merits condonation.

It is therefore most respectfully prayed that the Hon'ble Court may be pleased to condone the delay in filing the supplementary rejoinder reply and take the same on record in the interest of justice.

B.R. Vaish

APPLICANT

Dated: 12-9-95

21
at Lucknow.

Central Administrative Tribunal
Lucknow Bench
In the Hon'ble Central Administrative Tribunal,
Date of Receipt by Post
Lucknow.

By, Registrar ()

O.A. No. 17 of 1990.

Babu Ram Vaish

Applicant

Versus

Union of India and Others

Opposite Parties

Supplementary rejoinder to the supplementary counter

I, the applicant named above, having read the supplementary counter (herein after referred to as counter) and understood it's contents, respectfully submits as under in reply thereto:

- 1) That contents of paras 1 and 2 of the counter need no reply.
- 2) That contents of para 3 of the counter are denied while those of para 3 of the rejoinder are reiterated as correct. No enquiry was ever initiated against the applicant nor was the applicant ever chargesheeted or associated with any alleged enquiry, as alleged by the opposite parties. The alleged order of forfeiture of the applicant's ^{in 1984} gratuity was passed without any opportunity of hearing to the applicant or without any opportunity of showing cause and thus, any such order is vitiated in the ~~xx~~ eyes of law, and is against the Railway Board's letter dated 7-8-89 which provides that the D.C.R.G. of a retired employee cannot be withheld unless disciplinary proceedings are commenced or suspension given effect to before employee's retirement.

B.R. Vaish.

Central Administrative Tribunal
Lucknow Bench
1(a) Date of Filing
Date of Receipt by Post

It is further submitted that Annexure C-1 has been filed after 3 years of filing of the O.A.A perusal of the said annexure reveals that the statement of his successor was recorded on 18-10-79 and the District Supply Officer(DSO)Unnao, who endorsed the receipts of coal wagons without which delivery cannot be granted, was never contacted and examined by the Enquiry Officer. The opinion regarding alleged forgery about which a report was lodged with the police discloses that both the opposite parties and the G.R.P. authorities failed to initiate any action for the criminal prosecution of the consignee.

It is further submitted that the whole enquiry report is based on the opinion of the Enquiry Officer, the OSI, Moradabad without any cogent reasons in support of his conclusions and thus, mere presumption of forgery is not sufficient to conclude that the applicant was responsible for the alleged incident when the Railway Receipt was duly endorsed by the DSO, Unnao for delivery.

It may be relevant to state here that the alleged incident of forgery relates to 20-5-77, 14-6-77 and 29-6-77 while the alleged enquiry report was submitted after the applicant's retirement and more than 2 1/2 years after the alleged incident without even informing the applicant or without even associating him in the alleged enquiry and thus, no credence can be given to the enquiry carried behind the back of the applicant.

6-11-79

B.R.Vaish

Central Administrative Tribunal
Lucknow Bench
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It is further submitted that it is a settled
Dy. Registrar

principle of law that an opportunity to show cause
must be given before passing an order affecting
pay and emoluments.

It has been held by the Hon'ble Supreme
Court that -

" Even an administrative order which involves
civil consequences must be made consis-
tently with the rules of natural justice
and in case it is not done, the order is
bad."

In another case, it was held by the Hon'ble
Supreme Court that -

" All actions which involve penal or adverse
consequences must be in accordance with
the principles of natural justice."

It is further submitted that even if an
alleged enquiry was held, a copy of the alleged
enquiry report having been annexed vidd Annexure
C-1 to the counter, the same is bad in the eyes of
law as the applicant was never associated with the
same and the alleged enquiry was held behind the
back of the applicant and thus, the alleged enquiry
and the enquiry report being merely based on the
alleged fact finding enquiry without holding enquiry
under Rule 9 of the Railway Servant's (D & A) Rules,
1968 is bad, as held by the Hon'ble Calcutta Tribunal.

In another case, it has been held by the
Hon'ble Patna Bench that -

B.R. Varsh

Dy. Registrar (S)

" DCRG cannot be withheld unless a formal chargesheet was issued in a departmental proceeding or filed in Court in a criminal trial."

In this case, the applicant retired on reaching the age of superannuation on 31-7-79 and the alleged fact finding enquiry report is dated 6-11-79 i.e. more than 3 months after the applicant's retirement and based on this alleged enquiry report, the applicant's gratuity has been withheld, without associating the applicant in the enquiry or giving him an opportunity of hearing to place the correct facts and thus, the act of withholding of gratuity is ab-initio void and illegal and merits outright quashing.

It may be relevant to state here that it has been observed by the Hon'ble Supreme Court in a catena of decisions that -

" We are of the view that gratuity is no longer a bounty but it is a matter of right of the employee and it can therefore no longer be regarded as a provision in the discretion of the President as provided in the Pension Regulations. Since there is no legal provision empowering the authorities to forfeit the gratuity payable to an employee, the order passed by the government forfeiting the gratuity payable to the appellant must be held to

B R. Varsh

be bad and must be set aside." By Registrar (1)

As regards the claim of the applicant being time barred, as alleged by the opposite parties, it is submitted that it has been held in a catena of decisions that claim for pensionary benefits is a recurring cause of action and hence, the plea of limitation cannot be accepted in a case where pensionary benefits are sought to be denied.

Thus, in view of submissions made above, the withholding of the applicant's gratuity is illegal and void and the orders of the opposite parties for withholding the gratuity are illegal, ab-initio void, perverse and merit outright rejection.

3). That contents of para 4 of the counter are denied while those of paras 2, 3 and 4 of the rejoinder are reiterated as correct. The act of the opposite parties in holding responsible the applicant for the alleged loss without even giving the applicant even opportunity of hearing, a show cause notice chargesheet or an enquiry associating the applicant is illegal, perverse and merits outright rejection.

It is further submitted that Section 76 B of the Indian Railways Act, 1890 provides -

"Responsibility for wrong delivery - Where a railway administration to which animals or goods are delivered to be carried by railway

B. R. Vaish

delivers them in good faith to a person who produces the original railway receipt, the railway administration shall not be responsible on the ground that such person is not legally entitled thereto or that the endorsement on the railway receipt is forged or otherwise defective,"

and thus, the applicant cannot be held responsible for any alleged fraudulent dealing as the provisions contained above fully exonerates the railway administration in such cases.

4) That contents of para 5 of the counter are denied while those of paras 6,7,8 and 9 of the rejoinder are reiterated as correct. No amount is payable by the applicant much less recoverable from the applicant, as alleged by the opposite parties, for reasons set forth in paras above.

5) That contents of para 6 of the counter are denied while those of paras 10,11 and 12 of the rejoinder are reiterated as correct. As mentioned in the preceding paras above, the alleged orders of withholding of gratuity are patently illegal, malafide and perverse and thus, merit outright rejection.

6) That contents of para 7 of the counter are denied while those of paras 13 to 18 of the rejoinder are reiterated as correct.

Dated: 12-9-95
at Lucknow.

B.R. Vaish
APPLICANT

Central Administrative Tribunal

Lucknow Bench

Date of Filing

Date of Receipt by Post

VERIFICATION

By, Registrar ()

I, the applicant named above, do hereby verify that the contents of paras 1 to 6 of this supplementary rejoinder reply are true to my knowledge, based on records while the legal parts thereof are believed to be true.

Signed and verified this 12th day of September, 1995 at Lucknow.



APPLICANT

In the Hon'ble Central Administrative Tribunal,
Lucknow.

O.A. No. 17 of 1990.

Babu Ram Vaish

Applicant

Versus

Union of India and Others

Opposite Parties

Deposit of cost.

In the above noted case, it is respectfully submitted that as per orders of the Hon'ble Court dated 8-8-95, costs of Rs. 200/- have been deposited in the Registry of the Tribunal on 6-9-95 vide Book No. 34 and receipt No. 3313. The receipt is annexed for the perusal of the Hon'ble Court.

Dated: 21-9-95
at Lucknow.

A. Main, Adv.
Counsel for applicant

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[1989] 11 Administrative Tribunals Cases 765

Central Administrative Tribunal, Calcutta

(BEFORE A.P. BHATTACHARYA, JUDICIAL MEMBER AND P.K. MALICK,
ADMINISTRATIVE MEMBER)

BIMALENDU BANERJEE

Applicant;

Versus

UNION OF INDIA AND OTHERS

Respondents.

O.A. No. 17 of 1988, decided on June 9, 1989

✓ **Gratuity** — Death-cum-Retirement Gratuity of railway servant — Competence to order forfeiture of, held, possessed by the President alone — Hence, order of forfeiture passed by some other authority, held, incompetent — Railway Establishment Code, Vol. 2, Rule 2308 — Railway Board's letters Nos. E (D & A) 85 RG 6 — 49, dated 24-2-1986 and E (D & A) 88 RG 6-39, dated 20-3-1988 — Misconduct — Punishment (Para 8)

✓ **Relief** — Gratuity — Gratuity illegally withheld — Payment with interest @ 12 per cent per annum directed — Interest (Para 10)
Connected references: S. Malik: SUPREME COURT (L & S) DIGEST, Vol. 4, § [23220-B]

Manual of Railway Pension Rules, 1950 — Rule 313 (Dated w.e.f. 23-10-1983) — Order passed under, on a subsequent date, held, illegal (Para 8)

✓ **Departmental enquiry** — Natural justice — Hearing — Denial of opportunity to cross-examine witnesses during enquiry, held, violative of principles of natural justice and vitiate of the findings — Railway Servants (Discipline & Appeal) Rules, 1968, Rule 9 (Para 7)

Connected references: S. Malik: SUPREME COURT (L & S) DIGEST, Vol. 1 §§ [20737] to [20739]; B.R. Ghaiye: LAW AND PROCEDURE OF DEPARTMENTAL ENQUIRIES (Third edn.), Chap. 13, Note 23(f) p. 863

Application allowed

H-M/5335

Advocates who appeared in this case:

P.B. Mishra, and K.K. Ghosh, Counsel, for the Applicant;
Asit Banerjee, Counsel, for the Respondents.

The Judgment of the Bench was delivered by

A.P. BHATTACHARYA, JUDICIAL MEMBER.—This application under Section 19 of the Administrative Tribunals Act, 1985, has been filed by Shri Bimalendu Banerjee against the Union of India, represented by the General Manager, Eastern Railway and four others.

2. The applicant retired from service as Chief Booking Clerk, Krishnanagar City Junction under the Eastern Railway, with effect from the forenoon of 29-2-1976. After his retirement he was granted his pension and his contribution to provident fund, but his death-cum-retirement gratuity had not been paid. By a letter, dated 22-2-1978, issued by respondent 4, the applicant was directed to show cause as to why his D.C.R.G. should not be forfeited as he was responsible for the theft of Rs 12,780.55p. from the cash

safe of Liluah Booking Office in the night between 3/4-1-1972. The applicant replied to the show-cause notice denying the allegation made against him. Ultimately he had to move the Hon'ble High Court at Calcutta. By its order, dated 29-11-1982, the High Court disposed of the matter by giving a direction to the respondents to the effect that if they liked to initiate proceeding against the applicant, they might do so under Rule 313 of the Manual of Railway Pension Rules, 1950 and decide the matter in accordance with law after giving opportunities to the applicant of being heard. The railway authority had not initiated any further proceeding against the applicant. Nor did they release his D.C.R.G. money. The applicant sent a representation on 7-2-1986 to the General Manager, Eastern Railway. As no reply to it was given, the applicant filed an application before this Tribunal which was numbered as O.A. 407 of 1986. That application was disposed of by this Tribunal on 8-1-1987. Pursuant to the direction given by this Tribunal, the applicant submitted a further representation to the railway authority, but no reply to it was given. The applicant states that as per the order passed by this Tribunal the respondents had simply supplied him with a copy of the Fact Finding Enquiry Report. The applicant pointed out in his representation that on the basis of the Fact Finding Enquiry Report the charge levelled against him could not be taken as established. By a letter issued on 17-7-1981, the respondent 4 expressed his mind to the effect that the loss incurred by the railway authority would be recovered from the D.C.R.G. of the applicant. On 8-6-1987 the applicant preferred an appeal which also yielded no result. So, in filing the application the applicant has prayed for issuing a direction on the respondents so that his D.C.R.G. amounting to Rs 9867 may be paid to him at an early date with interest accrued thereon.

3. During the pendency of this case the applicant filed a supplementary annexing thereto an order dated 25-6-1987 passed by the Sr. Divisional Commercial Superintendent, Eastern Railway, Liluah (sic) in which it was mentioned that his D.C.R.G. amounting to Rs 8700 had already been confiscated, and by this letter he had been directed to deposit the balance amount of Rs 4080.55p. to meet the outstanding dues of the railway. In his supplementary application, the applicant has prayed for setting aside the said order.

4. The application has been contested by the respondents. The reply filed by the respondents deals only with the supplementary application filed by the applicant. It is stated by the respondents that in compliance with the order passed by the Hon'ble High Court at Calcutta they had handed over the copy of the findings of the Fact Finding Enquiry Committee to the learned advocate for the applicant. It is also stated by the respondents that in compliance with the order passed by this Tribunal they once again made over a copy of the said report to the applicant's advocate. The applicant made a representation which was duly replied to. It is the version of the respondents that the matter has been examined once again under the provision of Rule 313 of the Manual of Railway Pension Rules, 1950, and it has been decided by the Sr. Divisional Commercial Superintendent, Liluah (sic) that the D.C.R.G. amounting to Rs 8700 payable to the applicant would be forfeited. The appeal preferred by the applicant was duly considered and replied to by the successor in office and the decision taken earlier was confirmed. According to the respondents, the applicant has no case warranting an intervention by this Tribunal.

5. We note that in order to get his D.C.R.G. released from the

respondents, the present applicant had to approach the court thrice. The applicant retired from service on superannuation with effect from the forenoon of 29-2-1976. After his retirement all his retiring benefits had been granted to him excepting his D.C.R.G. money. At first that was withheld on the ground that an enquiry was pending against him. By a notice issued by the Sr. Divisional Commercial Superintendent, Eastern Railway, Liluah (sic), respondent 4, on 22-2-1978, the applicant was directed to show cause as to why his D.C.R.G. should not be forfeited as he was responsible for the theft of Rs 12,780.55 p. from the cash safe of Liluah Booking Office in the night between 3/4-1-1972. The applicant denied the allegation made against him. He filed a writ application in the Hon'ble High Court at Calcutta which was numbered as C.R. 3125(w) of 1978. By an order passed on 29-11-1982 the said civil rule was disposed of with a direction on the respondents that if they so liked they might initiate proceeding against the applicant under Rule 313 of the Manual of Railway Pension Rules, 1950. The said decision was communicated by the applicant to the concerned authority. Now, we refer to a letter dated 17-7-1984 issued by respondent 4. In this letter it was mentioned that pursuant to the Hon'ble High Court's order dated 29-11-1982 the case of the applicant had been examined under the provision of Rule 313 of the Railway Pension Rules, 1950 and it was decided not to release any sum to the applicant towards his D.C.R.G. claim. By that letter the entire D.C.R.G. amounting to Rs 8700 due to the applicant was confiscated. The applicant was given an opportunity by that letter to make a representation against the decision so taken. The applicant sent a representation to the General Manager, Eastern Railway on 7-2-1986 and getting no reply to it, filed an application before this Tribunal which was numbered as O.A. 407 of 1987. On 8-1-1987 this Tribunal disposed of the said original application directing the applicant to make a further representation to the concerned authority within three weeks from the aforesaid date and further directing the concerned railway authority to dispose of his representation in course of three months. Some other directions, viz. furnishing a copy of the letter dated 17-7-1984 and a copy of the report of the Fact Finding Enquiry Committee to the applicant were also given by this Tribunal. It is the respondents' version that they had complied with the said directions. But the fact remains that the said amount which is due to the applicant towards his D.C.R.G. has not yet been released in his favour. Being aggrieved by that the applicant has filed the instant application.

6. The whole action of the respondents of withholding and forfeiting the D.C.R.G. of the applicant rests on the decision taken by the Fact Finding Enquiry Committee. On 4-1-1972 when the cash safe at Liluah Booking Office was opened by the Head Booking Clerk it was found that cash amounting to Rs 12,780.55p. kept in the iron safe by him on 3-1-1972 was missing. As per order of the superior authority a Fact Finding Enquiry Committee consisting of A.C.S.(I), Howrah, A.S.O.(2), Howrah and A.D.A.O., Howrah, was constituted. The committee held an enquiry and found that this applicant was responsible for the theft of such cash. On the basis of that finding of the enquiry committee, the D.C.R.G. amount due to the applicant was first withheld and then forfeited. It is contended by the respondents that even after considering the matter under the provision of Rule 313 of the Manual of Railway Pension Rules, 1950, as directed by the Hon'ble High Court, the decision so taken could not be changed. On a consideration of the materials on record and the law on the point we are unable to uphold the action of the respondents.

7. At the very outset we must mention that an enquiry by a Fact Finding Enquiry Committee cannot be a substitute for an enquiry contemplated under Rule 9 of the Railway Servants-(Discipline & Appeal) Rules, 1968. On a reading of the copy of the enquiry report as annexed to the application, we find that while holding the said enquiry, the Enquiry Committee examined the applicant as well as eight other persons. After recording their statements, the committee came to the conclusion that this applicant was responsible for the theft of cash. It should be borne in mind that all the witnesses were examined separately by the said committee. The applicant did not get any opportunity of cross-examining any of the witnesses from whom some incriminating materials might have come before the committee. There is nothing on record to show that at the time of examinations of the other witnesses the applicant was present. Such being the position his liability to the theft of the amount cannot be fixed in his absence and in a position where he was not made aware of the nature of evidence adduced against him. Natural justice demands that before finding a person guilty of any offence he should be given an opportunity of being heard. So, when the applicant had not been given such opportunity, the principle of natural justice had been offended and as such the finding of the Fact Finding Enquiry Committee could not be applied against him. Now on a scrutiny of the enquiry report we find that it was also held by the enquiry committee that the responsibility of one Shri N.G. Roy, Sr. A.B.C., who was on duty from 9 p.m. of 3-1-1972 to 6 a.m. of 4-1-1972 for theft of the said cash amount could not be ruled out. In the concluding portion of the enquiry report a suspicion was cast on Shri N.G. Roy also. It was the observation of the enquiry committee that "Shri N.G. Roy might have also taken out the cash with duplicate key made previously". Such being the observation of the Fact Finding Enquiry Committee, it is not understandable to us as to how for the loss of the said amount of Rs 12,780.55/- the entire amount of the D.C.R.G. of the applicant could be forfeited.

8. It is the admitted position that the incident in question had taken place on 4-1-1972 when the applicant was in service. The enquiry committee held enquiries on 21-4-1972 and 29-8-1972 when also the applicant was in service. Long after his retirement i.e. on 22-2-1978 by a letter issued by respondent 4 he was directed to show cause as to why his D.C.R.G. amount should not be forfeited. The said show-cause notice was given to him on the basis of the aforesaid report submitted by the Fact Finding Enquiry Committee. In his show cause petition the applicant had denied the allegation made against him. Thereafter came the order of the Hon'ble High Court at Calcutta. The High Court while disposing of the writ application filed by the applicant directed the respondents to initiate proceeding against the applicant, if they so liked, under Rule 313 of the Manual of Railway Pension Rules, 1950. Instead of initiating any proceeding against the applicant, respondent 4 passed the order on 17-7-1984 forfeiting the entire D.C.R.G. amount of the applicant. In our opinion, that action was highly arbitrary and illegal. It should have struck respondent 4 that Rule 313 of the said rules was deleted with effect from 23-10-1983 i.e. long before his passing the order on 17-7-1984. Besides, when the applicant had retired from service on 29-2-1976 the Sr. Divisional Commercial Superintendent, Eastern Railway, Liluah (*sic*), had no authority to pass the said order forfeiting the entire D.C.R.G. of the applicant. In this context the D.C.R.G. shall be treated as pension and as one of the retiring benefits allowable to a railway servant. In our opinion in deciding the matter the provision of Rule 2308 of the Indian Railway Establishment

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With a view to implementing this direction the State Government came out with the impugned order dated August 12, 1988 marked Annexure 'A'.

4. In *Siva Reddy case*¹ this Court found that promotees had exceeded the quota and even got regularised in respect of the posts in excess of the limit. Taking into consideration the fact that regularisation had been done after the promotees had put in some years of service and disturbing regularisation would considerably affect the officers concerned, regularisation was not interfered with. This Court's intention obviously was not to take away the benefit of regularisation in respect of the officers belonging to the promotee group in excess of their quota but the court did not intend to allow such regularised officers in excess of the quota to also have the benefit of such service for purposes of seniority. A reading of the judgment in *Siva Reddy case*¹ clearly indicates that this Court intended what the government has laid down by way of guideline. We see no justification to interfere with the government direction. A draft seniority list on the basis of such direction has already been drawn up and has been circulated. We are told that objections have been received and would be dealt with in usual course by the appropriate authorities. This writ petition had been entertained in view of the allegation that the government direction was on a misconception of what was indicated in the judgment and in case there was any such mistake the

same should be rectified at the earliest. Now that we have found that the government order is in accord with the court direction, this writ petition must be dismissed and individual grievances, if any, against the draft seniority list would, we hope, be considered on the basis of objections filed by the competent authority.

5. There shall be no order as to costs.

1990 (Supp) Supreme Court Cases 640

(BEFORE P.N. BHAGWATI, C.J. AND V. KHALID, J.)

F.R. JESURATNAM

Appellant;

Versus

... Respondents.

UNION OF INDIA AND OTHERS

Civil Appeal No. 2827 of 1986 with SLP No. 5907 of 1985,
decided on September 30, 1986

Service Law — Gratuity — Forfeiture of — Employees have a right to be paid gratuity and government has no discretion in the matter — Hence order of forfeiture of gratuity set aside

R.M/10102/SLA

✓ Code, Vol. II should have been taken into consideration. Under the Railway Board's letter No. E(D & A) 85RG6-49 dated 24-2-1986 the President alone has the right of effecting a cut in Pension/D.C.R.G., if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service. In this case the impugned order of forfeiting the D.C.R.G. of the applicant was not passed by the President nor was his sanction taken before taking the said action. Besides, neither in a departmental nor in a judicial proceeding, the applicant, a pensioner, was found guilty of theft of the said cash. By its letter No. E.(D & A) 88RG6-39, dated 20-3-1988, the Railway Board made it clear once again that where a pensioner is found guilty of grave misconduct or negligence during the period of his service as a result of a departmental or judicial proceeding, the powers to withhold or withdraw his pensionary benefits or any part of it vest with the President only. At para 2 of the aforesaid letter it was stated that if the departmental proceedings were instituted while railway servant was in service, it shall be deemed to be proceedings under para 2308 RII and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service. It was pointed out by the Railway Board that this does not mean that the authority who instituted the departmental proceeding and concluded it has the power to pass the final orders of withholding or withdrawing the pensionary benefit. Such a power in cases falling under item (4) of the proviso to para 2308 RII vests only with the President. It was observed by the Railway Board that in such cases, after conclusion of the departmental proceedings, where it is proposed to effect a cut in pensionary benefits, a reference should be made to the Railway Board's office for obtaining the sanction of the President to effect the proposed cut in pension. We have already mentioned that for the purpose of pensionary benefits D.C.R.G. stands on the same footing with pension. So, it is quite clear from the aforesaid directions issued by the Railway Board that although some sort of enquiry was started against the applicant, such forfeiture of his D.C.R.G. amount could not be done by respondent 4 without the sanction of the President. Besides, it had nowhere been held in any departmental or judicial proceedings that the applicant was liable for the theft of the aforesaid cash causing loss to the railway. Considering the aforesaid we hold that the order passed by respondent 4 forfeiting the entire D.C.R.G. of the applicant cannot be sustained as it is bad in law.

✓ 9. Before parting with the case we like to make some comments on Annexure 'A' to the supplementary application. By the order passed by this Tribunal, the applicant made a representation. In reply to that representation, the present respondent 4 i.e. Sr. Divisional Commercial Superintendent, Eastern Railway, Liluah(sic), passed an order rejecting the applicant's prayer. It is curious to note that without applying his mind at all the present Sr. Divisional Commercial Superintendent, Eastern Railway, Liluah(sic), upheld his decision taken by the predecessor in office. We cannot but hold that this sort of treatment and disposal of a prayer made by a retired railway servant in compliance with the direction of the Tribunal is unbecoming of such a highly posted officer.

✓ 10. In view of our findings made above the application succeeds. We allow this application with costs which is quantified at Rs 1000. The respondents are directed to pay the Death-cum-Retirement Gratuity of the applicant with interests at the rate of 12 per cent per annum accrued thereon from 1-6-1976 till the date of actual payment within 90 days from this date.

✓ Code, Vol. II should have been taken into consideration. Under the Railway Board's letter No. E(D & A) 85RG6-49 dated 24-2-1986 the President alone has the right of effecting a cut in Pension/D.C.R.G., if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service. In this case the impugned order of forfeiting the D.C.R.G. of the applicant was not passed by the President nor was his sanction taken before taking the said action. Besides, neither in a departmental nor in a judicial proceeding, the applicant, a pensioner, was found guilty of theft of the said cash. By its letter No. E.(D & A) 88RG6-39, dated 20-3-1988, the Railway Board made it clear once again that where a pensioner is found guilty of grave misconduct or negligence during the period of his service as a result of a departmental or judicial proceeding, the powers to withhold or withdraw his pensionary benefits or any part of it vest with the President only. At para 2 of the aforesaid letter it was stated that if the departmental proceedings were instituted while railway servant was in service, it shall be deemed to be proceedings under para 2308 RII and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service. It was pointed out by the Railway Board that this does not mean that the authority who instituted the departmental proceeding and concluded it has the power to pass the final orders of withholding or withdrawing the pensionary benefit. Such a power in cases falling under item (a) of the proviso to para 2308 RII vests only with the President. It was observed by the Railway Board that in such cases, after conclusion of the departmental proceedings, where it is proposed to effect a cut in pensionary benefits, a reference should be made to the Railway Board's office for obtaining the sanction of the President to effect the proposed cut in pension. We have already mentioned that for the purpose of pensionary benefits D.C.R.G. stands on the same footing with pension. So, it is quite clear from the aforesaid directions issued by the Railway Board that although some sort of enquiry was started against the applicant, such forfeiture of his D.C.R.G. amount could not be done by respondent 4 without the sanction of the President. Besides, it had nowhere been held in any departmental or judicial proceedings that the applicant was liable for the theft of the aforesaid cash causing loss to the railway. Considering the aforesaid we hold that the order passed by respondent 4 forfeiting the entire D.C.R.G. of the applicant cannot be sustained as it is bad in law.

9. Before parting with the case we like to make some comments on Annexure 'A' to the supplementary application. By the order passed by this Tribunal, the applicant made a representation. In reply to that representation the present respondent 4 i.e. Sr. Divisional Commercial Superintendent, Eastern Railway, Liliuah(sic), passed an order rejecting the applicant's prayer. It is curious to note that without applying his mind at all the present Sr. Divisional Commercial Superintendent, Eastern Railway, Liliuah(sic), upheld his decision taken by the predecessor in office. We cannot but hold that this sort of treatment and disposal of a prayer made by a retired railway servant in compliance with the direction of the Tribunal is unbecoming of such a highly posted officer.

✓ 10. In view of our findings made above the application succeeds. We allow this application with costs which is quantified at Rs 1000. The respondents are directed to pay the Death-cum-Retirement Gratuity of the applicant with interests at the rate of 12 per cent per annum accrued thereon from 1-6-1976 till the date of actual payment within 30 days from this date.

With a view to implementing this direction the State Government came out with the impugned order dated August 12, 1988 marked Annexure 'A'.

4. In *Siva Reddy case*¹ this Court found that promotees had exceeded the quota and even got regularised in respect of the posts in excess of the limit. Taking into consideration the fact that regularisation had been done after the promotees had put in some years of service and disturbing regularisation would considerably affect the officers concerned, regularisation was not interfered with. This Court's intention obviously was not to take away the benefit of regularisation in respect of the officers belonging to the promotee group in excess of their quota but the court did not intend to allow such regularised officers in excess of the quota to also have the benefit of such service for purposes of seniority. A reading of the judgment in *Siva Reddy case*¹ clearly indicates that this Court intended what the government has laid down by way of guideline. We see no justification to interfere with the government direction. A draft seniority list on the basis of such direction has already been drawn up and has been circulated. We are told that objections have been received and would be dealt with in usual course by the appropriate authorities. This writ petition had been entertained in view of the allegation that the government direction was on a misconception of what was indicated in the judgment and in case there was any such mistake the same should be rectified at the earliest. Now that we have found that the government order is in accord with the court direction, this writ petition must be dismissed and individual grievances, if any, against the draft seniority list would, we hope, be considered on the basis of objections filed by the competent authority.

5. There shall be no order as to costs.

1990 (Supp) Supreme Court Cases 640

(BEFORE P.N. BHAGWATI, C.J. AND V. KHALID, J.)

F.R. JESURATNAM ... Appellant;

Versus

UNION OF INDIA AND OTHERS ... Respondents.

Civil Appeal No. 2827 of 1986 with SLP No. 5907 of 1985,
decided on September 30, 1986

Service Law — Gratuity — Forfeiture of — Employees have a right to be paid gratuity and government has no discretion in the matter — Hence order of forfeiture of gratuity set aside

R.M/10102/SLA

ORDER

1. Special leave granted.

2. We are of the view that gratuity is no longer a bounty but it is a matter of right of the employee and it can therefore no longer be regarded as a provision in the discretion of the President as provided in the Pension Regulations. Since there is no legal provision empowering the authorities to forfeit the gratuity payable to an employee, the order passed by the Government forfeiting the gratuity payable to the appellant must be held to be bad and must be set aside. We accordingly set aside the order of the High Court as also the Order of the Government forfeiting the gratuity of the appellant and direct that gratuity shall be paid to the appellant forthwith. There will be no order as to costs of the appeal. The appeal is disposed of in these terms.

1990 (Supp) Supreme Court Cases 641

(BEFORE S. RANGANATHAN AND K.N. SAIKIA, JJ.)

Writ Petition (Civil) No. 11704 of 1985[†]

AMAR DEO PRAKASH AND 44 OTHERS .. Petitioners;

Versus

UNION OF INDIA AND 53 OTHERS .. Respondents.

And

Writ Petition (Civil) No. 12802 of 1985

ALL INDIA TRAIN CONTROLLER ASSOCIATION .. Petitioner;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition (Civil) No. 11704 of 1985,

decided on February 19, 1990

Service Law — Seniority and Promotion — Seniority — Discrimination —

g Transportation (Traffic) Department of Railways — Determination of inter se seniority of Group C (Class III) employees drawn from two different streams viz. Control Stream and Traffic Stream with different pay scales for promotion to Group B (Class II) posts — Principle of considering employees in higher grade on regular basis as senior to those in lower grade failed to work when as a result of implementation of Third Pay Commission's recommendations, pay scales in the two streams became dissimilar — Later restructuring of cadres effected granting upgradation to each stream based on its total strength in order to balance promotional chances in both the streams — Sufficient material not placed before Court showing that Control Stream as a class was thereby subjected to discrimination — Good number of persons in Control Stream were also benefited monetarily despite the disadvantage to a few —

† Under Article 32 of the Constitution of India

now decide the matter afresh with advertence to the above observations taking into account the decision of this Court in *B. Karunakar*². In the circumstances of the case, we also direct that the Managing Director of the Corporation should decide the matter as early as possible and preferably by 31-1-1994.

8. No costs.

(1995) 30 Administrative Tribunals Cases 330

Central Administrative Tribunal, Patna

(BEFORE R.K. VARMA, J., VICE-CHAIRMAN)

RAM SHIROMANI

Applicant;

Versus

UNION OF INDIA AND OTHERS

Respondents.

O.A. No. 605 of 1993, decided on August 31, 1994

Retirement Benefits — Pension/Gratuity/Commutation of pension — Withholding of merely on the basis of intimation received from CBI advising major penalty proceedings against a retiring employee — Held, not permissible — Applicant retiring from service on 30-6-1993 — Before that date, General Manager (Vigilance) vide his letter dated 15-6-1993 informing that a letter had been received from CBI advising major penalty proceedings against applicant — No charge-sheet however issued to applicant till his retirement — Held, DCRG/commutation of pension could not be withheld unless a formal charge-sheet was issued in a departmental proceeding or filed in court in a criminal trial — Mere receipt of intimation from CBI was not sufficient to withhold DCRG/commuted pension — Respondents directed to allow commutation of pension and to release DCRG with interest @ 15% p.a. from 1-7-1993 — Instead of paying provisional pension, pension actually admissible to applicant also directed to be paid — Costs of Rs 500 allowed — Manual of Railway Pension Rules, Para 316(1) — IREC, Vol. II, R. 2308A — Pension — Gratuity — Commutation of Pension

(Paras 3 and 4)

Application allowed

K-M/A-04586

Advocates who appeared in this case :

Sudama Pandey and Umesh Pathak, Counsel, for the applicant;

A.B. Ojha, Counsel, for the respondents.

The Order of the Bench was pronounced by

R.K. VARMA, J., VICE-CHAIRMAN.— In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who superannuated on 30-6-1955, has made a grievance that he has not been paid pension, commuted value of pension and gratuity and has prayed for directions to the respondents for immediate payments of the same with interest at penal rate of 20 per cent per annum or at the market rate from 1-7-1993 till the date of actual payments.

2. The applicant was appointed in service in North Eastern Railway on 30-6-1955 and he superannuated on 30-6-1993 after attaining the age of 58 years as Assistant Engineer (Group 'B') at Chapra under the administrative control of Divisional Railway Manager, Varanasi and General Manager, North Eastern Railway, Gorakhpur. All settled dues on retirement of the applicant were due to be paid to him on 30-6-1993/1-7-1993 by the respondents but the

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applicant alleges that the respondents deliberately withheld the amounts of pension, commuted value of 1/3rd pension and gratuity, which caused financial

a harassment to the applicant. The respondents in their counter reply have tried to justify withholding of the aforesaid amounts on the plea that before 30-6-1993, the date of superannuation of the applicant, a letter dated 15-6-1993 was received by the respondents from the G.M. (Vigilance), Gorakhpur stating that a letter had been received from the C.B.I. indicating that a major penalty action against the applicant had been recommended and as such, the applicant's DCRG had been withheld in terms of para 316(1) of Manual of Railway Pension Rules, 1950/2308A of Indian Railway Establishment Code, Volume II. It has also been stated in the counter reply that the provisional pension has been sanctioned to the applicant and in view of the sanction of provisional pension, no commutation of pension is permissible.

3. The learned counsel for the applicant has stated that no provisional pension is being paid to the applicant. He has further submitted that the provision of para 316(1) of MRPR 1950/2308A of IREC Vol. II is not applicable to the instant case since contrary to the requirement of the said provision no departmental or judicial proceeding has been instituted or is continued against the applicant who has retired on attaining the age of superannuation. It is not disputed that no charge-sheet has been issued to the applicant either in a departmental proceeding or in any judicial proceeding so far. The learned counsel for the respondents has however, submitted that major penalty action has been recommended by the CBI, but mere recommendation of major penalty, action against the applicant does not amount to institution of a departmental proceeding or judicial proceeding which is the condition precedent for applicability of para 316(1) of MRPC 1950/2308A of IREC Vol. II relied upon by the respondents. A departmental or judicial proceeding can be said to be instituted only when a charge-sheet is issued or filed against the applicant. In the instant case no charge-sheet has been issued and as such, withholding of pension, commuted value of pension and DCRG by the respondents is arbitrary and illegal, being without authority of law.

4. Respondents are directed to pay to the applicant amounts of commuted value of pension and DCRG with interest @ 15 per cent per annum from 1-7-1993 till the date of payment. The respondents are also directed to pay the payable amount of pension accruing to the applicant every month since after the date of superannuation with interest @ 15 per cent annum till the date of payment and to continue to pay further pension month by month in future. All payments due to the applicant in pursuance of the directions made as hereinabove shall be made within a period of one month from the date of receipt of this order.

5. This application is accordingly allowed with costs. The counsel's fee would be Rs 500/- which shall be paid by the respondents.

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Eastern Railway on
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the impugned order of transfer has . . . not been made in good faith and to meet the exigencies of service alone. If the services of a senior Engineering Assistant at Port Blair was indispensable, the respondents would not have retransferred Mr Ravindran. Therefore, we are of the view that the impugned orders are liable to be quashed.

6. In the result, for the reasons mentioned in the foregoing paragraphs, we allow the application, quash the impugned orders dated 11-8-1989 and 27-10-1989 passed by the Chief Engineer, South Zone, Madras as arbitrary and illegal and direct the respondents to allow the applicant to resume his duties as Senior Engineering Assistant, Doordarshan, Trivandrum. We direct that this order should be complied with within a period of 7 days from the date of communication of this order. There is no order as to costs.

[1991] 15 Administrative Tribunals Cases 83

Central Administrative Tribunal, Calcutta

(BEFORE A. P. BHATTACHARYYA, JUDICIAL MEMBER AND P. K. MALICK,
ADMINISTRATIVE MEMBER)

BARINDRA KUMAR GHOSH .. Applicant ;
Versus

UNION OF INDIA AND OTHERS .. Respondents.

T.A. No. 131 of 1988, arising out of C.O. No. 148(w) of 1985,
decided on April 4, 1990

Punishment — Natural justice — Hearing — Government money allegedly lost from applicant's custody — Recovery of, merely on the basis of a fact finding enquiry without holding enquiry under Rule 9 — Held, bad — Departmental enquiry — Railway Servants (D & A) Rules, 1968, Rule 9 (Para 5)

N. Gopalakrishna Naidu v. State of M. P., AIR 1968 SC 240, followed

Connected references : S. Malik: SUPREME COURT (L & S) DIGEST, Vol. 1,
§§[20579] & [20580] ; B. R. Ghaiye : LAW AND PROCEDURE OF DEPARTMENTAL ENQUIRIES (Third edn.),
Chap. 3, Note 8(k), pp. 272-73

Retiral Benefits — Death-cum-retirement gratuity — Competence to order recovery from — Fact finding enquiry held after expiry of re-employment — Committee holding such enquiry, held, had no jurisdiction to order recovery from death-cum-retirement gratuity, of loss allegedly caused to government during re-employment — Railway Pension Rules, 1950, Rules 323 & 315 — Re-employment (Para 7)

Application succeeded

H-M/6936

Advocates who appeared in this case :

Ashok Ganguly, Counsel, for the Applicant ;
M.S. Banerjee, Counsel, for the Respondents.

The Judgment of the Bench was pronounced by

A.P. BHATTACHARYYA, JUDICIAL MEMBER—Applicant Shri Barindra Kumar Ghosh filed a writ application in the Hon'ble High Court at Calcutta against the Union of India, represented by the General Manager, Eastern Railway and four others, which by operation of Section 29 of the Administrative Tribunals Act, 1985 came to this Tribunal by way of transfer for disposal.

2. The applicant entered railway service on 3-1-1945 and retired on superannuation under the Eastern Railway on and from 1-8-1979. From 25-4-1980 he was reappointed as a Rest Giver Assistant Station-master at Kalinarayanpur within the Eastern Railway. Such re-employment was terminated on 24-4-1981. The applicant states that prior to his retirement his D.C.R.G. was determined as per rules. He states further that on 26-1-1981 he had to overstay in his duty at Santipur railway station as his reliever had not turned up. At that time it was detected that four sealed bags containing an amount of Rs 10,344.41 paise from the iron safe of this station were missing. The applicant immediately reported the matter by wire to all concerned. An investigation into the matter was conducted by the G.R.P.S. and Railway Protection Force at Ranaghat. Ultimately, final report was submitted by them. To make a probe into the incident a fact finding enquiry was held and it was decided by the enquiry committee that the aforesaid amount which was found missing from the applicant's custody would be recovered from his D.C.R.G. The applicant challenges that order as illegal. According to him, without giving him any opportunity to know the allegation against him and to show cause such decision could not be taken lawfully. In filing the application the applicant has prayed for quashing the decision of the fact finding enquiry committee dated 1-7-1983.

3. The application has been contested by the respondents. It is the main contention of the respondents that when the amount had been stolen from the custody of the applicant he would be liable to make good the loss caused to the government. According to them, a fact finding enquiry was held by senior officers of the railway before whom the applicant had admitted that for his negligence the four cash bags containing the amount of Rs 10,344.41 paise were lost from his custody.

4. The short question to be decided in this case is whether the decision of the fact finding enquiry can be sustained.

5. Admittedly, the applicant retired from railway service under the Eastern Railway on superannuation on 1-8-1979. It is also admitted that he was re-employed for a period of one year as a Rest Giver Assistant Station-master from 25-4-1980 to 24-4-1981. There was an incident on 27-1-1981 at Santipur railway station during the duty hours of the applicant when four sealed cash bags containing the amount of Rs 10,344.41 paise were missing. A fact finding enquiry was held and the committee holding the enquiry passed an order on 1-7-1983 to the effect that the said amount would be recovered from the D.C.R.G. of the applicant. Considering the facts and circumstances of the case as mentioned above we have no hesitation to hold that such a decision cannot at all be sustained.

6. We have already got that the applicant was re-employed for a period of one year from 25-4-1980 to 24-4-1981. The incident when the four cash bags containing the aforesaid sum were found missing happened during the tenure of service of the applicant as a railway servant and during his duty hours.

It remains unexplained as to why without starting a departmental enquiry as per Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 a fact finding enquiry was held and the applicant was held responsible for the said loss. We cannot but deprecate this sort of short cut method. Admittedly, the applicant was never given any opportunity of showing cause against the punishment proposed to be inflicted on him. In the fact finding enquiry, the applicant got no opportunity to cross-examine the witnesses examined. Such being the position, we cannot but hold that by holding such an enquiry the whole responsibility could not be cast on the applicant. It has been held by the Supreme Court in the case of *N. Gopalakrishna Naidu v. State of Madhya Pradesh*¹, that in such a case the very nature of the function implies the duty to act judicially. In a case where an opportunity to show cause against the action proposed is not afforded the order is liable to be struck down as invalid on the ground that it is one in breach of principles of natural justice. We have already mentioned that the applicant did not get the least opportunity to defend his case and as such the order passed by the fact finding enquiry committee cannot at all be sustained.

7. There is another aspect of the matter. The incident in question happened on 27-1-1981. The fact finding enquiry was held long after the expiry of the period of the applicant's re-employment i.e. 24-4-1981. By an order passed on 1-7-1983 (vide Annexure 'A' to the application) it was decided by the fact finding enquiry committee that the sum of Rs 10,344.41 paise would be recovered from the D.C.R.G. of the applicant. In our opinion the fact finding enquiry committee had no jurisdiction to pass such order. It has been contended by the side of the respondents that under the authority of Rule 323 of the Railway Pension Rules, 1950 such an order for recovery of the amount of loss caused to the government can be passed. We are unable to accept this contention. It is needless to mention that an order for recovery under the aforesaid rules can only be made in terms of Rule 315 which authorises only the President of India to order for recovery from the retiring benefits of a government servant of any pecuniary loss caused to government. The impugned order was neither passed by the President nor was with his consent. Such being the position, we have no hesitation to conclude that the order passed by the fact finding enquiry committee is wholly illegal and cannot at all be given effect to.

8. In view of our findings made above, the application succeeds. We allow this application making, however, no order as to costs. The decision of the fact finding enquiry committee dated 1-7-1983 as shown in Annexure 'A' to the application be hereby quashed. Respondents are directed to release the entire D.C.R.G. due to the applicant within 90 days from this date as per rules.