CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-38.

Dated: 8 MAR 1994

APPLICATION NO(s) 667 of 1993.

APPLICANTS:
Sri.H.R.Kamatha v/s.

RESPONDENTS:
Secretary,Ministry of Railways,
New Delhi and Other.

TO.

1. Prof.Raviverma Kumar,Advocate,
No.11,Jeevan Buildings,K.P.East,
Bangalore-560 001.

2. The Secretary,Ministry of Railways,
RailMantraleya,Raisina Road,
New Delhi-110 001.

3. Commissioner for Departmental Inquiries,
Central Vigilance Commission,
No.10, Jamnagar House,Akbar Road,
New Delhi-110 011.

4. Sri.A.N.Venugopala Gowda,
Advocate,No.8/2,First Floor,
R.V.Road,Bangalore-560 004.

SUBJECT:- Forwarding of copies of the Orders passed by the Central Administrative Tribunal,Bangalore.

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Please find enclosed herewith a copy of the ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal in the above mentioned application(s) on 11-02-1994.

O/C
Issued on 8.3.1994

for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.667/1993

FRIDAY THIS THE ELEVENTH DAY OF FEBRUARY, 1994

Mr. Justice P.K. Shyamsundar — Vice Chairman

Mr. V. Ramakrishnan — Member(A)

Shri H.R. Kamath,
Aged 59 years,
Retired Chief Electrical Engineer,
South Central Railways,
Secunderabad and now residing at
Plot No.272, 6th Main, 4th Cross,
MICO workers Housing Society,
Arakere Village Layout, Stage I,
Bangalore - 560076 — Applicant

(By Shri Ravivarma Kumar, Advocate)

v.

1. The Railway Board represented
by its Secretary,
Ministry of Railways,
Government of India,
Raisina Road, Rail Mantralaya,
New Delhi - 110 001

2. Shri S.C. Gupta,
Commissioner for Departmental
Inquiries, Central Vigilance
Commission, Government of India,
No.10, Jamanagar House,
Akbar Road,
New Delhi - 110 011 — Respondents

(By Shri A.N. Venugopal,)
learned Standing Counsel for Railways

ORDER

Mr. Justice P.K. Shyamsundar, Vice Chairman

In this application arising under Section 19 of the Administrative Tribunals Act, the applicant

..2/

is Shri H.R. Kamath, a retired Chief Electrical Engineer, South Central Railways, Secunderabad presently aggrieved by a charge-memo issued to him by the respondent Railway Board alleging commission of misconduct while in service. The charge-memo dated 5.8.92 produced at Annexure A-1 issued by the Joint Secretary, Railway Board was accompanied by a corresponding statement of imputations. He was then asked to file a defence statement in writing within the specified period enjoined under the Railway Servants (Discipline and Appeal Rules), 1968 etc. etc.

2. The applicant who was due to retire at the month end i.e. by the end of August, 1992, promptly filed a written statement transmitted the same along with a covering letter, copy of which is produced at Annexure 2. Suffice it to notice that he had in the course of his defence statement traversed the several charges framed against him by denying all of them thoroughly. In addition, as can be seen from the letter at Annexure 2, he had inter alia referred to a request made for supply of some documents in his earlier communications dated 13.8.92 and 20.8.92. In that letter, he also states that the written statement produced under Annexure A-2 was without prejudice to his right to file a further statement in defense, presumably after receipt of the documents sought for earlier. While these exchanges between the Department and the applicant was going on, the officer having reached the age of superannuation on 31.8.92, ceased to be an employee of the Railways

on retirement.

3. However, the Railway Administration having decided to continue the enquiry initiated against the applicant under Annexure A-1, even after his retirement, the said decision was communicated to him by an official memorandum dated 13.7.93. We have been furnished with a copy of that communication under at Annexure A-4 and we extract the same for the sake of convenience and it reads:

> "The Railway Board after carefully considering your written defence statement in reply to the above cited Memorandum of charges have decided to remit the charges for an oral inquiry appointing Shri S.C. Gupta, CDI, CVC, New Delhi as Inquiry Officer and Shri P.K. Mehrotra, AVO/RE/ALD as Presenting Officer. Orders appointing Shri S.C. Gupta as Inquiry Officer and Shri P.K. Mehrotra as Presenting Officer No.E(O)I-92/PU-2/51 dated 7.7.93 issued by the Rly. Board are enclosed.
>
> Please acknowledge receipt."

4. The Railway Board with a view to pursue the enquiry launched against the applicant under Annexure A-1 had passed another order dated 7.7.93 appointing one Shri S.C. Gupta, Commissioner, Commission for Departmental Enquiries, Central Vigilance Commission, New Delhi as Enquiry Officer to enquire into the charges framed against the applicant under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as rules). The Railway Administration had also passed one more order on the same date appointing one Shri P.K. Mehrotra, AVO/RE/Allahabad as Presenting Officer to present the case against the applicant in support of the charges before the

enquiring authority. The two orders appointing Shri Gupta as the Enquiry Officer and Shri Mehrotra as the Presenting Officer appear to have been issued simultaneously with the Department's communication at Annexure A-4 informing the applicant that notwithstanding his retirement, the enquiry already underway would be gone through and concluded in the usual course. We also find from a Memo produced at Annexure A-5 dated 14.7.93 that the Enquiry Officer, Shri S.C. Gupta had in right earnest started his work by fixing a date for preliminary hearing inter alia directing the applicant to appear before him at the Railway Guest House at Secunderabad on 6.8.93 at 11.30 a.m. The applicant instead of presenting himself before the Enquiry Officer and participating at the enquiry scheduled for 6.8.93 however chose to appear before this Tribunal seeking among other things the following reliefs:

"i) Issue a writ, order or direction in the nature of certiorari quashing the entire disciplinary proceedings initiated against the applicant including Memo dated 5th August, 1992, bearing No.E(O)1/92-PU-2/51(Annexure A-1) page 12 and the order dated 7.7.93 bearing No.E(O)I/92-PU-2 (Annexure A-4) page 63 and 64 in the interest of justice and equity;

ii) Forbear the respondents from holding any disciplinary inquiry pursuant to Annexures A1 Page 12 and A-4 page 63 and 64 in the interest of justice and equity;

iii) Issue a writ, order or direction in the nature of mandamus directing the Respondent No.1 to forthwith pay the DCRG and the commuted pension together with interest from the day the applicant became entitled to the same in the interest of justice and

equity; and

iv) To pass such other order or direction as this Hon'ble Tribunal deems fit in the facts and circumstances of the case including an order for award of costs."

5. Although the applicant asked for a stay of the enquiry, the Tribunal not having made any orders thereon but in view of the pendency of this application the enquiry it appears was not proceeded with. Presently, the applicant stands accused of having committed as many as four items of misconduct by the Railway Board, R-1 herein.

6. The learned Standing Counsel for the Railways, Shri A.N. Venugopal was directed to take notice of this application. Accordingly, he entered appearance and filed an objection statement justifying the action taken by the Department to arraign the applicant at the departmental enquiry and to justify as well the continuance of the enquiry even after the officer had admittedly retired. The matter was fully heard at the stage of admission and the pleadings also being complete, we think it appropriate to admit this application and to dispose it off on its merits finally by the order we propose to make hereunder. It would, however, be necessary to make a brief reference to the factual matrix which forms the basis for the contentions urged herein both in

law and on facts.

7. As mentioned earlier, the applicant, on the date of his retirement on 31.8.92 was the Chief Electrical Engineer attached to the South Central Railways, Secunderabad, Andhra Pradesh. We are told that he was a high ranking official in the pay scale of Rs.7300-7600 and during the years 1988-90, he was posted to work at Bilaspur and placed incharge of a project. Prior to that, he was posted at Calcutta where he had occupied an official quarters in the Garden Reach area that he later vacated on his transfer and posting at Bilaspur, a place quite some distance, we understand, from Calcutta. It appears following his transfer to Bilaspur, he had to vacate the official quarter at Calcutta but he appeared to have not moved out of Calcutta with his family whose members had admittedly settled down in a rented house at Calcutta. Therefore, on his transfer from Calcutta, he alone had gone to Bilaspur and stayed there, according to the Railway Administration, in a guest house managed by them. Railway Counsel Shri A.N. Venugopal told us that the officer was given a furnished air-conditioned room at the throw away rate of Rs.1.25 per day and that the applicant had been paying such low tariff for a cozy air-conditioned room is also not disputed by the applicant who, however, maintained in the course of his defense statement submitted before the enquiry officer that the room may have been air-conditioned, but it was not family accommodation. He also pointed

out that more often than not, he had to share that room with other visiting officers and therefore accommodation provided at Bilaspur was not exclusively ear-marked for his use. He also further pointed out that whenever he was out of Bilaspur on visits outside including Calcutta and other places he would vacate the room implying that it was not ear-marked for his exclusive use alone and did not therefore have the characteristic of a permanent home. These aspects become somewhat relevant in the light of one of the charges made against him alleging that although he was provided with official accommodation at Bilaspur he had nonetheless drawn HRA amounting to Rs.4000/- and odd without ever taking a house on leave at the place of his posting in Bilaspur.

8. Be that as it may, to continue the narrative, sometime in the year 1990, to be exact on 2.8.90, he had apparently ceased to have any connection with Bilaspur having been shifted from Bilaspur thereafter. We make this statement on the basis of the facts contained in the charges at Annexure A-1 framed against the applicant in relation to the pending enquiry allegedly relating to omissions and commissions that had reportedly taken place during his stay at Bilaspur during the period 29.4.88 to 2.8.90. But it really does not matter whether the applicant was in or out of Bilaspur after 2.8.90, however, what is not denied by any one is that he remained completely and totally free from any indiscretion whatsoever after his departure from Bilaspur.

But two years later i.e. in the year 1992 when he was actually journeying towards his retirement and was looking forward to a peaceful retired life after serving the Railways for decades, he appears to have been suddenly given a jolt by the Railway Administration by serving on him a catena of charges alleging commission of some misconduct by him. It is somewhat significant to note that the communication informing the decision of the Railway Board proposed to institute an enquiry against him on charges referred to in the communication dated the 5th of August, 1992, he was then just 26 days away from actual retirement. As a matter of fact when he did retire 26 days later he had in the meanwhile entered a strong defence against what he considered to be a very unjust inequitable and totally motivated action by the Railways contemplating an enquiry into something that had happened two years ago although strangely there being no whisper or any inkling whatsoever of the forthcoming disaster that awaited him by way of a stern disciplinary enquiry involving a lot of personal ordeal just on the eve of his retirement. In the course of the defense statement, copy of which is produced at Annexure A-2, he seems to have exposed the hollowness of those charges ending with a fervent plea for dropping the proceedings and to spare him the trauma of disciplinary enquiry in the evening of his life.

9. But His defense statement and the fervent plea for dropping the proceedings did not apparently strike any chord of sympathy with the Railway Administration. Apparently, they told him that having considered his defense statement etc. the Administration felt it necessary to proceed with the enquiry although by then the applicant had already retired. The Department made its intention as aforesaid very clear by appointing inter alia an Enquiry Officer and a Presenting Officer under Rule 9 of the Disciplinary Rules.

10. In the background of these facts and on the basis of the pleadings by either side, we have heard Shri Ravivarma Kumar in support of the applicant and Shri A.N. Venugopal, learned Standing Counsel for the Railways. Shri Ravivarma Kumar very strongly urged that the Railway Administration had no power to continue an enquiry against an officer after his retirement albeit the enquiry itself was pending at the time of his retirement. He also urged that the timing of the enquiry was so strategic and, therefore, it became clear that the enquiry itself was totally motivated, lacking wholly in bona fides, its sole object being aimed to deprive the applicant of his retiral benefits like pension, DCRG amount which had been withheld even now pleading the pendency of the so called disciplinary enquiry. He lastly urged that even if the disciplinary authority recorded findings on all the charges against the applicant even so, no punishment as enjoined

under the rules could be inflicted on the applicant being no longer an employee of the Railway Administration and, therefore, the total absence of any vinculus between the administration and the applicant had certainly deprived the Department of the right to punish the applicant for his alleged misconduct except of course to avail of the right to forfeit retiral benefits like pension, DCRG etc. either fully or notch a power that can be exercised by the President of India under Rule 2308 (CSR 351 A of Indian Railways Establishment Code). Counsel pointed out that under the Rules supra the power of denying a retired officer of his retiral benefits like pension etc. could be exercised only if he was held guilty of very grave misconduct implying that for an ordinary misconduct or misconduct which otherwise lacked in severity and therefore not liable to be treated as grave or extra-ordinary misconduct, the authority of the President of India did not extend under the said rule to make an order forfeiting retiral benefits, either fully or in part.

11. Per contra the learned Standing Counsel Shri A.N. Venugopal maintained that the best person to decide whether the applicant could be held to have committed any misconduct at all be it a simple misconduct or grave misconduct was the disciplinary authority with the enquiry being yet to take off, it was little too early even to hazard a guess and therefore asked us to dismiss this application in limine holding it to be premature.

12. Based on the contentions urged on either side, we formulate the following points for our considerations:

a) whether a departmental enquiry initiated before retirement be continued even after the officer's retirement;

b) assuming that a post retirement enquiry was feasible, can it be pursued even if the charges themselves did not spell out a grave misconduct;

c) the continuance of the enquiry after the applicant herein had retired, tentamount to an unreasonable exercise of authority and power ultimately leading to deprivation of legitimate retiral benefits like pension, gratuity that actually earned in virtue of services rendered to the Railway Administration.

13. Before we proceed to consider the foregoing issues, it seems appropriate to set out at this stage the charges set down for enquiry. We also think it apposite to reproduce inter alia the statement of imputations annexed with the charges delivered to the applicant. The charges and statement of imputations are as follows:

"STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI H.R. KAMATH, EX-CPM/RE/ BSP NOW CEE/S.C.RLY/SECUNDERABAD

Shri H.R. Kamath while functioning as Chief Projection Manager, Railway Electrification, Bilaspur, during 29.4.88 to 2.8.90 committed the following misconduct:

1) he misused the Bungalow peon attached to the post of CPM/RE/BSP, in that he was utilised, at Calcutta far away from his Headquarters at Bilaspur defeating the very purpose for which the post of Bungalow Peon is created and operated, causing indirect financial loss to the Railways.

2) he unauthorisedly claimed and received house rent allowance for eight months totalling Rs.4000.00 (Rupees Four Thousands) at Bilaspur rate without taking any accommodation on rental basis there.

3) he misused his official authority and status and unduly prolonged halts at Calcutta and Bangalore during his frequent tours to those places;

4) he extensively used the Maruti Van No. MP-26/3888 attached to the GRC based camp office of CPM/RE/ESP during his stay on tours at Calcutta, mostly on holidays, Saturdays/Sundays and recorded leave by misreporting facts and without signing the log book himself.

Thus, Shri H.R. Kamath, by his above acts of omission and commission, failed to maintain absolute integrity, devotion to duty and acted in a manner ubbecoming of a railway servant and thereby contravened Rule 3(1)(i), (ii) and (iii) of Railway Services (Conduct) Rules, 1966.

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Annexure II

STATEMENT OF IMPUTATIONS OF MISCONDUCT BASED ON WHICH ARTICLES OF CHARGE FRAMED AGAINST SHRI H.R. KAMATH, EX-CPM/RE BSP NOW CEE/S.C. RAILWAY ARE TO BE SUSTAINED

—

Shri H.R. Kamath while functioning as Chief Project Manager, Railway Electrification Bilaspur from 29.4.88 to 2.8.90 was found responsible for committing a number of delinquencies as listed in the articles of charge framed against him (Annexure I). The charges levelled against him are substantiated with the support of the evidence listed below, charge-wise.

Article I

The nature of duties attached to the post of Bungalow Peon necessitates that he should be headquartered at the place of posting of the officer with whom he is attached. With the posting of Shri H.R. Kamath as CPM/RE/BSE, the posting order of Shri Raghubans Prasad Rai was also issued on 15.7.88 to work as Bungalow Peon of CPM/RE/BSP at Bilaspur Likewise, after the transfer of CPM/RE/BSP (Shri Kamath) in the first week of August, 1990, the posting and trasnfer order of his bungalow peon Shri R.P. Rai was also issued on 30.8.90 in terms of which he was transferred from Bilaspur to Garden Reach, Calcutta. But the above transfer and posting orders of Shri R.P. Rai as Bungalow Peon of CPM/RE/BSP

were issued only to cover up his misutilisation as bungalow peon earlier at Railway quarter No.18/2 Garden Reach of Shri Kamath and thereafter at Harish Park, Calcutta where Shri Kamath's family shifted. The above said orders were merely on paper and in fact Shri R.P. Rai never reported at Bilaspur to work as bungalow peon at CPM/RE/BSP. This has been confirmed by Shri Rai Bungalow Khallasi in his statements dated 26.8.91 and 27.8.91 and by S/Shri TPAdhikari T/s Progressman and Amarjit Dass T/s Khallasi in their statements dated 26.8.91 and 27.8.91 respectively. Shri Ganga Rao, OS/General/RE/BSP, who was the superintendent incharge for controlling the attendance of Shri R.P. Rai and was collecting his attendance particulars on phone from Garden Reach, also stated that Shri Rai never reported at Bilaspur. In his clarification dated 24.9.91 Shri H.R. Kamath has also confirmed the utilisation of Shri R.P. Rai as Bungalow Peon at Calcutta in answer to question 3. TA journals for the months of October, November & December, 1989 of Shri R.P. Rai were forwarded by Shri L.P. Verma, OS/G/RE/GRC to Bilaspur under letters detailed below:

Letter No.	Date
CPM/RE/BSP/5/GRC	20.12.1989
-do-	03.01.1990

The pass applications of Shri R.P. Rai dated 28.2.90, 6.9.90 and 24.12.90 were forwarded from Garden Reach to Bilaspur by OS/RE/GRC Shri L.P. Verma. The passes availed as per these pass applications by Shri R.P. Rai did not cover BSP showing that he was actually working at Calcutta. The signatures of Shri Verma thereon have also been certified by Shri R.C. Sekhran, SPO/RE/BSP and Shri T.P. Adhikari T/S Progressman on 29.7.91 and 27.8.91 respectively. All the above noted documents indicate the working of Shri R.P. Rai at Garden Reach and not at Bilaspur as indicated on the transfer/posting orders of Shri Rai which are on paper only. From the evidence adduced above, it becomes clear that Shri R.P. Rai was also misutilised as Bungalow Peon at Calcutta by the then CPM/RE/BSP Shri Kamath, instead of at Bilaspur.

Article II

As confirmed by SAO/RE/BSP in his communication No.RE/BSP/Accts/EGA/728 dated 17.9.91 to CVO/RE a sum of Rs.1000.00 at the rate of Rs.500.00 per month from December, 1989 to July, 1990 was paid to Shri H.R. Kamath towards

house rent allowance following submission of a note dated 4.12.89 to APO/RE by Shri Kamath stating therein to stop recovery of Rs.678.00 towards house rent of Qr.No.18/2 at GRC and to arrange payment of HRA at the rate applicable to Bilaspur attaching a vacation Memo of IOW/SER/GRC. It may be mentioned here that the admissibility of HRA at Bilaspur was subject to the condition that the officer claiming HRA should cdrtify that he had taken accommodation on rental basis at the station of his posting and paid some rent. Shri Kamath had suppressed this fact in the said note to APO.

Article III

Para 1700 of Indian Railway Establishment Code Vol.II (1987 Edition) provides as under:

> "It is the duty of a controlling officer before signing or countersigning a travelling allowance bill (i) to scrutinize the necessity, frequency and duration of journeys and halts for which travelling allowance is claimed to disallow the whole or any part of the travelling allowance claimed for any journey or halt if he considers that a journey was unnecessary or unduly prolonged or that a halt was of excessive duration."

In terms of provisions made in para 1697 of the Establishment Code under reference, Heads of Departments shall be their own controlling officers and as such the above duties devolve on the Head of the Department...

As is clear from the movements of Shri H.R. Kamath ex-CPM as per his TA journal records and entries made in log book of GRC based Maruti Van No.MP-26/3888, he visited Calcutta more frequently including on Saturdays/ Sundays, holidays and stayed with his family more in his self interest than in administrative interest making himself available at Calcutta more than 11 days on an average in a month which shows to be on the high side when compared with the movements of his successor Shri L.N. Rao the present CPM. The comparative details appended below to facilitate a glance reference:

	Stay of Shri Kamath at Calcutta		Stay of Shri L.N. Rao successor of Shri Kamath at Calcutta
6/89	10 days	7/91	Nil
12/89	12 days	8/91	2 days
1/90	8 days	9/91	Nil

2/90	9 days	10/91	2 days
3/90	8 days	11/91	Nil
4/90	10 days	12/91	2 days
5/90	16 days	1/92	Nil
6/90	10 days		
7/90	19 days		

As clarified by Shri L.N. Rao, the successor of Shri Kamath in his confidential D.O. Letter No.CPM/BSP/CON/02/Pt.III dated 21.2.92 addressed to Shri D.P. Joshi, GM/CORE/ALD he considered 2 days stay per month at Calcutta sufficient for proper coordination with S.E. Railway. On this, CM/CORE has further observed that in his opinion, it should have been possible to manage the work of coordination at Cacutta in about 3 to 4 days per month at the most as against about 11 days spent by Shri Kamath. This is more than sufficient to indicate that the halts of Shri Kamath at Calcutta were excessive and uncalled for.

Article IV

Shri H.R. Kamath during his stay at Calcutta on/unduly prolonged his halts and used /tours extensively the Maruti Van No.MP-26/3888 based at Garden Reach Camp Office of CPM/RE/BSP even on holidays including Saturdays and Sundays and did not sign the relevant log book personally. Shri B.L. Mandal the concerned driver of the Maruti Van in his statement dated 27.8.91 informed that the log book should have been signed by the officer (Shri Kamath) who actually used the vehicle but Shri Kamath refused to do so. Shri T.P. Adhikari T/S Progressman in his statement dated 27.8.91 also clarified that despite the insistence that the log book should be signed by CPM/RE/BSP(Shri Kamath) personally they were verbally instructed by Shri Kamath to sign the log book on his behalf. This fact has also been admitted by Shri Kamath in his clarification dated 24.9.91 in answer to question 6. Shri Kamath has also admitted to have used both the GRC based vehicles with instructions to the concerned drivers to get the log book signed by Shri T.P. Adhikari T.S. Progressman or Shri L.P. Verma re-engated OS/RE/GRC on his behalf for journeys performed by him.

Apart from Sundays/Saturdays and holidays, Shri Kamath used the Maruti Van No.MP-26/3888 during his stay at Calcutta on recorded leave as per details given below to the extent of 1052 kms showing the entries in log book under his own signatures as 'official' although they were not at all official as per his leave applications wherein he had recorded 'Personal/

domestic work."

In July/90	Km. used	In Aug/90	Km used
22.7.90	52	8.8.90	42
23.7.90	63	9.8.90	72
24.7.90	40	10.8.90	83
25.7.90	49	11.8.90	46
		12.8.90	41
	204	17.8.90	65
		19.8.90	42
			391

In Sept./90	Km. used	Total for use in 3 months
9.9.90	52	
10.9.90	50	
11.9.90	64	
12.9.90	74	
13.9.90	67	
14.9.90	68	
16.9.90	82	
	457	1052 kms

Shri Kamath has also admitted in his clarification dated 24.9.91 to have taken a private accommodation at Harish Park, Calcutta for the stay of his family and having utilised the Government vehicle for his to and from journeys between HWH/GRC and Harish Park.

In the face of what has been brought out above Shri Kamath's argument in his clarification dated 24.9.91 that he used the vehicle because Railway telephone facility was available at GRC is not tenable and carries no force and he in fact unduly protracted his halts at Calcutta in self interest rather than in administrative interest and thereby misused his official authority and status as Head of Department."

14. We now find the enquiry scheduled to be held on 6.8.93 at Secunderabad was probably

interrupted by the pendency of this application and as of now the enquiry is yet to take off. In all probability, but for the contention that an enquiry pending against an officer who retires thereafter cannot be pursued later on, we would, in other circumstances, not have entertained this application at all since he always has a right to come back to us after the proceedings are concluded. With the remedy of a post-decision hearing being available, generally a pre-decision hearing by the Tribunal is not ordinarily permitted. But the case on hand seems to comprise of a larger dimension involving a retired officer and his right to acquire the fruits of his toil extending over two decades and even more, ~~it is we~~ therefore felt it appropriate to examine whether there was any justification for subjecting a retired officer to the ordeal and agony of a long drawn disciplinary enquiry held at a place far away from his place of residence causing him a lot of inconvenience that could not perhaps be compensated by money paid towards TA/DA to cover his travel and stay outside his home. More than all, the enquiry that is being now pursued against the applicant for an alleged misconduct being incapable of culminating in any punishment that can legally be imposed on him under the Railway Disciplinary Rules but would nonetheless result in an equally severe punishment that would still deprive him of his life savings in the shape of a pension and gratuity, the custodian of which is none other than the State itself indicating

further the need to probe into the not usual course pursued in completing a pending enquiry even after retirement. The right of the retiring officer to secure pension and gratuity without any administrative hassle,or bottlenecks has been very lucidly explained in the often quoted decision of the Supreme Court in the case of D.S. NAKARA AND OTHERS v. UNION OF INDIA - 1983(1) SCC 305. We quote from para 20 of the judgment which states:

> "20. The antequated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer nor claimable as a right and therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view has been reaffirmed in State of Punjab v.Iqbal Singh."

15. This decision was followed by a Full Bench of the Tribunal in WAZIR CHAND v. UNION OF INDIA AND OTHERS - OA NO.2573/89 disposed of on 25.10.90. The Full Bench held that gratuity was property and although the right to hold property had since been omitted by the Constitution even so in virtue of article 300-A of the Constitution(44 Amendment Act, 1978), which inter alia deleted Article 19(1)(f) of the Constitution, notwithstanding the deletion of Article 19(1)(f) that noone should be deprived

of his property except by authority of law.

16. The decisions referred to supra bring out in bold relief the situation touching the right of a government servant in the matter of sequestring and gathering his own savings like pension and gratuity etc. after retirement. As has been held by their Lordships in Nakara's case gratuity and pension is not a largess, it is no charity and is not a loaf of bread broken into crumbs to be given away or denied at will to a canine ward by its owner humouring and chastising alternatively depending on one's mood. It is for these reasons we felt impelled to to go into and investigate the whole gamut of the situation that might ultimately lead to an extra-ordinary situation with the administrative authority giving to itself the power to lower the democlean sword on the head of a retired government servant without any just cause. But for such sweeping powers, the Department would have no right to subject a retired officer to the agonising ordeal of a disciplinary enquiry that should have been held and concluded if one was really necessary while in service but not having thought fit to hold the same then and deciding to hold it now implying the case to be as the saying goes NON PROTANC i.e. now for then, indeed a very startling development.

17. Having made these prefatory observations, we now proceed to consider the points raised for our consideration:

17.1 a) Re-continuance of a departmental enquiry during the post retirement period: There was really not much of argument on this point by Shri Ravivarma Kumar, learned counsel for the applicant. A perusal of the statutory rules pertaining to the same and the relevant decision of the Full Bench of the Tribunal in the case of AMRIT SINGH v. UNION OF INDIA & OTHERS - 1986-89 VOL.I OF FULL BENCH JUDGMENTS OF CENTRAL ADMINISTRATIVE TRIBUNAL PAGE 227 apropos the entitlement of the Railway Administration to continue a disciplinary enquiry initiated while the officer was in service really leaves no room for arguments. There the Bench held:

> "Held that an analysis of article 2308 would show that it primarily reserves the right of the President to withhold or withdraw pension and to recover the pecuniary loss caused to the Government. The condition precedent for making any such order is that the pension should be found guilty of 'Grave misconduct or negligence during the period of his service' in a departmental proceeding or a judicial proceeding. Such a proceeding may have been initiated while he was in service or may be initiated after his retirement. Proviso (a) to Article 2308 permits continuance of Departmental proceedings initiated against a Railway servant while he was in service after his retirement. It also creates a fiction that such proceeding shall be deemed to be a proceeding under Article 2308. Proviso (b) to the said article permits initiation of fresh proceedings against a public servant after his retirement with the sanction of the President in respect of any event which took place not more than four years before such initiation subject to the conditions mentioned therein. The explanation to the said Article also clarifies when a Departmental proceeding would be deemed to have been initiated on the date on which the statement of charges is issued to the Railway servant or pensioner. If the Railway servant was

/As per the explanation, they would be deemed to have been initiated

placed under suspension earlier, the proceedings would be deemed to have been initiated on the date when he was suspended. In the case of a judicial proceedings, if that is a criminal proceeding, the date on which the Magistrate takes cognisance of the complaint or report of the Police Officer and in the case of a civil proceeding, the date of the presentation of the plaint in the court would be the date of initiation of the proceedings for the purpose of Article 2308. In any such enquiry, as is contemplated under Article 2308, no order withholding or withdrawing pension or recovery of loss occasioned to the Government can be made except upon a finding that the pensioner was guilty of grave 'misconduct' or 'negligence' But this grave misconduct or negligence may or may not result in any loss to the Government. If any loss also is occasioned to the Government, that loss also may be ordered to be recovered from the pensioner. Even if no loss is occasioned to the Government by grave misconduct or negligence of the public servant but the pensioner is found guilty of grave misconduct or negligence during the period of his service, whole or part of pension whether permanently or for a specified period may be ordered to be withheld or withdrawn. The provision thus authorises continuance of the disciplinary proceedings (already initiated during the period of his service) even after his retirement. It also makes provision for initiation of proceedings in respect of charges of grave misconduct or negligence even after retirement subject to the conditions mentioned in proviso (b) to the said Article. The basic postulate for permitting the continuance of the disciplinary proceedings against an officer against whom there are charges of misconduct levelled against him during the cause of his service or re-employment or permitting such proceedings to be initiated for the first time within 4 years after his retirement with the sanction of the President is that a Railway servant earns his pension and D.C.R.G. which is also a pensionary benefit by virtue of his good conduct and behaviour both during his service and after retirement." (p.227)

17.2 The Full Bench also held as could be seen from Head Notes (v) and (vi) that an enquiry during the post-retirement era can be gone through even if there was no pecuniary loss to Government that so long there was a charge of grave misconduct and negligence, a disciplinary proceeding initiated

against in-service officer can be continued even after retirement irrespective of the question whether he had been suspended from service before retirement. Head note (vi) lays down the dicta that under Rule 2308 of the said rules not only pension but gratuity can also be withheld pending disposal of an enquiry against an employee. The decision in Amrit Singh's case was followed by the Full Bench in Wazir Chand's case, supra. In order to complete and conclude the conspectus on point (a) we refer to that portion of Rule 2308 which is relevant for our purpose:

> "2308, (CSR 351-A). 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 of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement.
>
> Provided that :
>
> a) such departmental proceeding, if instituted while the Railway servant was in service, whether before his retirement or during his re-employment, shall after the final retirement of the Railway servant, be deemed to be proceeding under this Article 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." (P 232)

17.3 The scope of this rule is ~~what~~ was also extensively considered by the Full Bench in Amrit Singh's case supra laying down that once an enquiry had started against an officer while in service it can be continued even after his

retirement. Apart from the fact that the rule itself makes the position regarding tenability of pursuing a pending enquiry into the post retirement era, quite clear, the decision in Amrit Singh's case puts the matter beyond any doubt. This is the reason why Ravivarma Kumar, learned counsel for the applicant did not seriously dispute the competence or jurisdiction of the Railway Administration to extend its disciplinary jurisdiction to cover an employee who had admittedly retired. Our conclusion on point (a) is that Rule 2308 of the Indian Railway Establishment Code confer ample power to continue a pending disciplinary enquiry even after retirement.

17.4 (b) The issue raised herein calls for examining whether at a post-retirement enquiry now held to be feasible, can the Administration pursue the same even if the charges themselves did not spell out any kind of misconduct that could possibly be termed as grave. Shri Ravivarma Kumar, learned counsel for the applicant submitted that in the instant case charges as they now stand did not even state that the resulting misconduct if any was at least symbolic of a misconduct that could be characterised as grave. He urges that there was very little point in investigating a charge that could neither specifically nor impliedly characterised as a grave misconduct and, therefore, suggests that the entire exercise is a totally futile endeavour that deserved only a decent burial. In support of his contention,

he read to us a passage that appears in para 14 of Amrit Singh's case supra which reads:

> "We, therefore, held that so long as there is a charge of grave misconduct and negligence, disciplinary proceedings initiated while the officer was in service could be continued under Art.2308 after he has retired from service on attaining the age of superannuation even if he was not placed under suspension before retirement."
>
> (emphasis supplied)

17.5 No doubt the above passage does apparently lend support to learned counsel's contention ~~stating~~ that unless the charge spelled out grave misconduct and negligence, continuance of disciplinary proceedings initiated while in service would not be tenable after retirement but then the further observations in that very paragraph explains what really is the actual dicta. We quote:

> "If in such a proceeding he is found guilty of grave misconduct or negligence, an order either withholding or withdrawing or whole or part of the pension permanently or for a specified period could be ordered."
>
> (emphasis supplied)

17.6 From the above, it becomes clear that the principle laid down by the Bench is that in a proceeding under Rule 2308 which is continued after retirement, an order withholding or withdrawing whole or part of pension permanently or for

a specified period can be made subject to the officer being found guilty of grave misconduct or negligence. Their Lordships made the said position further clear by adding that for founding jurisdiction to withhold payment of pension, it was not necessary that there should be an allegation or a charge of causing pecuniary loss to Government but if any pecuniary loss is found to have been caused, in a proceeding under Rule 2308 continued after retirement, apart from withholding pension, the pecuniary loss sustained by Government can also be recovered. The Bench makes this position further clear in its observation made supra that at a post-retirement enquiry, none of the penalties mentioned in the Railway Servants (Discipline and Appeal) Rules or CCS (CCA) Rules or the corresponding rules can be imposed but the only disability that can be imposed on the officer would be of forfeiting his pension in full or in part besides recovery of any pecuniary loss sustained by Government. These observations made in Amrit Singh's case supra by the full bench make it quite clear that the administration has got the power to continue after retirement any enquiry in respect of charges which commenced prior to retirement. However, while exercising such power the concerned authority in the railway administration has to necessarily apply its mind to the need for continuance of such enquiry after retirement keeping in view the provisions of rule 2308 of the Indian Railway Administration Establishment Code. This would be our conclusion on point(b).

17.7 (c) The continuance of the enquiry after retirement leading ultimately to jeopardising the applicant's right to acquire legitimate retiral

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benefits earned while in service, is it not symptomatic of exercising arbitrary power particularly in the facts and circumstances of the case? This indeed is the larger question we have been impelled to address ourselves not merely in the context of the accusation made against the Administration by the applicant in the course of the pleadings alleging that he had become the Administration's target for deliberate victimisation, the former being bent upon seeing that after retirement he return;home with empty hands condemned to a life of penury and poverty, we think that there is little or no exaggeration in the picture painted to us vis-a-vis the aftermath of the enquiry subject of course to the enquiry resulting in a finding that the charges of misconduct levelled against the applicant are all proved. It is also now over an year since this officer had retired and till today the DCRG amount due to him has been withheld. The amount must be quite considerable, the applicant having retired apparently from the top echelons of office in the ~~Southern~~ Railways after decades of service and now in the evening of his life, a benefit or a prop to which he was looking forwadd to lean upon being denied and being ultimately deprived looming large as a near certainity that can only be characterised as total disaster ruining him as also the other members of his family who were dependent on him. Therefore, if an authority or any entity having such a lethal power on hand capable of totally decimating a

retired officer it would certainly be expected to exercise such devastating power necessarily under constraint and in circumstances that justifies the same, the question then would be how does one assess whether the situation on hand calls for exercise of such devastating power. Well that certainly is primarily for the authority to reflect over and to decide whether it should or should not exercise such power but that however cannot possibly be the end point because it is not almost an axiomatic principle of law that every authority is required to exercise its powers in a reasonable manner and not wield it in an arbitrary or capricious manner. The action of all administrative officers and authorities must necessarily pass the test of reasonableness enjoined by Article 14 of the Constitution. A court or a judicial tribunal who has the power of reviewing the exercise of power by administrative authority has necessarily to oversee whether exercising of such powers is it humane and compassionate or is it opposed to reason, to fairness, to good sense and rationality for if it were otherwise, it will have to be characterised as arbitrary and capricious calling for being summarily stifled. We are to state that Article 14 is in the later years of its development was lifted out of the narrow and pedantic limits enjoining the court merely to see whether the constitutional mandate is violated by the absence of apposite classification in a legislative provision or rule.

From such limited orbits it has been liberated by adding a third dimension giving power to the court to strike down any administrative action found to be wilfully injurious and even otherwise also if action taken is devoid of reason or lacking in fairness of approach and rationality. In England long years ago the Master of Rolls Lord Greene in the often quoted decision of ASSOCIATED PROVINCIAL PICTURE HOUSES LIMITED v. WEDNESBURY CORPORATION - 1948 KING'S BENCH DIVISION page 223 dealing with a local authority's power of imposing certain conditions under a rule regulating the exhibition of a cinema show as enjoined under the Act, 1932, considered therein whether the action of the local authority in imposing some restrictions on uninhibited screening of a picture on a Sunday was reasonable or not and laid down in that connection the following principle:

> "In the result, this appeal must be dismissed. I do not wish to repeat myself but I will summarize once again the principle applicable. The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority it may be still possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere."
>
> (emphasis supplied)
> p.233-234

17.8 This decision in later years acquired in England a particular significance of its own apropos all cases in which action of an administrative authority was questioned on grounds of

suspected reasonableness or lack of it. Lawyers often relied on the principle what had later come to be known as the Wednesbury principle of reasonableness. Prof.H.W.R. Wade in his well known treatise on ADMINISTRATIVE LAW (FIFTH EDITION) at page 364 refers to the Wednesbury principle and its application as follows:

> "This has become known as the Wednesbury principle. It explains how 'unreasonableness' covers a multitude of sins....
>
> Unreasonableness is a generalised rubric covering not only sheer absurdity or caprice, but also illegitimate motives and purposes, a wide category of errors commonly described as 'irrelevant considerations', and mistakes and misunderstandings which can be classed as self misdirection or addressing oneself to the wrong question. The language used in the cases shows that the abuse of discretion has this variety of differing legal facets. The one principle that unites them is that powers must be confined within the true scope and policy of the Act."
>
> (p.364) (emphasis supplied)

18. In this country, we have employed a similar technique not altogether alien to the Wednesbury doctrine in assessing administrative action to find out if it is so arbitrary, so unreasonable, so capricious or is it so unmindful of obvious realities vitiating thereby the resultant action. We take this opportunity to refer to a few decisions of our Supreme Court wherein the doctrine of unreasonableness has been availed of and adhered to may be in different hues. We have earlier adverted to the changes evolved in the course of the development of constitutional law with particular reference to Article 14 where the Supreme Court had liberated the law from a narrow conspectus relying on the principle of classification and had made it more vibrant and resonant fastening into it, fold a third wheel that kept it spinning more vigorously proving these to be

an anethema to pe[illegible]blind administrative action.

The first decision to be relied to in this context is the case of E.P. ROYAPPA v. STATE OF TAMIL NADU AND ANOTHER - AIR 1974 SC 555. Therein it was held:

> "The basic principle which, therefore, informs both Arts.14 and 16 is equality and inhibition against discrimination. Now what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J. "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined", within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14 and if it affects any matter relating to public employment, it is also violative of Art.16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant consicerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts.14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice; In fact the latter comprehends the former. Both are inhibited by Arts.14 and 16." (emphasis supplie
> (P.583)

19. In MAHESH CHANDRA v. REGIONAL MANAGER, U.P.F.C. AND ORS - (1993) 2 SCC 279 the Court was dealing with a controvery touching the disposal of an industrial unit by a State Financial Corporation

by private negotiation in preference to public auction by tender. While striking down the sale of the unit by private negotiation found the action of the Corporation to be unfair, unjust and unreasonable. Suffice for our purpose to refer to the head notes to the judgment:

> "Constitution of India - Art.14 - Arbitrariness - Wide power conferred by statute on public functionary - It is subject to inherent limitation that it must be exercised in just, fair and reasonable manner, bona fide and in good faith, otherwise it would be arbitrary and ultra vires - Test of reasonableness is more strict - An act contrary to the purpose for which authorised to be exercised and contrary to the reason is mala fide and dishonest - Such action is bad even without proof of motive - Administrative Law - Ultra Vires - Natural justice - Mala fide and dishonesty - Administrative action - Exercise of discretionary power should be objective - Fairness rule is a rule against arbitrariness.
>
> Every wide power, the exercise of which has far reaching repercussion, has inherent limitation on it. It should be exercised to effectuate the purpose of the Act. In legislations enacted for general benefit and common good the responsibility is far graver. It demands purposeful approach. The exercise of discretion should be objective. Test of reasonableness is more strict. The public functionaries should be duty conscious rather than power charges. Its actions and decisions which touch the common man have to be tested on the touchstone of fairness and justice. That which is not fair and just is unreasonable. And what is unreasonable is arbitrary. An arbitrary action is ultra vires. It does not become bona fide and in good faith merely because no personal gain or benefit to the person exercising discretion should be established. An action is mala fide if it is contrary to the purpose for which it was authorised to be exercised. Dishonesty in discharge of duty vitiates the action without anything more. An action is bad even without proof of motive of dishonesty, if the authority is found to have acted contrary to reason." (Para 15) (P.285)
> (emphasis supplied)

20. We now conclude by referring to the more than two decade old case of ROHTAS INDUSTRIES LTD. v. S.D. AGARWAL AND ANOTHER - AIR 1969 SC 707. This

was a case in which the court was invited to go into the question whether the decision of the Central Government to investigate into the affairs of a company under Sections 235 to 237(b) of the Companies Act both from being discretionary, It was urged that any decision to hold an enquiry into the affairs of the company should be shown to be bonafide and that the agency of the law was acting as a reasonable entity. Their Lordships K.S. Hegde and S.M. Sikri, JJ (as they then were) after a review of all the available authorities on the topic held that as in England, in this country also striking down of administrative action was permissible if found to be arbitrary and capricious. At para 40 (page 719) of the judgment their Lordships said:

> "Next question is whether any reasonable authority much less expert body like the Central Government could have reasonably made the impugned order on the basis of the material before it..
>
> We do not think that any reasonable person much less any expert body like the Government on the material before it, could have jumped to the conclusion that there was any fraud involved in the sale of the shares in question. If the Government had any suspicion about that transaction it should have probed into the matter further before directing any investigation. We are convinced that the precipitate action taken by the Government was not called for nor could be justified on the basis of the material before it. The opinion formed by the Government was a wholly irrational opinion. The fact that one of the leading Directors of the appellant company was a suspect in the eye of the Government because of his antecedents, assuming without deciding, that the allegations against him are true, was not a relevant circumstance. That circumstance should not have been allowed to cloud the opinion of the Government. The Government is charged with the respobsibility to form a bona fide opinion on the basis of relevant material. The opinion formed in this case cannot be held to have been formed in accordance with law."

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21. His Lordship Mr. Justice Bachawat, the only other member of the Bench wrote, however, a separate opinion concurring with Hegde and Sikri JJ in allowing the appeals and striking down the administrative action ordering a probe into the affairs of the company in question.

22. We have cited the above decision, in Rohtas Industries to show the Wednesbury principle of English origin is, in a manner of speaking, now a part of judicial dicta in this country although not specifically adumbrated to as such. Be that as it may, we note the principle to be garnered from all the decisions referred to supra is that administrative action is liable to be struck down if it appears to be so wholly unreasonable as to earn the epithet of being branded outrageous to good sense or fair play. In such a situation, the court is left with no option but to strike down remorselessly such offesnsive administrative action without any hesitation.

23. We now go back to the facts of the case and see if administrative action taken to continue a disciplinary enquiry initiated just a few weeks prior to the officer's retirement and may be knowing full well that the enquiry would not certainly be completed within the short span of three or four weeks before the retirement deadline and even when it was obvious that action to be taken pursuant to the enquiry will follow only in the post retirement period when the proceeding can probably be concluded, in such a situation can it

be said the action of the authority was not arbitrary or that it did not lack in bona fides?

24. The conduct of the Administration in this case raises at once suspicions about the bona fides of the action to indict the applicant on charges of misconduct and thereafter subject him to a departmental enquiry that can commence only after retirement although initiated earlier. We need hardly emphasise that the step taken presumably with certain amount of deliberation of starting it just on the eve of the officer's retirement and thereafter to pursue it till the end at the conclusion of which a penalty that is normally imposed at such an enquiry being ruled out but on the other hand, a more severe injury that is likely to leave the official without substantial means to sustain himself after retirement and consequently reducing him to penury. appears to any reasonable mind to be an act indicating the most obviously discernible design of making this man to suffer whether rightly or wrongly.

25. After a review of the conspectus of the entire action taken to initiate the enquiry from start to finish, the conclusion supra viz. that disciplinary action was solely and wholly initiated to bury him alive becomes absolutely clear. Take for instance the timing of the action which has been so strategic in that it is initiated following the service of charges and statement of imputations on the 5th of August, 1992, when the officer was due to retire on the 31st of August, 1992. The charges

and even the statement of imputations which we have collected and made a part of our judgment leaves no doubt that the in-puts making up the charges,viz. the so called short-falls, deficiencies purporting to make up the misconduct alleged against the applicant, were all two years old by the time the charges were framed and hurled at him. The omissions and commissions alleged against the applicant admittedly related to events that took place between 29.4.88 to 2.6.90 at a time when the officer was the Chief Project Manager, Railway Electrification Project at Bilaspur. Surely the Administration could not have been so inapt not to have noticed any of them during that two year period when this man walked around allegedly flouting all the rules and regulations of the Railway Administration. It is not again their case that whatever had been done or not done during those two years had been so well camouflaged his misdeeds during these two years had escaped detection and that only after the lapse of two more years and that too when he was on the verge of retirement, the Administration became wiser although somewhat belatedly. The statement of objections produced by the Administration seeking to support the action taken to indict the applicant for various misconducts allegedly committed by him during the period 1988-90 is placed on record. After a careful perusal of the same, we have not found anything therein suggesting that the Department became aware of the applicant's misdeed only in the year 1992 and that till then

they had no inkling, no knowledge not even the means of obtaining information touching the misconduct now alleged against the officer. If that be the position, it becomes clear the Administration was either in a fit of slumber at the time when the officer was indulging in a variety of misconduct right under its nose or it may also very well be even after being aware of the situation they had not acted because they did not then think the indiscretions attributable to the officer was not so palpable as to merit atleast some kind of an investigation, let alone any indictment. If this is the inference to be drawn from the stony or sphinx like silence maintained by the Administration for over two years that was followed thereafter by a sudden eruption of a flurry of activities hurrying and hastening to bring the officer before the Bar of Justice is a development which in our view is somewhat telltale apparently done with a view to deliberately injure and hurt the applicant willy nilly, without any justification. Shri A.N. Venugopal for the Railways repeatedly maintained on the basis of the reply statement and in the course of the submissions at the Bar that whatever defence, the applicant can put up he must appear before the disciplinary authority and seek justice at the hands of that authority alone. Counsel points out that the officer had listed 29 defence witnesses and had called for some documents for his aid indicating that he was getting ready to offer a battle royal before the authority and that he should not therefore

have come to us out of turn. May be in a different setting there might have been some force in this contention but herein it is a totally vain argument. A spectre that haunts is why should an attempt have been made at the last moment to crucify him after retirement for alleged misdeeds of the past and that we suppose is a question any reasonable person would ask and would certainly ask. We need hardly mention that at the end of the enquiry the usual punishment of dismissal removal etc. etc. cannot be imposed but even so something more severe and onerous can still be imposed without being called a penalty more appropriately in the hands of a feudal monarch wielding unbridled power. But even if such a power is exercisable by the President as a suzerain entity under the Constitution unless there are very strong and compelling reasons to cut off the officer from enjoying hard earned retiral benefits, such action should and cannot be taken is the purport of Rule 2308 making it clear that only in the case of grave misconduct pension and DCRG of a person can be withheld. Now, there is vast difference between simple misconduct and grave misconduct. The difference between the two no longer falls to be

decided on any apriori basis being covered by a decision of the Punjab & Haryana High Court and the other decision of the Karnataka High Court that followed the same. The Punjab and Haryana High Court in the case of BHAGWAT PARSHAD v. I.G. OF POLICE PUNJAB AND OTHERS - AIR 1970 PUNJAB & HARYANA 81 brought out very clearly the difference between simple misconduct and grave misconduct. Therein Tek Chand J. said:

> "11. The word 'grave is used in many senses and implies seriousness, importance, weight etc. There is, however, a distinction between misconduct and grave misconduct. The adjective 'grave' in this context makes the character of the conduct, serious or very serious. The words 'gravest acts of misconduct' are incapable of definition. One has to apply one's mind to the words and give a meaning to each of them in the light of the actual deed, situation and circumstances. 'Misconduct' in order to earn the epithet of gravity has to be gross or flagrant. Consequently the degree of misconduct to justify dismissal has to be higher or more serious.
>
> 12. The use of the superlative 'gravest' and the adverb only' is not entirely without significance. To look at the matter exclusively from a grammatical angle, 'gravest' is the highest degree of misdeed as compared to what is just 'grave'. This is because of the use of the superlative degree as against the positive or comparative degree. The superlative degree may be used either to denote the highest or maximum degree in a given aggregate, or simply to indicate a supreme or very high degree without definite comparison. In the former sense, particularly when construing a statute, no misconduct can be styled to be of such an extreme degree as to be without a parallel or which cannot be worsted or bettered. 'Misconduct' even if of the very worst cannot reach such a peak or depth which cannot be surpassed. Even in the case of superlative degree of misconduct there are grades and degrees. The argument does not admit of serious consideration that the intent of the framers of the rule was, that absolutely the worst misconduct could alone merit dismissal, and so long as, comparatively speaking, there could be a possibility of a still worse conduct, it could not be termed the gravest act of

misconduct. Human conduct or behaviour cannot be graded and there can be no precise scale of graduation in order to arithmetically compare the gravity of the one from the other. In the circumstances, the use of the superlative degree, appears to be intended to indicate a supereminent, or a very high degree of misconduct, and not, that the degree should be so high or so low as cannot be outclassed or excelled.

xx xx xx

14. The superlative degfee in relation to material things may admit of arithmetical accuracy in order to express the highest degree of the quality or attribute indicated in the adjective or adverb used. By way of illustration, one can refer with mathematical precision to the tallest building in the town, the highest mountain in the State, the longest river in the country, the deepest ocean etc. In these cases the highest attribute is intended not to be eclipsed. In the realm of the non-material or the notional, in particular in relation to thought, action conduct or to mental qualities, the superlative is used in an exaggerating heightening or hyperbolical sense, or in order to indicate simply a high degree of the quality mentioned. From the grammatical point of view the use of the superlative degree in order to emphasise a particular quality without intending that it cannot be surpassed is permissive." (P. 84)

26. This decision was followed with approval by Mr. Doddakale Gowda J of the Karnataka High Court in the case of K. MALLAPPA v. STATE OF KARNATAKA ILR KARNATAKA (1985) 2030 2 Suffice it to refer to the head note to the decision:

"(B) WORDS AND PHRASES - GRAVE

HELD Connotes enormity of misconduct in juxta position with technical, trifle or misconduct simpliciter. (Para 6)

- MISCONDUCT

HELD Misconduct is a generic term and means 'to conduct admiss; to mismanage; wrong or improper conduct, bad behaviour, unlawful behaviour or conduct' and

includes malfeasance, misdemeanour, delinquency and other offences. The term 'misconduct' does not necessarily mean corruption or criminal intent.
(Para 6)

GRAVE MISCONDUCT

HELD The word 'grave' intent to indicate super-eminent or a very high degree of misconduct."

(Para 6)

27. As pointed out above, there is a world of difference between misconduct and grave misconduct, in that, a misconduct is said to be grave only if it is of a very serious nature.

28. Now the question is whether the charges framed against the officer do they rise to the level of a grave misconduct granting that they are all held proved to the hilt.

29. Take for instance the first charge which is that the applicant made use of a bungalow peon making him to work at his residence at Calcutta whereas his Hqrs. was at Bilaspur. The second charge is that he claimed Rs.4,000/- as HRA although he was given official accommodation to stay at Bilaspur. The third charge is that he made trips with unreasonable frequency to Calcutta in order to visit his family whom he had left behind at Calcutta and that he spent more time in Calcutta than at the Hqrs. in Bilaspur. The fourth and the last charge is that he made use of a departmental Maruti Van for running around in Calcutta. To each and every one of these charges he has offered an explanation. About putting the bungalow peon to work in his house at Calcutta where he had taken hired accommodation for his family, he said it was necessary for a peon

to be at his disposal there because being in-charge of a project he was often visiting Calcutta being the project Hqrs. It is not denied that the peon had been paid for doing the work of a bungalow peon whether at Calcutta or at Bilaspur where the applicant had been admittedly provided with a one room accommodation at the local Railway Guest House. In the course of his defense statement, the applicant says that very often the accommodation given to him at Bilaspur was shared with other officers who came on duty and what is more being away from Bilaspur quite often in connection with the project work he mentioned that he had to go to Delhi and Allahabad more than a dozen times during his two years stint and, therefore, he did not consider a room provided for his stay at the Railway Guest House, a bungalow at which he could have deployed his servant and other domestic paraphernalia. Likewise, he explained the drawal of HRA. He pointed out that he had leased a house in Calcutta, a fact not in dispute at all. He explained that providing a room in a Railway Guest House when even he was in town is not the same thing as providing housing facility. It is not denied that the HRA was being charged, claimed and realised by the applicant month after month by submitting pay bills passed by the authorised custodian of the Railway Finances and, therefore, he could not at any rate be accused of having drawn HRA surreptitiously ~~or illegitimately~~. The third and fourth charges, Shri A.N. Venugopal, learned Standing Counsel did

not deny, were very trivial in character. The Establishment in the course of the statement of imputations alleged that in his two years stint at Bilaspur, the applicant had spent 102 days at Calcutta as against only 72 days at Bilaspur. Similarly, it was alleged that he had used the official car, adding up a mileage of about 1052 kms. The official had denied that he had misused the vehicle in the manner as spelt out in the charge read with the statement of imputation. Even if it is assumed that the use of the vehicle was for performing unofficial journey, he could have been made to pay for such unauthorised use of a departmental vehicle. Shri Ravivarma Kumar, learned counsel for the applicant urged that stay at Calcutta for about 102 days undeniably included holidays and Sundays etc. etc. According to him, the aforesaid objectionable tally of 102 days even if true as regards his ~~such a~~ sojourn at Calcutta during a span of 2 years of his posting at Bilaspur cannot possibly expose the applicant to a charge of whiling away his time with his family at Calcutta at Government cost.

30. It is not denied that the Administration had all the while complete knowledge of what he was doing, where he was going and how he was conducting himself during those two years. Then why is this postmortem after two years is the question we ask ourselves. The charges as they stand can certainly be dubbed without exaggeration as being almost trivial in nature and appear to be more of a trifle bordering almost on ludicrousness even in the absence of any explanation by the defense. We think this to be a case of gross misuse of power exercised to target this man just on the eve of his retirement made worse by the continued

hunting and pecking even after retirement.

31. The Administration had the chance of pulling him up and to take this action which they have now initiated, while he was actually misbehaving or even thereafter when they still had two years for hauling him over the coals before he retired. They kept quiet then only to continue this kind of head hunting later, is an act in our view, indicative of exercise of authority that is totally unreasonable.

32. Our views aforesaid recorded on an assessment of the charges may indicate that we had been doing an impermissible exercise in recording in brief findings with evidence to be still let in and impinging as well on the jurisdiction of the disciplinary enquiry whose duty is to record findings in regard to the charges set down for enquiry before it. We must in this context hasten to add that it is neither our intention nor has it been our endeavour to arrogate for ourselves the duties and functions of the disciplinary authority. If we have referred to the imputations and the charges framed by the disciplinary authority, it is only with a view to demonstrate that no reasonable person or authority would possibly venture to continue such an enquiry at any rate, after retirement. In our view the charges are comprised of insubstantial matters. The power to continue an on-going enquiry even after retirement is not to be employed in all run of the mill cases.

We may, in this connection, point out the State having reserved for itself such an extra-ordinary power to pursue an enquiry into the post-retirement period against an officer has to necessarily undertake things in a worthy or a fit case so that it can still be in a position to deal with an official who has been so grossly truant in his conduct and therefore merited a suitable reprisal taking the form of withholding of pension and DCRG amount which otherwise cannot be denied at all to a retired officer. We think an order withholding pension and DCRG on grounds of misconduct vis-a-vis retired officer is a mere condign punishment than the usual dismissal etc. etc. Such stringent action apropos a retired officer if it was deserved, there can certainly be no remorse or contriety in the exercise of a power readily available at law. But we must strike a note of caution in stating that if so deadly a power is exercised only to somehow jeopardise the interest of a retiring officer on the mere pretext of an enquiry, it would then by time for us to step in just to prevent the law from becoming an instrument of oppression.

33. We, therefore, consider it appropriate to here and now strike down the charges framed against the applicant at Annexure A-1 as also the decision taken to continue the enquiry even after retirement as per Annexure A-1 and

to further forbid the Railway Administration from holding any enquiry into the conduct of the officer pertaining to his acts and omissions when he was Chief Electrical Engineer at Bilaspur. In consequence of this order, there will be a direction for payment of D.C.R.G. amount presently withheld to be paid to the applicant with interest @ 12% from the date of retirement till the date of payment. We feel such an order is justified in the light of our finding that something that was justly due to him was unreasonably withheld. We may, in this connection, refer to a recent judgment of the Supreme Court in UNION OF INDIA v. JUSTICE S.S. SANDHAWALIA(RETD) AND ORS (A.M. AHMADI, J) - JT 1994(1) S.C.62 wherein it was held:

> "Delayed payment of gratuity - Payment of interest @ 12% upheld - Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court."
> (Para 3) (emphasis supplied)
> Page SC 66

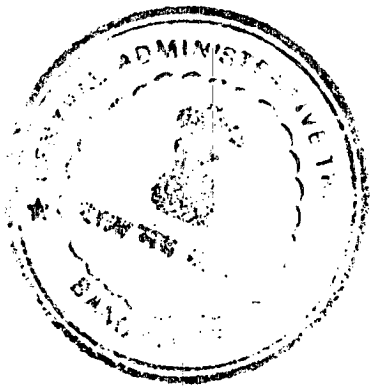
34. We feel well fortified by the judgment of the Supreme Court referred to supra in regard to the order we have made touching the payment of interest on the DCRG amount. In the result, we pass the following order:

1) This application succeeds and is allowed.

2) The charges at Annexure A-1 with the accompanying statement of imputations and the decision of the Railway Board to continue the enquiry after retirement as per Annexure A-4 shall stand quashed. The Railway Administration is forbidden from holding any enquiry into the conduct of the officer pertaining to his acts and omissions when he was Chief Electrical Engineer at Bilaspur.

3) We direct the Railway Board or any of its surrogate authority, whoever is responsible, to pay to him the DCRG amount due to him with interest @ 12% from the date of retirement till the date of payment. The applicant will also be given the option of exercising his right to commute the pension. The directions supra at para (3) to be complied within one month from the date of receipt of a copy of this order by either of the respondents.

4) The applicant to get the costs of the application from the respondents, Advocate's fee being Rs.1000/- only.



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SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Sd-
(V. RAMAKRISHNAN)
MEMBER(A)

Sd-
(P.K. SHYAMSUNDAR)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

C.P.NO.49/95

WEDNESDAY THIS THE EIGHTH DAY OF NOVEMBER 1995

Shri Justice P.K. Shyamsundar ... Vice-Chairman

Shri T.V. Ramanan ... Member (A)

H.R. Kamath,
S/o H.K. Kamath,
Aged about 61 years,
Retired Chief Electrical Engineer,
South Central Railways,
Now residing at Plot No.272,
6th Main, 4th Cross,
Mico Workers Housing Society,
Arakere village Layout, Stage I,
Bangalore-560 076. ... Complainant

(By Advocate Shri C. Jagdish)

v.

1. Shri S.A.A. Zaidi,
Secretary,
Railway Board,
Ministry of Railways,
Government of India,
Raisina Road,
Rail Mantralaya,
New Delhi-110 001.

2. Shri D. Seshagiri Rao,k
General Manager,
Personnel Branch,
South Central Railways,
Rail Nilayam,
Secunderabad-500 371. ... Respondents

(By Advocate Shri A.N. Venugopal ...
Standing Counsel for Railways)

ORDER

Shri Justice P.K. Shyamsundar, Vice-Chairman:

1. We have heard Shri C.Jagdish for Shri Ravivarma Kumar, learned counsel for the applicant. This concerns nonpayment of certain dues to the applicant following his retirement. A direction was issued by us while disposing of the original application O.A.NO.667/93 which reads --

"3. We direct the Railway Board or any of its surrogate authority, whoever is responsible, to pay to him the DCRG amount due to him with interest at 12% from the date of retirement till the date of payment. The applicant will also be given the option of exercising his right to commute the pension. The directions supra at para (3) to be complied within one month from the date of receipt of a copy of this order by either of the respondents."

2. In conformity with the foregoing the respondents submit that every thing has been paid except a sum of Rs.23,996 which is stated to be towards damage and enhanced rents payable by the applicant. There is, of course, some controversy about the amounts so withheld. The applicant says that he is not liable to pay anything to Government but the administration say they have validly withheld the amount which is due from the applicant and can be withheld from out of the DCRG amount payable to him.

3. Such outstanding dues can surely be recovered by Government provided it is valid. In this case that is the aspect which is in question. The applicant says that he is not due in any sum and Government says that the applicant is due in a sum of Rs.23,996. We think that is not a fit context in which we can go into such a controversy particularly in a contempt petition. We are inclined to take the view that withholding of any payment denied by the applicant to be due to the Government is a point to be decided in other proceeding and not in this contempt petition. It would surely be

open to the applicant to challenge the withholding of the amounts in question in any proceeding. In this view of the matter we drop these proceedings leaving it to the applicant to challenge the nonpayment of that portion of DCRG withheld by the respondents in any other appropriate proceedings. No costs.

4. We direct Shri A.N.Venugopal, learned counsel for the railway administration to furnish to the applicant a copy of the calculation chart quantifying the amounts said to be withheld by the Railways.

Sd- Sd-

MEMBER (A) VICE-CHAIRMAN

TRUE COPY

15/11/95

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore