

FORM NO. 21
(See Rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL - HYDERABAD BENCH : HYDERABAD

OA / T.A / CP / MA / DT 12460 of 1997

..... M. M. Shahjahan Applicant(s)

..... ^{Versus} The General Manager
S.E.R.Rs Calcutta ~~order~~ Respondent(s)

INDEX SHEET

Serial No.	Description of Documents	Pages
Docket Orders	—	—
Interim Orders	—	—
Orders in MA (s)	—	—
Orders in (Final Orders)	25-9-97	406243

Certified that the file is complete
in all respects.

Signature of
Dealing Hand
(In Record Section)

Signature of S.O.

Rec'd on 20/10/97
Rec'd on 10/10/97

Central Administrative Tribunal Hyderabad Bench: Hyderabad.

D.A. No.

1240

of 1997.

M. M. Shakayam

Applicants(s).

VERSUS.

The General Manager,
S. F. Rlys. Calcutta & Ors.

(Respondents).

Date	Office Note	ORDER
25.9.97		<p>OA is disposed of as withdrawn with no cash vide orders on separate checks.</p> <p><u>JK</u> HGSTP M (J)</p> <p><u>D</u> HRRN X (A)</p>

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH: BENCHHYDERABAD.

ORIGINAL APPLICATION NO. (240 OF 1997.)

M. M. Shahzahan

(Applicants(s))

VERSUS

Union of India, Repd., By.

The General Manager, S E Rly

Calcutta and 4 others

Respondents(s)(s)

The Application has been Submitted to the Tribunal by Shri T. M. K. Chaitanya Advocate/Party-
in person Under Section 19 of the Administrative Tribunal
Act, 1985 and the same has been scrutinised with reference to
the points mentioned in the check list in the light of the
provisions in the administrative Tribunal(procedure) Rules
1987.

The application is in order and may be listed for Admission
No. 9-97

On 12/12/97
Scrutiny Asst.

Amulya
DEPUTY REGISTRAR(JUDL).

11. Have legible copies of the annexure duly attested been filed. *yes*
12. Has the applicant exhausted all available remedies. *yes*
13. Has the Index of documents been filed and pagination done properly. *yes*
14. Has the declaration as is required by item No. 7 of form, I been made. *yes*
15. Have required number of envelops (file size), bearing full addresses of the respondent's been filed. *yes*
16. (a) Whether the relief sought for, arise out of single cause of action.
(b) Whether any interim relief is prayed for, *yes*
17. (c) In case an MA for coronation of delay is filed, is it supported by an affidavit of the applicant. -
18. Whether this cause be heard by single Bench. *yes*
19. Any other points.
20. Result of the Scrutiny with initial of the scrutiny *may be filed* clerk.

See 18/10/97
Scrutiny Assistant.

Section Officer.

Deputy Registrar.

Registrar.

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH: HYDERABAD.

File No. 2918/92

Report in the Scrutiny of Application.

Presented by Mr. T. M. K. Chaitanya Date of Presentation. 10/9/92

Applicant(s) M. M. Shahzahan

Respondent(s) The C.M. SERly, Calcutta and 409

Nature of grievance Grant of back wages for the Suspension period

No. of Applicants 1 No. of Respondents 5

CLASSIFICATION.

Subject..... No. Department..... Railways....(No)

1. Is the application in the proper form, (three complete sets in paper books form in two compilations). Yes
2. Whether name description and address of all the parties been furnished in the cause title. Yes
3. (a) Has the application been fully signed and verified. (b) Has the copies been duly signed. (c) Have sufficient number of copies of the application been filed. Yes
4. Whether all the necessary parties are impleaded. Yes
5. Whether English translation of documents in a language other than English or Hindi been filed. Yes
6. Is the application on time, (See Section 21). Yes
7. Has the Vakalatnama/Memo of Appearance/Authorisation been filed. Yes
8. Is the application maintainability. (U/S 2, 14, 18, or U/R. 8 Etc.,) Yes
9. Is the application accompanied IPO/DD, for Rs.50/- Yes
10. Has the impugned order's original, duly attested legible copy been filed. Yes

P.T.O.,

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BRANCH, HYDERABAD

INDEX SHEET

O.A. NO. 1240 of 1997.

CAUSE TITLE

M. M. Shahyan

VERSUS

The General Manager, S.E.R.R.
Calcutta Line

SL. NO.	Description of documents	Page No.
1.	Original Application	1-5
2.	Material Papers	6-34
3.	Vakelat	1
4.	Objection Sheet	1
5.	Spore Copies	5
6.	Covers	5

Reg!:- To quash the impugned proceedings at 9-6-1993 and direct respondents 3 and 5 to grant the pay and allowances for the suspension period of the applicant from 23-9-1994 to 7-11-1996.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: AT HYDERABAD.

Bench case

O.A.No. 1240 of 1997.

Between:

M.M.SHAJAHAN S/o N.M.A. Zahangir,
Age 32 years, K.H.T.No. 1489/DLS
S.E. Railway, Visakhapatnam.

Pay Grant of back wages
for the Suspension period

Railways (d)

...Applicant

And

Union of India, rep. by its
General Manager, S.E. Railway,
Garden Beach, Calcutta and Others.

... RESPONDENTS ...

INDEX

S1. No. **Description of Document** **Annexure-** **Page No**

1. Suspension order vide Proceedings
No. WDE/20/MMS/SUS dt.29-9-94 issued
by 4th respondent.

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2. Revocation of Suspension Order issued by Vide Proc. No. WDE/20/REV/MMS/3430 dt. 7-11-96 by 4th respondent.

平

3. Requisition made to Respondent No.5. dt. 20-11-96 by the applicant to issue appropriate orders for the grant of back pay and allowances.

8

4. Requisition made to 3rd respondent dt.
28-5-97 by the applicant to issue copies
9-6-97 of remark.

9

6. Notice issued by the applicant to the 3rd respondent on 1-7-97.

11 to 13

7. Judgement in S.C.No. 10/95 on the file of
W Addl. Dist. & Sessions Judge, VSP.

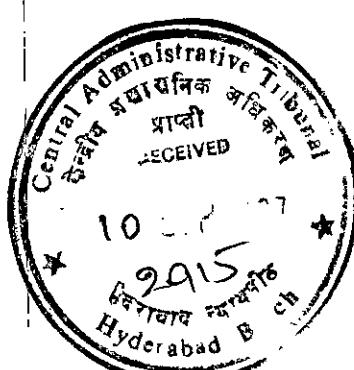
124 to 34

VTSAKHA PATNAM

APPLICATION

DATE: 8-9-1997.

belived GRM
was ~~TO 1952~~
S/C. for S.E.
VENICE ~~phys~~
MCART REDDY
advocate



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT HYDERABAD:::
HYDERABAD BENCH.

O.A. No. 1240 of 1997.

Between :-
M.M. Shahzahan, S/o N.M.A.Jahangir,
aged 32 years, K.H.T.No.1489/D/S,
S.E.Railways, Visakhapatnam. .. Applicant.

and

Union of India, rep. by its General Manager,
S.E.RAILWAY, Garden Beach, Calcutta and (4)
others. .. Respondents.

CHRONOLOGICAL EVENTS

S1.No.	Description of event/ Date.	Page No.
1.	July, 1990	2.
	The applicant got married.	
2.	2.9.95	2.
	The wife of the applicant with 2 children committed suicide.	
3.	23.9.94 to 7.11.1996.	2.
	Suspended the applicant from service.	
4.	26.9.96	2.
	Pronounced the judgement by giving clean acquittal by the IV Addl. Dist. and Session Judge, at Visakhapatnam.	
5.	28.5.97/ 2.6.97	3.
	The applicant sent a representation to R.3.	

Hyderabad;
Dtd/- 12.9.1997.

T.M.R. Chalange
Counsel for the applicant.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD : ADDL.

BENCH AT HYDERABAD.

O.A.No.

1240 of 1997.

Between:

M.M. Shahjahan, S/o. N.M.A. Jahangir,
Age: 32 years, K.H.T.No.1489/D/S,
S.E. Railway, Visakhapatnam.

.. Applicant.

And;

1. Union of India, rep. by its General Manager, S.E. Railway, Garden Beach, Calcutta.
2. Divisional Railway Manager, S.E.Railway, Visakhapatnam.
3. Sr. D.M.E., Diesel, Waltair, S.E. Rly, Visakhapatnam.
4. Asst. Mechanical Engineer, S.E. Railway, Visakhapatnam.
5. Divisional Personnel Officer, S.E. Rly, Visakhapatnam.

.. Respondents.

DETAILS OF APPLICATION:-

1. Particulars of the ~~Applicant~~ Applicant:-

The Particulars of the Applicant are same as mentioned in the above Cause-title.

The address of the Applicant for service of all notices and processes is that of his Counsel -

M/S. T.M.K. Chaitanya, Advocate,
7, Law Chambers, High Court Buildings,
Hyderabad-66.

2. Particulars of the Respondents:-

The particulars of the respondents and their addresses for service of all notices and summons are same as mentioned in the above Cause-title.

3. Particulars of the Order against which Application is made:-

i) to iii) : Proceedings No.WDE/20/SUS/MMS,
dated 9-6-1997 of the 3rd Respondent.

iv) Subject in Brief:

Aggrieved with the impugned order of the 3rd respondent rejecting to issue orders to give copies of remarks, this O.A. is filed.

4. Jurisdiction: The subject matter of the Application is within the jurisdiction of this Hon 'ble Tribunal under Sec. 14 (1) of the Administrative Tribunals Act, 1985.

5. Limitation:-

The applicant is seeking to question the order of the 3rd respondent passed in WDE/20/SUS/MMS, dated 9-6-1997, as such, the present Application is within the period of ~~Section 14 of the~~ limitation prescribed under the Administrative Tribunals Act, 1985.

6. FACTS OF THE CASE:-

a) The applicant most respectfully submits that he is working bearing Token No.1489 in Diesel Loco Shed, S.E.Railway, Visakhapatnam. The applicant submits that he has got married in July, 1990. On 2-9-1995 at about 1 P.M. due to some mental strain the wife of the applicant with two children committed suicide. Applicant further submits that on that day after taking lunch he went to work at about 2 P.M., he received message about the incident.

b) The applicant most respectfully submits that he has been implicated in a Criminal Case under Sec. 498-A and 306 IPC by the Vth Town P.S. Visakhapatnam. The case was numbered as S.C.No.10/95 and taken on the file of IV Addl.District and Sessions Judge, Visakhapatnam, and it was ended in acquittal on 26-9-1996. He further respectfully submits that during the pendency of trial of the said case he has been suspended by the 4th respondent herein from 23-9-1994 to 7-11-1996 vide Order No.WDE/20/MMS/SUS dated 23-9-1994 and he has been paid half of his salary and the applicant further submits that the Hon 'ble IV Addl. District and Sessions Judge at Visakhapatnam pronounced the judgment by giving clean acquittal on 26-9-1996.

c) The applicant most respectfully submits that immediately he had submitted a representation for his reinstatement with all back wages and benefits furnishing along with the copies of judgment in S.C.No.10/95, dated 26-9-1996. The applicant

(6)

further submits that the suspension orders were revoked with immediate effect from 7-11-1996 by the 4th respondent herein vide his Order No.WDE/20/REV/MMS/3430, dated 7-11-96 without backpay and allowances for the suspended period i.e. from 23-9-94 to 7-11-1996.

d) The applicant most respectfully submits that he joined duty on 8-11-1996 and has/instantly submitted a representation to the 5th respondent to issue orders to arrange payment but, unfortunately, there is no reply. The applicant further submits that he sent a representation to the 3rd respondent herein on 28-5-97/9-6-1997 requesting him to issue copies of remarks given by Sr. D.P.O. and Sr. D.M.E. and in reply to that representation dated 28-5-1997/9-6-1997, the ^{3rd} Respondent issued order rejecting the representation vide his Proceedings No.WDE/20/SUS/MMS, dated 9-6-1997 contemplating that he has been given benefit of doubt or the prosecution could not prove the case beyond all reasonable doubt and hence the suspension cannot therefore be treated as wholly unjustified, which is illegal.

e) Hence, the applicant is questioning the legality and validity of the order of rejection passed by the 3rd respondent and concerned respondents for the following among other;

G R O U N D S

- i) The respondents failed to appreciate the fact that there is absolutely no evidence on record to arrive at a conclusion that the applicant has been given benefit of doubt.
- ii) The findings of the respondent No.3 itself are without any evidence and is totally based upon misconception and presumptions. Hence, the same is liable to be set aside.

(6)

further submits that the suspension orders were revoked with immediate effect from 7-11-1996 by the 4th respondent herein vide his Order No.WDE/20/REV/MMS/3430, dated 7-11-96 without backpay and allowances for the suspended period i.e. from 23-9-94 to 7-11-1996.

- d) The applicant most respectfully submits that he joined duty on 8-11-1996 and has/instantly submitted a representation to the 5th respondent to issue orders to arrange payment but, unfortunately, there is no reply. The applicant further submits that he sent a representation to the 3rd respondent herein on 28-5-97/9-6-1997 requesting him to issue copies of remarks given by Sr. D.P.O. and Sr. D.M.E. and in reply to that representation dated 28-5-1997/9-6-1997, the ~~5th~~^{3rd} Respondent issued order rejecting the representation vide his Proceedings No.WDE/20/SUS/MMS, dated 9-6-1997 contemplating that he has been given benefit of doubt or the prosecution could not prove the case beyond all reasonable doubt and hence the suspension cannot therefore be treated as wholly unjustified, which is illegal.
- e) Hence, the applicant is questioning the legality and validity of the order of rejection passed by the 3rd respondent and concerned respondents for the following among other;

G R O U N D S

- i) The respondents failed to appreciate the fact that there is absolutely no evidence on record to arrive at a conclusion that the applicant has been given benefit of doubt.
- ii) The findings of the respondent No.3 itself are without any evidence and is totally based upon misconception and presumptions. Hence, the same is liable to be set aside.

- iii) The respondents wrongly comprehended and interpreted the finding of the Clean acquittal given by the learned IV Additional ~~xx~~ Sessions Judge in the Sessions Case.
- iv) The respondents should have given the copies of remark and ought to have issued orders for payment of backwages and allowances for the suspended 26 months period.
- v) The respondents failed to see that there is no where mentioned in the judgment as benefit of doubt is given to the applicant.
- vi) In any view of the matter the impugned order is liable to be set aside as there is absolutely no application of mind by the respondents. There were carried away by the finding of 3rd respondent.

7. Details of remedies exhausted:-

The applicant has no other alternative remedy than to invoke the jurisdiction of this Hon 'ble Tribunal.

8. Matters not pending with any other Court

The applicant submits that he has not filed any application, Writ petition or suit regarding the same subject matter and no application, writ petition or suit is pending before any other Court or Tribunal regarding the same subject matter.

9. MAIN RELIEF:-

In view of the facts stated in Para-6 above, it is prayed that this Hon 'ble Tribunal in the interest of justice may be pleased to call for the records relating to and connecting with the proceedings No.WDE/20/SUS/MMS, dated 9-6-1997 of the 3rd respondent and to quash the same and consequently direct the concerned Competent authorities (Respondents-3 and 5 herein) to grant the pay and allowances (back wages) for the suspension period of 26 months i.e. from 23-9-1994 to 7-11-1996 and pass such other or further orders as this Hon 'ble Tribunal may deem fit and proper in the circumstances of the case.

10. INTERIM RELIEF , IF ANY, PRAYED FOR:-

It is also prayed in the interest of justice that this Hon'ble Tribunal may be pleased to direct the 3rd respondent to issue the remarks copies to the concerned respondent authorities particularly 5th respondent to make arrangement for payment of back wages i.e. pay and allowances for the suspension period of 26 months i.e. from 23-9-1994 to 7-11-1996, pending disposal of the main O.A., and pass such other or further orders as are deemed fit and proper in the circumstances of the case.

11. Particulars of the Post order
in respect of Application Fee:

i) No. of Indian Postal Order: 812 677169.

ii) Name of the Post Office: G.P.O.

iii) Date of Postal Order: 8-9-97

iv) Post Office at which payable: G.P.O.

J. S. SO.

~~U.O.B.S.D.D. Memos~~

12. Details of Index:-

An index in duplicate containing the details of documents relief upon is enclosed.

VERIFICATION.

I, M.M. Shajahan, Son of N.M.A.Jahangir, aged 32 years, K.M.T.No.1489/DCS/WAT, South Eastern Railway, Visakhapatnam, do hereby verify that the contents are true to my personal knowledge and belief and on the advise rendered by my counsel in legal aspects and I have not suppressed any material facts.

T. M. S. Chary
Counsel for Applicant.

Hyderabad,
D/ 10-9-97.

To
The Registrar,
Central Administrative Tribunal,
Hyderabad Bench, at HYDERABAD.

M. M. Shajahan
Signature of Applicant

(a)

(1)

A-2

SOUTH EASTERN RAILWAY

(STANDARD FORM No. 2)

STANDARD FORM FOR DEEMING RAILWAY SERVANT UNDER SUSPENSION
RULE 5(2) OF R.S. (D&A) RULES 1968

No. WDE/20/MMS/SUS/8

Department: MECHANICAL(D)

Place of issue: Waltair

Dated: 23.9.1994

ORDER

Whereas a case against Sri M.M. Shajahan Designation: K.H. T.No 1489 in respect of a criminal offence is under investigation/inquiry/trial.

And whereas the said Sri M.M. Shajahan, Design. K.H. T.No 1489 was detained in Police Custody on 3.9.94 and sent for Judicial custody and detained for a period exceeding forty eight hours.

Now, therefore, the said Sri M.M. Shajahan, Design. K.H. T.No 1489 is deemed to have been suspended with effect from the date of detention i.e., the 3rd Sept'94 in terms of Rule 5(2) of (D&A) Rules, 1968 and shall remain under suspension until further orders.

It is further ordered that during the period this order shall remain in force, the said Sri M.M. Shajahan, Design: K.H. T.No 1489 shall not leave the Hqrs without obtaining the previous permission of the competent authority.

Signature: Bummanayulu Date: 23.9.94
Name: U. SURWANARAYANA
Design: AME(D) 23.9.1994

Copy to Sri M.M. Shajahan, K.H. T.No. 1489 of DLS/JAT through Superintendent Police, Mr. Balakrishna Supt, Central Jail / VSKP He is requested to please to serve on the party the order of suspension as the accused is under Judicial custody.

Copy to: DPO/JAT (BS-III) for info and necessary action
Copy to: LF (L) - DLS-JAT for information and necessary action
Copy to: HC (Pass) & Master Roll Clerk, OS (E) Gr-II DLS-JAT
(#) Copy to: DPO/S(2), T. Section, S.I., Vizian-Kilim, VSKP. Orders regarding subsistence allowances will be issued by BPO/JAT separately.

T C
JN

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SOUTH EASTERN RAILWAY

STANDARD FORM OF ORDER FOR RELOCATION OF SUSPENSION
ORDER (rule 5(5)(1) OF.R.S.(D&A) RULES, 1968

No. UDE/20/REV/DMS/3430

Department: Mechanical (Diesel)

Place of Issue: Diesel Loco
Shed, Waltair

Date: 07-11-96

ORDER

Where as an order Placing Shri M.M. Shaajan,
K.H. Token No: 1489 of DLS/WAT under Suspension was
made by undersigned on 23.9.1994

Now, therefore, the Undersigned (the authority
which made or is deemed to have made the order of
suspension or any other authority to which that authority
is sub-ordinate) in Exercise of the Powers conferred by
Clause (c) of Sub-Rule (3) of rule 5 of the R.S. (D&A)
Rules, 1968, hereby revokes the said orders of suspension
with effect from 07-11-96.

Signature: *Subramanyam* 07/11/96
Name: *Subramanyam*
Design: *Asst. Manager & D.I.C. Waltair*

- Copy to: 1) Sri M.M. Shaajan, K.H. T.No 1489 of DLS/WAT
2) Sr.OPO/WAT(ES-III) for information and
necessary action please.
3) LF(D) Waltair for info. and necessary action please.
4) Head Clerk(Recd section) & Head Clerk and
Os(Crude-1) DLS/WAT for information and necessary
action please.
5) SrOPO/WAT(Stew-1 section) for information
and necessary action please.
- TC*
RW

To
The Sr.Divl Personnel Officer,
South Eastern Railway
VISHAKHAPATNAM.

(Through Proper Channel)

Respected Sir,

Sub:- Request for drawal of full pay
and all other dues for the period
from 23.9.'94 to 07.11.'96.

With due respect I beg to putforth the
following for kind conseration and early orders
please.

I have been placed under suspension
from 23.9.'94 to 07.11.'96 vide Lr.No.WDE/20/HMS/
SUS dt: 23.9.'94, and revoked vide Lr.No.WDE/20/REV./
MS/3430,PLS dt: 07.11.'96 and joined my duties
from 08.11.'96.

During the above suspension period I was
paid half-pay for about 26 months. In this connect
tion I request your go d-self to draw full pay for
the period as mentioned above and also others
appears like DA,IR and Bonus as well which are due.

Therefore, request your good-self to
issue/orders for arrange of payment for all my dues
as I am facing financially much hard-ship.

Thanking you in anticipation,

Yours faithfully,

M.M. SHAJAHAN

(M.M.SHAJAHAN)
KOH T. No. 1489
DLS/SERLY/VSKP.

DT: 20.11.'96.

TC
N

To

The Senior D.M.E., (D)
D.L.S.,
VI SAKHAPATNAM.

Respected Sir,

Sub:- Request the recommendation copies of Sr. D.M.E. & Sr. D.P.O. applied for the suspension period of Half Pay salaries and other dues.

I, MM. Shahzahan, K.M.T.No. 1489, D.L.S., VSKP beg to state the few following lines for your kind consideration and favourable orders please.

Sir, I was in suspension period from 3-9-94 to 7-11-96, Vide Lr.No. WDE/20/KMS/SUS/22-9-94 and revoked Vide Lr.No. WDE/20/REV/MMS/3430, D.L.S. dt. 7-11-96 and joined my duties from 8-11-1996.

During the above suspension period I was paid Half pay for about 26 months. In this connection I have to apply for Higher Authorities to draw full pay for the above period and also D.A. and I.R and Bonus etc.

I, therefore, request your goodness to kindly issue orders to give copies of remarks given by Sr. D.P.O. and Sr. D.M.E. for which I shall be ever grateful to you.

Thanking you in anticipation.

Dt. 28-05-1997.
9-06-1997
Visakhapatnam.

Yours faithfully,

M.M. Shahzahan

(MM SHAHZAHAN)
K.M.T.No. 1489
D.L.S., VSKP.

b/6/97
OM

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13

SOUTH EASTERN RAILWAY

No. WDE/20/SUS/MMS/

OFFICE OF THE SR.DME(D)
WALTAIR:DT. 09-06-1997.

To Sri M.M. Shajahan, KH T.No.1489/ DLS-WAT.

Sub:- Suspension from duties of Sri M.M. Shajahan,
KH, T.No.1489, DLS-WAT.

Ref:- Your appeal dt. 28-05-97 Addressed to Sr.DME(D)WAT
09-06-97.

In response to your above appeal, the extract
of the decision taken by Sr.DME(D)/WAT on 2-4-97 is
re-published below as desired.

"I have gone through the entire case very
carefully. Shri M. Mustafa Shajahan was suspended
on 23-9-96 due to his arrest in a criminal case.

The charges against him were of grave
nature. He was arrested by the Police and was
suspended on the report of a Sub-Inspector of
Police, 5th Town L&O Police Station-Visakhapatnam.

The incident related to his arrest took
place outside the Railway area and the Railways
are in no way responsible for it. The incident
is of his own making and he himself is to be
blamed for it. In his order, the Hon'ble Addl.
Session's Judge-Visakhapatnam has stated that
"I am of the opinion that the prosecution
miserably failed to bring home the guilt of
the accused beyond all reasonable doubt for the
charges framed against them and the accused are
entitled for an acquittal." This implies that he
has been given a benefit of doubt as the prosecu-
tion could not prove the case beyond all
reasonable doubt. The suspension can not therefore
be treated as wholly unjustified and the Railways
shall not be called upon to incur the additional
financial burden that would accrue if the period
is treated as duty.

I, therefore, in public interest order that
the period shall be treated as suspension only."

10/6/97
S.D.M.E. (DIBAL) MMS

TC
R

ALL
ADVOCATES

Ram Manohar

B.A., B.L.

Phone No: 536894
Narayana Street,
Dobagardens,
VISAKHAPATNAM - 530 020

14

Date 11-7-1997

BY REGULAR PAPER

To

The Senior Mechanical Engineer,
(Diesel)

Miccel Loco Shed,
South Eastern Railway,
VISAKHAPATNAM

Under the instructions from our client Sri
M. M. Chajahan, K.H.T. No 1409/141, S.E.Railway, Visakhapatnam,
we issue the following

NOTICE

1. That our client is working in Miccel Loco shed S.E.Railway, Visakhapatnam. That our client was implicated in a criminal case and the said sessions Judge No: 10/95 on the file of IV Additional District and Sessions Judge, Visakhapatnam was ended in an acquittal on 26.9.96. That during the pendency of trial of the said case, our client was kept under suspension by you from 23.9.94 to 7.11.96 vide order No. M./20/88/Car dt:23.9.94 and he was paid half of his salary. The Hon'ble IV Additional District and Sessions Judge at Visakhapatnam was pronounced the judgement by acquitting him on 26.9.96.
2. That immediately our client has submitted a representation for his reinstatement with all back wages and benefits along with the copies of judgement in C.P. 10/95 dt:26.9.96. That the suspender orders was revoked with immediate effect from 7.11.96. That our client has joined on the duties on 8.11.96. That our client has sent representation to you on 9.6.97 requesting you to pay his half salary for 26 months for the period where he was kept under suspension. That our client has received a letter dated 20.6.97 from you.

T.C.

12
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stating that our client's representation was rejected and you were under an impression that the Hon'ble Court was acquitted our client on benefit of doubt, so your opinion and impression is totally incorrect.

3. Our client further states that the Hon'ble Additional District and Sessions Judge at Visakhapatnam was pleased to give finding in their para 28 of Judgement i.e. "I am of opinion that the prosecution miserably failed to bring home the guilt of the accused beyond all reasonable doubt for charges framed against the accused" and the court found that the accused was not guilty under Section 498-A and 306 I.C.C and under Section 3 of Dowry Prohibition Act and our client was acquitted under Section 234(1) Cr.P.C. hence it is clear that the prosecution failed to prove beyond all reasonable doubt, therefore it is a clean acquittal. The Hon'ble Court has not mentioned in any of his findings in the Judgement as to the accused is acquitted "under benefit of doubt". Hence our client is entitled to receive half of the salary during his suspension period of 26 months. If you failed to pay the above said amounts to our client, you will be held responsible for contempt of the court proceedings, because you have wrongly commented the judgement of the Hon'ble Court.

4. Please take notice that you are hereby called upon to pay half of the salary for the period of 26 months to our client within fifteen days from the date of receipt of this notice by you, as otherwise our client will be

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obliged to proceed against you in a court of law for appropriate relief and action.



ADVOCATE

Copies to:

1. The General Manager,
S.E.Railway, Garden Reach
Calcutta.
2. The Divisional Railway Manager,
S.E.Railway,
Visakhapatnam
3. The Divisional Personnel Manager,
S.E.Railway,
Visakhapatnam.

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IN THE COURT

THE IV.ADDITIONAL SESSIONS JUDGE, VISAKHAPATNAM
SESSIONS CASE NO. 3/96

(P.R.C. No. 10/95 of III Metropolitan Magistrate, Visakhapatnam in Crime No. 184/94 of V Town Law and Order Police Station, Visakhapatnam)

COMPLAINANT
ACCUSED

CALENDAR

1. The Inspector of Police, V Town L & O Police Station, Visakhapatnam.

2. Mr. Mohammad Mustafa Sajahan @ Sajahan, S/o. N.M.A. Jahangeer, 32 years, Muslim, Kalasi in Diesel Loco-shed, residing at Plot No. 103, Tikkavanipalem, Visakhapatnam.

3. Ruksana Begum, W/o. Md. Ahamad, 28 years Muslim, residing at Pithane dibba, near Apsara Hotel, Visakhapatnam.

4. Noorjahan Begum, W/o. N.M.A. Jahangeer, 50 years, Muslim, House wife, residing at B.N.I.T.N. Colony, Q.No. 239, Tikkavanipalem, Visakhapatnam.

5. Noor Mustaf Ahamad, Jahangir @ Jahangir, S/o. late Mustafa 62 years, Muslim, retired Railway Employee, Q.No. 239, B.N.I.T.N. Colony, Tikkavanipalem, Visakhapatnam.

DATE OF:

Offence : 2.9.94

Complainant : 10.3.95

Apprehension : 20.4.95

Commencement of trial : 13.8.96

Close of trial : 13.9.96

Judgment : 26.9.96

Whether the accused on bail or in jail. : On bail

Explanation for the delay in committal court. : No delay in committal court.

Explanation for the delay in trial court:

This case is made over from District Court, Visakhapatnam and taken on file on 12.1.96 and posted for appearance of accused on 20.2.96. On 20.2.96 accused present Sri M.L. Ali filed memo of appearance of A.1 to A.4 for hearing posted to 14.3.96. On 17.5.96 advance to this day and the case is withdrawn and transferred to Mahila Court and appear before Mahila Court on 6.6.96 and this matter is transferred to II Addl. Metropolitan Sessions Court, Visakhapatnam and posted to 26.6.96 and transfer this case from Mahila court, Visakhapatnam for disposal accused present for hearing on charges call on 4.7.96. On 4.7.96 charges framed and accused pleaded not guilty and for issue of schedule call on 18.7.96.

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On 13.8.96 P.W.2 and P.W.2 ~~present~~ examined, Ex.P.1 marked. L.Ws. 2, 4 to 6 are given up for further evidence posted to 14.8.96. On 14.8.96 P.Ws.3 to 6 are examined. Ex.P.2 to P.4 and Ex.D.1 are marked. L.W.11 given up. for further evidence posted to 16.8.96. On 16.8.96 P.Ws.7 to 9 are examined. Ex.P.5 to P.8 and M.Os.1 to 4 are marked. L.Ws.13,17 are given up for further evidence posted to 19.8.96. On 19.8.96 P.W.10 examined. Ex.P.9 to P.12 marked. L.W.22 and L.W.23 present and other L.Ws. absent call on 23.8.96 for further evidence. On 23.8.96 P.W.11 examined. Ex.P.13 to P.15 are marked. Issue S.S. to L.Ws.21 to 23 call on 28.8.96. On 28.8.96 P.Ws.12 to 14 are examined. Ex.P.16 to P.18 are marked. Prosecution evidence closed. For examination of the accused under Section 313 Cr.P.C. call on 4.9.96. On 4.9.96 accused present and examined under Section 313 Cr.P.C., and defence evidence posted to 13.9.96. On 13.9.96 D.W.1 and D.W.2 examined. Ex.B.2 to B.35 and Ex.P.19 marked. Evidence closed for arguments posted to 20.9.96. On 20.9.96 arguments heard for judgment posted to 26.9.96. On 26.9.96 Judgment pronounced. The accused are found not guilty for the offence punishable under Sections 498-A and 306 I.P.C. and under Section 3 of Dowry Prohibition Act and they are acquitted under Section 235(1) Cr.P.C. M.Os.1 to 4 shall be destroyed after the appeal time is over.

IV. Additional Sessions Judge
Visakhapatnam.

DISTRICT JUDGE COURT, VICTORIAHABHAM
Number

Number

Applications made.

Application of Figure 20.

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IN THE COURT OF THE MIAZDO IV. ADDITIONAL SESSIONS JUDGE,
VISHAKHAPATNAM.

SRI M. Mohd. S. S. Basha, B.Com., LL.B.,
IV. Adml. Sessions Judge

on the 26th day of September, 1996

AT CASE NO. 3/95

RECEIVED

The Inspector of Police, V. Town Law and Order Police Station,
Visakhapatnam.

...Complainant.

AND:

1. Mohammad Muzaffar Sajahan @ Sajahan, S/o.U.M.A. Jahangir, 22 years, Muslim, Kalesi in Diesel Loco-Shed, residing at Plot No.103, Tikkavaniipalem, Visakhapatnam.
2. Ruksana Begum, W/o.Md. Ahmed, 28 years, Muslim, residing at Pithana dibba, near Apsara Hotel, Visakhapatnam.
3. Noorjuhan Begum, W/o.N.M.A. Jahangir, 50 years, Muslim, house wife, residing at E.N.I.T.N. Colony, Tikkavaniipalem, Visakhapatnam.
4. Noor Mustaf Ahmad Jahangir @ Jahangir, S/o. late Mustafa, 62 years, Muslim, retired Railway Employee, Q.No.239, B.N.I.T.N. Colony, Tikkavaniipalem, Visakhapatnam.

...ACCUSED.

3. Charge : A.1 to A.4 under Section 498-A and 306 I.P.C. and A.1, A.3 and A.4 under Section 3 of Dowry Prohibition Act.
4. Plea of the accused : Not guilty
5. Finding of the court : The Accused 1 to 4 are found not guilty.
6. Sentence or Order : The accused are found not guilty for the offence punishable under Sections 498-A and 306 I.P.C. and under Section 3 of Dowry Prohibition Act and they are acquitted under Section 235(1) Cr.P.C.
7. Prosecution conducted by: Smt. N.V.R. Vijaya Akchmi, Adml. Public Prosecution.
8. Accused defended by : Sri M.L. Ali., Advocate for Accused.

This case is committed by SRI T. Suryanarayana B.Com., P.G.L., III Metropolitan Magistrate, Visakhapatnam in P.C.C. No.20/95 on his file (Cr. No. 184/94 of V. Town Law and Order Police Station, Visakhapatnam and having stood over for consideration till this day, this court delivered the following:

JUDGMENT

The Inspector of Police, Circle-III Law and Order, Visakhapatnam filed a charge sheet against the accused under Sections 498-A, 306 I.P.C. read with Sec. 3 of Dowry Prohibition Act alleging that A.2 is the sister and A.3 and A.4 are the parents

of A.1. The deceased Jaibunnesa Begum was given in marriage to A.1 in July, 1990 and at the time of marriage the parents of Jaibunnesa paid Rs.15,000/- towards dowry and another sum of Rs.10,000/- for purchasing a scooter, as per the demand made by the accused. The deceased Jaibunnesa was also presented with 5 tulas of gold ornaments. Even at the time of marriage A.1 to A.4 created a scene by throwing out the clothes and other items presented to them by commenting that they are all inferior quality. The parents of the deceased Jaibunnesa forced to purchase fresh clothes worth Rs.1500/- and the accused took away the new clothes along with the clothes which were earlier rejected by them. After marriage the deceased Jaibunnesa joined her husband in B.N.I.T.N. Colony, Visakhapatnam and began to live with her husband and in laws, A.4 removed the servant maid from service on the ground that the deceased Jaibunnesa did not bring sufficient dowry and presentations from her parents. When the deceased Jaibunnesa Begum questioned her husband for removing the maid servant, the accused bluntly told her to bring money from her parents if she wants the assistance of a maid servant. Since two months prior to the incident A.1 and the deceased Jaibunnesa Begum were residing separately at Tikkavanipalem. The accused started constructing a house near I.T.I. Junction in Visakhapatnam. The deceased started making demands on the deceased Jaibunnesa Begum to bring money from her parents. The parents of the deceased promised to arrange Rs.10,000/-. Even after shifting the residence to Tikkavanipalem A.1 never treated the deceased Jaibunnesa as a wife and a small request from the deceased to take her to Cinema was also turned down by A.1. Due to the continuous harassment for money the deceased Jaibunnesa Begum became desperate and came to the conclusion to end her life. On 2.9.94 A.1 left the house at 12.30 P.M. after taking lunch. At about 1.30 P.M. P.W.1 saw smoke coming out from the house of the deceased and went to the house of the deceased along with



others and saw the deceased were in flames. P.W.1 contacted the Police control room from a nearby telephone. Meanwhile neighbours force open the doors with crow-bars and found Jaibunnesa and her daughter Seema already died and her son Aslam was alive. The child Aslam was taken to K.G.Hospital by P.C.1172 and the child died in the hospital on the same day. The postmortem reports reveal that all the three died due to extensive burns. The accused by their acts of cruelty ~~exempt~~ compelled the deceased to commit suicide. Thereby the accused committed the offences punishable under Sections 498-A and 306 I.P.C. and under Section 3 of Dowry Prohibition Act. Hence the charge.

3. The learned III Metropolitan Magistrate, Visakhapatnam, took the above charge sheet on file as P.R.C.10/95 and committed the case to the court of Sessions, Visakhapatnam Division, Visakhapatnam for trial. The learned Sessions Judge, Visakhapatnam took the case on file as S.C.3/96 and made over the same to this court disposal according to law.

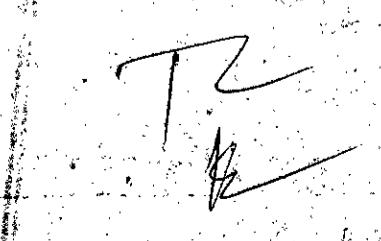
4. After the accused appeared before this court and after hearing both sides, charges under Sections 498-A and 306 I.P.C. were framed against A.1 to A.4 and a charge under Sec.3 of Dowry Prohibition Act was framed against A.1, A.3 and A.4. The said charges were read over and explained to the accused in Telugu to which all the accused pleaded not guilty and claims to be tried.

5. To prove its case the prosecution has examined P.Ws. 1 to 14 and marked Exs. P.1 to P.19, and M.Os. 1 to 4.

6. The case of the prosecution has disclosed from the evidence of P.W.5 mother of the deceased Jaibunnesa Begum in brief is as follows: A.1 is the son and A.2 is the daughter of A.3 and A.4 and they are the residents of Visakhapatnam. P.W.5 was the mother and P.W.6 was the father of the deceased Jaibunnesa Begum and they are the residents of Garividi village in Vizianagaram District. The deceased Jaibunnesa Begum was given in marriage to A.1 on 15.7.90 and the

Marriage was solemnized at Garividil at bride's residence. At the time of marriage A.1 was presented with Rs.15,000/- towards dowry and another sum of Rs.10,000/- for purchasing scooter. On the 2nd day of marriage A.2 and A.3 raised a dispute with bride's parents for not presenting costly sarees to the bride. After the marriage the deceased Jaibunnesa joined her husband at Railway quarters in Visakhapatnam and began to live with her husband and in-laws. According to P.W.5 from the date of marriage till the date of the death of the deceased Jaibunnesa Begum she was subjected to cruelty by the accused. A.4 imposed restrictions on the deceased Jaibunnesa not to write letters to her parents and her parents were also prevented from writing letters to the deceased. Two months prior to the incident A.1 shifted the family to Tikkavanipalem and began to live with the deceased Jaibunnesa Begum and children. On 30.7.94 P.Ws. 5 and 6 came to the house of the deceased Jaibunnesa Begum for the birth day of their grand daughter Seema. At that time A.1 demanded P.Ws.5 and 6 to pay Rs.20,000/- stating that he require money for construction of his house. P.Ws. 5 and 6 expressed their inability to pay Rs.20000/- and agreed to arrange Rs.15,000/- and returned to their village. On 2.9.94 at about 4 P.M. P.Ws.5 and 6 received information about the death of their daughter Jaibunnesa and their grand children Seema and Aslam and came to Visakhapatnam.

7. P.Ws.1, 3 and 4 are residing opposite to the house of the deceased in Tikkavanipalem. P.W.1 stated that on 2.9.94 at about 12.30 P.M. he saw smoke was coming out from the house of the deceased and suspecting something he along with his father and P.W.2 and some others went to the house of the deceased and found the door was bolted from inside. They opened the window with a crow bar and saw all the three deceased were in flames. Then they opened the door with crow bars and entered into the house. By then Jaibunnesa and her daughter Seema were dead and the boy Aslam was alive. P.W.1 went to the ne-



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Krishna Transport Company and telephoned to Police Control room. P.W.8 P.C.1172 and H.C.111998 received phone message and came to the house of the deceased. P.W.8 and P.W.1 took the boy Aslam in the auto to K.G.Hospital and from there P.W.1 went to the police station and gave Ex.P.1 report to the S.I. of Police, V Town Law and Order Police Station. Aslam also died on admission into hospital.

8. P.W.13 the then S.I. of Police, V Town Law and Order Police Station, received Ex.P.1 report from P.W.1 and registered the same as a case in Crime No.184/94 under Section 174 Cr.P.C. and submitted copies of the F.I.R. to all concerned officers. P.W.13 took up investigation and visited the scene of offence and prepared rough sketch and observation Mahazar in the presence of mediators V.Mahesh and P.Ammoru and seized M.Os. 1 to 4 from the house of the deceased under a cover of Mahazar Ex.P.8. P.W.13 sent a requisition to the M.R.O., Visakhapatnam Urban to held inquest over the dead bodies of the deceased.

9. P.W.10 M.R.O., Visakhapatnam Urban received the requisition on 2.9.94 and proceeded to the house of the deceased on 3.9.94 and secured the presence of panchayatdars and held inquest over the dead body of the deceased Jaiqunnesa Begum. Ex.P.6 is the inquest report. During inquest he examined P.W.1, L.W.2 Peerla Maseenu, P.W.4, A.1, A.3 and A.4 and recorded their statements.

10. P.W.14 the then ~~exp~~ Inspector of Police, Law and Order, Visakhapatnam took up further investigation from P.W.13 and secured the presence of panchayatdars and held inquest over the dead body of the deceased Seema Begum in the presence of panchayatdars. Ex.P.5 is the inquest report. P.W.13 held inquest over the dead body of Aslam from 4 P.M. to 6 P.M., on 3.9.94 at K.G.Hospital in the presence of panchayatdars. Ex.P.7 is the inquest report. During inquest P.W.5 gave a report Ex.P.4 to P.W.14. On receipt of Ex.P.4 P.W.14 altered the sections into 498-A and 306 IPC r/w.34 I.P.C. and submitted altered F.I.R. to court. Ex.P.18 is the altered F.I.R.

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11. P.W.11 Asst. Professor Forensic, Andhra Medical College, Visakhapatnam, conducted autopsy over the dead body of the deceased Jaibunnesa from 2.30 P.M. on 3.9.94. Ex.P.14 is the postmortem certificate. On the same day from 3.30 P.M. he conducted autopsy over the dead body of the deceased Seema Begum. Ex.P.15 is the postmortem certificate. On the next day i.e. on 4.9.94 from 10.30 A.M. to 11.30 A.M. he conducted autopsy over the dead body of the Aslam Johar. Ex.P.13 is the postmortem certificate. He opined that all the ~~three~~ three deceased appears to have died due to shock as a result of superficial extensive burns.

12. P.W.14 continued his investigation and arrested the accused on 3.9.94 at 8 P.M. at Tikkavanipalem and sent ~~from~~ them for remand on the next day. After receiving postmortem certificates and after completing investigation he laid the charge sheet against the accused.

13. After the prosecution evidence is closed, the accused were examined under Section 313 Cr.P.C. with regard to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses. When questioned all the accused stated that what the prosecution witnesses deposed is false, and that this case was foisted against them. On behalf of the accused the husband of A.2 was examined as D.W.1 and A.1 himself gave evidence as D.W.2 and Exs.D.1 to D.35 were marked.

14. D.W.1 stated that he purchased a house plot for Rs.60,000/- in 1991 at Bhavanigardens and constructed a house in that site after obtaining loan from his department. Ex.D.2 is the loan sanction proceedings. He further stated that the house constructed by him exclusively belonged to him and that none else including A.1 have got any share in it.

15. The first accused as D.W.2 stated that himself and his wife were living happily ever since their marriage on 15.7.90 and in April 1992 himself, his wife and his parents visited Nagpur, Agra, Delhi, Azmeer and Hyderabad and they have taken number of photos

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during their tour. Exs.D.3 to D.17 are the photos and Exs.D.18 to D.32 are the negatives. He further stated that in February 1992 his father received retirement benefits of Rs.1,14,000/- and called his children and expressed his intention to perform Haj if all his children given consent otherwise he will distribute the amount among all his children. He further stated that himself and his sisters asked their parents to go to perform Haj and his parents went to Haj pilgrimage in April, 1993. He further stated that himself, his wife and A.2 went to Bombay to give send of to his parents and stayed in Bombay for 3 or 4 days and returned to Visakhapatnam. He further stated that when his wife went to her parents' house for confinement he used to visit Garividi once in 15 days to see his wife and also used to give money to his wife for her expenses. He further stated that 2 or 3 months after her parents returned from Haj his mother-in-law used to visit their house and pressing his wife to have a ~~away from his parents and finally he agreed for separate residence and put-up separate family in Tikkavanipalem~~ separate residence and put-up separate family in Tikkavanipalem and began to live happily with his wife. He further stated that on 28.7.94 he met with an accident and two fingers of his right leg were cut in the accident. After the incident he was feeling difficulty to climb steps to go to his house in Tikkavanipalem and therefore, his wife used to bring his lunch to his parents' house where himself, his wife and his parents used to take lunch together. He further stated that on the day of incident he advised his wife to return back to Railway quarters to his parents' house and his wife did not agree for that. After taking lunch he went to work and at about 2 P.M. he received message about the incident.

16. The points for determination are:

1. Whether the deceased Jaibunnesa was subjected to cruelty or harassment by the accused prior to her death?
2. Whether the accused by their wilful conduct created circumstances which provoked the deceased Jaibunnesa to commit suicide along with her children and
3. Whether the prosecution has able to establish the guilt of the accused beyond all reasonable doubt for the charges framed against the accused?

17. Points: It is not in dispute in the present case that the death of the deceased Jaibunnesa and her two children was not

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normal circumstances. On 2.9.94 at about 1 P.M. in her matrimonial home the deceased Jaibunnesa bolted the door from inside and poured kerosene oil on her person andon her two children and set fire to herself and her children with a match ~~the~~ stick. Jaibunnesa and her daughter Seema died in the house itself and her son Aslam died on admission into K.G.Hospital,Visakhapatnam.

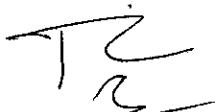
17. Ex.P.5 is the inquest report on the dead body of the deceased Seema. Ex.P.6 is the inquest report on the dead body of the deceased Jaibunnesa. Ex.P.7 is the inquest report on the dead body of the deceased Aslam. P.Ws.7 and 9 and some other are the panchayatdars for the inquest held over the dead bodies of the three deceased. During inquest the panchayatdars came to unanimous conclusion that the deceased died due to extensive burns. P.W.11 was the then Asst.Professor of Forensic Medicine in Andhra Medical College,Visakhapatnam. He stated that on 3.9.94 from 2.30 P.M. he conducted postmortem examination on the dead body of the deceased Jaibunnesa and found antimortem superficial extensive burns on her body. He further stated that on the same day from 3.30 P.M. he conducted postmortem examination on the dead body of the deceased Seema and found antimortem superficial extensive burns on her body. He further stated that on 4.9.94 from 10.30 A.M. to 11.30 A.M. he conducted postmortem examination on the dead body of the deceased Aslam Johar and found antimortem superficial extensive burns on his body. P.W.11 opined that all the three deceased appears to have died due to shock as a result of superficial extensive burns. From the above evidence it is clear that the death of the three deceased was not under normal circumstances and that the deceased Jaibunnesa committed suicide along with her two children.

18. P.Ws.1 to 4 are the neighbours of the deceased. P.W.1 is the son and P.W.3 is the daughter of P.W.4 and they are residing opposite to the house of the deceased. It was P.W.1 who lodged the first information report with the police. Ex.P.1 is the report. Ex.P.1 reads that on 2.9.94 at about 1.30 P.M. P.W.1 saw smoke

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coming out from the house of A.1 and suspecting something he went to the house of A.1 and saw through the window of the house that the deceased were in flames. On seeing it P.W.1 raised cries and on hearing his cries his father and P.W.2 and some others came there. While they were trying to open the door P.W.1 went to Krishna Transport Company and telephoned to Police control room and sent a word to A.1. Ex.P.1 further reads that they opened the door and found the deceased Jaibunnesa and her daughter Seema died and her son Aslam was alive. In the meanwhile police came there and took the injured boy to K.G.Hospital. P.W.1 corroborated the version given in Ex.P.1 and stated that on seeing the smoke coming out from the house of the deceased he went there along with neighbours and as the door was bolted from inside they opened the window with a crowbar and saw the deceased were in flames. P.W.1 further stated that they opened the door with the help of the crowbar and went inside and by that time Jaibunnesa and her daughter Seema died and her son Aslam was alive. P.W.2 is the constable who came to the house of the deceased on receiving phone message and took the boy Aslam to the Hospital in the Auto. P.W.2 also deposed in similar lines corroborating Jaibunnesa for the last time on the date of incident at 12.30 P.M. P.W.3 stated that generally the deceased Jaibunnesa was not used to present in the house at that time and on seeing her at the house at that time she questioned about it and the deceased gave reply that her husband left the house after taking food. P.W.3 further stated that after some time the raw smoke was coming out from the house of the deceased. P.W.1 to 3 did not speak anything against the accused. P.W.4 stated that 10 days after A.1 joined in that house along with his wife she heard that A.1 was shouting at his wife and his wife was weeping. P.W.4 further stated that since she could not understand the language she is not in a position to state what he was stating to his wife and why his wife was weeping. Except this P.W.4 did not state anything against the accused. She heard A.1 shouting at his wife only on one occasion. It is not a daily affair between A.1 and the deceased. Husband



ing at his wife and wife weeping are common things in houses. On the basis of this stray incident we cannot draw any inference that the ~~defence~~ accused were harassing or illtreating the deceased Jaibunnesa prior to her death. Thus the evidence of P.W.1 to 4 is not helpful to the prosecution case.

18. The prosecution is entirely relying on the evidence of P.Ws.5 and 6. P.W.5 was the mother and P.W.6 was the father of the deceased Jaibunnesa. P.W.5 deposed that the deceased Jaibunnesa was given in marriage to A.1 on 15.7.90 and at the time of marriage they paid Rs.15,000/- towards dowry and Rs.10,000/- for purchasing scooter and presented 5 tulas of gold ornaments to their daughter. P.W.5 further stated that on the second day of the marriage A.2 and A.3 who are sister and mother respectively of A.1 raised a dispute that they have not presented costly sarees to the bride and made them to purchase and present costly sarees. P.W.6 gave evidence in similar lines corroborating the evidence of his wife. The learned defence counsel argued that the parents of the deceased have no means to pay such huge amounts to the accused and that they are giving false evidence for the ^{purpose} purchase of the case. Let us consider the evidence on his aspect. P.W.5 stated that their's is a middle class family and her husband is working in a factory at Garividi. She further stated that her eldest daughter studied Intermediate and her 2nd daughter and 3rd daughter failed S.S.C. She further stated that her son studied M.Sc. and her 4th daughter studied M.Com. Even though P.W.5 did not give the particulars of the salary of her husband from her evidence it is clear that they are people having some means. Unless they have no means they would not have sent their children for postgraduation. For the foregoing reasons, I am of the opinion that they have got means to pay the said amounts to the accused. Now the point to be considered is whether the parents of the deceased really paid the amounts to the accused at the time of marriage as alleged by them. The accused are denying ~~them~~ to have received dowry

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or any amount from P.W.5 and P.W.6. In the present case except the evidence of P.Ws.5 and 6, there is no other evidence to show that they paid dowry to the accused at the time of marriage. Ex.D.1 is the list of Jahanex ~~next~~ articles, received backby P.Ws.5 and 6 after the death of the deceased Jaibunnesa. There is no evidence that they paid dowry to the accused at the time of marriage. P.W.5 admitted that all her relatives were present on the date of Valima when the accused alleged to have thrown away the clothes saying that they are of inferior variety. But none of the relatives came forward to speak about the incident atleast to corroborate the evidence of P.Ws.5 and 6. Even the investigating Officer did not choose to examine the relatives of both the parties to ascertain the truth in the allegation of payment of dowry to the accused. In the absence of corroboration, I am of the opinion that it is not safe to rely on the interested testimony of P.Ws.5 and 6 on this aspect.

19. P.W.5 further stated that after the marriage the deceased Jaibunnesa joined her husband and lived with her husband and in-laws in Railway quarters,Visakhapatnam. P.W.5 further stated that from the date of marriage till the date of her death the deceased was subjected to harrassment and ill-treatment by the accused for not bringing more dowry and articles and the deceased used to complain to them about the harrassment. For this there is no corroboration in the shape of any letters or independent witnesses. P.W.5 except giving a bald statement failed to bring to the notice of the court specific instances of harrassment or ill-treatment.

20. P.W.5 stated ~~in~~ in her cross-examination that she used to visit Railway quarters to see her daughter. According to her the portion in which the accused are residing consists of one room and one varandah and A.1 and her daughter used to sleep in the room whereas A.3 and A.4 were sleeping in the varandah by putting up a curtain. P.W.5 denied the suggestion that she used to tell her daughter to go and live separately away from A.3 and A.4. P.W.5 admitted in her cross-examination that when her daughter came to their house for

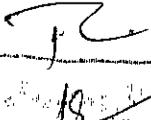
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first delivery A.1 used to visit their house once in 15 days and spent one or two days with them. She further admitted that A.1 used to take her daughter to cinema. During second delivery also A.1 was visiting them once in 15 days. Unless A.1 had no love and affection towards them his wife he would not have visited his in-laws' house to see his wife. P.W.5 further admitted that when A.3 and A.4 went to Haj pilgrimage A.1, A.2 and her daughter and grand children went to Bombay to give send off to them and returned after spending 4 days at Bombay. P.W.5 further stated that A.3 and A.4 returned from Haj pilgrimage on 7.7.93. According to her the deceased Jaibunnesa could not go to Bombay along with her husband to receive A.3 and A.4 as she was carrying 9th month of pregnancy at that time. P.W.5 admitted that at the request of A.1 she was with her daughter Jaibunnesa looking after her when A.1 went to Bombay to receive his parents. P.W.5 further stated that A.3 and A.4 gave some articles to her which they brought from Haj pilgrimage. P.W.5 further stated that after the 2nd issue the deceased Jaibunnesa was with them for four months and they sent a word to the accused when her grand child fell ill and A.1 and A.4 came to their house at 12 midnight on a motor cycle to see the child as there were no buses on that day. All these admissions made by P.W.5 goes to show that A.1 and the deceased Jaibunnesa were living happily and the relations between P.W.5 and the accused were also cordial. Unless they were not in good terms they would not have brought presentations from Haj pilgrimage for them. Except making a bald statement that from the date of marriage till her death the deceased was subjected to harrassment or illtreatment no specific instances of harrassment and illtreatment and brought to the notice to the court. It is not sufficient to say that the deceased was subjected to torture or cruelty. In the absence of specific acts of omission or commission court cannot come to the conclusion that the accused subjected the deceased to cruelty within the meaning of Section 38-A I.P.C.

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19. The only allegation made against A.2 and A.3 is that on the second day of marriage they threw away the clothes stating that the parents of the deceased presented inferior variety of clothes to the bride and made P.W.6 to present costly clothes to the bride. According to P.W.5 all her relatives who came to attend the marriage witnessed this incident. But none were examined to prove it. The allegation made against A.4 is that he prevented P.W.5 and 6 from writing letters to the deceased Jaibunnesa and the deceased was also prevented from writing letters to her parents. For this also there is no evidence. The other allegation against A.2 to A.4 is in the form of a bald statement that they harassed the deceased Jaibunnesa ever since the date of marriage till her death. As already stated by me this is only a bald statement not supported by any evidence. It is not the case of P.W.5 and P.W.6 that their daughter was sent back to their house at any time for bringing money or any articles. On the other hand the evidence on record shows that they were living happily and A.1 was also visiting his in-laws and spending time with them. According to P.W.5 specific demand for money came from A.1 on 30.7.94 when they came to the house of their daughter for the birth day of their grand child. P.W.5 stated that on 30.7.94 they came to the house of their daughter and on that day A.1 demanded them to pay Rs.20,000/- for construction of a house and they first expressed their inability to pay the amount and later on the request of their daughter they agreed to arrange Rs.15,000/-. P.W.5 did not state specifically that A.2 to A.4 also demanded to pay the amount. In the present case there is no evidence that either A.1 or A.4 are constructing any house and they are in need of funds. According to the prosecution case A.4 purchased a house site in the name of his son-in-law D.W.1 husband of A.2 and both D.W.1 and A.1 are having equal shares in that site and that A.1 requires money to invest for construction of a house in that site. But the evidence shows that D.W.1 purchased that site. D.W.1 stated that he applied to his department for sanction of loan for constructing a house and his department sanctioned total loan of Rs.1,470,840/- and that with that money he



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constructed the house for himself. Ex.D.2 is the loan section proceedings issued to D.W.1. There is no evidence that A.1 had any share in that property and that A.1 required amount for the house. P.Ws.5 and 6 stated that they also wrote a letter to A.4 that they arranged Rs.15,000/- and they are bringing the same. According to P.W.6 this letter written by them was seized by the police. But no such letter is produced before the court.

20. The defence version as spoken to by A.1 is that A.1 and the deceased Jaibunnesa were living happily and that the deceased Jaibunnesa under the influence of her mother began to press A.1 to have separate residence and that A.1 finally conceded her request and put up a separate residence at Tikkavanipalem. A.1 further stated that on 28.7.94 he met with an accident and two fingers of his right leg was cut. A.1 further stated that there is water problem in Tikkavanipalem and that the deceased and his children were experiencing difficulty while climbing steps to reach their house which is on an elevated portion of Dibba and on account of it he was telling his wife to go back to his parents' house in the railway quarters and the deceased Jaibunnesa did not agree for it. According to the defence version on the date of incident at about 12.30 P.M. A.1 came for lunch and reiterated his demand to go back to his parents house and the deceased who is very sensitive and who was not willing to go back to her in-laws' house put an end to her life along with her children. The accused filed number of photos Exs.D.3 to D.17 to show that A.1 and the deceased Jaibunnesa were living happily and there were no misunderstandings between them. Here we should not forget that A.1 is the only son to his parents and naturally he may not be willing to live separately leaving his old parents. Inspite of it out of love and affection towards his wife he accepted her request for separate residence and put up a separate residence in Tikkavanipalem. A.3 and A.4 also agreed for it considering the happiness of their n. According to the defence version after A.1 met with an accident he was feeling difficulty

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in climbing the steps. Therefore, the deceased Jaibunnesa used to take his lunch to the house of her inlaws and her husband used to take his lunch in his parents house. The evidence shows that the deceased and her husband and her in laws used to take lunch together in railway quarters. If they are not on cordial terms she would not be taking lunch to her in-laws' house and she could have bluntly refused and insisted her husband to come and take lunch in their house. All these circumstances goes to show that the accused and the deceased were in good terms and there were no mis-understandings or disputes between them.

21. The learned Addl. Public Prosecutor argued that no woman who was living comfortably may not think to end her life along with ~~her~~ her small children unless there are some compelling reasons and it shows that the deceased was subjected to cruelty or harrassment by her husband before her death. I do not agree with the learned Addl. Public Prosecutor. There may be some other reasons for the deceased to end her life. The defence version is that A.1 insisted the deceased to go back to his parents house and this might have prompted her to end her life. The deceased being a sensitive woman did not want to go back to her in-laws house having come out from the house and decided to end her life rather than going back to her in-laws house. There may be so many reasons for a woman to commit suicide. This reason appears to be more probable.

22. In the present case the investigation is not fair, P.W.14 is the investigating Officer in this case. He stated that during investigation he did not visit the railway quarters where the accused are living and examine the neighbours of the accused to ascertain the truth. It is not in dispute that the deceased lived in railway quarters along with her husband and in-laws from the date of marriage till two months prior to her death. The neighbours might have thrown some light on the offence and the court is deprived of their valuable evidence in view of the attitude of the investigating officer in not examining the neighbours of the accused. P.W.14 also did not choose to examine the

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relatives of P.Ws.5 and 6 and A.1 to A.4. For these reasons I am constrained to hold that the investigating in this case not fair.

22. Ex.P.4 is the basis for charge sheeting the accused. P.W.5 did not state specifically in Ex.P.4 that the accused were demanding for more dowry. What P.W.5 stated is that her daughter was informing her that the accused took away her gold ornaments and illtreating her with spoken words. For this also there is no corroboration. The incident in this case took place on 2-9-94 at about 1.30 P.M. The P.W. stated that they received message at 4 P.M. and came to Tikkavanipalem on the same day by 8 P.M. But she did not lodge any report on the same day or on the next day morning. She gave report only on the next day at 3 P.M. It shows that the report was lodged with much deliberations as contended by the learned defence counsel. From the circumstances it may be noted that P.Ws.5 and 6 might have shocked after seeing the charred dead bodies of their daughter and grand children and in that grief and anger they might have lodged the report with police. The delay in lodging the F.I.R. will strengthen this version. In these circumstances, I am of the opinion that there is every possibility to believe that P.W.5 in that grief and anger might have lodged a report against the accused.

23. The other evidence on record is of no importance. P.W.9 stated that he was present when M.Os.1 to 4 were seized from the house of the deceased and he signed in Ex.P.8 Mahazar. P.W.13 the then S.I. of Police stated that on 2.9.94 P.W.1 came to the police station and gave a P.I. report and he registered the same as a case in Crime No. 184/94 U/Sec.174 Cr.P.C. and took up further investigation. P.W.13 further stated that he visited the scene of offence and prepared an observation Mahazar and seized M.Os.1 to 4 from the house of deceased under Ex.P.8. P.W.13 further stated that he sent a requisition to M.R.O. to hold inquest over the dead body of the deceased Jaibunnesa. P.W.10 the then M.R.O., Visakhapatnam Urban stated that he held inquest over the dead body of the deceased Jaibunnesa and during

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inquest he examined P.W.1, P.W.4, P.W.5, P.W.6 and A.1, A.3 and A.4 and recorded their statements. P.W.14 stated that he took up further investigation in this case and held inquest over the dead body of the deceased Seema Begum. According to him during inquest P.W.5 gave report Ex.P.4 on the basis of which he altered the section of law into 498-A and 306 I.P.C. and arrested the accused and laid the charge sheet.

24. From the evidence on record, I am of the opinion that there is absolutely no evidence to show that the deceased was subjected to cruelty or harrassment before her death. P.Ws.1 to 4 who are residing in the neighbourhood did not state that they have seen A.1 either beating or abusing or demanding the deceased to bring money. As already stated by me the investigating officer failed to examine the neighbours of the accused in Railway quarters where the deceased was residing before coming to Tikkavanipalem ~~in~~ two months prior to her death. P.Ws.5 and 6 except giving a bald statement that the deceased was subjected to cruelty till her death no specific instances are brought before the court. As already stated by me it is not sufficient to say that the deceased was subjected to torcher or cruelty. In the absence of specific acts of omission or commission court cannot come to the conclusion that the accused subjected the deceased to cruelty within the meaning of Sec.498-A.

25. The learned Addl. Public Prosecutor argued that in the present case the deceased died within 7 years of her marriage and therefore presumption under Sec.113-A of the evidence Act has to be drawn that the deceased woman was subjected to cruelty by her husband or the relatives of her husband and that the suicide was committed by her husband or by his relatives.

26. In a case reported in 1988(3) Crimes at Page 549 (Veerulu and another Vs. State of Andhra Pradesh) it was held that:-

"to attract Sec.113-A the suicide must have been committed within seven years from the date of her marriage and that her husband or his relatives must have subjected her to cruelty. When these two factors were found to be present

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then having regard to all other circumstances of the case, the section directs a presumption that the husband or his relatives had abetted the suicide. The explanation to this provision makes it clear that cruelty contemplated by Sec. 113-A of the Evidence Act means the same as provided by Sec. 498-A I.P.C. Once 'Cruelty' envisaged by section 498-A IPC is proved (i) it will not be necessary to prove the same again so as to satisfy Sec. 113-A (ii) the legislature has presumed 'cruelty' as the cause of death (iii) the offence under Sec. 306 IPC need not be proved independently, even if there is no mens rea or anticipation of the act of 'Suicide' (xiv) it is not necessary for the prosecution to prove that the suicide was abetted by the accused (v) the presumption of abetment will be available, without there being evidence of abetment as Sec. 107 of the Penal Code; and this would be done without there being any non-obstante clause. However, it is to be born in mind that the presumption is to be drawn having regard to all the other circumstances of the case. Thus, when once the offence under Sec. 498-A IPC is established the court shall draw a presumption having regard to all the other circumstances of the case that the suicide was abetted by the accused found guilty under Section 498-A IPC. So, before drawing the presumption the court shall have to take into consideration all the other circumstances of the case".

27. In the present case there is no evidence that the accused demanded the deceased Jaibunnesa and her parents for money nor there is any evidence that she was subjected to cruelty or harrassment. Merely that the deceased Jaibunnesa committed suicide along with her children within 7 years of her marriage we cannot infer that she was subjected to cruelty. As already held by me in the present case the offence under Sec. 498-A IPC is not proved. When the cruelty of the accused is not proved, then no presumption for abetting the deceased in committing the suicide may not arise.

28. For the foregoing reasons, I am of the opinion that the prosecution miserably failed to bring home the guilt of the accused beyond all reasonable doubt for the charges framed against them and the accused are entitled for an acquittal.

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29. In the result, the accused are found not guilty for the offences punishable under Sections 498-A and 306 I.P.C. and under Section 3 of Dowry Prohibition Act and they are acquitted under Section 235(1) Cr.P.C. M.Os.1 to 4 shall be destroyed after the appeal time is over.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in open court, this the 26th day of September, 1996.

IV. Addl. Sessions Judge,
Visakhapatnam.

APPENDIX OF EVIDENCE

I. NO. OF WITNESSES EXAMINED FOR PROSECUTION:

- P.W.1 : Porla Nooka Raju(L.W.1)
P.W.2 : Vasupalli Gunna Rao(L.W.3)
P.W.3 : Pulleti Satyavathi(L.W.7)
P.W.4 : Perla Daniamma(L.W.8)
P.W.5 : Noorjahan Begum(L.W.9)
P.W.6 : Pharahatulla Sharif(L.W.10)
P.W.7 : V. Marayya(L.W.16)
P.W.8 : I. Sudhakar(L.W.14)
P.W.9 : Vasupalli Mahesh(L.W.18)
P.W.10 : Y. Rama Mohan Rao(L.W.15 Mandal Executive Magistrate)
P.W.11 : Dr. N. Doodiah(L.W.20)
P.W.12 : V. Mohana Rao, Police Constable(L.W.21)
P.W.13 : K. Raghu, S.I. of Police(L.W.22)
P.W.14 : N. Balaji Rao, C.I. of Police(L.W.23)

II. NO. OF WITNESSES EXAMINED FOR DEFENCE:

- D.W.1 : Md. Mohamood.
D.W.2 : Md. Mastafa Sajahan(A.1)

III. NO. OF DOCUMENTS MARKED FOR PROSECUTION:

- Ex.P.1 : Report given to the Police by P.W.1(L.W.1)
Ex.P.2 : Relevant portion in 161 Cr.P.C. statement of P.W.3(L.W.7)
Pulleti Satyavathi.
Ex.P.3 : Relevant portion in 161 Cr.P.C. statement of P.W.3.
Ex.P.4 : Report given by P.W.5 to the Police.
Ex.P.5 : Inquest report of deceased Saleema Begam
Ex.P.6 : Inquest report of deceased Jaibunnesa Begam.
Ex.P.7 : Inquest report of Asleem Jihar.



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- Ex.P.8 : Observation report.
- Ex.P.9 : Statement of P.W.5 recorded by P.W.10
- Ex.P.10 : -do- P.W.6 -do-
- Ex.P.11 : -do- P.W.1 -do-
- Ex.P.12 : -do- P.W.4 -do-
- Ex.P.13 : Carbon copy of P.M.Certificate issued by P.W.11 for deceased Aslam Jahar.
- Ex.P.14 : Carbon copy of P.M.Certificate of Jai Bunnessa Begam issued by P.W.11.
- Ex.P.15 : Carbon copy of P.M.Certificate of Sunnisa Begam issued by P.W.11.
- Ex.P.16 : First Information Report.
- Ex.P.17 : Rough sketch.
- Ex.P.18 : altered F.I.R.
- Ex.P.19 : Signature of M.E.M. on statement recorded by him.
- IV. NO. OF DOCUMENTS MARKED FOR DEFENCE:**
- Ex.D.1 : List of Articles.
- Ex.D.2 : Loan Sanctioned proceedings of D.W.1
- Ex.D.3 to D.17: Photos taken during tour.
- Ex.D.18 to D.32: Negatives of D.3 to D.17.
- Ex.D.33 : Group photo of family of A.1.
- Ex.D.34 : Negatives of D.33.
- Ex.D.35 : Letter of the Loco foreman.

V. NO. OF MATERIAL OBJECTS MARKED FOR PROSECUTION:

- M.O.1 : Plastic tin with kerosene.
- M.O.2 : Stainless meals carrier.
- M.O.3 : Match box.
- M.O.4 : Burnt cloth pieces and cotton.

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IV. Addl. Sessions Judge,
Visakhapatnam.

DISTRICT JUDGE COURT, VIZAKHAPATNAM

Number 15/16/

Application was made: 11/10/96

Application was received:

Application was decided:

Decided date:

ADMINISTRATIVE TRIBUNAL
CENTRAL HYDERABAD BENCH.

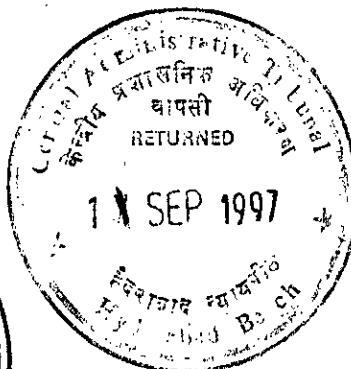
O. AREGD. NO. 2915/97

Date: 11/9/97

To: Mr. T. M. K. Chaitanya, Advocate
Sir,

I am to request you to rectify the defects mentioned below in your application within 14 days from the date of issue of this letter, failing which your application will not be registered and action under Rule 5 (4) will follow.

- ✓ 1. Provision of rule 16 to be furnished. P. No. 5
- ✓ 2. Annexures numbers to be furnished in material papers.
- ✓ 3. End of each document of material papers to be signed by counsel for the applicant.
- ✓ 4. Chronological events of OA to be furnished with material papers.
- ✓ 5. One more copy of OA to be filed.
- ✓ 6. Page 3 (iv) 2nd line, last but 2nd word, needs correction.



DEPUTY REGISTRAR (JUDL)

Ambr.

On
11/9/97

Filed by
18/9

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.1240/97

Date of Order : 25.9.97

BETWEEN :

M.M.Shajahan

.. Applicant

AND

1. Union of India, rep. by its General Manager, S.E.Railway, Garden Reach, Calcutta.
2. Divisional Railway Manager, S.E.Rly., Visakhapatnam.
3. Sr.D.M.E., Diesel, Waltair, S.E.Rly., Visakhapatnam.
4. Asst. Mechanical Engineer, S.E.Rly., Visakhapatnam.
5. Divisional Personnel Officer, S.E.Rly., Visakhapatnam.

.. Respondents.

Counsel for the A pplicant

.. Mr.T.M.K.Chaitanya

Counsel for the Respondents

.. Mr.C.V.Malla Reddy

CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (JUDL.)

ORDER

X Oral order as per Hon'ble Shri R.Rangarajan, Member (Admn.) X

Mr.T.M.K.Chaitanya, learned counsel for the applicant and Mr.C.V.Malla Reddy, learned standing counsel for the respondents.

2. The OA is filed ^{praying} for a direction to set aside the impugned order No.WDE/20/SUS/MMS, dated 9.6.97 where the suspension period was treated only as a suspension by R-3 and to grant pay and allowances (back wages) for the suspension period of

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26 months i.e. from 23.9.94 to 7.11.96.

3. When this OA was taken up for hearing the learned counsel for the applicant submitted that he is withdrawing this OA. He is permitted to withdraw the same.

4. The O.A. is disposed of as withdrawn. No costs.

Rs
~~(B.S. JAI PARAMESHWAR)~~
Member (Jud1.)

VS. 997

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(R.RANGARAJAN)
Member (Admin.)

Dated : 25 th September, 1997

(Dictated in Open Court)

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DRS
D.R(S)

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Copy to:

1. The General Manager, South Eastern Railway, Garden Reach, Calcutta.
2. Divisional Railway Manager, South Eastern Railway, Visakhapatnam.
3. Senior D.M.E., Diesel, Waltair, South Eastern Railway, Visakhapatnam.
4. Asst. Mechanical Engineer, South Eastern Railway, Visakhapatnam.
5. Divisional Personnel Officer, South Eastern Railway, Visakhapatnam.
6. One copy to Mr.T.M.K.Chaitanya, Advocate, CAT, Hyderabad.
7. One copy to Mr.C.V.Malla Reddy, Addl. SEC, CAT, Hyderabad.
8. One copy to D.R(A), CAT, Hyderabad.
9. One duplicate copy.

YLKR

10/10/97

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TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

THE HON'BLE SHRI R.RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S.JAI PARAMESHWAR :
M (J)

Dated: 25/8/97

ORDER/JUDGMENT

M.A/R.A/C.A.NO.

in
D.A.NO. 1240/97

Admitted and Interim Directions
Issued.

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

YLR

II Court

